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A

DICTIONARY OF LAW TERMS & PHRASES

WITH SPECIAL REFERENCE TO THE LAW IN FORCE IN BRITISH INDIA

CONTAINING TECHNICAL TERMS AND PHRASES OF LAW, BOTH ANCIENT AND MODERN, TERMS RELATING TO THE SCOTCH AND THE ROMAN LAWS, COMMERCIAL TERMS, TECHNICAL TERMS OF THE HINDU AND MAHOMEDAN LAWS, AND INDIAN JUDICIAL AND REVENUE TERMS

WITH

A LIST OF ABBREVIATIONS USED IN LAW REPORTS AND TEXT-BOOKS, AND A LIST OF ENGLISH, IRISH, SCOTCH AND INDIAN LAW REPORTS.

For the use of Students, the Profession and the Public.

BY

DESAI NAROTAM,

OF THE HIGH COURT, BOMBAY.

SECOND EDITION, REVISED AND ENLARGED.

TO BE HAD AT

BOMBAY.— Mrs. Radhabai Atmaram Sagoon, *Kalbadevi Road.*
Messrs. N. M. Tripathi & Co., ,, ,,

CALCUTTA.— Messrs. R. Cambray & Co, *9, Hastings Street.*
Rai M. C. Sarkar Bahadur & Sons, *75-1-1 Harrison Road.*

MADRAS.—Messrs. Higginbothams, Ld., *Mount Road.*

ALLAHABAD.—Messrs. Ram Narain Lal, *Katra Road.*

LAHORE.—The Punjab Law Book Depôt, *Anarkali.*

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Bombay:
THE "TATTVAVIVECHAKA" PRESS.

1916.

Price Rs. 5-8.

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PREFACE TO THE FIRST EDITION.

In 1901, the Compiler had Commenced to write a Dictionary of Law Terms and Phrases, with special reference to the law in force in British India. The work was at first designed to include Latin as well as English words, phrases, maxims, &c.; but when a portion of tne work was prepared, it was found that the proposed work would swell into a very bulky volume. It was therefore thought advisable to split up the work in two separate and handy volumes; the one containing only Latin maxims, words, phrases. &c., and the other embodying English terms and phrases. The first of these was published in January, 1902, under the title "A Manual of Legal Maxims, Words, Phrases, &c.," and the Compiler now lays the other before his readers, under the title "A Dictionary of Law Terms and Phrases."

The present work collocates the terms and phrases under English Law of past and present use, the terms of the Roman and Scotch Laws, and also a varied mass of commercial terms, Indian Judicial and Revenue terms, and technical terms of the Hindu and Mehomedan Laws.

In giving the meanings of words the Compiler has consulted Standard English Law Dictionaries, such as Wharton, Tomlins, Stroud, Brown, Mozley, &c., and in case of important terms and phrases, he has, wherever possible, added an exposition of the law bearing upon the subject matter, by reference to standard works upon the subject; thus, no effort has been spared to render the definition of a term or word as full and informing as possible, and, where necessary, the distinction between the English and Indian Law on the subject is duly brought out. This plan, it is hoped, will serve as an aid to the student, who will find the work particularly usful as a compact and a classified hand-book for revising his studies in various branches of Law. To the practitioner it will be an indispensable *vade mecum* showing at a moment's glance the authoritative interpretation of a particular word, term or phrase; while the lay reader will feel interested to find in it apt quotations made *in extenso* from various Indian Acts and Case Law on subjects specially useful to him.

At the end of the work are given (*a*) a list of Abbreviations used in Law Reports and Text Books, with their explanations; (*b*) an Alphabetical List of English, Irish and Scotch Law Reports, with the abbreviations generally used to denote them, their periods, and the names of the Courts; and (*c*) a similar list of Indian Reports. These, the Compiler trusts, will add to the general usefulness of the compilation as a work of reference.

Finally, the Compiler takes this opportunity of expressing his best thanks to Mr. Ratanlal Ranchhoddas, Editor of the Bombay Law Reporter, for the suggestions received from time to time, and particularly for the aid given by him in making the lists of English and Indian Reports as complete as possible.

140 Bapu Khote Street, } D. N.
Bombay, March, 1904. }

PREFACE TO THE SECOND EDITION.

Since writing the above Preface the Manual of Legal Maxims has gone through a second Edition, and the Compiler now finds great pleasure in laying this second Edition of his Dictionary of Law Terms and Phrases before the public, duly revised and enlarged, and hopes that it will meet with the same encouragement as has been accorded to his other works.

184 Kika Street, } D. N.
Bombay, January, 1916. }

LIST OF ABBREVIATIONS.

(Abbreviations of Law Reports and other general Abbreviations are not given in this list, as they will be found in the Appendices to this Dictionary.)

Bouvier	Bouvier's Law Dictionary.
Broom's Com. Law	Broom's Common Law.
Brown	Brown's New Law Dictionary.
Civ. L. *or* Rom. L.	Roman Civil Law.
Civ. Pro.	Civil Procedure Code.
Crim. Pro.	Criminal Procedure Code.
Elberling	Elberling's Law of Inheritance, Gift, Will, &c.
Encycl. L. E.	Encyclopædia of the Laws of England.
Evi.	Evidence Act.
Fr.	French.
Fr. L.	French Law.
Hin L.	Hindu Law.
Ind.	Indian
Lat.	Latin.
MacN. Meh. Law.	MacNaghten's Principles and Precedents of the Mehomedan Law.
Meh. L.	Mehomedan Law.
Mozley	Mozley & Whiteley's Concise Law Dictionary
Nego. Instr.	Negotiable Instruments Act.
Prob. and Adm.	Probate and Administration Act.
Rawson	Rawson and Remnant's Pocket Law Lexicon.
Rom. L. *or* Civ. L.	Roman Civil Law.
Sax.	Saxon.
Sc. L.	Scotch Law.
Sing.	Singular.
Stroud	Stroud's Judicial Dictionary.
Tomlins	Tomlins' Law Dictionary.
Trans. of Pro.	Transfer of Property Act.
Wharton	Wharton's Law Lexicon.

A

DICTIONARY OF LAW TERMS

AND

PHRASES.

A

Abactor. A stealer and driver away of cattle or beasts by herds or in great numbers at once, as distinguished from *fur*, a person who steals a single beast only.—*Wharton.*

Abalienate. Abalienation. To make over, or a making over of, realty, goods or chattels, to another by due course of law.—*Wharton.*

Abandonee. One to whom anything is relinquished.

Abandonment. The relinquishment of an interest or claim. The surrender of his property by a debtor for the benefit of his creditors.—*Wharton.*

Abandonment of an action. Its discontinuance.

Abandonment of children. The desertion and exposure of children, under two years of age, whereby their life is endangered or their permanent health injured.—*Brown.* For punishment for abandonment of children see Act XLV of 1860 (Penal Code), s. 317.

Abandonment of distress. Throwing up the distress.

Abandonment of domicile. *See* DOMICILE.

Abandonment of an easement. The voluntary and permanent relinquishment by the dominant owner of a right to easement which he has actually acquired (*Sham Churn* v. *Tariney Churn*, 1 Cal. p. 429).

Abandonment of the excess. In an action in a court, giving up the debt so far as it exceeds the court's limit of jurisdiction.

Abandonment of an execution. Withdrawing from the possession of the goods seized.

Abandonment of ship or cargo. The relinquishment by an assured person to the assurers of his right to what is saved out of a wreck, when the thing insured has, by some of the usual perils of the sea, become practically valueless. Upon abandonment the assured is entitled to call upon the assurers to pay the full amount of the insurance, as in the case of a total loss. The loss is, in such case, called a *constructive total loss.*—*Wharton.* *See* TOTAL LOSS.

Abandonment of slave or animal. The Civil Law permitted a master who was sued for his slave's tort, or the owner of an animal who was sued for an injury done by it, to abandon the slave or animal to the person injured, and thus relieve himself from further liability.—*Ibid.*

Abandun. Abandum (*abandonum*). Anything sequestered, proscribed, or abandoned. —*Ibid.*

Abatement. Making less; diminishing; taking away. The word is used in several senses—

Abatement of a badge. In coat armour, indicating a dishonour of some kind. It is called also *rebatement.*

To abate a castle or fort is to beat it down. —*Tomlins.*

Abatement of criminal proceedings means their termination without any decision on the merits and without the assent of the prosecutor.

Abatement of debts and legacies When equitable assets are insufficient to satisfy fully all creditors, their debts must abate in proportion, and they must be content with a dividend. So in the case of legacies, upon a deficiency of assets after payment of the debts they abate proportionably, unless a priority is specifically given to any particular legacy. A testator is always presumed to intend that the legacies shall be equally paid, unless he express in his will a contrary intention. *See* LEGACY.

Abatement of freehold. This takes place where a person dies seised of an inheritance, and before the heir or devisee enters, a stranger, having no right, makes a wrongful entry, and gets possession of it. Such an entry is technically called an *abatement*, and the stranger an *abater*. *Abatement* differs from *intrusion* in that it is always to the prejudice of the *heir* or immediate *devisee*, whereas the latter is to the prejudice of the *reversioner* or

remainderman; and *disseisin* differs from them both, for to *disseise* is to put forcibly or fraudulently a person seised of the freehold out of possession.

Abatement of litigation. An action shall not become 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.* See Act V of 1908 (Civ Pro.), Sch. I, O. XXII.

Abatement or removal of nuisances. A remedy allowed by the law to the party injured by a nuisance to abate, destroy, remove, or put an end to the same by his own act. Public nuisances may be abated, that is, taken away or removed, by urban sanitary authorities and other public bodies under various public Acts, and also by private individuals, where the abatement does not involve a breach of the peace. Private nuisances may also be abated by the individuals aggrieved. The law allows this, because injuries of this kind require an immediate remedy, and cannot wait for the slow progress of the ordinary forms of justice.

Plea in abatement. A defence by which a defendant showed cause to the court why he should not be sued, or, if sued, not in the form adopted by the plaintiff, and praying that the action might abate, *i. e.*, cease.

Abatement or *rebate.* In commerce, an allowance or discount made for prompt payment; also a deduction that is occasionally made at the Custom House from the duties chargeable upon such goods as are damaged, and for a loss in warehouses.

Abatement of rent. An agreement to accept a less sum for rent than that comprised in the original agreement.—*Brown.*

Abatement of writ. The defeat or overthrow of a writ.

Abator. Abater. One who abates a nuisance, or enters into a house or land vacant by the death of the former possessor, and not yet taken possession of by his heir or devisee. Also an agent or cause by which an abatement is procured.—*Wharton.*

Abbreviate of adjudication. (*Sc. L.*) An abstract of the decree of adjudication, containing the names of the debtor and creditor, the lands adjudged, and the amount of the debt.—*Rawson.*

Abbreviature. A short draft.

Abbroach. To monopolise goods or forestall a market.

Abbroachment. Abroachment (*abbrocamentum*). Forestalling a market or fair by buying up the wares before they are exposed to sale there and then selling them again by retail.—*Moxley.*

Abbuttals. Abuttals. The buttings, and boundings of land, east, west, north and south, with respect to the places by which they are limited and bounded. The *sides* of the land are properly said to be *adjoining* to; and the *ends*, *abutting* on, the land contiguous.—*Wharton.* Strictly speaking, the sides on the breadth are properly *adjacentes*, *i. e.*, lying or bordering, and only the ends on the length are *abuttantes*, *i. e.*, abutting or bounding.—*Brown.* The boundaries of any piece of land on every side, which are usually given in any conveyance of it, for purposes of description and identification.—*Rawson.*

Abdicate. To renounce or refuse anything; to disinherit in the civil law.

Abdication (*abdicatio*). This is a renunciation of office by some magistrate or other person in office before the natural expiration thereof. Such a renunciation differs from a *resignation* of office, being usually pure and simple, whereas resignation is commonly in favour of some particular successor.—*Brown.* It differs from resignation, in that *resignation* is made by one who has received his office from another and restores it into his hands; as an inferior into the hands of a superior.—*Wharton.*

Abduction. The forcible or fraudulent taking away of women or children.—*Wharton.* The leading away of any person. More strictly, the taking away of a wife from her husband, a child from its parent, a ward from her guardian, and a female servant from her master. In some cases the act is criminal, and in others a civil action will lie against the aggressor.—*Moxley.* Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.—*Act XLV of* 1860 (*Penal Code*), *s.* 362. Abduction of women was common during the Middle Ages, being regarded as gallantry rather than crime.

Abearance. Carriage or behaviour, *e. g.*, a recognizance to be of good *abearance.*

Aberemurder. A plain or downright murder; open murder; as distinguished from the less heinous crime of manslaughter or chance medley.

Abet. To encourage or set on. Thus an abettor of a crime is one who, being present, aids in the commission of the offence. This presence is either actual or constructive, and distinguishes an abettor from an *accessory*, who is not present at the performance of the crime, but is concerned therein either before or after the fact committed.—*Moxley.*

Abetment. The aiding in the commission of an offence.

Abetment of a thing. A person abets the doing of a thing who—(1) Instigates any person to do that thing; or (2) Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or (3) Intentionally aids, by any act or illegal omission, the doing of that thing. A person who, by willful misrepre-

sentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Whoever, either prior to, or at the time of, the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.—*Act XLV of* 1860 (*Penal Code*), *s.* 107.

Abetment of an offence. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention and knowledge as that of the abettor. The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act. To constitute the offence of abetment, it is not necessary that the act abetted should be committed or that the effect requisite to constitute the offence should be caused. It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge. The abetment of an offence being an offence, the abetment of such an abetment is also an offence. It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed. —*Ibid.*, *s.* 108. *See* CONSPIRACY.

A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India, which would constitute an offence if committed in British India.—*Ibid.*, *s.* 108 *A*.

Abettor. Abettator. An instigator or setter on; one who promotes or procures a crime to be committed.—*Wharton.*

Abeyance. An estate is said to be in abeyance, *i. e.*, in expectation, remembrance and contemplation of law, when there is no person *in esse* in whom it can vest and abide; though the law considers it as always potentially existing and ready to vest whenever a proper owner appears, holding it as a maxim "that of every land there is a fee simple in some man, or else it lies in abeyance." This estate has also been called *in nubibus* (in the clouds), and *in gremio legis* (in the bosom of the law).—*Mozley.*

Hindu Law does not recognise an estate in abeyance (*Gorahandas* v. *Ramcooverbai*, 3 Bom. L. R. 857).

Abiding by. An expression in Scotch Law indicating that a person declares judicially that he abides by a deed as true and genuine, of which the genuineness is challenged or objected to by an opponent.—*Mozley.*

Abigeat. The crime of stealing cattle by droves or herds; also a miscarriage produced by art.—*Wharton.* A kind of larceny, committed by leading or driving a living thing away with the intention of feloniously appropriating the same, as distinguished from the taking and carrying away of property from one place to another.—*Mozley.*

Abigeus. A stealer of cattle, the same as abactor. *Abigei*, stealers of cattle.

Abishering. Abishersing. Quit of amercements. It originally signified a forfeiture or amercement, and is more properly *mishering*, *mishersing* or *miskering*, according to Spelman. It has since been termed a liberty of freedom, because, wherever this word is used in a grant, the persons to whom the grant is made have the forfeitures and amercements of all others, and are themselves free from the control of any within their fee. —*Wharton.*

Abjuration (*abjuratio*). A forswearing or renouncing upon oath. To abjure the realm was to take an oath to quit it for ever, and such abjuring persons were and are civilly dead.—*Brown.* Anciently, a person accused of any crime, except treason or sacrilege, who took refuge in a church or churchyard before he was apprehended, might save his life by confessing his offence, within forty-eight days, to the justices or to the coroner, and swearing to abjure or forsake the realm. —*Mozley.* But this privilege, growing into an abuse, was subsequently abolished.

Abjure. To retract, to recant, or abnegate a position upon oath.

Abkar. (*Ind.*) A distiller of spirits.

Abkary. (*Ind.*) Excise; the revenue derived from spirits and intoxicating drugs, such as *toddy*, *opium*, *bhang*, *charas*, &c.

Ablegate. To send abroad a person on some public business or embassy.

Ablocation. A letting out to hire for money.

Abode. Habitation or place of residence, stay or continuance. In law it is used in different senses to denote the place of a man's residence or business, temporary or permanent. For some purposes in law, a man may be deemed to have an 'abode' where he has a place of business, even although he *reside* elsewhere, or where he has a *temporary* residence, although his *permanent* residence is elsewhere or even abroad. But 'abode' or residence is quite distinct from *domicile*, which means much more than even a place of permanent residence; whereas it would seem that 'abode' does not even necessarily imply *that*. 'Abode' seems larger and looser in its import than the word 'residence,' which in strictness means the place where a man lives *i. e.*, where he sleeps or is at home.—*Wharton.* *See* DOMICILE, DWELLING, DWELLING-PLACE.

Aborigines. The original or first inhabitants of a country.

Abolition. A destroying. This is also used in Stat. 25 Hen. 8, c. 21, to signify a licence given to a criminal accuser to desist from further prosecution.—*Mozley.*

Abortion. A miscarriage or the previous expulsion of the contents of the womb before the term of gestation is completed. *Punishment.*—Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. A woman who causes herself to miscarry is within the meaning of this section.—*Act XLV of* 1860 (*Penal Code*), *s.* 312. *With child.*—A woman is with child, within the meaning of this section, as soon as she is pregnant, and the offence may be committed even during the first month (*Queen-Empress* v. *Ademma*, 9 Mad. 369). *See* QUICK WITH CHILD.

Above cited *or* **mentioned.** Quoted before. A figurative expression taken from the ancient manner of writing books on scrolls, where whatever is mentioned or cited before in the same roll must be *above.*—*Wharton.*

Abridgment of damages. The right of the court to reduce the damages in certain cases.—*Rawson.*

Abrogate. To annul. To abrogate a law is to repeal it.

Abrogation. The annulment of a law by constitutional authority. It stands opposed to *rogation*; and is distinguished from *derogation*, which implies the taking away only some part of a law; from *subrogation*, which denotes the adding a clause to it; from *dispensation*, which only sets it aside in a particular instance; and from *antiquation*, which is the refusing to pass a law.—*Wharton.*

Abscond. To go out of the jurisdiction of the courts, or to be concealed in order to avoid any of their processes.

The term *abscond* is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and its ordinary sense are to *hide oneself*; and it matters not whether a person departs from a place or remains in it if he conceals himself; nor does the term apply only to the commencement of the concealment (*per* Turner, C. J., *Srinivas* v. *The Queen*, 14 Mad. p. 297).

Absentee. A person who is away from his usual place of residence.

Absolute. Complete; unconditional.

Absolute law. The true and proper law of nature, which is immutable in theory, but not in application.

A *rule or order absolute* is a completed judgment of a court, and is so called in contradistinction to a rule or order *nisi* which is made on the application of one party only (*ex parte*), to be made absolute unless the other party succeed in showing cause why it should not be made absolute (*discharged*).—*Wharton.* A *rule absolute* is an order which can be forthwith enforced, in contradistinction to a rule *nisi* which commands the opposite party to appear on a day therein named, and *show cause* why he should not perform the act, or submit to the terms therein set forth. In default of his appearance or showing good cause, the rule is made *absolute.*—*Rawson.*

Absolute warrandice. (*Sc. L.*) A warranting or assuring of property against all mankind. It is, in effect, a covenant of title.

Absolution. A dispensation; a remission of sins; an acquittal by sentence of law.

Absolve. To acquit of a crime; to pardon or set free from excommunication.

Absolvitor. (*Sc. L.*) An acquittal; a decree in favour of the defendant in any action.

Abstention. (*Fr. L.*) Keeping an heir from possession; also, tacit renunciation of a succession by an heir.

Abstract. An abridgment or epitome.

Abstract of pleas. A short statement delivered by a defendant of the substance of several pleas which he intends to plead.—*Mozley.*

Abstract of title. A summary or abridgment of the deeds constituting the title to an estate, prepared for the perusal of the intending purchaser or lessee.—*Mozley.* An epitome of the evidence of ownership; a document containing a sufficient summary of the deeds which show the nature of a person's right to a given estate together with any charges or circumstances in anywise affecting it. A *perfect abstract* should show that the owner has both the legal and equitable estates at his own disposal perfectly unencumbered. In conditions of sale, a "perfect" abstract means one as perfect as the vendor has at the time of delivery, in his actual or constructive possession. An *abstract in chief* is one made from the original document or a copy of it, and not from a recital of it in another document.—*Rawson.*

Abuse of process. There is said to be an abuse of process, when an adversary through the malicious and unfounded use of some regular legal process obtains some advantage over his opponent. Actions manifestly frivolous or brought against good faith have also not unfrequently been stayed in chambers as an abuse of the process of the court.—*Wharton.*

Abusing children. Having carnal intercourse with young girls. *See* RAPE.

Abut. To border upon or approach.

Abuttals. *See* ABBUTTALS.

Abwabs. (*Ind.*) Petty taxes imposed by a *semindar* on the cultivators of land, in addition to the rent or revenue demandable of them individually. See *Tilukdhari Singh* v. *Chultan Mahton* (17 Cal. 131).

Acceleration. The shortening of the time for the vesting in possession of an expectant interest.

Acceptance (*acceptatio*). The taking and receiving of anything in good part, and as it were a tacit agreement to a preceding act, which might have been defeated or avoided if such acceptance had not been made.

Acceptance of a bill of exchange. A person accepts a bill of exchange drawn upon him by writing his signature across it, with or without the word "accepted"; he thereby undertakes to pay the bill when due, and is the person primarily liable. Before acceptance he is called the *drawee*; after it, the *acceptor*. An acceptance may be general (absolute), special (qualified), *i. e.*, conditional, partial, or local, *i. e.*, undertaking to pay at one specified place only.—*Rawson*. *See* BLANK ACCEPTANCE.

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

Acceptor for honour. When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it *supra protest* for honour of the drawer, or of any one of the indorsers, such person is called an *acceptor for honour*. —*Ibid.*, *s.* 7, *as amended by Act II of* 1885, *s.* 2.

The person desiring to accept for honour, must, by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.—*Ibid.*, *s.* 109, *as amended by Act II of* 1885, *s.* 8.

A drawee in case of need may accept and pay the bill of exchange without previous protest.—*Ibid.*, *s.* 116.

Accepting service. This is where the attorney for a defendant undertakes on his behalf to accept service of a writ or other process of a court, so as to avoid the necessity of such writ or process being served on his client.—*Mozley*.

Acceptilation. (*Sc. L.*) The extinction of a debt, with a declaration that the debt has been paid when it has not; or the acceptance of something merely imaginary in satisfaction of the debt.

Access. Approach, or the means of approaching. The presumption of a child's legitimacy is rebutted, if it be shown that the husband had not aceess to his wife within such a period of time before the birth, as admits of his having been the father. If a husband have access, although others, at the same time, are carrying on a criminal intimacy with his wife, a child born under such circumstances is still legitimate (*per* Alderson, J., in *Cope* v. *Cope*, 5 C. & P. 604). Neither husband nor wife is admissible as a witness to prove non access. 'This' (says Lord Mansfield in *Goodright* v. *Moss*, 2 Cowp. 594) 'is a rule founded on decency, morality and policy.'—*Wharton*. See Act I of 1872 (Evi.), s. 112. *See* NON-ACCESS.

Access of light. This is an easement, attaching to houses, and is commonly called the easement of "ancient lights."—*Brown*. *See* EASEMENT, LIGHT AND AIR.

Accessary. Accessory (*Accessorius*: *particeps criminis*). He who is not a chief actor at a felony, nor present at its perpetration, but yet is in some way concerned therein, either before or after the fact committed. An accessory *before* the fact is one, who, being absent at the time of the commission of the felony, yet procures, counsels, or commands another to commit a crime. Absence is necessary to make him an accessory, for if he be present, he becomes a principal. An accessory *after* the fact may be where a person knowing a felony to have been committed, receives, relieves, comforts, or assists, the felon. To make an accessory, *ex post facto*, it is in the first place requisite that he knows that the felony has been committed; in the next place he must receive, relieve, comfort, or assist the felon, and, generally, any assistance whatever given to hinder the apprehension, trial, or punishment of the felon, makes the assister an accessory.—*Wharton*. *See* ABETMENT.

Accessory to adultery. A phrase used in the law of divorce, and derived from the criminal law. It implies more than connivance, which is merely knowledge with consent. A conniver abstains from interference; an accessory directly commands, advises, or procures the adultery. A husband or wife who has been accessory to the adultery of the other party to the marriage cannot obtain a diverce on the ground of such adultery.—*Wharton*.

Accessory licenses. *See* LICENSE.

Accident. An extraordinary incident; something not expected. The meaning to be attached to the word 'accident' in relation to equitable relief, is any unforeseen and undesigned event, productive of disadvantage. When title deeds are lost, the defect occasioned by such an accident will be supplied; thus a mortgage-deed being stolen, the mortgagor or the purchaser of the property will be compelled to pay the loan or consideration money upon the mortgagee's reconveyance and indemnity against all such loss. It is upon the principle of relieving against the prejudicial consequences of accident by loss of deeds, that grants are often presumed; thus evidence of the adverse enjoyment of an easement for

twenty years may raise the presumption that there has been a grant.

Although it is a delicate function to restrain the exercise of a legal right, yet equity relieves against penalties and forfeitures on the ground of accident, provided an adequate compensation can be given or the thing can be done afterwards without damaging the interests of the other parties. Upon the general survey of the grounds of equitable jurisdiction in cases of accident, it will be found that they resolve themselves into the following results:—that the party seeking relief has a clear right, which cannot otherwise be enforced in a suitable manner; or that he will be subjected to an unjustifiable loss, without any blame or misconduct on his own part; or that he has a superior equity to the party from whom he seeks relief.—*Wharton.*

It is a rule of all systems of jurisprudence that no one is liable for an accident, being purely such; but it is an equally universal rule that the slightest negligence will exclude the defence of accident. But this non-liability from accident does not, of course, protect the purchaser of a specific chattel from payment of the price in case the chattel is either injured or destroyed by accident.—*Brown.*

As a ground for seeking the assistance of a court of equity, accident means not merely inevitable casualty or the act of God, or as it is called *vis major*, but also such unforeseen events, misfortunes, losses, acts, or omissions as are not the result of negligence or misconduct.—*Mozley.* If an event be the result of culpable negligence, then by due care it could have been prevented, and the negligent person cannot be allowed to excuse himself by declaiming it an accident.

Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.—*Act XLV of* 1860 (*Penal Code*), *s.* 80.

Accite. To summon.

Accommenda. The contract between an owner of property and a master of a vessel in which the former entrusts his goods to the latter, to be sold by him for their joint profit. In the event of the goods being sold without a profit, the whole of the proceeds go to the owner.—*Bouvier.*—*Mozley.*

Accommodation bill. A bill of exchange accepted without consideration for the convenience of the drawer, and with a view to his raising money upon it, or otherwise using it. It stands on a somewhat peculiar footing, inasmuch as in this case there is an implied undertaking on the part of the drawer to indemnify the acceptor against claims which may be made upon him in respect of the bill; and upon this implied contract of indemnity an action will lie against the former of these parties at suit of the latter, if obliged to take up the bill. Even in the case of an accommodation bill, however, the drawer is not *prima facie* the party to pay it; upon the face of such a bill, the party who is bound to pay is the accomodation acceptor.—*Broom's Com. Law.*

Accommodation land. Land bought by a builder or speculator who erects houses thereon, and then leases portions thereof, upon an improved ground rent; land acquired for the purpose of improving the value of the adjacent land.

Accommodation works. Works which a Railway company is required to make and maintain for the accommodation of the owners or occupiers of land adjoining the railway *e. g.*, gates, bridges, culverts, fences, &c.

Accomplice. One concerned with another or others in the commission of a crime.

An accomplice is a person who is a guilty associate in crime or who sustains such a relation to the criminal act that he can be jointly indicted with the principal offender (*Ramasamy* v. *King-Emperor*, 14 M. L. J. R. 226; 27 Mad. 271; *Queen Empress* v. *O' Hara*, 17 Cal. 642).

A conviction proceeding on the uncorroborated testimony of an accomplice, though not illegal, is contrary to the practice of the Courts in England and India. It is unsafe to convict on the only evidence of an accomplice, and it is the practice of judges to guard their minds carefully against acting upon such evidence when uncorroborated, and, when trying a case with a jury, to warn the jury that such a course is unsafe (*Empress* v. *Gamhira*, 2 All. W. N. 13; *Empress* v. *Ram Saran*, 5 All. W. N. 311; *Empress* v. *Imdad*, 6 All. W. N. 7).

Accord and satisfaction. An agreement between two persons, one of whom has a right of action against the other, that the latter should do or give, and the former accept, something in satisfaction of the right of action. When the agreement is executed, and satisfaction has been made, it is called *accord and satisfaction*. Accord and satisfaction bars the right of action; accord without satisfaction does not. In the case of an ascertained debt, the acceptance of a smaller sum is no satisfaction, *e. g.*, payment of 50 is no answer to an action for a debt of 100; though if anything other than money, *i. e.*, a negotiable instrument for a smaller amount or a pepper corn had been accepted in satisfaction, the action would have been barred (*Cumber* v. *Wane*, 1 Sm. L. C.; *Foakes* v. *Beer*, 9 App. Cas. 605).—*Wharton.*

Accord and satisfaction obtained by fraud may be set aside in equity, and a receipt given for money received as compensation under circumstances amounting to imposition, or even undue consideration, will not stop the injured party even at law.—*Brown.*

Account. Accompt. A registry of debts, credits, and charges, or a detailed statement of a series of receipts (credits) and disbursements (debits) of money, which have taken

place between two or more persons. Accounts are either (1) *open* or *current*, where the balance is not struck, or it is not accepted by all the parties, (2) *stated*, where it has been expressly or impliedly acknowledged to be correct by all the parties; and (3) *settled*, where it has been accepted and discharged. —*Wharton*. To make a *rest* in an account, or an *account with rests*, is at stated periods to strike a balance, so that interest may thenceforward be computed on the sum actually due, and not merely on the original principal or debt.—*Rawson*.

The reciprocity of dealing and the right to mutual demand form the essential ingredients of a *mutual, open and current* account. An account to be a *settled* account need not be signed, provided it is submitted to the party sought to be made liable on it and he has by words or conduct, acquiesced in its correctness (*Hafi Abdul Rehman* v. *Haji Bibee*, 7 Bom. L. R. 151).

An *open* account is one, which is continuous or current, uninterrupted or unclosed by settlements or otherwise, consisting of a series of transactions. An account *current* is an open or running account between two or more parties, or, an account which contains items between the parties, from which the balance due to one of them is, or can be, ascertained. *Mutual* accounts are such as consist of reciprocity of dealings between the parties, and do not embrace those having items on one side only, though made up of debits and credits. An account, under which one party has merely received and paid monies on account of the other, is not a mutual account properly so called. Each party must receive and pay on account of the other. A shifting balance, sometimes in favour of one side, sometimes in favour of the other, is a test of mutuality, but its absence is not conclusive proof against mutuality. So also, the mere circumstance that, on one solitary occasion, there was a sum to the credit of the defendants in the books of the plaintiffs, does not make the account between the parties a mutual account in which there have been reciprocal demands between the parties (*Ram Pershad* v. *Harbans*, 6 Cal. L. J. 158).

Account current. A running or open account between two or more persons or firms.

Account stated. This is nothing more than the admission of a balance due from one party to another, and that balance being due, there is a debt; and a statement of the account implies a promise in law to pay the debt shown by the balance. For an account stated it is requisite that a sum certain should be due in certainty, but the sum need not be payable *in præsenti*. The account must have been stated by the debtor to the creditor himself or his agent, and is not sufficient if made to a stranger. The statement may be in writing or by word of mouth; an I. O. U. is evidence of an account stated. But to revive debts barred by statute, the account stated must be in writing. An account stated is not conclusive, but an error therein may be shown; also that an item therein is not a valid debt for want of consideration. An infant cannot state an account; upon attaining his age, he might, however, have ratified such an account.—*Brown*.

To make an account a stated account it is not necessary that it should be signed (*Mulchand* v. *Girdhar*, 8 Bom. H. C., A. C., 6).

Account settled. Settled accounts are accounts rendered by, *e. g.*, a trustee or executor to his *cestuis que trustent*, or to the residuary legatees, upon their releasing him of his accountability to them, and which accounts so rendered they have approved and accepted. Usually settled accounts are not opened, *i. e.*, taken over again *in toto*, but the practice of the court is at the most to give merely liberty to surcharge and falsify the accounts, and not even that unless at least one clear error is proved.—*Brown*.

Action of account. An action which lies against him who ought to render an account, but who refuses to do so. It is now rarely resorted to, proceedings in equity being considered preferable.—*Mozley*. *See* PERSONAL ACTIONS.

Accountable receipt. A written acknowledgement of the receipt of money or goods to be accounted for by the receiver. It differs from an ordinary receipt, or acquittance, in this, that the latter imports merely that money has been paid.—*Wharton*.

Accountant. Accomptant. One whose business it is to compute, adjust, and range in due order accounts.

Accountant-General. Accomptant-General. An officer of the Court of Chancery, appointed by act of Parliament to receive all money lodged in Court and to place the same in the Bank of England for security The office however, has been abolished, and the duties transferred to His Majesty's Paymaster-General.—*Wharton*.

Accountants to the Crown. Certain persons (*e. g.*, brewers) and officers accountable to the Crown for money received by them; the Crown has the first claim for such moneys on any land they may own.—*Rawson*.

Accouple. To marry.

Accredit. To countenance or procure honour or credit to any person. To accredit a deplomatic agent is to furnish him with such authority and credentials as are calculated to ensure his being received with the credit and rank due to his public character.—*Wharton*.

Accredulitare. To purge oneself of an offence by oath.

Accretion. The act of growing to a thing; usually applied to the gradual and imperceptible accumulation of land out of the sea or a river. Accretion of lands is of two kinds; by *alluvion*, *i. e.*, by the washing up of sand or soil, so as to form firm ground; or by *dereliction*, as when the sea shrinks below the usual

water mark. If this accretion of land be by small and imperceptible degrees, it belongs to the owner of the land immediately adjacent to it, in accordance with the maxim *De minimis non curet lex* (the law cares not about trifles), but if it be sudden and considerable it belongs to the Crown.—*Wharton*. See *Secretary of State* v. *Kadirikutti* (13 Mad. 369). *See* ALLUVION.

Accrimination. Accusation.

Accroach. Accroche. To encroach. Accroaching royal power means attempting to exercise royal power.—*Mozley*.

Accrue. To grow to, as interest accrues to principal, or as the *accruing costs* are added to a judgment when execution is issued. It also means to arise, as when a cause of action is said to have accrued to the plaintiff.—*Mozley*.

Accruer, clause of. This is an express clause frequently occurring in the case of gifts by deed or will to persons as tenants in common, providing that upon the death of one or more of the beneficiaries, his or their shares shall go to the survivors or survivor. It is a rule of law, that there is "no survivorship upon survivorship," *i. e.*, that the clause of accruer extends only to the original, not also to the accrued, shares, unless in terms the clause is expressly made to extend to the latter also, which it customarily is made to do.—*Brown*.

Accumulation. A gathering together, heaping up, or amassing. The dominion over property and its rents, issues, and profits, is restrained by our law as regards perpetuity and accumulation. The rules against perpetuities and accumulations bound the propriety right on every side, and limit that species of vanity which in the language of Lord Nottingham, 'fights against God, by effecting a stability which human providence can never attain to.'—*Wharton*. When the interest of a fund instead of being paid over to some person or persons is itself invested as often as it accrues, so as to be reserved for the benefit of some person or persons in the future, the income is said to be accumulated, and a direction for this purpose in a deed or will is called a direction for accumulation. Restrictions are imposed upon accumulation partly by the rules against perpetuities and partly by statute.—*Mozley*. *See* RULE AGAINST PERPETUITY.

Direction for accumulation. When the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed. *Exception.*—Where the property is immoveable, or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 18.

Accumulative judgment. If a person already under sentence for a crime be convicted of another offence, the court is empowered to pass a second sentence, to commence after the expiration of the first. The passing distinct sentences for two or more distinct offences.

Accusation (*accusatio*). The formal charging of any person with a crime.

Accused. This is the generic name for the defendant in a criminal case and (as not prejudging the case, but being a wholly neutral description) it is more appropriate than either 'prisoner' or 'defendant'.—*Brown*.

Achat. (*Fr. L.*) A purchase, contract, or bargain. *Achators* or *Achetors*, purveyors, because they frequently bargain; also purchasers.

Acknowledgment. *Effect of acknowledgment on limitation.*—If, *before* the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made *in writing* signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation according to the nature of the original liability shall be computed from the time when the acknowledgment was so signed. When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received. For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance, or enjoyment, has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or is coupled with a claim to a set off, or is addressed to a person other than the person entitled to the property or right. In this section *signed* means signed either personally or by an agent duly authorized in this behalf; and an application for the execution of a decree or order is an application in respect of a right.—*Act IX of* 1908 (*Limitation*), *s.* 19.

Compare s. 25 (3) of the Indian Contract Act, 1872, under which a *promise* made *in writing* and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt which is already *barred* by limitation, is sufficient to give a new cause of action.

Acknowledgment money. Money paid by the copyhold tenants in some parts of England on the death of their landlords as an

acknowledgment or recognition of the title of the new lords, in the like manner as money is usually paid on the attornment of tenants. *See* FINE.

Acquest. Acquit. Property obtained by purchase or donation.

Acquiescence. Consent, either express or implied. Where a person having a full knowledge of the facts neglects to dispute the right of another, he is said to acquiesce in such right; but there can be no acquiescence where there is not full knowledge. The effect of such acquiescence is a species of *estoppel by conduct*, and it is one of the principal grounds upon which Courts of Equity and also of Law rely in refusing relief to persons bringing forward their claims, although they are within the period allowed by the Statute of Limitation. And when a person stands by and allows another to deal with property to which he claims (or has) a right, he is prevented from disputing the right of such other person, at least to the prejudice of a purchaser for value without notice.—*Brown. See* ESTOPPEL, LACHES, WAIVER.

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

Acquiescence does not mean simply an active, intelligent, consent, but may be implied, if a person is content not to oppose irregular acts which he knows are being done (*Anandra Chandra* v. *Parbati Nath*, 4 Cal. L. J. 198)

Estoppel by acquiescence. There is a distinction between acquiescence in an act while it is still in progress and mere submission to it when it has been completed. In the first case it may operate as an estoppel if it have induced action infringing a right. In the second case submission cannot change the past, and the right of action once vested cannot, at all events as a general rule, be divested without accord and satisfaction, or release under seal. Estoppel by acquiescence has no application to an *ex post facto* submission not amounting to satisfaction, and inducing no action or omission and consequently insufficient to constitute what in such case would be necessary, accord and satisfaction with full knowledge. Acquiescence after a *fait accompli* if not prolonged beyond the verge of limitation is no bar to a right of suit already accrued (*Fatesingji* v. *Bamanji*, 5 Bom. L. R. 274).

Acquisition. The act of procuring property.

Under the Land Acquision Act, the term includes the purpose for which the land is taken as well as the actual taking (*Collector of Dinajpur* v. *Girja Nath*, 25 Cal. 346).

Acquisitive prescription. Prescription whereby a right is acquired, otherwise called *positive* prescription. *See* EASEMENT.

Acquittal. A deliverance and setting free of a person from the suspicion or guilt of an offence; also to be free from entries and molestations by a superior lord, for services issuing out of lands. Acquittal is of two kinds:—(1) *Acquittal in deed*, as when a person is cleared by verdict; and (2) *Acquittal in law*, as if two be indicted for a felony, the one as principal and the other as accessory, and the jury acquit the principal, by law the accessory is also acquitted.—*Wharton.*

Acquittance (*acquietantia*). A release or written discharge of a sum of money or debt due; as where a man is bound to pay money on a bond, rent reserved upon a lease, &c., and the party to whom it is due, on receipt thereof, gives a writing under his hand witnessing that he is paid, this will be such a discharge in law that he cannot demand and recover the sum or duty again, if the acquittance be produced.—*Wharton.* If under seal, it is called a *release.—Mozley.*

Act in pais. An act done "in the country," as distinguished from an act done in court, which is a matter of record.—*Mozley.*

Act of attainder. An Act of Parliament passed for attainting a person or rendering a person liable to the consequences of attainder. *See* ATTAINDER.

Act of bankruptcy. An act or event done or suffered by a person, which would be available against him for an adjudication in bankruptcy is called an "act of bankruptcy;" for example, having made an assignment of his property in trust for his creditors; having made a fraudulent conveyance, gift, delivery or transfer of his property, or any part thereof; having made a conveyance amounting to a 'fraudulent preference'; having, with intent to defeat or delay his creditors, departed out of the country; having filed in the *bankruptcy court* a declaration admitting his inability to pay his debts; having given notice to any creditor of suspension of payment. *See* INSOLVENCY.

Act of curatory. (*Sc. L.*) The order by which a curator, or guardian, is appointed by the court.

Act of God (*vis major*). A direct, violent, sudden and irresistible act of nature, which could not by any reasonable cause, have been foreseen, guarded against or resisted.

Act of God means not a mere misfortune, but something overwhelming, such as storms, lightening, and tempests, which could not happen by the intervention of man, and loss from which could not have been prevented, or avoided by any reasonable amount of foresight, pains or care.—*Stroud.*

Act of grace. An act of Parliament proceeding originally from the Crown is sometimes called an act of grace or pardon.

Act of indemnity. A statute passed for the protection of those who have committed some illegal act subjecting them to penalties. An annual indemnity act used to pass for the protection of those who had acted in certain capacities without the necessary qualification; as justices, for instance, without taking the oaths. Indemnity acts have also been passed to protect a ministry who have issued an order in council not justifiable in law.—*Mozley.*

Act of insolvency. *See* INSOLVENCY.

Act of law. The applicatian of a legal doctrine to a given event. Thus the son of an intestate succeeds to his father's estate by act of law; as opposed to *act of parties*, *i. e.*, an agreement, understanding or conduct of the parties.

Act of Parliament. A law made by the Sovereign, with the advice and consent of the lords spiritual and temporal, and the commons, in parliament assembled. Acts of Parliament are either public, local or special, private or personal. *Public* acts are those which affect the whole realm, or important parts of it. *Local* acts concern particular localities, as railway and gas or water Acts. *Private* acts concern individuals and families only, as acts naturalising a party, dissolving a marriage, or settling particular estates.—*Wharton.*

Act of State. An act done by the Sovereign authority in its political capacity independently of the ordinary law of the land, which, therefore, is not cognizable by the ordinary courts. The acts of State, of which the Municipal Courts of British India are debarred from taking recognizance, are acts done in the exercise of Sovereign powers, which do not profess to be justified by municipal law. But, where an act complained of is professedly done *under* the sanction of municipal law, and in the exercise of powers conferred by that law, the fact that it is done by the Sovereign power and is not an act which could possibly be done by a private individual, does not oust the jurisdiction of the Civil Courts.—*Secretary of State* v. *Hari Bhanji* (5 Mad. 273). An act of State by a foreign power has no effect in British India, and does not confer any right on the plaintiff in British India. A foreign act of State cannot be made the basis of an action in British India, and it cannot be regarded as a foreign judgment (*Shriman Goswami* v. *Shri Goswami Girdharlalji*, 17 Bom. 620).

The test whether an act is or is not an act of State excluding the jurisdiction of the courts, is not whether it is capable of being legally performed only by persons specially empowered in that behalf as authorised by the law to perform specific acts of Government, but whether it is an act of State in those external relations, which Municipal or positive law addressed by political superiors to political inferiors does not profess to regulate. An act of State in respect of which the jurisdiction of the Courts is barred must be an act which does not purport to be done under color of a legal title at all, and which could neither assert or violate any right conferrible by law, but which must rest for its jurisdiction on considerations of external politics and interstatal duties and rights (*Jehangir* v. *Secretary of State*, 6 Bom L.R. 131).

Action (*actio*). Conduct; something done; also the form prescribed by law for the recovery of one's due, or the lawful demand of one's right. Actions are divided into criminal and civil; criminal actions are more properly called prosecutions; and perhaps actions penal, to recover some penalty under statute, are properly criminal actions. Actions civil are divided into three classes:—(1) *real*, which concerns real property only, as the action of dower; (2) *personal*, such as concerns contracts, both sealed and unsealed, and offences or trespasses; and probates and administrations; the first are called *ex contractu*—they are debt, promises, covenant, account, detinue, revivor, and scire facias; the second are *ex delicto*, as case, trover, replevin, and trespass *vi et armis*; (3) *mixed*, which lie as well for the recovery of the thing as for damages for the wrong sustained, as ejectment. Many of these actions are obsolete now.—*Wharton.* *See* PERSONAL ACTIONS, TORT.

Also stock in a company, or shares in a corporation (*Fr. L.*).

Actionable claim. An actionable claim means a claim to any debt other than a debt secured by mortgage of immoveable property, or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property, not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 3, *as amended by Act II of* 1900, *s.* 2. The new definition sets at rest the difference between the several High Courts in their interpretation of the term (as defined in the original s. 130 of the Trans. of Pro. Act) in connection with a mortgage. For the mode of transfer of actionable claims see ss. 130 to 137 of the same Act as amended by Act II of 1900, s. 4.

Actionary. A foreign commercial term for the proprietor of an action or share of a public company's stock; a stock holder; a share holder.

Action of adherence. (*Sc. L.*) An action competent to a husband or wife, to compel either party to adhere in case of desertion. It is analogous to the English suit for restitution of conjugal rights.

Action of the writ. A phrase which has become obsolete, used when the defendant pleaded some matter by which he showed

that the plaintiff had no cause to have the writ he brought, though it might well be that he might have another writ or action for the same matter. Such a plea was called a plea to the action of the writ; whereas, if by the plea it appear that the plaintiff had no cause to have an action at all for the thing demanded, then it is called a plea to the action. —*Mozley.*

Action prejudicial. Otherwise called *preparatory* or *principal*; an action arising from some preliminary doubt, as in case a man sue his younger brother for lands descended from the father, and it is objected against him that he is a bastard, this point of bastardy must be tried before the cause can proceed. It is therefore termed *præjudicialis.—Wharton.*

Action redhibitory. (*Civ. L.*) An action instituted to avoid a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect that it must be supposed the buyer would not have purchased it had he known of the vice.

Actions civil and penal. A *civil* action is brought to enforce a civil right merely, as if a man seek to recover a sum of money formerly lent, &c. A *penal* action aims at some penalty or punishment in the party sued, be it corporal or pecuniary. In general, the term 'penal action' implies only an action brought for the recovery of the penalties given by statute, and denotes what is called a *popular* or more usually a *qui tam* action *Criminal* actions or prosecutions are of a public nature, and affect the whole community. They are litigated in the name of the King, against one or more individuals accused ot a crime.—*Mozley.*

Actions mixed. Actions which partook of the nature both of real and personal actions, for therein real property was demanded, and also personal damages for a wrong sustained. These actions are all abolished unless one form of the action of ejectment, in which arrears of rent are recovered by the landlord by the same judgment as the possession of the property, may be so considered.

Actions ordinary. All actions not rescissory.

Actions personal. An action personal, in its most limited sense, signifies an action for a purely personal right (as for a bodily injury, or injury to the reputation), which must be brought, if at all, by the party injured and is not transferable to his representatives, according to the maxim *Actio personalis moritur cum persona*, a personal action dies with the person. But the maxim must not be understood to apply in cases of breach of contract causing damage to a man's estate through medium of a personal injury, as by incapacitating him from work, or depriving his family of his support.—*Mozley.*

Actions popular. Those actions which are given upon the breach of a penal statute, and which any man that will may sue on account of the king and himself, as the statute allows and the case requires. And because this action is not given to one especially, but generally to any of the king's people that will sue, it is called an action *popular.*

Actions real and personal. By the *real actions* of the English law we understand specially the old feudal actions brought for the recovery of land or any freehold interest therein. *Actions personal*, as opposed to actions real, are such whereby a man claims a debt, or personal duty, or damage in lieu thereof; and likewise whereby a person claims a satisfaction or damages for some injury done to his person or property. *See* PERSONAL ACTIONS, REAL ACTIONS.

Actions rescissory. (*Sc. L.*) Actions rescissory are either (1) actions of *proper improbation*, for declaring a writing false or forged; (2) actions of *reduction improbation*, for the production of a writing in order to have it set aside or its effect ascertained under the certification that the writing if not produced shall be declared false or forged; or (3) actions of *simple reduction*, for declaring a writing called for null until produced.—*Wharton.*

Actitation. A debating of law-suits.

Active debt. A debt on which interest is paid.

Active trust. One which has a duty connected with it, as opposed to a passive trust.

Active use. A present legal estate.

Actor. A term borrowed from the Roman Law to signify the person who has the active claim in a judicial proceeding, *e. g.*, as plaintiff, claimant or demandant under the old practice.

Acts done. Words which refer to acts done extend also to illegal omissions.—*Act XLV of* 1860 (*Penal Code*), *s.* 32. The word *act* used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions.—*Act X of* 1897 (*General Clauses*), *s.* 3 (*2*).

Actual. The word *actual* does not usually advance the meaning. Speaking generally, a thing is not more itself because it is spoken of as "actual"; nor is an act, more done or enjoined because it is said or required to be "actually" done. But where a word has a constructive legal meaning not completely corresponding to the fact it indicates, then the addition of "actual" will intensify that word, so that it will not be fully satisfied by such legal meaning.—*Stroud.* The term *actual* is opposed to *constructive.* *See* CONSTRUCTIVE.

Actuary (*actuarius*). A registrar of a public body; a clerk. An officer appointed to keep Savings Banks accounts. The manager of an Insurance company; one skilled in the business of insurance, the calculation of the value of life interests, annuities, &c.

Adawlut. (*Ind.*) Corrupted from *Adalat*, justice, equity; a court of justice. The terms Dewanny Adawlut, and Foujdarry (or Nizamut) Adawlut, denote the civil and criminal courts of justice in India. The Chief or High Court in each Presidency of British India, until its amalgamation with the Supreme Court of Judicature, was called the *Sudder Dewanny and Foujdarry (or Nizamut) Adawlut.*

Adcredulitare To purge one's self of an offence by oath.

Addition. A title given to a man besides his proper name and surname; that is to say, of what estate, degree or mystery he is, and of what town, hamlet, or country.—*Mozley.* Examples of estate—yeoman, gentleman, esquire, &c.; of degree—knight, earl, marquis, duke, &c.; of trade—merchant, clothier, carpenter, &c.; of place of residence—London, York, Bristol, &c.

Addition means the place of residence, and the profession, trade rank and title (if any) of a person described, and in the case of a native of India, his caste (if any) and his father's name, or, where he is usually described as the son of his mother, then his mother's name.—*Act XVI of* 1908 (*Registration*), s. 2 (*1*).

Additionales. Propositions or terms added to a former agreement or contract.

Address. A petition; also a place of business or residence.

Ademption. Revocation or taking away of a legacy, *i. e.*, if a testator, after having given a legacy by his will, alienate the subject of it during his life, it is an ademption.—*Wharton.* Ademption of a legacy is the implied revocation of a bequest in a will by some subsequent act of the testator; as when a specific chattel is bequeathed, and the testator afterwards sells it; or where a parent bequeaths a legacy to his child, and afterwards makes a provision for the child in satisfaction thereof.—*Mozley.* *See* LEGACY.

Adherence. *See* ACTION OF ADHERENCE.

Adherent. Being adherent to the king's enemies, as by giving them aid, comfort, or intelligence, by sending them provisions, by selling them arms, or the like, constitutes high treason.—*Mozley.*

Adhivedanika. (*Hin. L.*) A kind of woman's property given her on the occasion of her husband taking another wife.

Adhyagnika. (*Hin. L.*) A kind of woman's property given her at the time of her marriage before the nuptial fire.

Adhyavahanika. (*Hin. L.*) A kind of woman's property given her while she is conducted from her father's house to her husband's dwelling.

Adiation (*adiatio*). An expression used in Dutch Law for the entering upon an inheritance by the instituted heir. The adiation of an inheritance consists in the intention of the party to enter thereon signified by words or acts.

Adjective law. *See* POSITIVE LAW.

Adjournment (*adjournamentum*). A putting off to another time or place; a continuation of a meeting from one day to another. The adjournment of a trial is in the discretion of the Judge.

Adjudication. The giving of judgment; a sentence or decree. Thus we say, it was adjudged for the plaintiff, &c. We also speak of an adjudication of bankruptcy, or that A. B. was adjudged a bankrupt. The term is used in Scotch Law to express the "diligence" (or process) by which land is attached in security for the payment of a debt.—*Mozley.*

Adjudication fee. Adjudication stamp. The fee paid to a Collector, or the stamp (of a similar value) impressed on or affixed to an instrument, on the Collector being requested under s. 31 of the Indian Stamp Act (II of 1899), in a case of doubt, to assess the duty chargeable on the instrument.

Adjudication in implement. This is the action given in the Law of Scotland to a grantee of an estate whose full legal title thereto the grantor refuses to complete.—*Mozley.*

Adjudication order. That order of the court of Bankruptcy whereby a debtor is adjudicated or declared a bankrupt is so called.—*Brown.*

Adjunction. (*Civ. L.*) When a thing belonging to one is attached or united to that which belongs to another, whether by inclusion, soldering, sewing, construction, writing, or painting, the whole generally belongs to the property of the latter.

Adjuncts. Additional judges.

Adjuration. A swearing or binding upon oath.

Adjustment. In marine insurance, adjustment of a loss means the settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions made, is entitled to receive under the policy, and, in the case of several underwriters, fixing the proportion which each underwriter is liable to pay.

Adlegiare. To purge oneself of a crime by oath.

Admeasurement, writ of (*admensuratio*). A writ which lay against those who usurped more than their share. It used to lie in two cases, first, for *admeasurement of dower* (*ad mensuratio dotis*), and secondly, for *admeasurement of pasture* (*admensuratio pasturæ*). In the former case it was brought by the heir against the widow of a deceased, who withheld from such heir, or his guardian, more land in respect of her dower than she was justly entitled to, in which case the heir was to be restored to the overplus. In the second case, it lay between those who had common of pasture appendant to their freehold, or common by vicinage, when any one or more

surcharged the common with more cattle than he or they ought to have thereon.—*Brown.*

Adminicle (*adminiculum*). Aid or support. In Scotch Law, adminicle is a writing or deed adduced for the purpose of proving the tenor of a lost deed to which it refers. It is principally used to designate evidence, adduced in aid or support of other evidence, which without it is imperfect.

Adminicular evidence. Evidence explanatory or in support; completing testimony.

Administration. This word has several significations, such as, the giving or supplying of something; the King's ministers, or collectively the ministry, is not unfrequently called the *Administration*, as charged with the administration or management of public affairs; so we speak of the administration of justice by judges, &c.; the affairs of a lunatic may be said to be administered by his Committee; the affairs of a bankrupt, by his trustee; and the affairs of an absent person, by his agent, factor, or attorney, &c.; also the administration of a convict's estate; to administer a drug. Administration of a deceased's estate, *i. e.*, getting in the debts due to the deceased, and paying his creditors to the extent of his assets, and otherwise distributing his estate to the persons who are by law entitled thereto; the person charged with this duty is spoken of as "executor" or "administrator," according as he has been appointed by the deceased in his will, or by the Court of Probate.—*Mozley.*

Administration bond. A bond for the good administration of the estate of a deceased person, invariably given by his executor or administrator upon obtaining a grant of probate or of administration from the Court.—*Brown.*

Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall, from time to time, by any general or special order, direct. —*Act X of* 1865 (*Succession*), *s.* 256 *as amended by Act VI of* 1889, *s.* 6.—*Act V of* 1881 (*Prob. and Adm.*), *s.* 78.—*In the Matter of the Petition of Juggodishari Debi* (7 Cal. 84). *Contra, Run Bahadur Singh* v. *Raj Rup Koer* (4 C. L. R. 498).

Grant of Administration. In the grant of letters of administration, there are certain relations of the deceased, who are considered to have a preferable right. Thus, the husband has an absolute right to administer to his wife, and the widow has a moral right (which the Court generally recognizes) to administer to her husband. When there is no husband or widow, the right to administer belongs to the next of kin according to their proximity in relationship. A creditor may also administer; and the Court may even appoint to the administration a person entirely without interest, in which latter case the grant is merely *ad colligendum.* There are various species of administration, *viz.*,—(1) A general administration—when the deceased is wholly intestate; (2) administration *de bonis non*—as upon the death of a sole executor after probate intestate, or upon the death of a sole administrator, while the administration is still incomplete (*de bonis nondum administratis*); (3) Administration *durante minoritate*—as where the executor appointed by the will, being a sole executor, is a minor; (4) Administration *pendente lite*—as where any suit touching the validity of the will is pending, and generally wherever the Court of Chancery would appoint a receiver of the estate; (5) Administration *durante absentia*—as where a sole executor is out of the kingdom; and (6) Administration *cum testamento annexo*—as where either a sole executor dies without having proved the will, or a sole or surviving executor dies intestate.—*Brown*

See LETTERS OF ADMINISTRATION.

Administration suit. A suit instituted in Chancery, for the administration of a deceased's estate. This suit may be instituted by an executor or administrator, or any person interested in the deceased's estate, as creditors, legatee, or next of kin.—*Mozley.*

Administrator. A person appointed by competent authority to administer the estate of a deceased person when there is no executor.—*Act X of* 1865 (*Succession*), *s.* 3.—*Act XXI of* 1870 (*Hindu Wills*), *s.* 6.—*Act V of* 1881 (*Prob. and Adm.*), *s.* 3. One to whom the administration of the estate of a deceased is committed by letters of administration from the Court of Probate in cases where no executor has been appointed by the will of the deceased, or where the person or persons so appointed have refused to act. If an administrator die, his executors are not administrators, but a new administration may be granted, of such of the goods as remain to be administered, to some person, who is then called the administrator *de bonis non.* If a stranger, that is not administrator nor executor, take the goods of the deceased, and administer of his own wrong, he shall be charged and sued, not as an administrator, but as an executor *de son tort.*—*Mozley.* The executor of the executor of an original testator is also the executor of such testator; *secus* in the case of administrators.—*Brown.*

Administrator ad litem. An administrator is so called when appointed for a particular litigation only.

Administratrix. A woman to whom administration is granted.

Admiral. Lord High Admiral (*admiralius*; *custos maris*). A high officer that has the government of the navy, and the hearing and determining of all causes, as well civil as

criminal, belonging to the sea, and for that purpose has a court, called the Admiralty. His functions in the government of the navy, however, are usually committed to the Lords, or Lords Commissioners, of the Admiralty, who are appointed by letters patent to perform them, this great office being rarely conferred on any one individual. The judicial duties of the Admiral are performed by his deputy, who is called the Judge of the Admiralty.—*Mozley.*

Admiralty. The Probate, Divorce, and Admiralty Division of the High Court of Justice was, as far as relates to admiralty, formerly called the High Court of Admiralty, and was held before the Judge of the Admiralty who formerly sat as deputy of the Lord High Admiral of England, until that office was put into commission, and afterwards as deputy of the Lords Commissioners. The Judge now holds his appointment of the Crown as a judge of the High Court of Justice. There are two divisions of the jurisdiction of the Admiralty branch of the High Court—the Prize Court, and the Instance Court. In the Prize Court, the Judge has jurisdiction, by virtue of a commission issued under the Great Seal, at the beginning of every year, to proceed upon all and all manner of captures, seizures, prizes and reprisals of ships and goods which are or shall be taken, and to hear and determine according to the course of the Admiralty and the Law of Nations. In the Instance Court, also, the jurisdiction exercised by the Judge is conferred by a commission under the Great Seal. This is a municipal tribunal, it is a Court of record, and its decrees and orders for the payment of money have the same effect as the other judgments of the Supreme Court. It has jurisdiction in cases of private injuries to private rights arising at sea, or intimately connected with maritime subjects. Its jurisdiction in cases of torts is confined to wrongs committed at sea, or at least on the water within the jurisdiction of the Admiralty.—*Wharton.*

Admissibility of evidence. This phrase denotes the quality of matters adduced in evidence, according to which they are or are not receivable, *i. e.*, admissible, as evidence—a question for the *judge* or court to determine. It is commonly opposed to the *weight* of the evidence once it has been admitted, the weight being for the *jury* or for the judge sitting as a jury.—*Brown.*

Admission (*admissio*). Admission is when the patron presents to a vacant benefice, and the Bishop upon examination, admits the clerk by saying *Admitto de habilem.* In the same sense a man is said to he admitted to a corporation, or to the freedom of a city, on having complied with the preliminary conditions. The admission of an attorney is, when, having served his articles and been examined, he is, on taking the oaths required by the statute, and conforming to certain other regulations, admitted to the privileges of his profession.—*Mozley.*

In the law of evidence, the word denotes a sort of estoppel, which may be either by word of mouth, or by conduct, or by the assumption of a particular office or character, or by writing under hand, unless stated to be "without prejudice," or by deed. But the word "admission" is more commonly used to denote the mutual concession which the parties to an action or suit make in the course of their pleadings, and the effect of which is to narrow the area of facts or allegations requiring to be proved by evidence.—*Brown.*

Admittance. The admission of the tenant by the lord of the manor into the possession of a copyhold estate, whereby the tenant's title to his estate is said to be perfected.—*Mozley.* Admittance is of three kinds: (1) Upon a voluntary grant by the landlord, where the land has escheated or reverted to him; (2) Upon surrender by the former tenant; (3) Upon descent, where the heir is tenant on his ancestor's death.—*Wharton.* Every devisee of copyholds, and also every other alienee thereof, whether for value or voluntary, perfects his title by procuring his admittance from the lord of the manor paying, where such admittance is compulsory, the fine which the custom of the manor has ascertained, and, where the admittance is voluntary on the part of the landlord, such fine as the lord chooses to demand.—*Brown.*

Admonition. A judicial or ecclesiastical censure or reprimand to an accused person on being discharged from future prosecution. This was authorized by the civil law as a punishment for slight misdemeanors.

The House of Commons is invested with the power of enforcing its privileges and of punishing those who infringe them. The mildest form of punishment is by summons to the bar of the House, followed by an *admonition* addressed to the offender by the Speaker. The person so summoned may purge himself of his contempt by an apology accepted by the House in full satisfaction of his offence, and so may escape being *admonished.*

Admortization. Amortization. Amortizement. The reduction of property or lands or tenements to mortmain, in the feudal customs; an alienation of lands and tenements in mortmain. *See* MORTMAIN.

Adnichiled. Annulled; cancelled, made void; brought to nothing.

Adolescence. The period between 12 in females, and 14 in males, till 21 years of age.

Adoption. An act by which a person appoints as his heir the child of another. There is not any law of adoption in England. It also means the affirmation or acceptance of a contract which one is at liberty otherwise to repudiate. *See* ARROGATION.

Adoption under Mehomedan Law confers no right to succession to property. During the lifetime, or after the death, of the adopt-

ing father, the adopted son has no claim upon his property. By the term adoption, under the Mehomedan Law, affiliation by distinct claim of parentage is not intended, but merely the reception, by the adopting father, into his family, of a child, who notoriously and avowedly belongs to another family. In this particular the Mehomedan seems to agree with the English, and the Hindu with the Roman Law. Adoption among the Roman's as among the Hindus at this day, was immediately connected with religious or superstitious notions, and it was thought disgraceful not to keep up and preserve the domestic gods and sacred things of the family.—*Mac N. Meh. Law.*

Adpromissor. (*Rom. L.*) An accessory to a promise; in order to give a stipulator greater security, he guaranteed the fulfilment of a primise ; a guarantor ; a surety.

Adrogation. (*Rom. L.*) The adoption of an *impubes*, *i. e.*, a male under 14, and a female under 12 years old.

Adstipulator. (*Rom. L.*) Adstipulator was an accessory to the stipulator, *i. e.*, to the principal creditor in the verbal contract of stipulatio. He was in use prior to Justinian, but in consequence of that Emperor's legislation he ceased to be wanted for any purpose. Prior to Justinian's legislation a person could not validly stipulate for a payment to be made to him after his death but he could stipulate a present obligation to pay to a third person after the death of him the stipulating person, and as agent for him ; and this third person was called the adstipulator. —*Brown.*

Adulteration. The corrupt production of any article, especially food. This word is commonly applied to the mixing up with food or drink intended to be sold, other matters of an inferior quality, and generally of a more or less deleterious character. The offence of mixing cheap or inferior substances with another substance, either to increase the bulk or weight or the apparent size of the substance, with the intent that the compound may be sold as pure and genuine. The adulteration of food or drugs is made punishable under the Indian Penal Code (XLV of 1860), ss. 272-5.

Adulterine. The issue of an adulterous intercourse.

Adultery. Advowtry (*adulterium*). The sin of incontinence between two married persons. The offence of adultery is sometimes distinguished into *single* and *double* adultery. Single adultery is the illicit sexual intercourse of two persons one only of whom is married. Double adultery is the illicit sexual intercourse of two persons both of whom are married.—*Brown.* A husband can obtain a dissolution of his marriage upon the ground of his wife's adultery, and the wife can obtain a judicial separation on the ground of her husband's adultery, or a dissolution of marriage on the ground of adultery coupled with cruelty or desertion, or begamy or of his incestuous adultery, provided that there is no collusion or connivance, and that the alleged charges have not been condoned. See ss. 10-13 of the Indian Divorce Act (IV of 1869). The offence of adultery being of a tortious nature, a husband may claim damages from the adulteror. Where a man finds another in the act of adultery with his wife, and kills him or her, in the *first transport of passion*, he is only guilty of manslaughter and that in the lowest degree; but the killing of an adulteror deliberately and upon revenge, is murder. The husband of an adulteress is relieved from the obligation to support her, though he himself have committed adultery, and was the first offender. The word is also used by ecclesiastical writers to describe the intrusion of a person into a bishopric during the former bishop's life, the reason being that a bishop is supposed to contract a sort of spiritual marriage with his church.—*Wharton.* For punishment for adultery see Act XLV of 1860 (Penal Code), s. 497. *See* CONDONATION, LIVING IN ADULTERY.

Incestuous adultery. Adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity.—*Act IV of* 1869 (*Divorce*), *s.* 3 (*6*).

Advance. Money paid before it is due; increase.

Advancement. Promotion. Additional price. To the doctrine of resulting trusts there is a very important exception, for in Equity, where a purchase is made in the name of a wife or child, or of an illegitimate child, grandchild, or nephew of a wife, to whom the purchaser has placed himself *in loco parentis*, there will *prima facie* be no resulting trust for such purchaser, but, on the contrary, a presumption arises that an advancement was intended, pursuant to the obligation to provide for such relations. And a purchase by a parent in the joint names of himself and his child, as well as a purchase in the joint names of his child and a stranger, will be held an advancement for the child to the extent of the interest vested in him; the stranger, however, holding the estate vested in him in trust for the parent.—*Wharton.* But the presumption has not been extended to an illegimate grandchild, a kept woman, or the child of a widow when the widow is the purchaser. *See* RESULTING TRUST.

The doctrine of advancement, applies only where a husband buys in his wife's name, and not where a wife purchases in her own name with her husband's money (*De Silva* v. *De Silva*, 4 Bom. L. R. 849, 855).

As to the Indian law on the subject, *see* BENAMI.

Adventure. *See* AVENTURE.

Bill of adventure. A writing signed by a merchant, stating that the property in goods shipped in his name belongs to another, whose

risk it is, with a covenant from the merchant to account to him for the produce.

Adversaria. Rough memoranda; commonplace books.

Adversary. A litigant-opponent.

Adverse claim. Where the sheriff, in levying an execution upon the goods of a debtor, finds that some third person claims the goods as his own, he may have an interpleader summons requiring the execution-creditor and such third person to settle the right to the goods between them; so also, where the seller of goods attempts to stop them *in transitu*, and the buyer insists upon having the goods delivered to him, the wharfinger or other person in custody of the goods may have an interpleader summons requiring the two parties to litigate between themselves their adverse claims.—*Brown*. *See* INTERPLEADER SUIT.

Adverse possession. Occupancy, as against the person rightly entitled, of realty without molestation, which may at length ripen into an unimpeachable title. Where one person is in possession of property under any title, and another person claims to be the rightful owner of the property under a different title, the possession of the former is said to be an "adverse possession" with reference to the latter. Under the Indian Limitation Act (IX of 1908, Sch. I, Art. 144), a suit for possession of immoveable property or any interest therein, not otherwise specially provided for, must be brought within twelve years from the date when the possession of the defendant becomes adverse to the plaintiff.

By adverse possession is meant possession by a person holding land on his own behalf or on behalf of some person other than the true owner, the true owner having a right to immediate possession (*Bejoy Chandra* v. *Kally Prosanna*, 4 Cal. p. 329); it is the *intention* to claim adversely accompanied by such an invasion of the rights of the opposite party as gives him a cause of action, which constitutes adverse possession (*Sivasubra* v. *Secretary of State*, 9 Mad. p. 303).

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 be cross examined by the counsel calling him.—*Brown*. See Act 1 of 1872 (Evi.), s. 154.

Advice. View; opinion; counsel. Also the instructions usually given by one merchant or banker to another by letter, or by the consignor to the consignee, informing him of the bills or draughts drawn on him with the particulars of date, or sight, the sum and the payee, or of goods having been forwarded to him. So when one merchant draws bills upon another usually *advises* him of the fact; and bills presented for acceptance or payment are frequently dishonoured for *want of advice*.

Advisement. Deliberation.

Advocate. A person privileged to plead for another in court. This title was formerly confined to those who practised in the Ecclesiastical and Admiralty Courts; but now that these courts have been thrown open to all barristers at-law, the title has lost its distinctive meaning.—*Mozley*. Their duties are analogous to those of barristers, and since the recent Acts, which have thrown open to all practitioners the practice in all the various courts, the term "advocate" is used interchangeably with, although less frequently than, that of barrister.—*Brown*. In Scotland all counsel are called advocates. *See* BARRISTER.

Faculty of Advocates. The bar of Scotland in Ediuburgh. The Faculty of Advocates is a corporate body, consisting of the members of the bar in Edinburgh, founded in 1532. The Solicitors practising in Aberdeen, also use the name of "advocates."

Advocate-General. The adviser of the Crown in matters of Naval and Military Law. *See* JUDGE.

King's (Queen's) Advocate. A member of the college of advocates, appointed by letters patent, who has to advise and act as counsel for the Crown in questions of civil, canon and international law. His rank is next after the Attorney-General or Solicitor-General.

Lord Advocate. A Scotch legal official corresponding to the English Attorney-General. The principal Crown Lawyer in Scotland, and one of the great Officers of State of Scotland. It is his duty to act as public prosecutor. He is assisted by a Solicitor-General and four junior counsel, who are appointed by himself, and are called *Advocates-depute*. The Lord Advocate is virtually Secretary of State for Scotland.

Advocation. A process now abolished, by which an action was carried from an inferior to a superior court in Scotland.

Advow. Avow. Avouch (*advocare*). To justify or maintain an act, *e. g.*, one distrains for rent, and he that is distrained brings an action of replevin; if the distrainer, in his defence, justify or maintain his act, he is said to advow or avow, and his plea is called avowment or avowry.—*Wharton*. *See* AVOWRY.

Advowee. Avowee (*advocatus*). The person or patron who has a right to present to a benefice.

Advowee paramount. The Sovereign, or highest patron.

Advowry. *See* AVOWRY.

Advowson (*advocatio*). A right of presentation to, or the patronage of, a church or spiritual living. The right to present to a benefice, the *jus patronatus* of the Canon Law, so termed because they that originally obtained the right of presentation to any

church, were maintainers of, or great benefactors to, that church, either by building or increasing it, and are therefore sometimes termed *patroni*, sometimes *advocati*, and sometimes *defensors*.—*Mozley*. There are several kinds of adowsons, *viz* :—(1) Presentative advowsons, subdivided into (a) Appendant, (b) In gross, and (c) Partly appendant and partly in gross; (2) Donative advowsons; and (3) Collative advowsons. An adowson 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 *appendant* means an advowson which is, and which from the first has been and ever since continued to be, appended or annexed to a manor, so that if the manor were granted to any one, 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.—*Brown* If a partial right of presentation be granted to a stranger, the advowson may be *appendant* for the term of the lord, and *in gross* for the term of the stranger.—*Mozley*. An advowson is termed *donative* when the king or a subject founds a church or chapel, and does by a single donation in writing place the clerk in possession, without presentation, institution or induction. An advowson is termed *collative* when the bishop and the patron happen to be one and the same person (the bishop having the right of patronage, either originally or by lapse), 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, 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. —*Brown*.

Advowtry. *See* ADULTERY.

Afat asmani. (*Ind*) A calamity from heaven, *i. e*, Act of God; an inevitable accident. *See* ASMANI SULTANI.

Affairs. A person's concern in trade or property.

Affeerors. Affeerers (*afferatores*). Persons who, in courts leet, upon oath, settle and moderate the fines and amercements imposed on those who have committed offences arbitrarily punishable, or that have no express penalty appointed by statute.

Affiance. The plighting of troth or promise between a man and woman upon agreement of marriage.

Affidare (*fidum ad alium dare*). To plight one's faith or to give or swear fealty, *i. e*., fidelity.

Affidari To be mustered and enrolled for soldiers upon an oath of fidelity.

Affidatio. A swearing of the oath of fidelity or of fealty to one's lord, under whose protection the *quasi* vassal has voluntarily come.

Affidatus. A tenant by fealty; a retainer.

Affidavit (*affido*). A written statement sworn before a person having authority to administer and oath. To make affidavit is to testify upon oath. A written or printed statement made voluntarily, and verified by oath, for the purpose of being used in a court of justice as evidence of facts. The statements of facts in an affidavit should be plain and unequivocal; the best evidence should as a rule, be adduced, but (on interlocutary applications, at least when they do not determine any right) matters of hearsay, belief, or information are not excluded. If made in a foreign country, it may be sworn before the mayor or other magistrate, attested and certified by a notary public. If the affidavit is in a foreign language it must be accompanied with a verified translation.—*Brown*. Affidavit includes affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.—*Act X of* 1897 (*General Clauses*), *s*. 3 (*3*).—*Bom. Act I of* 1904 (*General Clauses*), *s*. 3 (*3*).

Affidavit of documents or *discovery* sets out the material documents then or formerly in deponent's possession.

Affidavit of increase sets out the extra expenses, *i. e*., counsel's fees, which do not appear on the face of the proceedings, and must be evidenced on oath before they can be allowed on taxation.

Affidavit of means deposes that a judgment-debtor has means to pay the debt and so should be committed in default.

Affidavit of plight deposes that a will is in the same condition in which it was found at testator's death.

Affidavit to hold to bail. On affidavit by plaintiff that defendant owes him a certain amount, and is about to quit England, and that plaintiff will thereby be materially prejudiced in the prosecution of his action, plaintiff may apply to a judge to hold defendant to bail.—*Rawson*. *See* ARREST BEFORE JUDGMENT.

Affiliation. The fixing any one with the paternity of a bastard child and the obligation to maintain it.

Affiliation order. An order made by a police magistrate or justice against the reputed father of a bastard and upon the oath of the mother (being an unmarried woman) as to the bastard's paternity, for the payment of a small sum weekly for the bastard's maintenance.—*Brown*. See Act V of 1898 (Crim. Pro.), s. 488.

Affinage (*purgatio metalli*). Refining metal; hence fine and refined.

Affinity. The relationship which marriage occasions between the husband and the blood

risk it is, with a covenant from the merchant to account to him for the produce.

Adversaria. Rough memoranda; commonplace books.

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Adverse claim. Where the sheriff, in levying an execution upon the goods of a debtor, finds that some third person claims the goods as his own, he may have an interpleader summons requiring the execution-creditor and such third person to settle the right to the goods between them; so also, where the seller of goods attempts to stop them *in transitu*, and the buyer insists upon having the goods delivered to him, the wharfinger or other person in custody of the goods may have an interpleader summons requiring the two parties to litigate between themselves their adverse claims.—*Brown*. *See* INTERPLEADER SUIT.

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By adverse possession is meant possession by a person holding land on his own behalf or on behalf of some person other than the true owner, the true owner having a right to immediate possession (*Bejoy Chandra* v. *Kally Prosanna*, 4 Cal. p. 329); it is the *intention* to claim adversely accompanied by such an invasion of the rights of the opposite party as gives him a cause of action, which constitutes adverse possession (*Sivasubra* v. *Secretary of State*, 9 Mad. p. 303).

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 be cross examined by the counsel calling him.—*Brown*. See Act I of 1872 (Evi.), s. 154.

Advice. View; opinion; counsel. Also the instructions usually given by one merchant or banker to another by letter, or by the consignor to the consignee, informing him of the bills or draughts drawn on him with the particulars of date, or sight, the sum and the payee, or of goods having been forwarded to him. So when one merchant draws bills upon another usually *advises* him of the fact; and bills presented for acceptance or payment are frequently dishonoured for *want of advice*.

Advisement. Deliberation.

Advocate. A person privileged to plead for another in court. This title was formerly confined to those who practised in the Ecclesiastical and Admiralty Courts; but now that these courts have been thrown open to all barristers at-law, the title has lost its distinctive meaning.—*Mozley*. Their duties are analogous to those of barristers, and since the recent Acts, which have thrown open to all practitioners the practice in all the various courts, the term "advocate" is used interchangeably with, although less frequently than, that of barrister.—*Brown*. In Scotland all counsel are called advocates. *See* BARRISTER.

Faculty of Advocates. The bar of Scotland in Ediuburgh. The Faculty of Advocates is a corporate body, consisting of the members of the bar in Edinburgh, founded in 1532. The Solicitors practising in Aberdeen, also use the name of "advocates."

Advocate-General. The adviser of the Crown in matters of Naval and Military Law. *See* JUDGE.

King's (*Queen's*) *Advocate*. A member of the college of advocates, appointed by letters patent, who has to advise and act as counsel for the Crown in questions of civil, canon and international law. His rank is next after the Attorney-General or Solicitor-General.

Lord Advocate. A Scotch legal official corresponding to the English Attorney-General. The principal Crown Lawyer in Scotland, and one of the great Officers of State of Scotland. It is his duty to act as public prosecutor. He is assisted by a Solicitor-General and four junior counsel, who are appointed by himself, and are called *Advocates-depute*. The Lord Advocate is virtually Secretary of State for Scotland.

Advocation. A process now abolished, by which an action was carried from an inferior to a superior court in Scotland.

Advow. Avow. Avouch (*advocare*). To justify or maintain an act, *e. g.*, one distrains for rent, and he that is distrained brings an action of replevin; if the distrainer, in his defence, justify or maintain his act, he is said to advow or avow, and his plea is called avowment or avowry.—*Wharton*. *See* AVOWRY.

Advowee. Avowee (*advocatus*). The person or patron who has a right to present to a benefice.

Advowee paramount. The Sovereign, or highest patron.

Advowry. *See* AVOWRY.

Advowson (*advocatio*). A right of presentation to, or the patronage of, a church or spiritual living. The right to present to a benefice, the *jus patronatus* of the Canon Law, so termed because they that originally obtained the right of presentation to any

church, were maintainers of, or great benefactors to, that church, either by building or increasing it, and are therefore sometimes termed *patroni*, sometimes *advocati*, and sometimes *defensors.*—*Mozley.* There are several kinds of advowsons, *viz* :—(1) Presentative advowsons, subdivided into (a) Appendant, (b) In gross, and (c) Partly appendant and partly in gross; (2) Donative advowsons; and (3) Collative advowsons. 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 *appendant* means an advowson which is, and which from the first has been and ever since continued to be, appended or annexed to a manor, so that if the manor were granted to any one, 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.—*Brown* If a partial right of presentation be granted to a stranger, the advowson may be *appendant* for the term of the lord, and *in gross* for the term of the stranger.—*Mozley.* An advowson is termed *donative* when the king or a subject founds a church or chapel, and does by a single donation in writing place the clerk in possession, without presentation, institution or induction. An advowson is termed *collative* when the bishop and the patron happen to be one and the same person (the bishop having the right of patronage, either originally or by lapse), 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, 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. —*Brown.*

Advowtry. *See* ADULTERY.

Afat asmani. (*Ind*) A calamity from heaven, *i. e*, Act of God; an inevitable accident. *See* ASMANI SULTANI.

Affairs. A person's concern in trade or property.

Affeerors. Affeerers (*afferatores*). Persons who, in courts leet, upon oath, settle and moderate the fines and amercements imposed on those who have committed offences arbitrarily punishable, or that have no express penalty appointed by statute.

Affiance. The plighting of troth or promise between a man and woman upon agreement of marriage.

Affidare (*fidum ad alium dare*). To plight one's faith or to give or swear fealty, *i. e.*, fidelity.

Affidari To be mustered and enrolled for soldiers upon an oath of fidelity.

Affidatio. A swearing of the oath of fidelity or of fealty to one's lord, under whose protection the *quasi* vassal has voluntarily come.

Affidatus. A tenant by fealty; a retainer.

Affidavit (*affido*). A written statement sworn before a person having authority to administer and oath. To make affidavit is to testify upon oath. A written or printed statement made voluntarily, and verified by oath, for the purpose of being used in a court of justice as evidence of facts. The statements of facts in an affidavit should be plain and unequivocal; the best evidence should as a rule, be adduced, but (on interlocutary applications, at least when they do not determine any right) matters of hearsay, belief, or information are not excluded. If made in a foreign country, it may be sworn before the mayor or other magistrate, attested and certified by a notary public. If the affidavit is in a foreign language it must be accompanied with a verified translation.—*Brown.* Affidavit includes affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.—*Act X of* 1897 (*General Clauses*), *s.* 3 (*3*).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (*3*).

Affidavit of documents or *discovery* sets out the material documents then or formerly in deponent's possession.

Affidavit of increase sets out the extra expenses, *i. e.*, counsel's fees, which do not appear on the face of the proceedings, and must be evidenced on oath before they can be allowed on taxation.

Affidavit of means deposes that a judgment-debtor has means to pay the debt and so should be committed in default.

Affidavit of plight deposes that a will is in the same condition in which it was found at testator's death.

Affidavit to hold to bail. On affidavit by plaintiff that defendant owes him a certain amount, and is about to quit England, and that plaintiff will thereby be materially prejudiced in the prosecution of his action, plaintiff may apply to a judge to hold defendant to bail.—*Rawson. See* ARREST BEFORE JUDGMENT.

Affiliation. The fixing any one with the paterinty of a bastard child and the obligation to maintain it.

Affiliation order. An order made by a police magistrate or justice against the reputed father of a bastard and upon the oath of the mother (being an unmarried woman) as to the bastard's paternity, for the payment of a small sum weekly for the bastard's maintenance.—*Brown.* See Act V of 1898 (Crim. Pro.), s. 488.

Affinage (*purgatio metalli*). Refining metal; hence fine and refined.

Affinity. The relationship which marriage occasions between the husband and the blood

relations and the wife, and between the wife and the blood relations of her husband. Thus there is an affinity between the wife and her husband's brother, but there is no affinity between the wife's sister and her husband's brother, or between the husband's sister and wife's brother.—*Brown.*

Affirm. To ratify or confirm a former law or judgment. Hence a court of appeal is said to affirm the judgment of the court below. To *affirm* also means to make a solemn declaration, equivalent to a statement upon oath.—*Mozley.*

Affirmation. A solemn declaration without oath This has been substituted for an oath in the case of certain religionists who object, on the ground of conscience, to take an oath, *e. g.*, in the case of quakers, separatists, and others; and in short, any person objecting to be sworn (or being an Atheist may make a solemn affirmation instead.—*Brown.* Where the witness, interpreter, or juror, is a Hindu or Muhammadan, or has an objection to making an oath, he shall, instead of making an oath make an affirmation. In every other case the witness, interpreter, or juror, shall make an oath,—*Act X of* 1873 (*Oaths*), *s.* 6.

Affirmative easement. *See* EASEMENT.

Affirmative pregnant. An assertion implying a negation.

Afforare. To set a price or value on a thing.

Afforatus. Appraised or valued, as things vendible in a fair or market.

Afforciare. Afforce. To add increase or make stronger; in the case of disagreement of the jury, let the assize be increased, which is an afforcement of the assize.—*Wharton.*

Afforest. To turn ground into a forest. When forest ground is turned from forest to other uses, it is said to become dis-afforested. —*Tomlins.*

Affranchise. To make free.

Affray. The fighting of two or more persons in some public place to the terror of others; and there must be a stroke given or offered, or a weapon drawn, otherwise it is no affray, howsoever quarrelsome or threatening the words may be; and the fighting must also be in public; for if it be in private, it is no affray, but an assault.—*Brown.* When two or more persons by fighting in a public place, disturb the public peace, they are said to commit an affray.—*Act XLV of* 1860 (*Penal Code*), *s.* 159.

Affreightment(*affretamentum*). The freight or lading of a ship. The contract of affreightment is made with a shipowner for hire of his ship to carry goods.

Affri. Affra. Bullocks, horses, or beasts of the plough.

Aforesaid. Already mentioned.

Aforethought. Prepense; premeditated.

After. When act is to be done within so many days "after" a given *event* the day of such event is not to be reckoned, and the party to do the act has the whole of the last day of the prescribed time in which to do it (*Williams* v. *Burgess*, 10 L. J. Q. B. 10; *Robinson* v. *Waddington*, 18 L. J. Q. B. 250).

After sight. *See* ON DEMAND.

Aftermath. The second crop of grass; or the right to have the last crop of grass or pasturage.

Agalma. An impression or image of anything on a seal.

Agard. Award.

Age The periods of life, when men and women are enabled by law to do that which before, for want of age, and consequently of judgment they could not legally do. The criminal responsibility also of males and females depends upon their age Nothing is an offence done by a child under seven years of age (*Act XLV of* 1860, *Penal Code*, s 82). Nothing is an offence done by a child above seven years of age and under twelve, who has not attained sufficient maturity or understanding to judge of the nature and consequence of his conduct on that occasion (*Ibid.*, *s.* 83). A consent given by a person under twelve years of age is not a consent within the meaning of the Indian Penal Code, unless the contrary appears from the context (*Ibid.*, *s.* 90). Abandonment of children under twelve years of age is an offenc (*Ibid*, *s.* 317). Sexual intercourse by a man with his own wife, the wife being under twelve years of age, is rape (*Ibid.*, *s.* 375). Taking or enticing any minor under 14 years of age if a male, and under 16 years of age if a female, out of the keeping of the lawful guardian of such minor, without the consent of such guardian, is an offence (*Ibid.*, *s.* 361). *See* MINOR.

Agency. Agency is founded upon a contract either express or implied, by which one of the parties confides to the other the management of some business to be transacted *in his name* and *on his account*, and by which the other assumes to do the business and to render an account of it.—*Broom's Com. Law.*

Deed of agency. A revocable and voluntary trust for the payment of debts.

Agenfrida. The true lord or owner of anything.

Agenhine. Agenhind Also called Hogenhine and Third night-awne-hinde. He that comes as a guest to an inn, and stays there for three nights, after which he is accounted as one of the family; and if he offend the king's peace, his host must be answerable for him. On the first night he was deemed a stranger, *uncuth* (unknown); and on the second night, a guest, *twa night geste.*

Agent. A person authorized, expressly or impliedly, to act for another, who is thence called the *principal*, and who is, in consequence of, and to the extent of, the authority delegated by him, bound by the acts of his

agent.—*Mozley.* Agents may be divided into three classes:—(1) Commercial, as:—(*a*) Auctioneers, (*b*) Brokers, (*c*) Factors, (*d*) Consignees, (*e*) Supercargoes, (*f*) Ship's husbands, (*g*) Masters of Ships, (*h*) Partners; (2) For the purpose of litigation, as:—(*a*) Attorneys, (*b*) Solicitors, (*c*) Proctors; (3) Social, as:—(*a*) Attorneys in fact, (*b*) Servants. It is a general Common Law rule that where an authority is given to two or more persons to do an act, the act binds the principal only when all of them concur in doing it; for the authority is construed strictly, and the power is deemed to be joint, unless expressed to be several.—*Wharton.* An agent may be *general* to do all business of a particular kind; or *special* to do one particular act; and according to the scope of his authority is his power to bind his principal.—*Rawson.*

An agent is a person employed to do any act for another, or to represent another in dealings with third persons The person for whom such act is done, or who is so represented, is called the *principal.* Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf contained in the Contract Act, 1872. No consideration is necessary to create an agency. The authority of an agent may be express or implied. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.—*Act IX of* 1872 (*Contract*), *ss.* 182–7. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise to indemnify him against the consequences of that act.—*Ibid., s.* 224. *See* SUB AGENT.

Agent and patient. These terms denote respectively the doer and the sufferer of an act. The same person who is the doer of a thing, may also be the party to whom it is done; as when a widow endows herself of part of her husband's possession, this being the act of herself to herself she is both agent and patient. So also, if a man be indebted to another, and afterwards makes his creditor his executor, and dies, the executor may retain so much of the goods of the deceased in his hands as his own debt amounts to; and by this retainer he is the agent and the patient, that is, the party to whom the debt is due, and the party that pays the same. *See* RETAINER OF DEBT.

Agent's lien. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether moveable or immoveable, of the principal, received by him, until the amount due to himself for commission, disbursements, and services in respect of the same, has been paid or accounted for to him.—*Act IX of* 1872 (*Contract*), *s.* 221.

Agent's right of retainer. An agent may retain out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.—*Act IX of* 1872 (*Contract*), *s.* 217.

Age-prier or prayer (*ætatem precari; ætatis precatio*). To pray age; thus, when an action is brought against a minor for the recovery of lands, which he possesses by descent, he petitions or moves the Court to stay the action until he attains his majority.

Aggravation, matter of. The increase of the enormity of a wrong. Matters of mere aggravation, *i. e.*, which tend only to increase the amount of damages, and do not constitute or concern the right of action itself, need not be traversed in pleading. In a count, for example, charging a trespass in pulling down a house, it is a mere matter of aggravation to state that the plaintiff was in it at the time. The damages when so increased are called *exemplary.*

Aggregate. A collection of individuals, units, or things in order to form a whole.

Aggressor. The beginner of a quarrel or dispute.

Agild (*sine mulcta*). Free from penalties; not subject to customary fines or impositions.

Agiler. An observer or informer.

Agio. A commercial term used to express the difference in point of value, between metallic and paper money (bank notes), or between one sort of metallic money and another.

Agist. To take in and feed the cattle of a stranger in the King's forests. Those officers of the forest who thus take in cattle and gather money for the feed of them are called *agisters*, and the feed or herbage of the cattle is called *agistment.* Agisters were also called *guest takers.* Agistment now, however, generally means the taking in by any one of other men's cattle to graze in his ground, at a certain rate per week, without letting them the land for their exclusive use as tenants; so called, because the cattle are suffered *agiser, i. e.*, to be *levant et couchant* there. Agistment also means the profit of such feeding. There is also an *agistment* of sea banks *viz.*, where lands are charged with a tribute to keep out the sea.—*Wharton.*—*Mozley.* The agistor has no lien on the cattle he takes care of, unless by express agreement. He is not liable to re-deliver the cattle; but he is liable for cattle straying through an open gate. *Brown. See* BAILMENT.

Agister. *See* AGIST.

Agistment (*agistamentum*). *See* AGIST.

Agnates. Agnati. Adgnati. Relations by the father's side as distinguished from *cognati*, relations by the mother's. An agnate is related by generation; thus my son, brother, paternal uncle, and their children, as also my daughter and sister, are agnated to me.—*Wharton.* Agnates are those relations of a person who connected themselves with him by a male relationship all through. —*Brown.*

Agnation. Kinship by the father's side.

Agnomen. A name derived from some notable personal circumstance.

Agnomination. Surname.

Agreed. This word in a deed creates a covenant.

Agreement (*agreamentum*; *aggregatio mentium*). Agreement is the consent or joining together of two minds in respect of anything done or to be done; also the written evidence of such consent. An agreement or *contract*, exists either where a promise is made on one side, and assented to on the other; or where two or more persons enter into an engagement with each other, by a promise on either side.—*Mozley.* A contract, especially one not under seal, *i. e.*, sealed. If under seal, it is called a deed. Agreements may be *executed*, *i. e.*, complete, performed, or *executory*, where something remains to be done by one or both of the parties.—*Rawson.* Every promise and every set of promises, forming the consideration for each other, is an agreement.—*Act IX of* 1872 (*Contract*), *s.* 2 (*e*). *See* CONTRACT, VOID AGREEMENT.

Agri. Arable lands in common fields.

Agricultural fixtures. *See* FIXTURES.

Agriculturist. Agriculturist shall be taken to mean a person who, by himself or his servants, or by his tenants, earns his livelihood wholly or principally by agriculture carried on in a district to which the Deccan Agri. Relief Act extends, or who ordinarily engages personally in agricultural labour within those limits. An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by agriculture or to engage personally in agricultural labour as aforesaid, or who is prevented from so earning his livelihood or engaging in agriculture by age or bodily infirmity or by necessary absence in the military service of His Majesty, does not thereby cease to be an agriculturist. An agriculturist shall be deemed to reside where he earns his livelihood by agriculture or personally engages in agricultural labour as aforesaid.—*Act I of* 1879 (*Deccan Agricul. Relief*), *s.* 2, *as amended by Act VI of* 1895, *s.* 5.

Agusadura. In ancient customs, a fee paid by the vassals to the lord of the manor, for the sharpening of their ploughshares. The fee was also called *reillage*, from the French *reille*, a ploughshare.

Agweddi. A portion given with a female upon her marriage.

Aider by verdict. This is where a defect or error in any pleading in an action, which might in the first instance have been objected to by the opposite party, is after verdict, no longer open to objection, or, in other words, is *cured by the verdict.*

Ahfad. (*Ind.*) Descendants, including descendants of females (*Shaikh Karim-ud-din* v. *Nawab Mir Syed Alam*, 10 Bom. p. 122).

Aiders. Advocates; abettors. *See* ABETTOR, ACCESSARY.

Aid of the king (*auxilium regis*). This is where the king's tenant prays *aid of the king*, on account of rent demanded of him by others. *See* AID PRAYER.

Aid prayer (*auxilium petere*). A proceeding by which a person, sued in respect of land in which he had but a limited interest, besought the aid of a lord or reversioner or other person having a further or more permanent interest in the land, to defend the same. *Aid of the king* might also be sought by a person sued in respect of land held of the king.

Aids (*auxilium*). Originally there were benevolences granted by a tenant to his lord in times of distress, but at length the lords claimed them as of right. They were principally three:—(1) To ransom the lord's person, if taken prisoner; (2) To make the lord's eldest son and heir apparent a knight; (3) To give a suitable portion to the lord's eldest daughter on her marriage. This imposition was a relic of the old feudal laws, and was subsequently abolished. The word also means extraordinary grants to the Crown by the House of Commons, and which were the origin of the modern system of taxation.—*Wharton.* To *aid* is to remedy a defect in pleading by some subsequent proceeding, *e. g.*, a verdict.—*Rawson.* *See* AIDER BY VERDICT.

Aiel. Aile. Ayel. Ayle. A writ which lay when a man's grand-father or great grand-father died seised (*i. e.*, possessed) of lands in fee-simple, and on the day of his death the heir was dispossessed of his inheritance by a stranger.

Aimah. *See* AYMAH.

Air, acquisition of right to. *See* LIGHT AND AIR.

Airship. This means any machine fitted with mechanical or other means for propulsion designed to fly or float in the air without connection with the earth, and includes any part of any such machine.—*Act XVII of* 1911 (*Airships*), *s.* 2 (*1*).

Airway. A passage for the admission of air into a mine.

Akbar-ur-rai. (*Ind.*) Convincing, strong presumption.

Akriba. (*Ind.*) The term akriba (relations, though more properly confined to relations by blood) will, when the context shows that it

was intended to be used in a wider sense, be extended so as to include relations by affinity. The wife or widow of a man is not included amongst his akriba (*Advocate-General* v. *Fatima*, 9 Bom. H. C., O. C., 19).

Akubat. (*Ind.*) Punishment. Torture.

Alcade. A judicial officer in Spain.

Alderman (*aldermannus*). This word was of very frequent occurrence among the Anglo-Saxons. According to Spelman, all princes and rulers of provinces, all earls and barons, were designated aldermen in a general sense; but the word was applied more particularly to certain chief officers, *e. g.*, "the Alderman of all England," whoever that officer was. In modern times the word is used to denote certain officers in municipal corporations, who are a kind of assessors to the chief Magistrate.—*Brown.* In modern times this title is confined to the persons associated with (and next in order to) the mayor in the government of a city or town corporate.—*Mozley.*

Ale and Beer houses. An ale-house is a place where ale is sold to be drunk on the premises where sold. Such a house is commonly called also a *public house.*—*Wharton.* Every inn is not an ale-house, nor is every ale house an inn; but if an inn uses common selling of ale it is then also an ale-house; and if an ale-house lodges and entertains travellers, it is then also an inn.—*Brown.* *See* INN.

Alea. (*Civ. L.*) The chance of gain or loss in a contract.

Aleatory contract. (*Civ. L.*) An agreement of which the effects, with respect both to the advantages and losses, whether to all parties or to some of them, depend on an uncertain event. *See* CONTINGENT CONTRACT.

Ale-conner. Sometimes called *Ale-taster.* An officer appointed by the court-leet, sworn to look to the goodness of ale and beer within the precincts of the leet.

Ale founder. *See* ALE-CONNER.

Ale silver. A rent or tribute, yearly payable to the Lord Mayor of London, by those who sell ale within the liberty of the city.

Ale-taster. *See* ALE-CONNER.

Alfet. A cauldron into which boiling water was poured, in order that a person charged with an offence might plunge in his fore arm, and there hold it for some time to prove his innocence.

Aliamenta. A liberty of passage, open way, watercourse, &c., for the tenant's accommodation.

Alias. Otherwise. A second or further writ, which was issued after a former writ had expired without effect. *Alias dictus* (*otherwise called*) is a second name applied to a person where it is doubtful which of two or more names is his real name.—*Rawson.*

Alien (*alienus*). A child of a foreign father; born in a foreign country; or in the United kingdom before the naturalization of his father. A person born without the dominions of the Crown of England, that is, out of the allegiance of the King. But to this rule, there are some exceptions. Thus the children of the Sovereign, and the heirs of the Crown, wherever born, have always been held natural born subjects, and the same rule applies to the children of our ambassadors born abroad.—*Mozley* At common law, aliens were subject to very many disqualifications, but recent enactments provide that real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural born British subject, and that a title to real and personal property of every description may be derived through, from or in succession to an alien in the same manner in all respects as through, from, or in succession to, a natural born British subject. An alien is disqualified both for the parliamentary and municipal franchise, and also for being a member of either house of parliament, or of the Privy Council.—*Wharton.* Aliens are also unable to own shares in British ships. For the Indian Naturalization Act XXX of 1852, *See* ALLEGIANCE, NATURALIZATION.

Alien ami or *amy.* Subject of a nation which is at peace with this country. The subject of a friendly state.

Alien enemy. Subject of a nation which is at war with this country. The subject of a hostile state.

Alienage. The state of an alien.

Alienate. Aliene. To transfer property to another. The word is generally used of landed property.

Alienated lands. In the Bombay revenue language, all lands held either revenue-free or at a reduced rate are called alienated lands, the term *alienated* implies that Government has parted with its revenue rights absolutely or to some extent, levying only a quit-rent.

Alienation. A transferring of property, or the resignation of an estate by one man, and its acceptance by another. It is (*a*) voluntary, or (*b*) involuntary, where one is deprived of property by act of the law or of another, *e. g.*, on bankruptcy. *See* RESTRICTION AGAINST ALIENATION.

Alienee. One to whom property is transferred.

Alienor. One who transfers property.

Aliment (*alimentum*). A fund for maintenance. To aliment, in Scotch Law, is to give support to a person unable to support himself, and is used especially in reference to the mutual obligation of parents and children to support each other.—*Mozley.* *See* ALIMONY.

Alimony (*alimonia*). The allowance made to a wife out of her husband's estate for her support either during a matrimonial suit (*alimony pendente lite*), or at its termination (*permanent alimony*), when she proves herself entitled to a separate maintenance, and the fact of marriage is established. But she

is not entitled to it if she elope with an adulterer, or willingly leave her husband without any just cause for so doing. The husband is obliged to allow his wife alimony during the suit, whether the suit be commenced by or against him, and whatever its nature may be. It is usually about one-fifth of the husband's net annual income, and will be reduced or increased according to fluctions of income. *Permanent alimony* is allotted to a wife after final decree.—*Wharton*. See the Indian Divorce Act (IV of 1869), ss. 36-8,

All. "All" is equivalent to "each and every" (*Burnett* v. *G. N. of Scotland*, 54 L. J. Q. B. 539,; but with the context it may mean "any".—*Stroud*.

Allay. Alloy. The mixture of base metalls with silver or gold, to increase the weight, in order to defray the charge of coinage, and to make it more fusile to cast. From signifying the proportion of base metal, the term *alloy* was applied to the base metal itself.

Allegation. A statement of fact made in a legal proceeding. The assertion or statement of a party to a suit or other proceeding (civil or criminal) which he undertakes to prove. Sometimes the defendant's plea is called a *defensive* or *responsive* allegation, and the plaintiff's reply to it a *rejoining* allegation.—*Moxley*.

Allegation of faculties. The statement formerly made by a wife of her husband's means, when she sued for alimony in the ecclesiastical courts.

Allegiance (*allegiantia*). Allegiance is such natural or legal obedience which every subject owes to his prince. It is defined by Blackstone to be "the tie which binds the subject to the sovereign, in return for that protection which the sovereign affords the subject." Allegiance is either *natural* and perpetual, or *local* and temporary; the former being such as is due from all men born within the sovereign's dominions immediately upon their birth; the latter, such as is due from an alien, or stranger born, during the time that he continues within the king's dominions and protection.—*Moxley*. It is also either *implied* so soon as the relationship of sovereign and subject is created; or *express* which is the formal declaration of it.—*Wharton*. See NATURALIZATION.

All fours. A phrase often used in courts of justice to signify that a case or a decision agrees in all its circumstances with some other case or decision. Such case is said to be *on all fours* with the other.

Allocation (*allocatio*). An allowance made upon accounts in the Exchequer, or rather a placing or adding to a thing.

Allocatur. It is allowed. After an attorney's bill has been examined or taxed by one of the masters, and the items which he disallows have been deducted, the remaining sum, certified by the master to be the proper amount to be allowed is termed the *allocatur*. The *allocatur* is conclusive as to the amount of costs.—*Brown*. Such amount is called the "taxed costs."

Allodarii. Tenants having as great an estate as subjects can enjoy.

Allodial. *See* ALODIAL.

Allograph. A document not written by any of the parties thereto; opposed to *autograph*.

Allonge. If there be no room on the back of a bill of exchange to write all the indorsements, the supernumerary indorsements may be written on a slip of paper annexed to the bill and called an *allonge*, and are then deemed to be written on the bill itself. It requires no additional stamp.

Allotment. Partition; the distribution of land under an enclosure act, or shares in a public undertaking.

Letter of allotment. The notice received by an applicant for shares in a company, informing him of the number of shares allotted to him; such a notice (either in writing or verbal) is necessary before the applicant is bound. The letter of allotment requires a stamp; of course, when not in writing, it can bear no stamp, and it is then not a letter, but a notice of allotment simply.—*Brown*.

Allotment note. A writing by a seaman whereby he makes an assignment of part of his wages, in favour of his wife, father, or mother, grandfather or grandmother, child or grandchild or brother or sister. Every allotment note must be in a form sanctioned by the board of trade.—*Moxley*.

Allottee. A person to whom an allotment is made.

Allowance. A deduction; an average payment; a portion. Also in selling goods or in paying duties upon them, the deductions which are made from their weights, depending on the nature of the packages in which they are enclosed, and which are regulated in most instances by the custom of merchants, and the rules laid down by public officers.

Subsistance allowance. Allowance payable for the subsistance of judgment-debtors who are under arrest or in jail. See Act V of 1908 (Civ. Pro.), s. 57.

Alloy. *See* ALLAY.

Alluminor. One who anciently illuminated, or coloured, or painted upon paper or parchment, particularly the initial letters of charters and deeds.

Alluvion. Alluvio (*incrementum latens*). Land imperceptibly gained from the sea or the river by the washing up of sand and soil, so as to form *terra firma*. See ACCRETION, AVULSION.

Where there is an acquisition of land from the sea or a river, by gradual, slow and imperceptible means, the accretion by alluvion belongs to the owner of the adjoining land; but this doctrine has no application, where by the violence of a stream or by a sudden

change of its course, a considerable piece of land is separated from one estate and joined to another, so that its identity is not destroyed and its recognition is not prevented (*Thakurain Ritraj Koer* v. *Thakurain Sarfaraj Koer* 2 C. L. J. 185; 2 All. L. J. 623; 9 Cal. W N. 889; 15 M. L. J R. 349; 27 All. 655; 7 Bom. L. R. 872; 32 I. A. 165).

Alluvion means an imperceptible increase; land is said to be acquired by alluvion, when it is acquired so gradually, that one cannot say how much is added at any particular moment of time. But if by the violence of a river, a portion of land is added to the estate of an adjoining owner, the land continues to be the property of the original owner (*Rai Krishna* v. *Saidan Bibi*, 25 All. W. N. 271; 2 All. L. J. 821; 28 All. 256; *Narendra Bahadur* v. *Achhaibar*, 3 All. L J. 453; 28 All. 647).

Almaria. Armaria. The archives or muniments of a church or library

Almoin A tenure of land by divine service.

Almoner. Almner (*eleemosynarius*). An officer of the king's house whose business it is to distribute the king's *alms* every day.

Alnage. Aulnage. A measure; particularly the measuring with an ell. *See* ALNAGER.

Alnager. Aulnager. An officer of the king, who anciently, by himself or his deputy, was to look to the soundness of the woollen cloth made throughout the land and to levy thereon a duty called *alnage* —*Mozley*. These duties were payable at so much per ell.

Alodial. Allodial. Allodium. A holding of lands in absolute possession, without acknowledging any superior lord, as contra-distinguished from *feudal* lands, which are held of superiors. A tenant holding land on an *allodial* tenure has an absolute property and not an estate merely. The lands of the Anglo-Saxons were allod, but under the oath taken at Salisbury in 1087, all the lands in England become feudal, *i. e.*, held of some superior lord and for an estate only.—*Brown*. All land in England is held, in theory, of the Crown, and cannot therefore be allodial.—*Rawson*.

Alody. Inheritable land.

Altarage (*altaragium*). Offering made upon the altar; the profit arising to the priest by reason of the alter, such as tithes of wool, lambs, colts, calves, &c.

Alteration (*alteratio*). The changing of a thing.

Alterations in written instruments. Where any deed is altered in a point *material*, by the plaintiff himself, or by a stranger without the privity of the obligee, be it by interlineation, addition, raising or drawing a pen through the midst of any material word, the deed thereby becomes void; and whether in any of such cases the act was allowed by the obligee himself, or was done by a stranger without his privity. If the obligee himself alter the deed by any of the said ways, although it is in words *not material* yet the deed his void. But if a *stranger* without his privity alter the deed by any of the ways in any point *not material*, it shall not avoid the deed (*Pigot's Case*, Coke's Reports, Pt. II., p. 26). Thus two points seem to be established by this case:—(1) That an alteration by a party whether in a material part or not, avoids the deed. (2) That an alteration by a stranger without the privity of the parties, avoids the deed, if it be in a material part. The instances in which material alterations may be said to be permitted, whether by any of the parties themselves, or by strangers, without affecting the instrument seem to be where the object is merely to correct a mistake, or where the transaction is *in fieri* —*Tilsley's Digest of Stamp Laws*, 1871 *pp.* 307-8. In the case of deeds an unexplained alteration is presumed to have been made at the time of execution; but it is otherwise in the case of wills.—*Wharton*. *See* INTERLINEATIONS.

Alternative. The one or the other of two things. Where a new remedy is created in addition to an existing one, they are called alternative, if only one can be enforced; but, if both, *cumulative*.

Alternative obligations. As a general rule, the person who has to perform one of two things in the alternative, has the right to elect. An election once made is binding, and the promise is thenceforth single to perform the alternative chosen. Where one of two alternatives becomes impossible, or is so from the first, the promise is absolute to perform the other, unless, in the case of an impossibility subsequently arising, the construction of the contract, or the circumstances under which it was entered into, exclude the ordinary rule. It seems that no difference is made, whether the alternative which is impossible is so for *natural* or for *legal* reasons. —*Brown*.

Alternative relief. Under the old practice it was usual in a Bill in Chancery to pray for certain specified relief *or* such other or general relief as the nature of the case may require; and there is a like claim in every action (or in mostly every action) in every division of the High Court under the present practice But such prayer or claim is not an example of alternative relief properly and strictly so called; for alternative relief is claimed when one or other of two *specified* and *particular* modes of relief are pointed out *e. g.*, a claim for specific performance of the contract, or *else*, the rescission of the contract. The alternative relief may even be inconsistent with the primary or principal relief, but within certain narrow limits only.—*Brown*.

Altumgha. (*Ind.*) Royal grants are of two descriptions. The one is called *Altumgha* and is made for personal purposes. To such an estate, on the death of the grantee, the sharers and residuaries succeed to their legal portions according to the law of inheritance. The other is made for charitable or

religious purposes and is termed *Wakf*. With respect to the latter, no claims of inheritance are admissible.—*MacN. Meh. Law. See* WAKF

Altumghadar. The holder of an *Altumgha*.

Altumgha Inaam. A royal grant in perpetuity of land free of rent.

Alumnus. A child which one has nursed; a foster-child. One educated at a college or seminary is called an *alumnus* thereof.

Amaldastak. (*Ind.*) Deed of conveyance; any document giving possession of property; warrant or authority to collect the rents of an estate; a written order from the proper authority to enable the purchaser of an estate at a public sale to obtain possession of it.

Amalgamation. The union of two incorporated companies or societies by one being merged in the other. Such amalgamation cannot take place unless such a transaction is authorized by the constitutions of both companies, or unless all the shareholders in both consent to the amalgamation.

Amanat. (*Ind.*) Trust or deposit.

Amanat-namah. (*Ind.*) A deed of trust or deposit; a document conveying anything in trust.

Amanuensis. One who writes on behalf of another that which he dictates.

Amand. (*Sc. L.*) A fine or penalty.

Ambactus. A servant or client.

Ambassador (*legatus*). A representative minister, sent by one sovereign power to another, with authority conferred on him by letters of credence, to treat on affairs of state. Ambassadors are either *ordinary*, who reside in the place whether they are sent; or *extraordinary*, who are employed upon special matters. The person of an ambassador is protected from civil arrest and his goods from seizure under distress or execution. This is the highest rank and designation of diplomatic officials. Sovereigns are represented also by ministers at foreign courts, under the name envoy, minister, *charge d' affaires*, or consuls, and the functions of all these are the same as an ambassador, the only difference being in dignity.—*Wharton*. As a representative of his Government, an ambassador is exempt, together with his family, secretaries and servants, from the local jurisdiction, not only in civil, but also in criminal cases.—*Brown*.

Ambassy. An embassy.

Ambidexter. Properly a man that can equally use both his hands; but in a legal sense it is used of a man who takes bribes from both the parties to an action to promote their respective interests; a juror who takes bribes from both the parties to influence his verdict *See* EMBRACERY.

Ambiguity (*ambiguitas*). Doubtfulness; double meaning; obscurity. Uncertainty of meaning in the words of a written instrument.

There are two sorts of ambiguities of words; the one is *ambiguitas patens* and the other *latens*. *Patens* is that which appears to be ambiguous upon the deed or instrument; *latens* is that which seemeth certain and without ambiguity for anything that appeareth upon the deed or instrument, but there is some collateral matter out of the deed that breedeth the ambiguity.

A simple instance of *ambiguitas patens* presents itself where a blank occurs in some material part of an instrument. A latent ambiguity is where you show that words apply equally to two different things or subject-matters; and then evidence is admissible to show which of them was the thing or subject-matter intended.

Now the short rule to be kept in mind, with reference to the above two kinds of ambiguity is that whereas extrinsic evidence is admissible to explain a latent, it cannot ordinarily be received to clear up a patent ambiguity.—*Broom's Com. Law.*

Illustrations of latent ambiguity:—

A man having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons each answering to the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator Evidence is admissible to show which of the two applications was intended.

A, by his will leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

Illustrations of patent ambiguity:—

A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths Rs. 1 000 to "his aunt Caroline." and Rs. 1,000 to "his cousin Mary," and afterwards bequeaths Rs. 2,000 to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty.

A bequeaths Rs. 1,000 to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

A bequeaths to B Rs. of his estate of . Evidence is not admissible to show what sum or what estate the testator intended to insert. See ss. 67 and 68 of the Indian Succession Act (X of 1865).

Ambiguity of language is however to be distinguished from unintelligibility and inaccuracy, for words cannot be said to be ambiguous, unless their signification seem doubtful and uncertain to persons of competent skill and knowledge to understand them.—

Wharton. Pleadings must not be doubtful or ambiguous in meaning; and when two different meanings present themselves, that construction shall be adopted which is most unfavourable to the party pleading.—*Mozley.*

Ambit. The limits or circumference of a power or jurisdiction; the line circumscribing any subject matter.

Ambulatory. Changeable; revocable. A will is said to be ambulatory until death, because it ambles about uncertainly until it can amble about no more; and then only are its intentions ascertainable.

Ameliorative waste. *See* WASTE.

Amenable. Tractable; that may be led or governed. It is commonly applied to a woman that is governable by her husband. It also signifies to be responsible or subject to answer, &c., in a court of justice.—*Tomlins.*

Amendment (*emendatio*). The correction of some error or omission, or the curing of some defect, in the pleadings in actions, suits, or prosecutions.

Amercement. Amerciament (*amerciamentum*). A fine assessed by a jury not, as is usually the case, fixed by the court or by statute.—*Rawson.* A pecuniary punishment or penalty assessed by the peers or equals of the party, amerced for an offence, by the commission of which he had placed himself at the mercy of the lords. The difference between *amercements* and *fines* is as follows: The latter are certain, and are created by some statute; they can only be imposed and assessed by courts of record; the former are arbitrary, imposed by courts not of record, as courts-leet.—*Wharton.*

Amhiniogan tir. Land borderers. Witnesses in suits respecting landed property, whose lands bordered on that in dispute.

Ami. Amy (*amicus*). Friend. *See* NEXT FRIEND.

Amil. (*Ind.*) Dominion; a farmer of revenue; an officer of government.

Amildar. (*Ind.*) Governor; a native revenue collector; generally any person holding a post or office.

Amildaree. (*Ind.*) A territory; government.

Amin. Ameen. (*Ind.*) A title given to the native judges by the English; as *Sudder Ameen*, chief judge; *Sudder Ameen Ala*, principal chief judge; a chief officer of police or revenue; an inspector. An arbitrator in financial or judicial affairs. A trustee; commissioner; a temporary collector or supervisor appointed to the charge of a country on the removal of a zemindar, or for any other particular purpose of local investigation or arrangement (*Iswarchandra* v. *Jugal Kishor*, 4 B. L. R., Ap., 33).

Amla. (*Ind.*) Buildings erected on a site (*Ram Das* v. *Mirza Jamaluddin*, 6 Ind. Cas. 399).

Ammodwr. One before whom a compact is made, and who is therefore admissible as a witness to prove the terms of it.

Amnesty (*amnestia*; *oblivio.*) Non-remembrance. An act of pardon or *oblivion* (such as that of 1660, on the Restoration of Charles II) by which crimes against the Government up to a date therein mentioned are condoned, so that they can never thereafter be made the subject of a charge. An amnesty may be *general*, to all concerned in the offence, or *particular*, to one or more.—*Rawson.*

Amortization. Amortizement (*amortizatio*). An alienation of lands in mortmain. *See* ADMORTIZATION.

Amortize. To alienate lands in mortmain.

Amotion. A removing, deprivation or ouster of possession; removal from a post or office.

Amove. To remove from a post or station.

Ampliation (*ampliatio*). An enlargement; a deferring of judgment till the cause be further examined.

Amputation of right hand. An ancient punishment for a blow given in a superior court, or for assaulting the judge sitting in the court.—*Wharton.*

Amr-ba-yad. A form of divorce according to Mehomedan Law. If a man says to his wife "your business is in your own hands" (*amruki-ba-yadiki*), and the woman assents, an irrevocable divorce takes place.

Anacrisis. (*Civ. L.*) An investigation of truth, interrogation of witnesses, and inquiry made into any fact, especially by torture.—*Wharton.*

Anagraph. A register or inventory.

Analogism. An argument from the cause to the effect.

Analogy. Identity or similarity of proportion; where there is no precedent in cases on the same subject, lawyers have recourse to cases in a different subject-matter, but governed by the same general principle. This is reasoning by analogy.—*Wharton.*

Anandravan. (*Ind.*) A junior member of a Malabar Tarwad. *See* TARWAD.

Anatocism. Taking compound interest for the loan of money.

Ancestor (*antecessor*). One that has gone before in a family; it differs from a predecessor, in that it is applied to a natural person and his progenitors, while the latter is applicable also to a corporation, and those who have held offices before those who now fill them.—*Wharton.* *See* PREDECESSOR.

Ancestral. Ancestrel. That which has relation to ancestors. Real actions were either *possessory*, *i. e.*, of a man's own seisin, or *ancestral*, *i. e.*, of the seisin of his ancestors.—*Brown.*

Ancestral property. (*Hin. L.*) The term ancestral property is not confined to such property as the father had derived from his ancestors, but includes *paternal* property or

such as had been acquired by the father by whatever title and was possessed by him at the time of his decease (*Rajmohan* v. *Gourmohan*, 8 Moo. I. A., p. 46).

Anchor. A measure of brandy, &c., containing ten gallons.

Anchorage (*ancoragium*). A duty taken from the owners of ships for the use of the haven where they cast anchor.

Ancient demesne (*vetus patrimonium domini*). A tenure whereby all manors belonging to the Crown in the days of Edward the Confessor and William the Conqueror were held; the numbers and names of which manors as of all others belonging to common persons, William the Conqueror caused to be set down in a book called Domesday, and those which appear by that book to have belonged to the Crown and are there denominated *terræ regis*, are called ancient demesne. —*Brown*. It is a species of copyhold, which differs however from common copyholds in certain privileges, but yet must be conveyed by surrender, according to the custom of the manor.—*Wharton*.

Ancient lights. The enjoyment of light for twenty years and upwards. Windows and other openings which have remained in the same place and condition and have been enjoyed by the same title for more than twenty years.—*Moxley*. Windows which have had uninterrupted access of light for twenty years and upwards. The prescriptive right to light which they thereby acquire is called *ancienty* of light.—*Rawson*. *See* ACCESS OF LIGHT.

Ancient writings. Documents upwards of thirty years old. These are presumed to be genuine without express proof, when coming from the proper custody.

Where any document purporting or proved to be thirty years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin or if the circumstances of the particular case are such as to render such an origin probable.—*Act I of* 1872 (*Evi.*), *s.* 90.

Ancients. Gentlemen, in the Inns of Court and Chancery, who were of a certain standing.

Ancienty (*antiquitas*). Eldership or seniority.

Ancillary. Auxiliary; that which is subordinate to, or assists, some other thing. That which depends on, or is subordinate to, some other decision.

And. *See* OR.

Andaga. Andæg. A day or term appointed for hearing a cause; hence *andagian*, to appoint the day.—*Wharton*.

Androgynus. A hermaphrodite.

Angel. An ancient English coin of the value of ten shillings.

Anglkar-patra. (*Ind.*) A letter of acceptance or acknowledgment.

Angild (*angildum*). The bare single valuation or compensation of a criminal; from the saxon *An*, one, and *gild*, payment, mulct or fine. *Twigild* was the double mulct or fine; and *trigild*, the treble, according to the rated ability of the person.—*Tomlins*.

Anglo-Indian. An Englishman domiciled in the Indian territory of the Crown.

Anichilled. Annulled, cancelled, or made void.

Aniens. Anient. Void; of no force or effect.

Animals. Animals may be divided into—(1) Domestic animals, or animals not naturally mischievous, such as dogs or oxen; (2) Animals *mansuetæ naturæ*, such as sheep and cows; (3) Animals that are naturally dangerous and ferocious, such as lions, bears &c.; (4) Animals *feræ naturæ* (which are unreclaimed), such as hares, pheasants, partridges, &c.

Negligent keeping of animals. An instance of tort to the person is from the negligent keeping of animals either wild or domestic. Any one who keeps a wild animal, as a tiger, a bear, which escapes and does damage is liable without any proof of notice of the animal's ferocity; but where the damage is done by a domestic animal the plaintiff must show that the defendant knew the animal was accustomed to do mischief. But the gist of the action is not the negligent keeping, but keeping with *knowledge* of the mischievous propensity (technically called *scienter*), whether the animal be of a savage or domestic nature; so that it is immaterial though in fact there was no negligence in keeping; but the negligence is in keeping such an animal after notice; and as to a wild animal, there is always such notice. A single instance of ferocity is sufficient notice, or even a knowledge that it has evinced a savage disposition by attempting to bite; and there is no difference between a corporation and an individual as to what is such notice. The knowledge of the servant who keeps the animal as to his ferocity is the knowledge of the master. If a horse is negligently suffered to stray into a road or into anothor's land, and does any kind of damage, the owner is liable though the horse was not known to be vicious. But a man is entitled to keep a ferocious dog for the protection of his premises, and to turn it loose therein at night. He has, though, no right to put a ferocious dog in such a situation in the way of access to his house, that a person, innocently coming there for a lawful purpose in the day-time, may be injured by it. But

one may not shoot a dog, though he is ferocious; to justify that, it must be actually attacking the shooter at the time.—*Collett on Torts.*

Trespass by animals. It is the nature of cattle and other live stock to stray if not kept in, and to do damage if they stray; and the owner is bound to keep them from straying on the land of others at his peril, though liable only for the natural and probable consequences, not for an unexpected event, such as a horse not previously known to be vicious kicking a human being. So strict is the rule that if any part of an animal which the owner is bound to keep in is over the boundary, this constitutes a trespass. The owner of a stallion has been held liable on this ground for damage done by the horse kicking and biting the plaintiff's mare through a wire fence which separated their closes (*Ellis* v. *Loftus Iron Co.*, L. R. 10 C. P. 10; 44 L. J. C. P. 24 [1874]). The result of the authorities is stated to be "that in the case of animals trespassing on land, the mere act of the animal belonging to a man, which he could not foresee, or which he took all reasonable means of preventing, may be a trespass, inasmuch as the same act if done by himself would have been a trespass.—*Pollock on Torts.* *See* CATTLE-TRESPASS.

Property in wild animals. There is no absolute property in wild animals or game, fit for food or otherwise profitable, until reclaimed or captured. As long as such an animal remains on a man's land, he has a qualified interest which is lost when it leaves the land, though it be hunted off it. But if a man trespasses on the land of another, and there captures such an animal, the property at once vests in the owner of the land, who may take it. Generally, dogs trespassing in pursuit of wild animals cannot be destroyed.—*Collett on Torts.*

Anker. *See* ANCHOR.

Annats. Annates. The first fruits, being one year's whole profits, of a spiritual living. They were so called because one year's value of profits was taken as their rate. They were payable to the Pope, but in the reign of Henry VIII they ceased to be so payable.

Annienated. Abrogated; frustrated; brought to nothing.

Annoisance. Annoyance. Any hurt done to a place, public or private, by placing any thing thereon that may breed infection, or by encroachment or such like means. It is the same as *noisance* or *nuisance.*—*Wharton.*

Annotation. (*Civ. L.*) The designation of a place of deportation; the citing of an absentee; the prince's answer on a doubtful point of law.—*Wharton.*

Annuity (*annuus redditus*). 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.—*Brown.* *See* PERSONAL ACTIONS.

Abatement of annuity. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in proportion to the other pecuniary legacies given by the will.—*Act X of* 1865 (*Succession*), *s.* 162.

Annul. To deprive of operation, *e. g.*, a decree, an adjudication of bankruptcy.

Anomy. Lawlessness; breach of law.

Answer. Reply; counterspeech. This was the most usual mode of raising defences to a bill of complaint in a Court of Chancery; but it has now ceased to be the name of any pleading at all, what used formerly to be called an answer being now called a statement of defence. An answer is now the name used to denote the affidavit made in answer to interrogatories administered by either party in the action touching the subject matter of the action.—*Brown.* An answer in Divorce is the defence of a respondent or co-respondent in the Divorce Court. And generally an answer to an accusation means the defence of the accused person thereto.—*Moxley.*

Antedate. To date a document before the day of its execution. Bills, cheques, or notes may be antedated, *i. e.*, given an earlier date than that of the day they are made. *See* POST-DATING.

Antejuramentum. Præjuramentum. An oath taken by the accuser and accused before any trial or purgation.

Antenati. Those born before a certain period, *e. g.*, before marriage.

Ante-nuptial. Before marriage; as opposed to *post-nuptial.*

Antichresis. (*Civ. L.*) A contract of pledge in which the pledge-creditor received the produce in lieu of interest, usury being prohibited among the Romans.

Anticipation. Doing or taking a thing before the appointed time. This word is commonly used in Courts of Equity as signifying the alienation of married women. It is a rule of Common Law that the absolute property given to any one cannot be fettered with any restraints or conditions against alienating. But Courts of Equity, in the case of property given to the separate use of a married woman, allow the restraint, as tending to render the separate use more perfect and assured. Whence the clause against anticipation is common in gifts of property to females to their separate use.—*Brown.*—*Peters* v. *Manuk* (13 B. L. R., O. C., 383). The object of this provision is to prevent them, when under the influence of their husbands, or others, from parting with their means of subsistance. But the court may dispense with this restraint when it is for the woman's benefit.—*Rawson.* *See* RESTRICTION AGAINST ALIENATION.

Antient demesne. *See* ANCIENT DEMESNE.

Antigraphy. A copy or counterpart of a deed.

Antimony. A contradiction between two laws or two articles of the same law.

Antipelargia. An ancient and righteous law, whereby children were obliged to furnish necessaries to their aged parents. The *ciconia*, or stork, is a bird famous for the care it takes of its parents when grown old. Hence, in some Latin writers, this is rendered *lex ciconiaria*, or the stork's law.—*Wharton.*

Antiquation. *See* ABROGATION.

Antithetarius. Anthetarius. This word signifies where a man endeavours to discharge himself out of the fact of which he is accused, by recriminating and charging the accuser with the same fact.—*Tomlins.*

Anubhavam. Anubhogam. (*Ind.*) The word *anubhavam* or *anubhogam* literally means 'enjoyment.' In grants, it ordinarily implies hereditary and therefore perpetual enjoyment; and when used as descriptive of tenure of land, it *prima facie* implies a hereditary or an irredeemable tenure; but when used with reference to an allowance of money or grain to be deducted from the rent due to the grantor, it will not imply any tenure in favour of the grantee (*Vythilingam* v. *Kuthi ravattah*, 16 M. L. J. R. 358; 1 M. L. T. 290; 29 Mad. 501),

Anumatipatra. (*Ind.*) A deed expressive of assent or concurrence; especially a deed executed by a husband about to die, authorising his widow to adopt a son. A deed of permission.

Anvadheyaka. (*Hin. L.*) A kind of woman's property received by her after marriage from the family of her husband at a time posterior to her marriage; also that which is similarly received from the family of her father.

Apanage. *See* APPANAGE.

Apatisatio. An agreement or compact.

Apaviddha. (*Hin. L.*) A son cast off, abandoned by his parents.

Apograph. A copy; an inventory.

Apology. In the case of a libel being published in a newspaper or other like public writing, the defendant may plead inadvertent insertion of same without malice or gross negligence, and the prompt insertion in the same publication of an apology for same; and he may pay into court at the same time a reasonable sum of money by way of amends. So in the case of defendants being private individuals such apology shall go in mitigation of damages.—*Brown.*

Appanage. Apanage. Appennage. Apennage. A child's part or portion. A portion for the king's younger children in France, where there was a law called the "Law of Apenages," whereby the sons had duchies, counties, or baronies granted to them and their heirs, the reversion being reserved to the Crown, together with all matters of regality, such as coinage, levying taxes, and the like.—*Mozley.*

Apparator. Apparitor. A messenger who cites and arrests offenders, and executes the decrees of the judges of the spiritual courts.

Apparent easement. *See* EASEMENT.

Apparent heir. *See* HEIR.

Apparlement. A resemblance or likelihood; as *apparlement* of war.

Apparura. Furniture and implements.

Appeach. To accuse or bewray.

Appeal. A removal of a cause from an inferior to a superior court, for the purpose of testing the soundness of the decision of the inferior court. A complaint to a superior court of an injustice done by an inferior court. The person making the appeal is called the *appellant*; the opposite party is then called the *respondent*.

Appeal of felony, under the old law, was a criminal proceeding brought by one person against another, the ground for which was the particular injury done by the *appellee* to the *appellor*; *e. g.*, by a widow against the murderer of her husband.

Appearance. This term whether applied to plaintiff or defendant, has reference to an ancient state of practice, by which the parties personally, or their respective attorneys, actually confronted each other in open court. As regards the plaintiff, no particular form of appearance is now used; but as regards the defendant, the form is observed of his delivering to the proper officer of the Court a memorandum importing either that he appears in person, or that some solicitor, whose name is given, appears on his behalf.—*Mozley.* A married woman appears by her husband, but may by leave appear alone; an infant appears by the person with whom he resides; a lunatic appears by his committee.—*Brown.* These modes of appearance are called:—(1) Appearance in person; (2) Appearance by attorney; (3) Appearance by guardian; (4) Appearance by committee.

Appellant. The party appealing; the party resisting the appeal is called *respondent*. *See* APPEAL, APPELLATE JURISDICTION.

Appellate jurisdiction. The jurisdiction exercised by a court of justice at the instance of a person complaining of the decision of another court, called, in reference to the court of appeal "the court below." The person complaining is called the *appellant*; any person called upon to answer the appeal is called a *respondent*.—*Mozley.*

Appellee. One who is appealed against or accused. *See* APPEAL.

Appellor. An accuser; a criminal who accuses his accomplices; one who challenges a jury, &c. *See* APPEAL.

Appendant (*appendens*). A thing of inheritance belonging to another inheritance which is more worthy; as an advowson, com-

mon, &c., which may be appendant to a manor, common of fishing to a freehold, a seat in a church to a house, &c. It differs from appurtenance, in that appendant must ever be by prescription, *i. e.*, a personal usage for a considerable time, while an appurtenance may be created at this day, for if a grant be made to a man and his heirs, of common in such a moor for his beasts levant and couchant upon his manor, the commons are appurtenant to the manor and the grant will pass them.—*Wharton.* It is a characteristic of properly appendant rights, that once they are disannexed, although for even so short a time, from the principal hereditament, so as to become *in gross*, they can never become appendant again, but may become appurtenant.—*Brown.* One corporeal hereditament cannot be appendant to another, nor an incorporeal to an incorporeal.—*Rawson.* *See* APPURTENANT.

Appenditia. The appendages or pertinances of an estate.

Appensura. The payment of money at the scale or by weight.

Appointee. A person selected for a particular purpose; also the person in whose favour a power of appointment is exercised. *See* POWER.

Appointment. Direction; designation; the selection of a person for an office.

Appointment in exercise of power. Appointment, under a *power of appointment*, of a person who is to enjoy land or other property, or some estate or interest therein. A gift or distribution of property made by a person (called the *donee of the power* or *appointor*) under a power given him by some instrument. *See* POWER.

Appointment of new trustees. Every assurance which creates a trust, and nominates trustees, should contain a power to appoint new trustees, and this power should be comprehensive and should provide for all the usual contingencies. Such a power must be strictly exercised. A trustee who transfers the trust property to another, without an express power to do so, does not thereby pass the trust, for the office with all its powers and responsibilities is still vested in him, as he places himself in this predicament; his liability is retained, while he has deprived himself of his control over the property.—*Wharton.* A trustee who has accepted the trust cannot afterwards renounce it except (*a*) with the permission of a principal civil court of original jurisdiction, or (*b*) if the beneficiary is competent to contract, with his consent, or (*c*) by virtue of a special power in the instrument of trust.—*Act II of* 1882 (*Trusts*), *s.* 46. As to the power of the court to appoint new trustees, see the same Act, Chapter VII.

Appointor. A donee of a power after he has executed it; a person who nominates another for an office.

Apponere. Pledge or pawn.

Apportionment (*apportionamentum*). A division of a whole into parts (usually unequal) proportioned to the rights of more claimants than one. It is either (1) Apportionment in respect of time, or (2) Apportionment in respect of estate.

In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends, and other periodical payments in the nature of income, shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 36.

Apportum. The revenue or profits which a thing brings in to the owner; it was commonly used for a corody or pension. It has also been applied to an augmentation given to an abbot out of the profits of a manor for his better supports.—*Tomlins.*

Apposal of sheriffs. Charging them with money received upon their accounts in the Exchequer.—*Tomlins*,

Appostille. An addition or annotation of a document.

Appraisement. The act of valuing property, goods, furniture, &c. The *writ* of appraisement directs the valuation, *e. g.*, of goods forfeited to the Crown.

Appraisers. Persons employed to value goods, repairs, labour, &c.

Apprehension. The capture of a person upon a criminal charge.

Apprendre. A fee or profit taken or received. To take or seize a thing, such as exercising the right of common.

Apprentice (*apprenticius*). A person bound by indentures of apprenticeship to a tradesman or artificer, who covenants to teach him his trade or mystery. The master is bound to instruct his apprentice and to make him master of the art so far as his capacity to learn will permit, If the master die, or become bankrupt, or abandon the trade, the obligation of the apprentice is at an end.—*Wharton.*

Any child above the age of ten, and under the age of eighteen years, may be bound apprentice by his or her father or guardian to learn any fit trade, craft or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child shall be of full age of twenty-one years, or in the case of a female, beyond the time of her marriage.—*Act XIX of* 1850 (*Apprentices*), *s.* 1.

Every contract of apprenticeship shall be in writing according to the form given in Schedule A annexed to this Act (*i. e.*, XIX of 1850), or to the like effect, which shall set forth the conditions agreed upon, particularly specifying the age of the apprentice, the term for

which he is bound, and what he is to be taught.—*Ibid.*, *s.* 8.

Approbate and reprobate. A person is said to approbate and reprobate when he takes advantage of one part of a deed and rejects the rest. The maxim runs, *qui approbat non reprobat*, one who approbates cannot reprobate.

In pleadings, it is a sound principle of law that as between the same litigants, a defendant cannot defeat the claim of the plaintiff by a plea negativing a contention advanced by him in a former suit, if he thereby approbates and reprobates (*Varajlal* v. *Bhaiji*, 6 Bom. L. R. 1103). Ordinarily, he who seeks assistance from the Court cannot for the purpose of securing to himself a further measure of relief assert that, on the negation of which, relief has already been awarded to him in relation to the same transaction (*Ahmedabad A. S. & W. Co.* v. *Lakshmishankar*, 6 Bom. L. R. 790).

Appropriation (*appropriatio*). The annexing of an ecclesiastical benefice to the perpetual use of a religious body, which thus becomes the patron. *See* IMPROPRIATION.

Appropriation of payments. The application of a particular payment for the purpose of paying a particular debt.

Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.—*Act IX of* 1872 (*Contract*), *s.* 59.

Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.—*Ibid.*, *s.* 60.

Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.—*Ibid.*, *s.* 61.

Appropriator. A spiritual corporation entitled to the profits of a benefice.

Approve (*approbare*). To augment a thing to the utmost; to approve land is to make the best benefit of it, by increasing the rent, &c.; to improve.

Approvement. Improvement; or partial inclosure of a common. The profits arising from land approved. The act of an approver.

Approver. Prover (*approbator*). An accomplice in crime who accuses others of the same offence, and is admitted as a witness at the discretion of the Court to give evidence against his companions in guilt, in order to obtain his own pardon. He is vulgarly called "King's evidence." This testimony must necessarily be of an unsatisfactory nature, and the practice is for judges to leave it to juries with the direction not to believe it unless corroborated in some material particular by independent unstained testimony.—*Wharton.*

Approvers. Bailiffs of lords in their franchises. Sheriffs were called the king's approvers (*approbatores regis*), who had the letting of the king's demesnes in small manors to his best advantage.

Appurtenances (*pertinentia*). Signify things both corporeal and incorporeal, appertaining to another thing as principal; as hamlets to a chief manor; and common of pasture, piscary, &c. Also liberties and services of tenants. If a man grant common of estovers to be burnt in his manor, these are appurtenant to the manor, for things appurtenant may be granted at this day. Out-houses, yards, orchards and gardens are appurtenant to a messuage; but lands cannot properly be said to be appurtenant to a messuage. And one messuage cannot be appurtenant to another. Lands will not pass by the word *appurtenances*, but only such things which do properly belong to the house.—*Tomlins.*

The "appurtenances" used with reference to a piece of land in a conveyance has the meaning of "usually occupied" and would include a structure erected on a land for the purpose of the enjoyment (*Macleod* v. *Kissan*, 6 Bom. L. R. 995).

Appurtenant. This word denotes annexed or belonging to; but in law it denotes an annexation which is of convenience merely and not of necessity, and which may have its origin at any time, in both which respects its is distinguished from *appendant*. In conveyances of lands and houses it is usual to add to the parcels or to the *habendum*, or to both, the phrase "with the appurtenances" and to make surer, to add "or reputed as appurtenant or belonging thereto." The term is commonly confined in law to the purely incorporeal hereditaments that are commonly annexed to lands or to houses, and may include as well common as any other rights.—*Brown.* *See* APPENDANT.

Apratibandha. (*Hin. L.*) *See* DAYA.

Arabant. Applied to those who held by the tenure of ploughing and tilling the lord's lands within the manor.

Arace. To rase or erase.

Aratia. Arable grounds.

Arbiter. A private extra-judicial judge; an arbitrator, or referee; a witness. *See* ARBITRATOR.

Arbitrament. The award or decision of arbitrators upon a matter of dispute, which has been submitted to them.

Arbitrary punishment. Such as is left to the discretion of the judge.

Arbitrament and Award. The technical plea in an old common law action, that the parties had submitted the matter to arbitration, and an award had been made.—*Rawson.*

Arbitrate. To judge; to make an agreement.

Arbitration. Arbitration is where two or more parties submit all matters in dispute to the judgment of *arbitrators*, who are to decide the controversy; and if they do not agree, it is usual to add, that another person be called in as *umpire*, to whose sole judgment it is then referred; or frequently there is only one arbitrator originally appointed. The decision is any of these cases is called an *award*, but sometimes when the umpire gives the decision, it is termed *umpirage*.—*Mozley.* Generally speaking, almost all matters in dispute, not being of a criminal nature, may be referred to arbitration.—*Wharton.*

Arbitrator. A disinterested person, to whose judgment and decision matters in dispute are referred. The civilians make a difference between *arbitor* and *arbitrator*, the former being obliged to judge according to the customs of the law; whereas the latter is at liberty to use his own discretion, and accommodate the difference in that manner which appears most just and equitable. An arbitrator's authority commences from the time of the agreement to refer being signed by all the parties. As soon as the award is published, his authority is at an end.—*Wharton.*

Archbishop (*archiepiscopus*). The chief of the clergy in his province, where he is, under the King, supreme in all ecclesiastical causes, and superintends the bishops. The Archbishops of Canterbury and Armagh are respectively called the Primate of *all* England and of *all* Ireland; those of York and Dublin, the Primate of England and of Ireland, and are inferior in rank.

Archdeacon (*archidiaconus*). A substitute for, and next in order to, the bishop. He has an ecclesiastical jurisdiction and court.

Archery. The service rendered by a tenant in keeping a bow for the use of his lord in the defence of his castle.

Arches Court (*curia de arcubus*). This is a court of appeal belonging to the Archbishop of Canterbury whereof the judge, who sits as deputy to the Archbishop, is called the *Dean of the Arches*, because he anciently held his court in the church of St. Mary-le-Bow (*Sancta Maria de Arcubus*), so named from the steeple which is raised upon pillars, built *archwise*. This court was afterwards held in the hall at Doctors' Commons, and now in Westminster Hall.

Archetype. The original type or copy.

Archidiaconal Belonging to an archdeacon.

Archiepiscopal. Belonging to an archbishop.

Archigrapher. A chief secretary.

Archives. A chamber or place where ancient records, charters, and evidences are kept. Also used for the writings themselves, as the archives of a college or monastery.

Archivist. The keeper of archives.

Arentare. To rent or let out at a certain rent.

Argentarius. A money lender or banker.

Arguendo. In the course of the argument.

Argument. The process of drawing inferences. The discussion of a legal point by counsel. The inference itself.—*Rawson.* In reasoning men ordinarily use four sorts of arguments. The *first* is to allege the opinions of men whose parts and learning, eminency, power, or some other cause, have gained a name, and settled their reputation in the common esteem, with some kind of authority; this may be called *argumentum ad verecundiam*. The *second* is to require the adversary to admit what they allege as a proof, or to require a better; this is called *argumentum ad ignorantiam*. The *third* is to press a man with consequences drawn from his own principles, concessions, or actions; this is known by the name of *argumentum ad hominem*. The *fourth*, the using of proofs drawn from any of the foundations of knowledge or probability; this is called *rgumentum ad judiciam*.—*Wharton. Argumentum ad baculum*, the appeal to force; *ad misericordiam*, the appeal to compassion. Argument or the process of reasoning is also divided into (1) *a priori*, from the antecedent cause to the consequent or effect, and (2) *a posteriori*, from the consequent to the antecedent.

Argumentative plea. A pleading in which the statement on which the pleader relies is implied instead of being expressed was, under the old system, called argumentative. An affidavit or pleading is now called argumentative if it states not merely facts, but the conclusions of law to be drawn from those facts. This practice is improper.—*Rawson.* A plea not concise, direct and positive.

Arles. Earnest.

Armaria. *See* ALMARIA.

Armiger. A title of dignity, originally belonging to such gentlemen as bore arms. An esquire.

Armiscara. A sort of punishment formerly imposed on an offender by a judge, to carry a saddle on his back as a mark of subjection.—*Mozley.*

Armistice. A suspension of hostilities between belligerents.

Arms and armour. This includes everything with which one strikes: thus sticks, stones and fists are "arms." Anything that a man, in his anger or fury, takes into his hand to cast at, or strike another. In all actions of trespass, and in indictments, it was formerly necessary to allege that the acts complained of were done *vi et armis*, "with

force and arms," the force being the gist of the action; but this is no longer required.—*Mozley.*

For the purpose of the Indian Arms Act, the word "arms" includes fire-arms, bayonets, swords, daggers, spears, spears-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms. —*Act XI of* 1878 (*Arms*), *s.* 4.

Arnalia. Arable grounds.

Arpen. Arpent. An acre or furlong of ground. According to *Domesday Book*, one hundred perches make an arpent.

Arpentator. A measurer or surveyor of land.

Arraign. Arraignment (*Fr. arraisonner, i. e., ad rationem ponere*). To call a man to answer in form of law. A prisoner is *arraigned*, when he is indicted and brought to trial. *See* INDICTMENT.

Arraigns, clerk of the. A person who assists the clerk of assize, more particularly in taking the arraignments.

Arrangements between debtors and creditors. A scheme, for assigning a debtor's property to his creditors, or for compounding with them, or for giving them the control of his business. *See* COMPOSITION.

Array (*arraiamentum*). This is the setting forth in order of a jury of men that are impannelled upon a cause, from whence comes the verb *to array* a pannel, *i. e.*, to set forth in order the men that are impannelled.—*Mozley.*

A *challenge to the array*, as applied to juries, signifies an exception or objection against all the persons arrayed or impannelled on a jury on account of partiality, or some default of the sheriff or his under officer who arrayed the pannel.—*Brown.* On such grounds the array may be *quashed.*

Arrears. Arrearages. Money unpaid at the due time as rent or interest behind; the remainder due after payment of a part of an account; money in the hands of an accounting party.

Arrectatus. One suspected of a crime.

Arrected. Reckoned; considered.

Arrenatus. Arraigned; accused,

Arrendare. To let lands yearly.

Arrentation. The licensing an owner of lands in the forest to enclose them with a low hedge and little ditch, according to the assize of the forest, under a yearly rent. *Saving the arrentations* is reserving the power to grant such licenses.

Arrest (*arrestum*). To restraining of the liberty of a man's person in order to compel obedience to the order of a court of justice, or to prevent the commission of a crime, or to ensure that a person charged or suspected of a crime may be forthcoming to answer it. Arrests are either in civil or criminal cases; civil arrests must be effected, in order to be legal, by virtue of a precept or writ issued out of some court, but every person has authority to arrest criminals without warrant or precept.—*Wharton.*

Persons exempted from civil arrest. No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court. Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal. Nothing in this section shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution, or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.—*Act V of* 1908 (*Civ. Pro.*), *s.* 135.

Arrest before judgment. Where at any stage of a suit, other than a suit for the possession of immoveable property, the court is satisfied, by affidavit or otherwise, that the defendant with intent to delay the plaintiff, or to avoid any process of the court, or to obstruct or delay the execution of any decree that may be passed against him (*a*) has absconded or left the local limits of the jurisdiction of the court, or (*b*) is about to abscond or leave the local limits of the jurisdiction of the court, or (*c*) has disposed of, or removed from the local limits of the jurisdiction of the court, his property or any part thereof, or that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance. Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the court until the suit is disposed of or until the further order of the court. Where the defendant fails to show cause, the court shall order him either to deposit in court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the preceding proviso. Where the defendant fails to comply with this order, the court may commit him to the civil prison

until the decision of the suit, or, if judgment be given against the defendant, until the decree has been satisfied: Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees: Provided that no person shall be detained in prison under this section after he has complied with such order.—*Ibid., Sch. I, O. XXXVIII, RR.* 1 to 4.

Compensation for improper arrest. See ATTACHMENT BEFORE JUDGMENT.

Arrest of inquest. This is to plead in arrest of taking the inquest, upon the former issue, and to show cause why an inquest should not be taken.—*Tomlins.* See REPLEADER.

Arrest of judgment. A staying or withholding of judgment, although there has been a verdict in the case, on the ground that there is some error on the face of the record which vitiates the proceedings, or from which it appears that the plaintiff has at law no right to recover in the action. The defendant is of course the party who moves in arrest of judgment.

Arrest on mesne process. See ARREST BEFORE JUDGMENT.

Arrester. Arrestee. See ARRESTMENT.

Arrestment. The Scotch term for the arrest of a person or the seizure of his effects. A process of attachment prohibiting a person, in whose hands a debtor's moveables are, to pay or deliver up the same to such debtor, till the creditor so arresting is paid, or the debtor gives security to answer the demand. The judgment-debtor is called the *arrestee*; the garnishee, the *common debtor*; and the judgment creditor, the *arrester*, or *user of the arrestment.*

Arret. A judgment, decree or sentence.

Arretted (*arrectatus; ad rectum vocatus*). Charged. Convened before a judge and charged with a crime. It is sometimes used for *imputed* or *laid unto*; as no folly may be *arretted* to one under age.—*Tomlins.*

Arrha. Earnest; pledge; evidence of a completed bargain.

Arriage and carriage. In the Law of Scotland, indefinite services formerly demandable from tenants. Such indefinite services are now abolished, and none can now be demanded except such as are enumerated in the lease, or in writing apart.—*Moxley.*

Arrogation. (*Rom. L.*) Adoption of a person of full age; *adoption*, properly so called, being that of a person under age. See ADOPTION.

Arsha. (*Hin. L.*) One of the approved forms of marriage. When the father gives his daughter away, having received from the bridegroom one pair of kine, or two pairs, for uses prescribed by law, that marriage is termed *Arsha.* Now obsolete.

Arson. The malicious and wilful burning of a house or building.

Art, words of. Words used in a technical sense.

Art and part. (*Sc. L.*) Means where a person is guilty of aiding and abetting a criminal in the perpetration of a crime. One is "art and part" guilty, who orders, incites, counsels or assists a criminal in the execution of a crime. "To have neither art nor part," is to be neither contriver nor participator.—*Rawson.*

Arthel. Ardhel. Arddello. A vouchee; one who answers for another. If a man were taken with stolen goods in his hand, he was to be allowed a lawful *arthel* (or vouchee) to clear him of the felony. The privilege of arthel occasioning a delay and exemption of criminals from justice, provision was subsequently made against it.—*Tomlins.*

Article (*articulus*). A complaint exhibited in the Ecclesiastical Court, by way of libel. The different parts of a libel, responsive allegation, or counter allegation in the Ecclesiastical Courts.

Articled clerk. A clerk under articles (*i. e.*, heads and particulars) of an agreement to serve an attorney or solicitor in consideration of being initiated into the routine and mystery of the profession, previously to being admitted himself as an attorney or solicitor.

Articles. Divisions or paragraphs of a document or agreement. Agreements between different persons expressed in writing, sealed or unsealed, are often spoken of as "articles." It is a common practice for persons to enter into articles of agreement preparatory to the execution of a formal deed, whereby it is stipulated that one of the parties shall convey to the other certain lands, or release his right to them, or execute some other disposition of them. So also we speak of articles of partnership. Rules are sometimes spoken of as "articles"; as when we speak of "articles of war," "articles of the navy," "articles of a constitution," "articles of religion," &c. The complaint of the promoter in an ecclesiastical cause is called "articles." So an impeachment by the House of Commons is expressed in what are called "articles of impeachment."—*Moxley.* See MARRIAGE ARTICLES.

Articles of association. See ASSOCIATION.

Articles of religion. Commonly called the Thirty-nine Articles, a body of divinity drawn up by the convocation in 1562, and confirmed by James I.

Articles of roup. (*Sc. L.*) The conditions under which property is exposed to sale by auction.

Articles of the peace. A form of complaint by a person who fears that another may do him some bodily hurt, or procure a third person to perpetrate it. Upon the articles being sworn to by the complainant, sureties of the peace are taken on the part of the party com-

plained against. And the Court may require bail for such time as they shall think necessary for the preservation of the peace.—*Mozley.* See Act V of 1898 (Crim. Pro.), ss. 106-7.

Artificial person. A corporation ; a body of men ; a company. *See* NATURAL PERSON.

Artificial watercourse. *See* WARTER.

Arzi. (*Ind.*) A letter addressed to a superior ; an application ; a petition.

As against. As between. These are expressions indicating partial effect or influence. They contrast the relative position of two persons with a tacit reference to a relationship between one of them and a third person. Thus a bill in Chancery may be dismissed as against certain parties to it who have been wrongfully made parties while mainted as against others. The temporary bailee of a chattel is entitled to it, as between himself and a stranger, or as against a stranger ; reference being made by this form of words to the rights of the bailor.—*Wharton. —Mozley.*

Asbab. (*Ind.*) Goods ; effects ; implements.

Ascendants. The progenitors of a person in a direct line.

Ascesterium. A monastery.

Ascriptitius. A naturalized foreigner.

Asmani sultani (*Ind.*). A calamity from heaven or the king, *i. e.*, from an act of God or an act of State. *See* AFAT ASMANI.

Asportation. Carrying away or removing goods. In all larcenies there must be both a taking and carrying away. The technical words in indictments for larceny were *felonice cepit et asportavit* (he feloneously took and carried away), the carrying away being an essential part of the crime, though the slightest removal is sufficient.—*Mozley.*

Assach. Assath. A custom of purgation formerly used in Wales, by which an accused party cleared or purged himself of the accusation by the oaths of three hundred men.

Assart. Essart (*assartum*). In the old forest law, the offence of pulling up the trees by the roots that are thickets and covert for deer, and making the ground plain as arable land. It is more than *waste* : for whereas waste of the forest is but the felling and cutting down of the coverts which may grow up in time again, an *assart* is a plucking them up by the roots and utterly destroying them, so that they can never afterwards grow.

Assassination. Murder accomplished with premeditation or lying in wait.

Assault (*assaltus*). Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. Mere words do not amount to an assault, but the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.—*Act XLV of* 1860 (*Penal Code*), *s.* 351.

Any gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence, or, in the language of the Ind. Penal Code, " is about to use criminal force " to the person threatened, constitutes, if coupled with a present ability to carry such intent into execution, an assault in law. Mere words do not amount to an assault, but the words which the party threatening uses at the time may either give his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault. In order to have this latter effect the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force (*A. C. Cama* v. *H. F. Morgan*, 1 Bom. H. C., A. C., 205).

An assault may be committed without actual battery ; an attempt or offer to beat another without touching him, as if one lifts up his cane or his fist in a threatening manner at another, or strikes at but misses him, a threat of violence exhibiting an intention to assault and a present ability to carry the threat into execution, will amount in law to an assault. So, also, *a fortiori*, does a *battery*, which includes an assault, and is described as the wrongful beating of another—the least touching of another's person wilfully or in anger ; for the law cannot draw the line between different degrees of violence, and therefore totally prohibits the first and lowest stage of it—every man's person being sacred, and no other having a right to meddle with it in any the slightest manner.—*Broom's Com. Law.—Pollock on Torts.*

Battery includes assault, and though assault strictly means an inchoate battery, the word is in modern usage constantly made to include battery. No reason appears for maintaining the distinction of terms in our modern practice. Examples of acts which amount to assaulting a man are the following :—Striking at him with or without a weapon, or presenting a gun at him at a distance to which the gun will carry, or pointing a pitch fork at him, standing within the reach of it, or holding up one's fist at him, or drawing a sword and waiving it in a meanacing manner.—*Pollock on Torts.*

An assault is an unsuccessful attempt to do harm to the person of another. Thus, if one make an attempt, and have at the time of making such attempt a present ability, to do harm to the person of another, although he actually do no harm, it it nevertheless an assault. Battery consists in touching another s person hostilely or against his will, however slightly. This touching may be occasioned by a missile or any instrument set in motion by the defendant, as by throwing water over the plaintiff, or spitting in his face, or caus-

ing another to be medically examined against his or her will.—*Underhill on Torts.*

Assay. A proof; a trial. Thus the *assay* of weights and measures is the examination of them by the clerks of the market. Also the testing and proving of coins, metals, &c.

Assayer of the king (*assayator regis*). An officer of the Mint appointed to be present at the taking in of the bullion, as a party indifferent between the master of the Mint and the merchant, to set the true value of the bullion according to the law.

Assedation. (*Sc. L.*) A lease or feu-right.

Assembly, unlawful. *See* UNLAWFUL ASSEMBLY.

Assent. Consent. Agreeing to, or recognizing a matter. As, the title of a legatee is not complete until the executor has assented to the legacy, either by inplication or expressly.

Assertory covenant. An affirming promise under seal.

Assess. To fix or settle the amount of a tax or rate.

Assessed taxes. Properly, duties varying with the value of the property on which they are charged, as the property tax, house tax, or land tax, but the term is also applied to the duties charged upon persons in respect of articles in their use or keeping, as servants, carriages, or armorial bearings.—*Wharton.* They are also called *King's taxes.*

Assessors. Literally, those who sit by the side of another. Persons appointed to ascertain and fix the value of taxes, rates, &c. The term is also frequently applied to persons associated with a judge or judges to advise them and to assist in their deliberations, but who take no part in giving the judgment. In Admiralty cases they are often employed. Thus we speak of "legal assessors," "nautical assessors," &c.

Assets. The funds or property (real or personal) of a person available for the payment of his debts or legacies. Property available for the payment of the debts of a person or corporation In commerce, the term "assets" is used to designate the stock in trade and entire property belonging to a merchant, or to a trading association with reference to bankruptcy.

Assets enter manis. The personal assets of a deceased which come to the hands of his executor or administrator.

Assets per descent. Lands or real assets of a deceased person descending to his heir.

Asseveration. Positive affirmation or assertion; solemn declaration.

Assidere. Assedare. To tax equally. Sometimes it signifies to assign an annual rent to be paid out of a particular farm.

Assign. To *assign* has two significations; (1) to make over a right or interest to another; (2) to point out or set forth. In the former sense we speak of the "assignment of a lease," which is the making over the lease to another. In the latter sense we have—to assign error, to assign perjury, to assign waste, &c.—*Mozley.* The judges are said to be assigned to take assizes. *See* ASSIGNMENT.

'Assign' is a word of the widest significance in respect to the nature of the transfer to which it relates. It does not in its accepted meaning import any restriction upon the *quantum* of interest transferred (*Behari Lal* v. *Mohammad*, 20 All. p. 485).

Assignation. (*Sc. L.*) Assignment.

Assignee *or* **Assign** (*assignatus*). One who is appointed by another to do any act, or perform any business, or enjoy any commodity, and he is always such a person who occupies a thing in his own right as distinguished from a *deputy* who doth it in the right of another. Such an assignee may be either *by deed* or *in law.* Assignee by deed is he that is appointed by a person as when a lessee assigns his lease to another; an assignee in law is he whom the law so makes, without any appointment of the person, as an administrator, who is the assignee in law to the intestate. Assignee *in bankruptcy* were those in whom the property of a bankrupt became vested for the benefit of the creditors. They are now called *trustees* in bankruptcy.—*Mozley.*

Assignment (*assignatio*). A transfer of property, especially of personalty. A transfer of the whole of a particular estate or right, *e. g.*, a lease or contract; the usual words being, "assign, transfer and set over." But other words indicating an intention to make a complete transfer will amount to an assignment.—*Rawson.* *See* EQUITABLE ASSIGNMENT.

Assignment of breaches. Where a contract (whether a specialty or simple) is broken, and an action is brought upon it, it is necessary to state in what the contract has been broken, and this statement of the breach, is called the assignment of the breach, or if the contract has been broken in more respects than one, then the statement of these respects is called the assignment of breaches.—*Brown.*

Assignment of dower. The ascertaining and setting out of a widow's portion of her deceased husband's realty for her thirds of dower.

Assignment of errors. The formal statement of the objection or error in the record complained of. *See* ERROR.

Assignor. A person who transfers or make over property to another.

Assimulate. To connect highways.

Assisa. (*Sc. L.*) A sitting in session. A law. A jury.

Assise. Assize (*assisa*). This signifies, originally, the jury who are summoned by virtue of a writ of assize, who try the cause and "sit together" for that purpose. It was subsequently made to signify the court or jurisdiction which summoned this jury together

by a commission of assize. And hence the judicial assemblies held by the King's commission in every county to deliver the gaols (*i.e.*, to try every prisoner in the gaol committed for any offence whatsoever, so as to clear the prisons) and to try causes at *nisi prius*, are termed in common speech the assizes. It also means an *ordinance* or *statue*; as the Assise of Bread and Ale (a statute regulating the price of bread, &c.), the Assise of Clarendon, the Assise of Arms, the Assise of the Forest (a statute touching orders to be observed in the king's forests). Assise of *darrein presentment* (last presentation) is a real action which lay against any one who interposed with the plaintiff's right to present to a benefice. Assise of *mort d'ancestre* is a real action against an *abator* who had entered on the death of the plaintiff's ancestor. Assise of *novel dissesin*, a real action where one had been recently disseised. It is sometimes used to denote generally anything reduced to certainty in respect to number, quantity, quality, weight or measure.—*Moxley.*—*Rawson.*

Assise of nuisance. A writ wherein it was stated that the party injured complained of some particular fact done to the injury of his freehold, and therefore commanded the sheriff to summon an assize, that is a jury, and view the premises and have them at the next commission of assizes, that justice might be done therein. If the assize was found for the plaintiff, he had judgment of two things—(1) to have the nuisance abated; and (2) to recover the damages.—*Brown.*

Assise rents. These are the certain established rents of the ancient freeholders and copyholders of a manor, and are so called precisely because they are assised or certain.

Writ of assise. An action, now abolished, used for the purpose of regaining *possession* of lands whereof the demandant or his ancestors had been unjustly deprived by the tenant or possessor of the freehold or those under whom he claimed. The tittle of the demandant was proved by showing his or his ancestor's possession, and it was not necessary (as it was in a writ of entry) to show the unlawful commencement of the tenant's possession.—*Moxley.*

Assiser. An officer who had the care and oversight of weights and measures.

Assisors. In Scotland, assisors were the same as jurors in England.

Assistance, writ of. An ancient writ issuing out of the Exchequer, authorising a person to take a constable or other public officer, to seize goods or merchandise prohibited, or on which duty has not been paid. A writ issuing out of Chancery, when a defendant has been ordered to give up possession of lands and has refused to do so. The writ is directed to the sheriff of the county in which the lands lie, commanding him to eject the defendant, and to put the plaintiff in possession.—*Brown.*

Assithment. Assythment. This was a weregeld or compensation for murder, by a pecuniary mulct, due to the heirs of the person murdered.

Assize. *See* ASSISE.

Associate. An officer in each of the superior courts of Common Law, whose duty is to keep the records and documents of the court to which he is attached, to attend its *Nisi Prius* sittings, and in each case to enter the verdict and to make up the *postea* or formal entry of the verdict, and deliver the record to the party entitled thereto. A person associated with the judges and clerk of the assize in the commission of general gaol delivery.—*Moxley.*

Association (*associatio*). A commission granted either by writ or patent to the justices of assize to have other persons (sergeants at-law, for instance) associated to them to take the assizes, that a sufficient supply of commissioners may never be wanting. It usually takes place when, from the illness or death of a judge, the press of business, or some other cause, additional help is required.—*Moxley.*

Articles of Association. Articles of association of a company are the rules regulating the internal management of the company under the Companies Act.

Memorandum of Association. Memorandum of association of a company regulates the position of that company by defining its objects, &c., in relation to the world without, and is incapable of variation even by the whole body of shareholders, unless after full notices to creditors, and with the confirmation of the court. For forms of articles and memoranda of association of companies see the Schedules annexed to the Indian Companies Act VII of 1913.

Assoile. Assoil (*absolvere*). To deliver or discharge a man of an excommunication; to acquit. In Scotch law, when judgment is given in favour of a defendant, the Court "assoilzies" him, or absolves him from the charge.

Assoilzie. *See* ASSOILE.

Assuetude. Custom.

Assumpsit. *See* PERSONAL ACTIONS.

Assurance. *See* INSURANCE.

Assurance. Assurances. The legal evidence of the transfer of property, called *common assurances*, by which every man's property is secured to him, and controversies, doubts and difficulties prevented and removed. It is also the old name for conveyances.

The word assurance shall mean any deed or instrument, other than a will, by which any land shall be conveyed or transfered at law or in equity.—*Act XXX of* 1839 (*Inheritance*), *s.* 1.

Assured. A person assured and indemnified against certain events, by the undertaking of another.

Assurer. One who undertakes to indemni-

fy against certain risks or dangers; an underwriter.

Assythment. *See* ASSITHMENT.

Aster. Homo aster. A resident.

Astipulation. A mutual agreement, as sent, and consent between parties; also a witness or record. *See* ADSTIPULATOR.

Astriction to a mill. A servitude by which grain growing on certain lands or brought withim them, must be carried to a certain mill to be ground, a certain multure or price being paid for the same.

Astrihilibet. A forfeiture of double the damage.

Astrum. A house; place of habitation.

Asura. (*Hin. L*) One of the disapproved forms of marriage. When the bridegroom, having given as much wealth as he can afford to the father and paternal kinsmen, and to the damsel herself, takes her voluntarily as his bride, that marriage is named *Asura*.

Asyle. Asylum A sanctuary or place of refuge for offenders to fly into. A place where lunatics are lodged and treated.

At arm's length. One who has an advantage over another by virtue of holding a position of trust, is bound, on a proposal for a contract between them, to divest himself entirely of that authority, influence or advantage which he possesses, so as to place himself on an equality, and to let the negotiations proceed as between two independent persons. This is called putting *at arm's length*. It is most frequently applicable to transactions between solicitor and client, trustee and cestui que trust.—*Rawson*. When a person having been under the influence or control of another ceases to be so, he is said to be *at arm's length* with him.—*Moxley*.

When two adult men have contracted, at arm's length and with their eyes open, it is eminently desirable, on principle, that they must be held to the terms of their bargain (*Hunsraj* v. *Runchordas*, 7 Bom. L. R. 319).

Athe. Atha. Ath. Adda. (*Sax.*) An oath. A privilege of administering an oath in cases of right and property.

Ats. An abbreviation denoting "at the suit of"; Thus, C. D. (defendant), *ats*. A. B. (plaintiff).

At sight. *See* ON DEMAND.

Attache. A person associated with a foreign legation

Attached. This word does not always mean physically fastened; it may also mean superincumbent upon.—*Stroud*.

Attaches. When the liability of the underwriter commences under the contract, the technical mode of expressing this is by saying that "the policy attaches," or "the risk begins to run" from that time.—*Stroud*.

Attachment. The taking into the custody of the law the person or property of one already before the court, or of one whom it is sought to bring before it. This is done by means of a judicial writ called the *writ of attachment*.—*Moxley*. It differs from *arrest*, because it takes not only the body, but sometimes the goods, whereas an arrest is only against the person. Besides, he who attaches keeps the party attached in order to produce him in court on the day named, but he who arrests lodges the rerson arrested in the custody of a higher power, to be forthwith disposed of.—*Wharton*. An attachment may issue in all cases for a contempt of court, arising from a refusal to obey or to comply with its process; or to enforce the doing or forbearing from any act ordered to be done or forborne; or to enforce an order to pay money into court; or to enforce the recovery of specific property (not being land or money) ordered to be delivered up. The writ should not be regarded as a penal writ.—*Brown*. For properties exempted from attachment see Act V of 1908 (Civ. Pro.), s. 60.

Attachment before judgment. Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him (*a*) is about to dispose of the whole or any part of his property, or (*b*) is about to remove the same from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security. The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof. The Court may also, in the order, direct the conditional attachment of the whole or any portion of the property so specified. If the defendant fail to show cause or to furnish security required, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.—*Act V of* 1908 (*Civ. Pro.*), *Sch. I, O. XXXVIII, RR.* 5-6.

The effect of attachment before judgment is to secure that the property attached shall be forthcoming at the time of pronouncing the decree, to abide whatever order the Court shall make upon it (*Java Ramji* v. *Jadavji*, 1 Bom. H. C., O. C., 224).

Compensation for improper arrest or attachment. Where, in any suit in which an arrest or attachment has been effected, or a temporary injunction granted, it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or the suit of the plaintiff fails, and it appears to the Court that there was no reasonable or probable ground for instituting the same, the Court may, on the application of the

defendant, award against the plaintiff by its order such amount not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him. Provided that the Court shall not award under this section an amount exeeeding the limits of its pecuniary jurisdiction. An order under this section shall bar any suit for compensation in respect of such arrest, attachment or injunction.—*Act V of* 1908 (*Civ. Pro.*), *s.* 95.

Attachment of debts. The judgment-creditor may apply to the court or a judge to have a judgment-debtor orally examined as to debts due to him and may either before or after such examination apply *ex parte* for an order *attaching* such debts owing or accruing in the hands of the parties owing the same (garnishees), and by the same or any subsequent order the garnishee may be required to appear before the court or a judge or an officer of the court to show cause why he should not pay the judgment creditor the debt due from him, the garnishee, to the judgment-debtor, or so much thereof as may be sufficient to satisfy the judgment-debt. See Act V of 1908 (Civ. Pro.), Sch. I, O. XXI, RR. 41 and 46.

Foreign attachment. The attachment of the goods of foreigners found within any liberty or city for a debt due. "Foreigner" here means a person resident outside the jurisdiction of the court. This was a peculiar and ancient remedy open to creditors within the jurisdiction of the cities of London, Bristol, Exeter and Lancaster, by which they were enabled to satisfy their own debts by *attaching* or seizing the money or goods of their debtor in the hands of a stranger or third person within the jurisdiction of such city. The expression "foreign attachment" is also used in the same sense as a *garnishment*, which is a process by which a creditor may attach property belonging to his debtor which may be in the hands of a third party.—*Mozley*,—*Brown*.

Attachment of the forest. One of the three courts formerly held in forests. The highest court was called Justice in Eyre's seat; the middle, the Swainmote; and the lowest, the Attachment.

Attachment of privilege. When a person by virtue of his office or privilege calls another into that court to which he himself belongs and in respect of which he is privileged. A power to apprehend a person in a privileged place. Now abolished.

Attainder (*attincta, attinctura*). The taint, stain, or corruption, which the law attached to a criminal who was capitally condemned. He was then called attaint (*attinctus*), stained, or blackened, and was no longer of any credit or reputation and was considered already dead in law (*civiliter mortuus*) and incapable of performing the functions of another man. The effect of the attainder used to be a forfeiture of the party's property, honours and dignities, and corruption of blood. His children could not be heirs to him, nor to any other ancestor through him. These consequences could only be removed by authority of Parliament. But these consequences are now abolished.—*Brown*.

Bill of attainder. A bill declaring persons attained and their property confiscated. Bills of attainder differ from impeachments in this respect, *viz.*, in an impeachment the Commons are the prosecutors, and the Lords are the sole judges; but a bill of attainder is like any other bill in Parliament. Evidence is not necessary in the latter; but an impeachment must be supported by evidence.—*Brown*.

Writ of attaint. This writ lay to inquire whether a jury of twelve men had given a false verdict so that the judgment following thereupon might be reversed. The jury who were to try the former verdict must have been twenty-four and were called the grand jury in the attaint. If the first jury were found to have given a false verdict, they incurred infamy with imprisonment and forfeiture of their goods; which two latter punishments were, in course of time, commuted to a pecuniary penalty. The practice of setting aside verdicts upon motion and granting *new trials* superseded the use of attaints, and the writ itself is now abolished by statute.—*Mozley*.

Attainture. Legal censure.

Attempt. An endeavour to commit a crime or unlawful act. Attempt is defined in jurisprudence as that which if not prevented would have resulted in the full consummation of the act attempted. Wherefore there can be no attempt to steal a purse from an empty pocket; but an action of trespass for the assault may lie.—*Brown*. But under the Indian Penal Code (XLV of 1860) such an act would amount to an attempt to steal. See s. 511, illus. (*b*), of the Code.

To constitute the offence of attempt under s. 511 of the Penal Code, there must be an act done with the intention of committing an offence and for the purpose of committing that offence, and it must be done in attempting the commission of the offence. The provisions of that section do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such acts are doubtless done towards the commission of the offence, they are not in the attempt to commit the offence, within the meaning of the word "attempt" as used in that section (*Queen* v. *Ramsarun*, 4 N.-W. P. H. C. 46).

The offence of attempting to commit a crime may be committed in cases in which the offender voluntarily desists from the actual commission of the crime itself.—*Stroud*.

Attendant (*attendens*). One that owes a duty or service to another, or in some sort depends on him. Where a wife is endowed of lands by a guardian, &c., she shall be attendant on the guardian, and on the heir at his full age.—*Tomlins*.

Attendant term. A term held "upon trust

to attend the inheritance," *i. e.*, an estate for years in land held in trust for the party entitled to the inheritance thereof on the expiration of the term of years.—*Mozley.* Terms for years in real property are created for many purposes, *e. g.*, to furnish money for the payment of debts (mortgages), to secure rent charges or jointures, to raise portions for younger children, daughters, &c. Now, although the purpose for which the term was originally created has been satisfied or has failed, yet, not being surrendered, it continued to exist, the legal interest remaining in the trustees, to whom it was at its creation limited, or, if deceased, in their personal representatives, but the person entitled to the inheritance then became, according to the equitable principle, entitled to the beneficial interest in such term, and the termor was held to be such person's trustee.—*Wharton.* *See* TERM, OUTSTANDING TERM.

Attermining. Granting longer time for the payment of a debt.

Attestation. The subscription by a person of his name to a deed or will executed by another, for the purpose of testifying to its genuineness. Wills must be attested by two or more witnesses. *See* WILL. As to the attestation of mortgage-deeds, *see* MORTGAGE.

Attestation clause. The sentence subscribed to a written instrument signed by the witnesses to its execution, stating that they have witnessed it. Such a clause (in very precise terms) is always appended to a *will* formally prepared, but it is expressly provided that no particular form of attestation shall be necessary. *See* WILL.

Proof of attested documents. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court, and capable of giving evidence. If no such attesting witness can be found or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him though it be a document required by law to be attested. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence. An attested document not required by law to be attested may be proved as if it was unattested.—*Act I of* 1872 (*Evi.*), *ss.* 68 *to* 72.

When a document is executed by a pardanashin lady, who is sitting behind a parda at the time of signing, it may be attested by witnesses who are present outside the purda and who have satisfied themselves that there was no fraud (*Harmongal* v. *Ganaur*, 13 Cal. W. N. 40; *Nawab Sarurnigar Begam* v. *Baroda Kant*, 5 Ind. Cas. 539).

Attested copy. A verified transcript of a document.

Attesting witness. A person who has seen a party execute a deed, or sign a written agreement. He then subscribes his signature as a witness for the purpose of identification and proof at any future period (*Ranu Shivji* v. *Laxmanrao*, 10 Bom. L. R. 943). *See* ATTESTATION.

The mere fact of a person attesting a deed is not in itself sufficient proof that he consented to it or knew it contents, and does not necessarily import his assent to all the recitals therein (*Mewa Singh v. Bhagwant*, 5 Ind. Cas. 252; *Mathura Prasad* v. *Jagat Bahadur*, 18 Ind. Cas. 289); nor does the attestation amount to a representation by the attestor that the vendor had a good title to the property (*Deenabandu* v. *Vinayaka*, 8 M. L. T. 171).

Attorn. To make attornment. *See* ATTORNMENT.

Attorney (*attornatus*). One who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated. He is of two kinds:—(1) *Attorney at-Law* was a public officer belonging to the superior courts of Common Law at Westminster who conducted legal proceedings on behalf of others, called his *clients*, by whom he was retained: he answered to the *solicitor* in the courts of Chancery, and the *proctor* of the Admiralty, Ecclesiastical, Probate and Divorce courts. An attorney was almost invariably also a solicitor. It is now provided by the Judicature Act 1873, that solicitors, attorneys, or proctors of or by law empowered to practice in any court the jurisdiction of which is by that Act transferred to the High Court of Justice or the Court of Appeal, shall be called "Solicitors of the Supreme Court." (2) *Attorney-in-fact*, including all agents employed in any business or to do any act *in pais* for another. Also a person acting under a special agency, whose authority must be expressed by deed commonly called a *power-of attorney.*—*Wharton.*

As nearly every attorney-at-law is also a solicitor, the words are generally used indiscriminately, and are popularly supposed to mean the same thing.—*Mozley.* *See* SOLICITOR.

Attorney-General. Is the attorney for the Crown in all matters affecting the Crown or the people generally. He is the head of the Bar and takes precedence of and has pre-audience over all serjeants and king's counsel. He is the informant in all informations; and he is usually a member of Parliament and there superintends the legal business of the Government. The Prince of Wales has his own Attorney General; likewise a Queen-Consort.—*Brown.*

Attorneyship. The office of an agent or attorney.

Warrant of Attorney. *See* POWER-OF-ATTORNRY.

Attorney's general lien. *See* BANKERS' GENERAL LIEN.

Attornment (*attornamentum*). The acknowledgment of a new lord on the alienation of land, and the assent and agreement of the tenant to attorn, as "I become tenant to the purchaser."—*Wharton.* In feudal times a lord could not alien or transfer the fealty he claimed from a vassal without the consent of the latter, for it was esteemed unreasonable to subject a vassal to a new superior with whom he might have a deadly enmity, without his own approbation. In giving this consent, the vassal was said to *attorn* (or *turn* over his fealty to the new lord), and the proceeding was called an attornment. The doctrine of attornment was extended to all lessees for life or years and became very troublesome until attornment were made no longer necessary to complete any grant or conveyance; though in certain exceptional cases they are still necessary.—*Moxley.* Attornments made by tenants to strangers claiming title to the estate of their landlord are null and void, and the landlord's possession is not affected thereby. The word attornment is inaccurately applied to such an acknowledgment of tenancy as operates by way of "estoppel." *See* ESTOPPEL.

Attornment clause. Attornment clause in a mortgage-deed is that clause whereby the mortgagor as upon a re-demise (and sometimes upon an actual re-demise) of the mortgaged property, attorns to and becomes tenant of the mortgagee in respect of his continuing in possession of the mortgaged premises. Such a clause usually reserves a rent equal to the interest on the mortgage debt; and it confers on the mortgagee the right of distraining for such interest.—*Brown.*

Attributive justice. Is a term in jurisprudence, used to denote the duties arising out of imperfect obligations, the performance of which is not legally but only morally enforceable. In this sense it is opposed to the term *expletive* justice, which consists in duties of perfect obligation, and which are legally enforceable.—*Brown.*

Auction. A public sale of property usually conducted by biddings, which augment the price. A spear used to be raised by the Romans, as the sign of a public auction.

Auctioneers. Licensed agents appointed to sell property and to conduct sales or auctions. They differ from brokers, in that the latter may both buy and sell, whereas auctioneers can only sell; also brokers may sell by private contract only, and auctioneers by public auction only. Auctioneers can only sell goods for ready money but factors may sell upon credit.—*Wharton.*

Auctor. A seller or vendor.

Audience. A hearing; an interview.

Audience Court (*curia audientiæ cantuariensis*). A court belonging to the Archbishop of Canterbury and held in his palace. It is of equal authority with the Arches Court, though inferior both in dignity and antiquity. The Archbishop of York has also an Audience Court. But these courts, as separate courts, have long since been disused.—*Moxley.*

Audit. An examining of accounts, which may be either (*a*) *detailed* or (*b*) *administrative*; (*a*) is the comparison of vouchers with the sums debited as paid, in order that the party whose accounts are audited may not debit his employer with payments not in fact made; (*b*) is the comparison of the sums debited with the authorities to pay, in order that the party whose accounts are audited may not debit his employer with payments not authorized. *See* SURCHARGE.

Auditor. One who examines accounts and evidences of expenditure.

Auditors of the Imprest. Officers in the Exchequer, who formerly had the charge of auditing the accounts of the customs, naval and military expenses, &c, now performed by the commissioners for auditing public accounts.

Auditor of the Receipts. This was an officer of the Exchequer who filed the tellers' bills and made an entry of them, and gave the Lord Treasurer an account of the money received the week before.

Augmentation of teinds and stipends. (*Sc. L.*) In order to secure a better provision for the clergy of the Church of Scotland, the Court of Session has power, under various acts of parliament, to modify or increase stipends to the clergy out of the teinds of the parish in which the minister officiates.

Augmentation, Court of. The name of a Court erected in the 27th year of King Henry VIII for the purpose of inquiring into the profits of such religious houses and their lands as were given to the Crown by an Act of Parliament passed the same year. The name of the Court arose from this, that the revenues of the Crown were *augmented* by the suppression of such of the said religious houses as the king reserved to the Crown.

Aula Regis *or* **Regia.** 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. —*Brown.* This court was established by William the Conqueror in his own hall. It was composed of the King's great officers of state resident in his palace, and usually attendant on his person, assisted by persons learned in the laws, who were called the king's justiciars or justices, and by the greater barons of parliament, all of whom had a seat in the *aula regia*, and formed a kind of Court of Appeal, or rather of advice in matters of great moment and difficulty. This court was at first bound to follow the king's household in all

his progresses and expeditions, whereby the trial of common causes was found very burdensome to the subjects. By the eleventh chapter of *Magna Charta* it was enacted that thenceforth common pleas should not follow the king's court, but be held in some certain place. This "certain place" was established in Westminster Hall. In the reign of Edward I this court was broken up into several distinct courts:—This Court of Chancery, from which original writs were issued under the Great Seal, to the other courts; the Common Pleas, for determining causes between private subjects; the Court of King's Bench, for pleas of the Crown or criminal cases; and the Court of Exchequer, for the recovery of the King's debts and duties.—*Mozley.*

Aulad dar-aulad. (*Ind.*) Descendants and their descendants. In the case of a settlement of property, *held*, that the plaintiffs who were sons of a daughter of one of the original settlers, did not come within the meaning of the term *aulad dar aulad* or the term *warrasan* used in the instrument of settlement (*Abdul Ganne* v. *Hussen Miya*, 10 Bom. H. C., O. C., 77).

Aulnager. An ancient officer appointed by the king, whose business it was to measure all woollen cloth made for sale, that the Crown might not be defrauded of customs and duties.

Aumil. Aumildar. (*Ind.*) An agent; the holder of an office; an intendent and collector of revenue, uniting civil, military, and financial powers under the Mehomedan Government.

Aumone and Almoin. Tenure in *aumone* was where lands were given to some church or religious house, upon condition that some service or prayers should be offered at certain times for the good of the donor's soul.

Auncel weight. An ancient manner of weighing in England, by the having of balances at each end of a staff, which, when lifted up with the hand in the middle, showed the equality or difference of the things weighed. This weight, being subject to much deceit, was forbidden by statute. What are now called *steel yards*, which show the pound by certain notches on the beam, are very similar to the *auncel weight*.

Auncient demesn. *See* ANCIENT DEMESNE.

Aurasa. (*Hin. L.*) The legitimate son.

Aures. A Saxon punishment by cutting off the ears, inflicted on those who robbed churches, and afterwards on thieves in general.

Auricularius. A secretary.

Authentic. An undoubted original.

Authentic act. That which has been executed before a notary or other public officer duly authorized, or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register.

Authentication. An attestation made by a proper officer by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed to do so.

Authorities. The citations which are made of laws, acts of the legislation, precedents and decided cases, and opinions of text writers.

Authority. A right; an official or judicial command; also a legal power to do an act given by one man to another. It also means a public body having certain powers or jurisdiction.

Autochiria. Autoctonia. Autophonia. Suicide.

Autograph. The handwriting of any one.

Auxiliary jurisdiction. This 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. —*Brown.*

Auxilium. An aid or service paid by a tenant to his lord.

Avail. Profit of land.

Avail of marriage (*valor maritagii*). The Scotch expression for *value of marriage*. A sum paid on marriage by a vassal to his superior. The right of marriage which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. If the ward refused a suitable marriage, without *disparagement* or inequality, tendered by the lord or guardian, he forfeited the *value of marriage*; and if he married without the lord's consent, he forfeited double the value of marriage. *See* MARRIAGE.

Avails. Profits or proceeds.

Aval. Avalum. Surety for payment. A written guarantee.

Avenage. A certain quantity of oats paid to a landlord in lieu of some other duties, or as a rent from the tenant.

Aventure. Adventure. A *mischance* causing the death of a man; as where a person is suddenly drowned, or killed by any accident, without felony. *See* MISADVENTURE.

Aver. A beast of the plough. Money. To prove to be true. To allege as true (in pleadings); whence *averment*.

Average (*averagium*). (1) The service which the tenant owes to the lord, to be done by the beasts of the tenant.

(2) A contribution which merchants and others make towards the losses of those who have their goods cast into the sea for the safe guard of the ship or of the other goods and of the lives therein; it is called an average because it is proportioned after the rate of every man's goods carried. It is either *general* or *particular*. A *general average* is the contribution which the proprietors, in general, of a ship, cargo and freight, make towards the loss sustained by any individual of their num-

ber whose property has been sacrificed for the common safety. The proportion which the value of the property so sacrificed bears to the entire value of the whole ship, cargo and freight, is first ascertained; and then the property of each owner contributes in the proportion so found. Under the usual maritime policies the underwriters are liable for these payments made by the assured. *Particular average* is where the loss has been accidental or not for the general benefit, and therefore there is no general contribution; such as the loss of an anchor or cable, the starting of a plank, or such like other particular losses which do not endanger the general safety; it is a loss upon the ship, cargo, or freight, severally, to be borne by the owner of the particular property on which it happens; and in cases where the loss is not total, it is called *average* or *partial* loss. In every case of partial loss the underwriter is liable to pay such proportion of the sum he has subscribed as the damage sustained by the subject of insurance bears to the whole value at the time of insurance.

(3) *Petty average* consists of small charges paid by the master for the benefit of the ship and cargo, such as pilotage, towage, &c.

(4) A small duty which merchants who send goods in another man's ship, pay the master for his care over and above the freight.

(5) Stubble, or short standing straw and grass left in cornfields after harvest. In kent it is called *grattan* and in other parts *roughings*.

(6) Average prices, such as are computed on all the prices of any article sold within a certain period or district.

Aver corn. A reserved rent in corn paid to religious houses by their farmers or tenants.

Averium. The best live beast due to the lord as a heriot on his tenant's death.

Averment (*verificatio*). A positive statement of facts as opposed to an argumentative or inferential one. The offer of a defendant to make good or justify his plea. In any stage of the pleadings, when either side advances or affirms any new matter, he is understood to *aver* it to be true, as every such pleading had formerly this conclusion "and this he is ready to verify." This was called a *general* averment, as opposed to a *particular* one, where a special method of verification was mentioned, "and this he is ready to verify by the said record," or "and this he is ready to verify when, where, and in such manner as the court here shall order, direct or appoint." There are also called *common* and *special* averments. *Common* were applied to ordinary cases; *special* were used where the matter pleaded was intended to be tried by record, or by some other method than a jury.—*Mozley.—Wharton.*

Avibhakta. (*Hin. L.*) Undivided, as property held in common, or as joint property; one who is unseparated from his family; a co-parcener; as opposed to *vibhakta*, separate.

Avisamentum. Advice or counsel.

Avitious. Left by a person's ancestors.

Avizandum. In the Scotch Courts, the judges are said to "make avizandum" with a case when time is taken to consider judgment.

Avocat. In France, is a barrister; one whose duty it is to plead in a court of justice; an advocate.

Avoidance. (1) A vacancy, specially of a living, by the death of the incumbent; in which sense it is opposed to *plenarty*. (2) making void or null, especially of a plea by a defendant in *confession and avoidance* of the plaintiff's declaration. *See* CONFESSION AND AVOIDANCE. (3) Destroying the effect of a written instrument, or of any disposition therein, by revocation on the part of any person entitled to revoke the same, or by establishing its invalidity in a court of justice, *i. e.*, the avoidance of a fraudulent conveyance is the setting such conveyance aside.

Avoucher. The calling upon a warrantor to fulfil his undertaking. Under the feudal system, when the tenant's title was impugned, he *avouched* (or vouched) his landlord to defend his right.

Avoue. A French attorney.

Avow. *See* ADVOW.

Avowant. One who makes an avowry.

Avowee. *See* ADVOWEE.

Avowry. Advowry. A declaration. A pleading in the action of replevin, which stated the nature and merits of the defence, and justified or avowed taking the distress in his (defendant's) own right; the defendant in his defence insists (admitting the taking of the goods) that he has a right to do so. The defence, if established, would entitle him to a judgment *de retorno habendo*. When this alleged right is as agent for another, this defence is called a cognizance. *See* COGNIZANCE, REPLEVIN.

Avowterer. Avouterer. An adulterer.

Avulsion (*avulsio*). Land separated by an inundation or current from other land of which it originally formed part, and gained to the estate of another. The property of the part thus separated continues in the original proprietor, in which respect *avulsion* differs from *alluvion*, (*i. e.*, where an addition is insensibly made to a property by the gradual washing down of the river), for such an addition becomes the property of the owner of the lands to which it is made.—*Wharton.*

Await. Waylaying; a lying in wait to execute some mischief.

Award. (*Fr. Agard*). To adjudge or to assess, *e. g.*, damages. The taking a matter into consideration and pronouncing judgment upon it. The decision of an arbitrator, which is binding on the parties unless set aside on proper grounds. *See* ARBITRATION.

Away-going *or* **Way-going crops.** Crops sown during the last year of tenancy, but not ripe until after its expiration. The right which an out-going tenant has to enter, cut and take an away-going crop, when ripe, is sometimes given to him by the express terms of the contract, but where that is not the case, he is generally entitled to do so by the custom of the country. Such custom or usage has been held reasonable for the benefit and encouragement of agriculture. But the modern farming agreements frequently bar any claim under it, and substitute a claim to compensation. Sometimes the incoming tenant is bound to buy the crop of the out-going tenant at a valuation.—*Wharton.*—*Rawson.*

Awm. Aums. Awame. A measure of wine containing forty gallons.

Axiom. An indisputable truth.

Ayant cause. (*Fr. L.*) A receiver; a successor; one to whom a right has been assigned or transferred by legacy, gift, sale, exchange, &c.

Ayeen. (*Ind.*) Laws; regulations; institutes.

Aymah. Aimah. (*Ind.*) Learned or religious men. Allowances to religious and other persons of the Mehomedan pursuation. Land given as a reward or favour by the king at a very low rent. Charity lands. Rent-free ground.—*MacN. Meh. Law.*

Aymahdar. A learned or religious person who holds or enjoys charitable donations.—*Ibid.*

Aymah mauza. A village given as a charitable allowance to learned or religious persons.—*Ibid.*

B

Babuana. Babuai. (*Ind.*) An maintenance allowance granted to younger sons in recognition of their rights as *Babus*, in cases where an impartible estate passes to the eldest son by custom (*Sarabjit Partab* v. *Indrajit Partab*, 27 All. 203; 2 All. L. J. 720; *Manswar* v. *Baboo Bir Pertab*, 6 B. L. R., A. C., 646).

Babuana property. Property given to junior members to be enjoyed by them in lieu of money-maintenance.

Backadation. Backwardation. A premium given to obtain the loan of stock against its value in money, when stock is more in demand than money.—*Mozley.* A consideration given to keep back the delivery of stock when the price is lower for time than for ready money.—*Wharton.*

Backberinde. Backverinde. Backberend. (*Sax.*) Bearing upon the back. Used formerly of a thief apprehended with the things stolen in his possession; also called being taken with the *mainour*, as having the goods in his hand. It was one of the four circumstances wherein a forester might have arrested the body of a trespasser in a forest; *viz.*, *dog-draw*, drawing after a deer that he has hurt; *stable-stand*, standing with a knife, gun, bow, or grey-hound, ready to shoot or course; *back-berend*, carrying away upon his back, the deer which he had killed; *bloody-hand* (redhanded), when he had shot or coursed, and was imbrued with blood.—*Wharton.*

Back-bond. (*Sc. L.*) A deed, usually separate, which in conjunction with an absolute disposition, constitutes a trust, by attaching a qualification or condition on the terms of the disposition. It expresses the nature of the right actually held by a person to whom the disposition is made.

Backing a warrant. Where a warrant which has been granted in one jurisdiction is required to be executed in another, as where a felony has been committed in one county, and the offender is lurking in another county, then, on proof of the handwriting of the justice who granted the warrant, a justice in such other county endorses or writes his name on the back of it, and then gives authority to execute the warrant in such other county.—*Wharton.*

Backside. A term formerly used in conveyances, and even in pleadings, denoting a yard at the back part or behind a house and belonging thereto.

Backwardation. *See* BACKADATION, CONTINUATION.

Badger. A person who buys corn or victuals in one place, and carries them to another to sell and make profit by them.

Ba furzundun. (*Ind*) A grant to a person of lands to descend to his children. This term when inserted in a grant implies that it is made to the grantee and his posterity. A grant as an estate of inheritance.

Baga. A bag or purse. *Baga parva*, a little bag. *See* PETTY-BAG-OFFICE.

Bagavel. A toll granted by Edward I to the citizens of Exeter, upon all manner of wares brought to that city to be sold, to be applied towards the paving of the streets, repairing the walls, and maintaining the city.

Bagayet. (*Ind*) Land on which garden products (as chillies, tobacco, turmeric, &c.), are raised.

Bail (*baillum*). To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming (*i. e.*, become bail for his due appearance when required), in order that he may be safely protected from prison. *Bail* and *mainpernors* are often confounded, but there is this marked distinction between them:—*mainpernors* are merely a person's sureties who cannot imprison him themselves to secure his appearance, but *bail* may, for they are regarded as his gaolers, to whose custody he is committed, and therefore they may take him upon a *Sunday*, and confine him until the next day, and then render him

to the proper prison. The word *bail* is never used with a plural termination.—*Wharton.*

Common bail, or bail below, is given to the sheriff, after arresting a person, on a bail bond, entered into by sureties, on condition that the defendant appear at the day and in such place as the arresting process commands. *Special bail*, or bail above, or bail to the action, are persons who undertake generally after appearance of a defendant, that if he should be condemned in the action, he should satisfy the debts, costs, and damages, or render himself to prison, or that they would do it for them.

Affidavit to hold to bail. *See* AFFIDAVIT.

Bail-bond. An instrument prepared in the sheriff's office after an arrest, executed by two sufficient sureties and the person arrested, and conditioned for his causing special bail to be put in for him in the Court out of which the arresting process issued.—*Wharton.*

Bail Court. Sometimes called the Practice Court. It was a branch of the Court of Queen's Bench, in which a single judge sat during term, armed with the power of the full court, for the purpose of "adding and justifying special bail" (*i. e.*, for taking new bail, in addition to, or substitution for existing bail, and for ascertaining the sufficiency of persons offering themselves as bail), and otherwise disposing of applications of ordinary occurrence in practice, and for other purposes.—*Mozley.* It has now ceased to exist.

Bail-piece. A piece of parchment containing the names of special bail, with other particulars, which, being signed by a judge, was filed in the court in which the action was pending.

Bailable. An arresting process is said to be bailable when bail can be given, and the person arrested may obtain his liberty in consequence.

Bailable offence. An offence for which justices are bound to take bail.

Bailee. A person to whom goods are entrusted for a specific purpose. *See* BAILMENT.

Bailee's particular lien. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of goods bailed, he has, *in the absence of a contract to the contrary*, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them. A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered. A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three month's credit for the price. B is not entitled to retain the coat until he is paid.—*Act I of* 1872 (*Contract*), *s.* 170.

Bailie. In Scotch Law, this signifies a magistrate of a borough.

Bailiff. (*ballivus*). A subordinate officer appointed to execute writs and processes and do other ministerial acts. *Bound* bailiffs (*bum-bailiffs*) are those employed by the sheriff on account of their adroitness, and *bound* annually to the sheriff, with sureties, for the due execution of their office. *Special* bailiffs are appointed on the application of a party in a suit, and for whose doings or neglects the sheriff is not responsible. *Bailiffs of manors* are employed to pay rents issuing out of the manor, fell trees, distrain beasts doing damage, and generally to look after the property. —*Mozley.*

Bailiff-errant. A bailiff's deputy.

Bailiwick (*balliva*). The jurisdiction of a bailiff. A county in respect of the sheriff's jurisdiction therein.

Bailment. Bailor. Bailee. A bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned, or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the *bailor*. The person to whom they are delivered is called the *bailee*. If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment. —*Act IX of* 1872 (*Contract*), *s.* 148.

In all cases of bailments the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed.—*Ibid.*, *s.* 151.

The bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed, if he has taken the amount of care of it described in s. 151.—*Ibid.*, *s.* 152.

If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.—*Ibid.*, *s.* 154.

A bailment is a delivery of a thing in trust for some special object or purpose, and upon an undertaking—express or implied,—to conform to the object or purpose of the trust. Two ingredients are indeed essential to and must be presented (under some form or other) in every satisfactory definition of a bailment —a delivery and trust—this latter term being used to signify the confidence which one man reposed in another. The nature of a bailment may admit of illustration in an indefinite variety of ways, thus, if cloth be delivered to a tailor to make a suit of clothes, he takes it upon an implied contract, *viz*, to make the

clothes in a workmanlike manner, and to deliver them to his customer when made. He is therefore a bailee. And so is a pawn broker who receives plate or jewels as a pledge or security for the payment of money lent thereon—the contract of trust being in this case to keep the thing pledged with ordinary care and deligence, and to restore it upon redemption, *i. e.*, upon repayment of the money advanced upon it by the pawnor. So, if a man takes in cattle to graze and depasture on his land—he is a bailee—(this particular kind of bailment being technically termed an *agistment*.—*See* AGIST)—and the bailee takes the cattle in this case on an implied contract or undertaking that he will look after them with ordinary diligence,—which means—with that degree of diligence which men in general exert in respect of their own concerns. In any of the foregoing instances of bailments it will be found that there is a delivery of the subject-matter of the bailment and a trust, *i. e.*, a confidence reposed by the bailor and a corresponding undertaking by the bailee.

The classification of bailments usually adopted is into three great heads, *viz.*—

(1) Bailments in which the trust is *exclusively for the benefit of the bailor*. This class includes, therefore, *mandates* and *deposits*. A deposit is commonly defined to be a naked bailment of goods to be kept for the bailor gratuitously, and returned when he shall require them; and a mandate is likewise a gratuitous bailment of goods to be carried and conveyed from one place to another, or made with a view to some act being performed about them. Now in the case of a mandate or deposit, the bailment is made for the benefit of the bailor, and the law applicable to these cases is, that the bailee is bound merely to use a slight degree of diligence respecting the thing bailed, and is liable for gross negligence only, the reason being that the bailee is to receive nothing for his services. But even a gratuitous bailee who accepts his trust for the benefit of the bailor will, if possessed of skill with reference to the specific subject matter of the bailment, be bound to use it; for instance, a person conversant with horses might be answerable for damage happening to a horse whilst under his gratuitous care or management, for which an individual not so skilled might be in no degree responsible.

(2) Bailments in which the trust is *exclusively for the benefit of the bailee*, and in which the thing bailed is usually to be restored *in specie*. A bailment of this kind was denominated in the civil law *commodatum*, in ours it is called a *loan*, and the degree of diligence here required from the bailee is very much, if not precisely, that required from a gratuitous bailee possessing skill, who, as above stated, is bound to exercise skill which he possesses; the reason being, that a gratuitous bailee for use must be taken, in point of law, to have represented himself to the bailor as a person of competent skill—a much greater degree of diligence will therefore be expected from him than from one who is a mere gratuitous bailee for the benefit to the bailor. The party to whom a loan of chattels is made gratuitously is bound to the strictest care and diligence to keep the goods (lent) so as to restore them back again to the lender; for the bailee, having a benefit by the use of them, will be answerable if guilty of the least neglect, as if a man should lend another a horse to go westward, or for a month, and the bailee go northward, or keep the horse above a month—if any accident happen to the horse in the northern journey, or after the expiration of the month, the bailee will be chargeable,—because he has made use of the horse contrary to the trust under which he was lent; and it may be if he had been used not otherwise than as had been intended, the accident would not have happened.

(3) Bailments in which the trust is *for the benefit of both parties*. To this class is referable the law relative to *vadium*, the pledging or pawning of a chattel, and that relating to *locatio-conductio*, a bailment for reward or compensation, of which the more important sub-divisions are (1) The hiring of a thing for use (*locatio rei*); (2) The hiring of work and labour (*locatio operis faciendi*); (3) The hiring of care and services to be performed or bestowed on the thing delivered (*locatio custodiæ*); (4) The hiring of the carriage of goods from one place to another (*locatio operis mercium vehendarum*). This class of bailments is obviously far more comprehensive and practically important than either of the two kinds previously mentioned, embracing *inter alia* bailments to pawn-brokers, inn-keepers, and carriers. The general rule applicable where the bailment is reciprocally beneficial to both parties to it is, that ordinary diligence on the part of the bailee is required, so that (to put the converse of the rule) he will be responsible for ordinary neglect. The degree of care or diligence required in this third class of bailments is therefore intermediate between that required from a bailee in the first and in the second class.—*Broom's Com. Law*.

Mutuum. A *mutuum* differs from a *commodate*, as it is a loan of things that are fungible, or consumed in their use, where the borrower is bound to restore, not the same thing, but other things of the same kind. Consequently a delivery of the thing passes to the borrower, not a mere interest, but the absolute property therein; so that, however the thing may subsequently be lost, the loss is that of the borrower, whose obligation to return the equivalent in kind remains as before. The lender may probably derive no profit and so the transaction may be said to be gratuitous, but though usually classed among bailments, it seems, in effect, to be a sale, though by way of barter and not for money. It seems doubtful if it falls within

the definition of a bailment given in s. 148, Indian Contract Act.—*Collett on Torts.*

Bailor. Bailer. A person who commits goods to another person (the bailee) in trust for a specific purpose. *See* BAILMENT.

Bainanamah. (*Ind.*) A written agreement to sell together with payment of earnest.

Bairman. A bankrupt. A poor insolvent debtor, left bare and naked, who was obliged to swear in court that he was not worth more than five shillings and five pence. Now obsolete.

Bairns' part. (*Sc. L.*) Children's part. It is a third part of the defunct's free moveables, debts deducted, if the wife survived, and a half, if she did not, due to the children.

Baiting animals. It is a species of cruelty to animals by setting them to fight with each other *e. g.*, bulls, bears, badgers, dogs, cocks, &c.

Bait-ul-Mal. (*Ind.*) The royal treasury.

Bakhshnama. (*Ind.*) A deed of gift.

Bakidar. (*Ind.*) A revenue defaulter; one who is in arrears; a debtor.

Baki-deva. (*Ind.*) The Gujarati words *baki-deva* which are of common use in the Bombay Presidency in balance accounts import no more than the English words "balance due," from which an unwritten contract may be inferred, but which do not of themselves amount to a promise to pay within the sense of Act IX of 1872, s. 25, cl. 3 (*Ranchoddas* v. *Jayachand*, 8 Bom. 405).

Balance. That which expresses the difference between debtor and creditor sides of an account; also used commercially to express the difference between the value of the exports from, and imports into, a country.—*Wharton.*

Balance sheet. A statement of account or business between merchants, partners or others.

Balance of trade. The difference between the value of the exports from, and imports into, a country.

Balance-order. An order served on a contributory to a company to pay up the balance of a call due from him.—*Rawson.* *See* JUDGMENT, ACTION ON.

Baligha bilulamut. Under the Mehomedan Law, if a girl exhibit certain signs of womanhood at the age of nine, ten, eleven, or up to fourteen years old, she is, in the language of the Law, denominated *baligha bilulamut*, or adult by puberty. Should she exhibit non of these signs up to her fourteenth year, yet, on her attaining the age of fifteen years, she will be deemed an adult, and in the language of the Law will be termed *baligha bissin*, or adult by majority.—*MacN. Meh. Law.*

Ballastage. A toll paid for the privilege of taking up ballast from the bottom of a port or harbour.

Balliva. A bailiwick or jurisdiction.

Ballot. A little ball or ticket used in giving votes. Voting by ballot means voting by means of little balls which are put into either side of a box privately, according to the inclination of the voter or by writing the name or names of the candidates upon small pieces of paper and rolling them up, so that they cannot be read, which are put into a box, and, when the time limited for the voting is over, are taken out one by one by an impartial person.—*Wharton.*

Ban. Bann. Bans. Banns. A public notice given of any thing. In England the word "banns" is used especially in the publishing of matrimonial contracts in the church before marriage, so that if any man can say ought against the intention of the parties, he may do so in time.—*Mozley.* Hence *bannire*, to summon. It also means a denunciation or curse.

Banc (or Banco), sittings in. The sittings which the respective superior courts of Common Law used to hold as a full Court during every term for the purpose of hearing and determining the various matters of *law* argued before them, were so called, in contradistinction to the sittings at Nisi Prius, which were held for the purpose of trying issues of *fact*. The former were usually held before four of the Judges; at the latter one Judge only presided.—*Brown.*

Bancale. A covering of ease or ornament for a bench or other seat.—*Tomlins.*

Banco. A seat or bench of justice. *See* BANC. Also in commerce a word of Italian origin signifying a bank.

Bancus Superior. The Upper Bench; the King's Bench was so called during the Protectorate. Abbrev. *Banc. Sup.*

Bandhak. (*Ind.*) A pledge; pawn; mortgage.

Bandhaknama. (*Ind.*) A mortgage-deed.

Bandhu. (*Hin. L.*) A cognate kinsman in a remote degree. Bandhus are of three kinds:—(1) Such as are in parallel grade to the individual himself, who are the sons of his father's sister, the sons of his mother's sister, and the sons of his maternal uncle; (2) such as are parallel to his father, who are sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons his father's maternal uncle; and (3) such as are parallel to his mother, who are the sons of her paternal aunt, the sons of her maternal aunt; and the sons of her maternal uncle *Bandhus* are also called *bhinna-gotra sapindas.*

Plaintiff was the deceased owner's paternal grand-father's sister's son. Defendant was his father's sister's daughter's son. Defendant was held to be the preferable heir as an *Atma-bandhu*, and, as such, nearer to the last owner than the plaintiff, who was the owner's *Pitri-bandhu* (*Krishna Ayyangar* v. *Venkatarama*, 20 Mad. 115).

Bandit. A man outlawed, put under the ban of the law.

Baneret. Banneret. A knight made in the field by the ceremony of cutting off the point of his standard, and making it, as it were, a banner. He ranks next to a baron and is sometimes called *vexillarii*.

Banishment (*exilium abjuratio*). An expulsion from the realm, entailing civil death. It is of two kinds:—one voluntary, and upon oath, called abjuration; the other, upon compulsion, for some offence. *See* TRANSPORTATION.

Bank. Commercially it is a place where money is deposited for the purpose of being let out to interest, returned by exchange, disposed of to profit, or to be drawn out again as the owner shall call for it.—*Wharton.* A seat or bench of judgment

Bank-book. A book kept by a customer of a bank, showing the state of his account with it. It is usually supplied by the bank. It is also called a pass-book.

Bank-credits. Accommodations allowed to a person on security given to a bank to draw money on it to a certain extent agreed upon.

Bank-note. A bank-note is a promissory note made by a banker, payable to bearer on demand. A bank note has, however, some peculiar qualities, of which the most important is that it circulates as money, and, in the ordinary course of business, is treated as such. Bank-notes are constantly and universally, both at home and abroad, treated *as cash* and paid and received as cash. A *bona fide* holder of a bank-note *for value* is entitled to retain it as against a former owner from whom it has been stolen, as in the case of money stolen, which the true owner cannot recover after it has been paid away fairly and honestly upon a valuable and *bona fide* consideration.—*Broom's Com Law.*

Bank post bill. An instrument issued by a bank for the remittance of money to persons in the country or abroad. It is in the first instance made payable to order, at a certain number of days after sight. When endorsed by the payee it becomes payable to bearer, and negotiable as any other bill or note, until ultimately paid by the bank which issued it. —*Mozley.*

Bank rate. The minimum rate of discount charged for the time being by the Bank of England for discounting the bills of the first mercantile houses.—*Mozley.*

Bank-stock. Shares in a bank, especially in the Bank of England.

Banker. One who receives money in trust to be drawn again as the owner has occasion for it. The monied goldsmiths first got the name of *bankers* in the reign of Charles the Second.—*Tomlins.* The relation of a banker and a customer who pays money into the bank is the ordinary relation of a debtor and creditor with a superadded obligation arising out of the custom of bankers to honour the drafts of the customer, and the relation is not altered by an agreement by the banker to allow interest on the balances in the bank (*Foley* v. *Hill*, 2 H. L. 28).

Bankers' cash notes. Formerly called goldsmiths' notes, because bankers were originally goldsmiths. Written promises given by bankers to their customers as acknowledgments of having received money for their use. They are payable to bearer on demand and considered as money and transferable from one person to another by delivery. They are now seldom made except by country bankers, their use having been superseded by the introduction of cheques.—*Wharton.*

Bankers' general lien. Bankers, factors, wharfingers, attorneys of a High Court, and policy brokers, may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.—*Act IX of* 1872 (*Contract*), *s.* 171.—*Kunhan Mayan* v. *The Bank of Madras* (19 Mad. 234).

Bankrupt. A debtor who does certain acts (called acts of bankruptcy), tending to defeat or delay his creditors, may be adjudged bankrupt and so made liable to the Bankruptcy Laws. *See* ACTS OF BANKRUPTCY. The Bankrupt Law is distinguished from the ordinary law between debtor and creditor as involving these three general principles: (1) A summary and immediate seizure of all the debtor's property; (2) a distribution of it among the creditors in general, instead of merely applying a portion of it to the payment of the individual complainant; and (3) the discharge of the debtor from future liability for the debts then existing.—*Wharton.* *See* INSOLVENCY.

Bankruptcy. The status of a bankrupt.

Banneret. *See* BANERET.

Bannitus. Banniatus. An outlaw; a banished man.

Bannum. Banleuga. The bounds of a manor or town.

Bar. Barr. Originally the bar or rail which in superior Courts of Record separated the members and officers of the Court from the criminals brought before it, and from the suitors, their advocates and the general public. Such bars to this day exist in the House of Parliament and are there still used for similar purposes. Advocates as representing the suitor or criminal whose case the Court is trying used always to stand at the bar, by the client's side, and then plead his cause. From this last fact the phrase "the bar" has obtained a secondary significance and is used to describe those who practice the profession of advocacy.—*Encycl. L. E.*

The term *bar* used in several senses. (1) The place where prisoners stand to be tried; hence the expresion "the prisoner at the bar." (2) The place where barristers stand in court

to speak for their clients; hence the term *barristers*. (3) The profession of a barrister and the persons who practise it. (4 An impedement; thus we speak of uses and limitations in a deed "in bar of dower," because they are intended to prevent a wife becoming entitled to the dower out of the lands comprised in the deed. (5) *Pleas in bar*, are pleas which go to the root of a plaintiff's action and if allowed, destroy it entirely. (6) A trial at bar in one of the superior courts of common law (generally the court of Queen's Bench) means a trial before the full court, or a quorum which shall represent the full court.—*Mozley*.

Going through the Bar. The judge of a court demanding of every member of the bar, in order of seniority, if he has anything to move.

Bar-fee. Barr-fee. A paying of twenty pence formerly taken by a sheriff or gaoler from an acquitted prisoner.

Baral-Khor-o-posh. (*Ind.*) An assignment of real or personal property to a person for maintenance for life, not conveying a right of transfer. Maintenance. Allowance for food and clothing.

Bare (or dry) trustee. A trustee all whose duties have determined, but through some negligence or other cause the legal estate in the trust property has been left to remain in him; so that he can be compelled by his *cestui que trust* to convey the property according to his direction.

Bargain. A bargain is only another name for a "contract" (*per* Hawkins, J., *Crossman* v. *The Queen*, 56 L. J. Q. B. 245).

Bargain and sale. A species of conveyance. Properly a contract made of manors, lands, tenements, hereditaments and other things, transferring the property from the bargainor to the bargainee. Prior to the Statute of Uses (27 Hen. 8, c. 10) the effect of a bargain and sale was that the bargainor stood seised of the land to the use of the bargainee, to the extent to which it was affected by the transaction; *i. e.*, though the bargainor's estate was still good *at law* yet a court of *equity* considered the estate as belonging to the bargainee, who had paid the money. But the Statute of Uses had the effect of transforming the bargainee's interest into a *legal estate*.—*Mozley*.

Bargainee. A person to whom a bargain and sale is made.

Bargainor. Bargainer. A person who makes a bargain and sale.

Barley corn. The third of an inch. In conveyancing, a nominal consideration or rent.

Barmaster. The Barmaster of the High Peak is an officer appointed by His Majesty to execute all precepts and warrants directed to him by the steward of the Barmote courts and to accompany the steward in taking views of the mines.—*Mozley*.

Barmote (or Barghmote) Court. A court not of record, within the Hundred of the Peak in Derbyshire, for the regulation of groves, possession and trade of the miners and lead. —*Wharton*.

Barnard's Inn. One of the Inns of Chancery. *See* INNS OF CHANCERY.

Baron. This word has the following meanings:—(1) It is taken for a degree of nobility next unto a viscount. In old times, probably, the word was used to indicate persons holding signiories or manors or lordships of the king. It is supposed that soon after the Conquest all such came to the Parliament and took their seats in the Upper House. These afterwards becoming too numerous, it grew to a custom that none should come but such as the king thought good to call by writ, which writ ran, *hac vice tantum* (for this occasion only). After this, men seeing this nobility to be but casual, obtained of the king letters patent to such honour upon them and their heirs male; and these were, on creation, intituled barons by patent, whose posterity be now, by inheritance, those barons that are called Lords of the Parliament, of whom the king may create at his pleasure. But, nevertheless, there are still barons by writ as well as barons by letters patent; and those barons who were first by writ, may now also justly be called *barons by prescription*, for they and their ancestors have continued barons beyond the memory of man. (2) A Judge of the Court of Exchequer. These Judges are so called because barons of the realm were wont to be employed in that office. (3) Baron is the word used of a husband in relation to his wife; as *baron and feme*, husband and wife. (4) Chief Magistrates of London were also anciently called barons before they had a Lord Mayor, as appears by several ancient charters.—*Mozley*.

Baron Court. *See* COURT-BARON.

Baron and feme. Husband and wife. A wife being under the protection and influence of her *baron*, lord, or husband, is styled a *feme covert* (*fœmina viro cooperta*), and her state of marriage is called her *coverture*.

Baronet (*baronettus*). The holder of a dignity of inheritance created by letters patent, and descendible to the issue male. He has precedency before all knights, except Knights of the Garter, and would have taken precedence of them, were it not that Knights of the Garter are always Privy Councillors. The order was instituted in 1611 by James I.

Barony. Baronage (*baronia*). The honour and territory of a baron; also a body of barons and peers.

Barr. Barre. *See* BAR.

Barrator. Barretor (*barractator*). A deceiver; a vile knave or unthrift. A person guilty of barratry.

Barratry. (1) A wilfully wrongful or fraudulent act committed by the master of a ship or the mariners, causing damage to the ship or cargo, to which the owner is not a con-

senting party. (2) *Common barratry* is the offence of inciting and stirring up suits and quarrels between His Majesty's subjects, either at law or otherwise. (3) The offence committed by a judge who is induced by a bribe to pronounce judgment.—*Mozley.*

Back-freight. This is the freight payable by the owner of goods which cannot be delivered at their destination, owing to causes for which the ship-owner is not responsible, and are consequently conducted by the ship to the place from which they are shipped, or some other suita le place, if their owner gives no instructions to the ship with regard to them and neither receives them nor arranges about their reception.—*Encycl. L. E.*

Barren money. Money not put out at interest.

Barrister. Barrastor. Barraster (*barrasterius*). A counsellor or advocate learned in the law, admitted to plead at the bar, and there to take upon himself the protection and defence of clients. He is termed *jurisconsultus* and *licentiatus in jure*. His professional conduct is under the control of the Benchers of his Inn. A counsel can maintain no action for his fees, which are given not as a salary or hire, but as a mere *honorarium* or gratuity (*Stamp Reference*, 9 Mad. 140, F. B.; *Stamp Reference*, 16 All. 132, F. B.; *In re Beavan*, 23 L. J. Eq. 536; Punj. Chief Court Ruling No. 1465 of 1899, F. B.), nor can he take any security for them, and even an express promise by a client to pay money to counsel for his advocacy is not binding. The payment of the fee does not depend upon the event of a cause; and for the purpose of promoting the honour and integrity of the bar, it is expected that all their fees should be paid when their briefs are delivered. He is not liable to an action for negligence or unskilfulness, or for any matter by him spoken relative to the cause in hand and suggested in his client's instructions although it should reflect upon the reputation of another, and even prove groundless; nevertheless, it seems that he is liable to be punished for contempt of court even for words professedly spoken in the discharge of his functions as advocate. He is privileged from arrest while attending court or going circuit. It is a rule of etiquette, but *not* a rule of law, that a barrister should not take instructions except through the intervention of a solicitor.—*Wharton.*—*Brown.*

But *held*, in *Pennell* v. *Harrison* (4 L. B. R. 55, F. B.; following *The Land Mortgage Bank of India, Ld.* v. *Elmes*, 25 W. R. 332; and dissenting from *Grey* v. *Diwan Lachman Das*, Punj. Rec., No. 219 of 1895), that a Barrister, as a barrister, has no right to practise in India. He asks for permission to practise as an Advocate. He, on admission, subjects himself to a desciplinary authority to which he is not subject as a barrister. He is liable as other Advocates of the Court to which he is subject are liable; and he acquires the same rights as other Advocates have. His professional status in India is that of an Advocate, and the law applicable to him is the law of, and custom in, India, applicable to an Advocate of the Court in which he practises. Hence he can sue for his fees for professional services rendered, and can be sued for negligence.

See also *Manug Kyaw* v. *Mg. Po Thaing* (8 Ind. Cas. 958) in which a decree for the return of a portion of the fee was confirmed against a barrister, as he physically became unable to conduct the case of his client.

See JUNIOR BARRISTER, PLEADER.

Barter. To exchange one commodity for another, or truck wares for wares.

Barton. Berton. Burton. Demesne lands of a manor, a great farm, a manor-house, outhouses, fold-yards, a court-yard.

Bas-Chevaliers. Low or inferior knights as distinguished from bannerets, chief or superior knights. Simple knights are called knights bachelors, *base-chevaliers*.

Base-court (*Fr. cour basse*). An inferior court, not of record, as a court-baron, court-leet, &c.

Base-estate (*Fr. bas estat*). Lands held by base-tenants who performed villeinous services to their lords; base-tenants being those who hold at the will of their lords. There is a difference between a base-estate and villenage, for to hold in pure villenage is to do all that the lord commands; pure copy-holders are reckoned among base tenants, and they not holding by the performance of every commandment of their lord, cannot be said to hold in villenage. It is called *bassa tenura*, as opposed to *alta*, or military.

Base-fee. An estate held at the will of the lord. But in modern times the term "base-fee" is used to signify an estate descendible to heirs general but terminable on an uncertain event. So long, however, as it lasts, it differs in nothing from a fee-simple. Thus if lands be granted to the use of A and his heirs until B returns from Rome, and then to the use of B and his heirs, A's estate, so long as it lasts, is a base-fee.—*Mozley.* 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.—*Brown.*

Base-infeftment. (*Sc. L.*) A disposition of lands by a vassal, to be held of himself.

Base-rights. Those by which a grantor creates a subinfeudation in favour of a vassal, to be held of himself.

Basket-tenure. Lands held by the service of making the King's baskets. One John of Liston, in the reign of King John, held a manor by the service of making the king's baskets.

Bassa tenura. A base tenure as opposed

to *alta tenura*, the highest tenure *in capite*, or military by service. *See* BASE-ESTATE.

Bastard (*bastardus*). A child born out of wedlock. He is not legitimized by the subsequent marriage of his parents. Upon an order of affiliation the putative father becomes liable to a limited extent to support the child. A person born in wedlock may be declared a bastard by legal sentence, 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.—*Brown.* See Act I of 1872 (Evi.), s. 112. In the Scotch and other systems derived from the Roman Civil Law, one born a bastard may be legitimated by the subsequent marriage of the parents.—*Mozley.* If a man or woman marry a second wife or husband, the first being living, and have issue by such second wife or husband, the issue is a bastard —*Tomlins.*

Bastard eigne. An elder son born before marriage. When a man has a natural (*i. e.*, bastard) son, and afterwards marries the mother, and by her has a legitimate son, the latter is called *mulier puisne*, and the elder son, *bastard eigne.*

Bastardize. To declare one a bastard, as a court does. To give evidence in proof of bastardy. A mother (married) cannot bastardize her child.

Bastardy (*bastardia*). The state of a person not born in lawful wedlock.

Bastart. One born in concubinage. A bastard.

Batta. (*Ind.*) Extra pay or allowance to public servants; an allowance to temporary peons serving summons and other processes of courts.

Battel, wager of. A form of trial by combat anciently used in military, and certain criminal, cases. Trial by battle. The question at issue was decided by the result of a personal combat between the parties.

Battels. An allowance of provisions.

Battery. *See* ASSAULT.

Battlings. An allowance of money, as *battels* or *battles* is an allowance of provisions. To battle, is to take the allowance.

Bawdy-house (*lupanar fornix*). *See* BROTHEL.

Bay-bil-wuffa. (*Ind.*) A mortgage or conditional sale.

Bay mokasa. (*Ind.*) A sale of property for property, or barter, which is sale in one shape, and purchase in another. Neither of these can be absolutely termed a *sale.* A deed of sale in satisfaction of dower.

Bay taljiah. (*Ind.*) A fictitious sale made to serve a temporary purpose; so that the parties appear to the world to execute a sale for some purpose which calls for it, whilst in fact no sale takes place between them. *Husl* is a more comprehensive term. It means joking or jesting. *Husl* consists in this that the contractors secretly agree that they should apparently execute a sale before men, whilst in reality no contract is formed. A sale of the nature of *Bay-i-taljiah*, to which effect has not been given, and which was clearly intended to serve a temporary purpose is invalid in regard to the transfer of property under such sale.—*MacN. Meh. Law.*

Baz-dawa. Baz-namah. (*Ind.*) A deed of relinquishment of claim; one abandoning or renouncing a claim.

Beacon. A light-house or sea-mark, formerly used to alarm the country in case of the approach of an enemy, but now used for the guidance of ships at sea, by night as well as by day.

Beaconage. Money paid towards the maintenance of beacons.

Beadle. A church servant whose business is to attend the vestry, to give notice of its meetings, to execute its orders, to attend upon inquests, and to assist the constables.

Bear. A word used in Stock Exchange. One who speculates for a fall in the market. One who sells stock with a view to buy back at a lower price. *See* BULL.

Bearer. One who carries anything. When the benefit of a security, *e. g.*, a cheque, can be claimed by any person who presents it, it is said to be "payable to bearer."

Bearers. Persons who oppress others, usually called maintainers.

Beasts. *Beasts of chase* (*ferœ champestres*) are five, *viz.*, the buck, doe, fox, marten and roe. *Beasts of forest* (*ferœ silvestres*) are, the hart, hind, hare, bore and wolf, which are also called *beasts of venary. Warren* are the hare and coney.

Bedel (*bedellus*). A crier or messanger of a court that cites men to appear and answer. An inferior officer of a parish or liberty. *See* BEADLE.

Bedelary (*bedelaria*). The jurisdiction of a beadel.

Bederepe. Biderepe. A service which certain tenants were anciently bound to prform, as to reap their landlord's corn at harvest.

Bede role. Bead roll. A long list.

Bedewerl. Banditti; profligate and excommunicated persons.

Bed of justice (*Fr. lit de justice*). The seat or throne upon which the King of France sat when personally present in parliament; hence it signified the parliament itself.

Beer-house. A house where beer is sold to be drunk either *on* or *off* the premises. *See* ALE AND BEER HOUSES.

Beer-shop. A house where beer is sold to be drunk *off* the premises only.

Begin, right to. This right rests with the party on whom is the onus of proving the affirmative.—*Wharton.*

Begum. (*Ind.*) A lady, princess, woman of high rank.

Being. The word properly denotes a state or condition existent at the time when the conclusion of law or fact is to be ascertained. —*Stroud.*

Benami. (*Ind.*) A sale or purchase made in the name of some one other than the actual vendor or purchaser. Property purchased or held or vested in a fictitious owner; the ostensible title is in the name of one person, but the real ownership vests in another. Such fictitious purchaser is called the *benamidar*. In the case of a benami purchase, the burden of proof is upon him who alleges that the certified purchaser and registered owner is a *benamidar* (*Baij Nath* v. *Rugho Nath*, 12 C. L. R. 186). The burden of proof is on the plaintiff, who seeks to give to a purchase a different meaning and complexion from those which it bears on its face. This burden must be strictly discharged by legal and satisfactory evidence; it will not suffice to point to matters of suspicion or even to plausible conjecture (*Ramabai* v. *Ramchandra*, 7 Bom. L. R. 283; *Sham Lal* v. *Johri Mal*, Punj. Rec., No. 37 of 1909). But when a purchase is made by a Hindu or Mohomedan in the name of his son, the presumption is in favour of its being a *benami* purchase; and it lies on the party in whose name it was purchased to prove that he is solely entitled to the legal and beneficial interest in the estate (*Nagindhai* v. *Abdulla*, 6 Bom. 717; *Meeyappa* v. *Maung Ba Lu*, 8 Ind. Cas. 450). Where *bona fide* creditors of the ostensible owner of property are claimants on that property, the Court will require strict proof on the part of any one seeking to have it declared that he held it only benami (*Ruknadawla* v. *Hurdwari*, B. L. R., P. C., 578).

In cases where the question is whether property bought and held in the name of another than the party claiming as the real purchaser is the property of that other, or merely bought and held in his name (*benami*) for the claimant, the criterion is to consider from what source the purchase-money came; the presumption is that a purchase made with the money of A in the name of B is for the benefit of A, and where the purchase is by a father, whether Mehomedan or Hindu, in the name of his son, there is no presumption of an advancement in the favour of that son (*Moulvi Sayad Azhar Ali* v. *Mt. Bibi Altaf Fatima*, 4 B. L. R., P. C., 1).

The law of benami is founded on principles which are not limited to India. It is nothing more or less than an application of the equitable rule that where there is a purchase by A in the name of B, there is a resulting trust of the whole to A. It is an accepted rule of guidance in reference to benami transactions to see from what source the purchase money has proceeded; and it must be shown that the person whose money has gone to effect the purchase, furnished it as purchaser. The benami character of a transaction, if it exists, must be legally established (*De Silva* v. *De Silva*, 5 Bom. L. R. 784).

According to the law, as it prevails in Bombay, a purchase by a husband in the name of his wife does not raise any presumption of a gift to the wife or of an advancement for her benefit. *Per* Batty, J.—The presumption of advancement that would arise in England does not arise in India. This is so even in the case of Mehomedans. Amongst Hindus, the grounds against assuming advancement are stronger and are specially unfavourable to the claim of a widow to an absolute estate. In the absence of rebutting circumstances, the criterion as to the ownership of property, is the source from which the purchase-money was supplied (*Bai Motivahoo* v. *Purshotum*, 29 Bom. 306; 6 Bom. L. R. 975).

A suit does not lie for a declaration that a conveyance executed by the plaintiff is a *benami* and fictitious transaction, when the alleged transaction has been used to *accomplish* the fraudulent purpose for which it was intended (*Banka* v. *Raj Kumar*, 27 Cal. 231).

Where a colourable transfer is made for the purpose of enabling the transferor to defraud his creditors, and where the intended fraud has been wholly or partially carried into effect, the court will not lend its aid to enable the transferor, who has thus defrauded his creditors, to get his property back from the transferee (*Govinda* v. *Lala Kishun*, 28 Cal. 370).

A benamidar can sue or appeal in his own name on behalf of the beneficial owner (*Bachcha* v. *Gajadhar Lal*, 25 All. W. N. 173; 2 All. L. J. 702; *Yad Ram* v. *Umrao Singh*, 21 All. 380).

See ADVANCEMENT, FARZI, RESULTING TRUST, SECRET OWNERSHIP.

Bench. Banc. A tribunal of justice. The aggregate body of judges. The judges of any given court. Judges, as distinguished from the *Bar*. Thus we speak of "judges on the bench," "the judicial bench," a "bench of magistrates."

Bench warrant. A warrant issued by the presiding judicial officer at assizes or sessions for the apprehension of an offender; so called, in opposition to a justice's warrant, issued by an ordinary justice of the peace or police magistrate.—*Mozley.*

Benchers. Dignitaries of the Inns of Court. Each Inn of Court is presided over by a certain number of Benchers, who exercise the right of admitting candidates as members of their society and also of ultimately calling them to the bar. They are usually selected from those of their members who have distinguished themselves in their profession; and it is the ordinary practice, but subject to a discretion in the body of benchers, for each Inn of Court to select its member a Bencher as soon as he has attained the rank or degree of King's Counsel. They also exercise a general supervision over the professional conduct of all counsel that are members of the Inn.—*Brown.*

Benefice (*beneficium*). An ecclesiastical living and promotion, a rectory or vicarage; all church preferments except bishoprics. The word was also anciently used of the interest of a grantee of lands under a feudal grant; which interest was afterwards called a feud.

Beneficial interest. The expression is used to indicate a right of substantial enjoyment, in opposition to mere nominal ownership. Thus if A holds lands in trust for B, A is said to have the legal estate, and B is said to have the beneficial interest.—*Mozley.* *See* TRUST.

Beneficiary. He that is in possession of a benefice; also a *cestiu que trust*, or person entitled beneficially to property held by a trustee, executor, &c. *See* TRUST.

Beneficiary privileges. Patent rights and copyrights.

Benefit Building Societies. Societies established, principally amongst the industrial classes, to raise a subscription fund by advances from which the members shall be enabled to build or purchase dwelling houses, or to purchase land, such advances being secured to the society by mortgage of the premises so built and purchased.—*Mozley.*

Benefit of Clergy (*privilegium clericale*). A privilege originally granted to the clergy, and subsequently extended to all persons who could read, whereby they were exempted from trial by the secular courts in criminal cases. Privilege of clergy formerly signified certain privileges or exemptions which the clergy alone enjoyed. These exemptions were of two kinds—(1) Exemption of places consecrated to religious duties from criminal arrests, 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." The meaning of the phrase is also conveyed by the word "clergy" The privilege of benefit of clergy is now entirely abolished.

Benefit Societies. *See* FRIENDLY SOCIETIES.

Benerth. A service which a tenant rendered to his lord with the plough and cart.

Benevolence (*benevolentia*). This was nominally a voluntary gratuity made by subjects to the sovereign, but in reality a tax or forced loan. It is now yielded only with consent of the House of Commons. An aid granted by a tenant to his lord, in times of distress.

Benevolent Societies. *See* FRIENDLY SOCIETIES.

Bequeath. To dispose of personal property by will. To leave such property by will to another. With reference to real property the word "devise" is generally used. In a will, however, the word *bequeath* avails to transmit real property as well as the word *devise* which is the proper word, and *vice versa*.—*Wharton.* *See* DEVISE.

Bequest. A disposition or gift of personal property by will; a legacy.

Berbiage (*berbiagium*). Rent paid for the depasturing of sheep.

Berghmaster. A chief officer among the Derbyshire miners, who also performs the duty of a coroner. *See* BARMASTER.

Berghmote. Berghmoth. A court upon a hill in Derbyshire for the miners. *See* BARMOTE COURT.

Bernet. Arsen. Burning. Sometimes it is used to signify any capital offence.

Besaile. Besayle. A father of a grandfather. Also a writ that lay for one who was entitled as heir to enter upon the lands of a deceased great-grandfather, against a stranger who had wrongfully entered into possession of the lands. Now abolished.

Best evidence. Primary evidence, if obtainable, renders secondary evidence inadmissible; but this is only one application of the rule requiring the best evidence to be given. Because even in secondary evidence and also in circumstantial evidence, that evidence is to be used which is the best obtainable, having regard to the nature of the case.—*Brown.*

Bestiality. The crime of men with beasts. Carnal intercourse with the lower animals. *See* SODOMY.

Bestials. (*beastiales*). Beasts or cattle of any sort.

Better equity. Where A has, in the contemplation of a Court of Equity, a superior claim to land or other property than B has, is said to have a *better equity*. Thus, a second mortgagee advancing his money without knowledge of a prior mortgage, has a better equity than the first mortgagee who has not secured to himself the possession of the title-deeds, or has parted with them, so as to enable the mortgagor to secure the second advance as upon an unincumbered estate.—*Mozley.*

Bewared. This is an old Saxon word signifying *expended*, for before the *Britons* and *Saxons* had plenty of money, they traded wholly in exchange of *wares*.—*Tomlins.*

Beyond seas. An expression to indicate that a person is outside of the United Kingdom, the Channel Islands, and the Isle of Man. *See* FOUR SEAS.

Bhadekhat. (*Ind.*) A rent-note. An agreement between a lessee and lessor in the nature of a counterpart of a lease (*Moro Vithal* v. *Tukaram*, 5 Bom. H. C., A. C., 92).

Bhag. (*Ind*) Share; part; portion.

Bhagdar. A co-sharer; a share-holder.

Bhaoli rent. (*Ind.*) A rent paid in kind, *e.g.*, by a share of the crops. *Bhaoli tenure*, a tenure under which the tenant pays rent in kind. In a suit by landlord against the tenant for rent in kind, for the share of the crop due to him, or rent, or for its money equivalent, the prices at which the landlord is entitled to have the crop valued are those which prevailed at the time the crop was cut, and when it

should have been made over to him (*Lachman Prasad* v. *Holas Mahtoon*, 2 B. L. R., Ap., 27).

Bhartridatta. (*Hin.*) A kind of woman's property given her by her husband

Bhratridatta. (*Hin. L.*) A kind of woman's property given her by her brother, or by her cognate kindred, on her marriage.

Bid. An offer to give a price for an article about to be sold at an auction. It may be retracted before acceptance, even if there be a condition prohibiting it.—*Rawson.* *See* PUFFER.

Bidding of the beads. A charge or warning that the parish priest gave to his parishioners at certain special times (*i. e.*, any festival or saint's day) to say some particular prayers or do other acts of devotion.—*Mozley.*

Biddings. Raising the price of a thing at a sale or auction.

Bigamus. A person gilty of bigamy.

Bigamy (*bigamia*). Whoever, having a husband or wife living, marriers in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprison ment of either description for a term which may extend to seven years, and shall also be liable to fine. This section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage shall have been continually absent from such person for the space of seven years and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same are within his or her knowledge.—*Act XLV of* 1860 (*Penal Code*). *s.* 494.

Bigamy with adultery means adulery with the same woman with whom the bigamy was committed.—*Act I of* 1869 (*Divorce*), *s.* 3 (7).

Bilagines. Bye-laws of a corporation, &c.

Bilateral contract. A contract in which both the contracting parties are bound to fulfil obligations reciprocally towards each other; as a contract of sale, where one becomes bound to deliver the thing sold, and the other to pay the price of it. *See* UNILATERAL CONTRACT.

Bilinguis. One who uses two tongues or languages. A jury, part Englishmen, and part foreigners, which used to try a foreigner for a crime.

Bill (*billa*). This word has several significations:—An account delivered by a creditor to his debtor in respect of goods supplied or work done.

Bill chamber. A department of the Court of Session in Scotland.

Bill in Chancery or *in Equity.* The written statement whereby the plaintiff in a Chancery suit complains of the wrong upon which the suit is based and seeks the appropriate redress.

Bill in Parliament. A measure submitted to either House of Parliament for the purpose of being passed into law. When a measure has been actually passed into law, it is called an "Act."—*Mozley.*

Bill of adventure. *See* ADVENTURE.

Bill of attainder. A bill brought into Parliament for declaring persons attainted and their property confiscated. *See* ATTAINDER.

Bill of conformity. *See* CONFORMITY.

Bill of costs. A bill furnished by a solicitor to his client.

Bill of credit. A license or authority given in writing from one person to another, very common among merchants, bankers, and those who travel, empowering a person to receive or take up money of their correspondents abroad.—*Wharton.* *See* LETTER OF CREDIT.

Bill of debt or *Bill obligatory.* An acknowledgment in writing of debt specifying the amount and the date and place of payment.

Bill of entry. An account of the goods entered at the custom house, both inwards and outwards, and specifying the name or the merchant exporting or importing, the quantity and species of merchandise, and whither transported, and whence. Also daily statistical publication issued by the Customs giving the particulars of goods imported and exported.

Bill of exceptions. If during a civil trial, the Judge in his directions to the jury, or his decision, mistook the law, he was required by the counsel of the party aggrieved to sign a *bill of exceptions*, *i. e.*, a document containing the objections raised to his ruling so that the point might be settled by a Court of Error. It was in the nature of an appeal. The present mode of proceeding is by motion for a new trial.

Bill of exchange. An instrument in writing containing an *unconditional* order, signed by the maker, directing a *certain* person to pay a *certain* sum of *money only* to, or to the order of, a *certain* person or to the bearer of the instrument—*Act XXVI of* 1881 (*Nego. Instr.*) *s.* 5. A promise or order to pay is not *conditional* within the meaning of s. 4 or 5 of the Negotiable Instruments Act, 1881, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.—*Ibid.* The sum payable may be *certain* within the meaning of the above two sections, although it includes

future interest, or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.—*Ibid.* The person to whom it is clear that the direction is given, or that payment is to be made, may be *certain person* within the meaning of the above two sections, although he is mis-named or designated by description only.—*Ibid.*

Set of bills. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished. But if a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.—*Ibid.*, *s.* 132.

A bill of exchange is a *written* order or request by one person to another for the payment of *money* at a *specified* time *absolutely* and *at all events*. A bill of exchange is only a transfer of a *chose in action* according to the custom of merchants; it is an authority to one person to pay to another the sum which is due to the first.—*Broom's Com. Law.*

For presumptions as to bills of exchange *see* NEGOTIABLE INSTRUMENTS.

For distinction between a bill and a promissory note, *see* PROMISSORY NOTE.

See ACCOMMODATION BILL.

Bills, notes, &c, payable to bearer on demand. No person in British India shall draw, accept, make, or issue any bill of exchange, hundi, promissory note, or engagement for the payment of money payable to *bearer on demand*, or borrow, owe or take up any sum or sums of money on the bills, hundis, or notes payable to *bearer on demand*, of any such person: Provided that cheques or drafts payable to bearer on demand or otherwise may be drawn on bankers, shroffs, or agents, by their customers or constituents, in respect of deposits of money in the hands of tho e bankers, shroffs, or agents, and held by them at the credit and disposal of the persons drawing such cheques or drafts.—*Act II of* 1910 (*Paper Currency*), *s.* 26. Anybody corporate or person committing any offence under the above section shall, on conviction before a Presidency Magistrate or magistrate of the first class, be punished with a fine equal to the amount of the bill, hundi, note, or engagement in respect whereof the offence is committed.—*Ibid.*, *s.* 27. *See* ON DEMAND.

Bill of gross adventure. This is, in French maritime law, a written instrument containing a contract of bottomry, respondentia, or any other kind of maritime loan.

Bill of health. A certificate, properly authenticated, that a certain ship therein named comes from a place where no contageous distempers prevail, and that none of the crew at the time of her departure were infected with any such distemper. A *clean* bill imports that there was no such disorder: a *suspected* or *touched* bill imports that there were rumours of such disorder, but that it had not actually appeared; a *foul* bill, or the absence of a *clean* bill, imports that there was such a disorder.

Bill of indictment against a prisoner is the presentment charging his offence and submitted to the grand jury. If the grand jury think that the presentment is supported by probable evidence, they "return" it, *i. e.*, deliver it to the proper officer of the court, endorsed with the words, "A true bill against A. B." (the prisoner), and thereupon the prisoner is said to stand indicted of the crime, and bound to make answer to it. If they think otherwise, they "return" it with the words "Not found" or "No bill against C. D.," who may thereupon claim his discharge. They are then said to "ignore the bill." *See* GRAND JURY, INDICTMENT.

Bill of lading. A bill of lading is a witten acknowledgment by the master of a vessel that he has received goods from the shipper, to be conveyed on the terms therein expressed to their destination, and to be then delivered to the parties therein designated. The ordinary practice is this: when goods are sent on board ship, the master, or person acting for him gives a receipt for them, and the master afterwards signs three parts of a bill of lading; one of which is retained by the captain, another is transmitted to the consignee, and a third is held by the consignor himself for his own security. The bill of lading specifies that the goods sent are to be delivered to the consignee or his assigns or orddr, or to the order or assigns of the consignor, or to order or assigns merely; and, according to the form of the instrument, it usually passes either by *delivery* or *indorsement and delivery*.—*Broom's Com. Law.*

A bill of lading for the delivery of goods to order and assigns is a negotiable instrument which by indorsement and delivery passes the property in the goods to the indorsee, subject only to the right of an unpaid vendor to stop them in transitu. The indorsee may deprive the owner of this right by indorsing the bill of lading for valuable consideration, although the goods are not paid for, or bills have been given for the price of them which are certain to be dishonoured, provided the indorsee for value has acted *bona fide* and without notice. Although a bill of lading is a negotiable instrument, it is so only as a symbol of the goods named in it.—*Broom's Com. Law.* See Act IX of 1856 (Bills of Lading). *See* CHARTER-PARTY, MATE'S RECEIPT, STOPPAGE IN TRANSIT.

Bill of Middlesex. A fictitious mode of

giving the Court of Queen's Bench jurisdiction in personal actions by arresting a defendant for a supposed trespass. Now abolished.

Bill of pains and penalties. A bill introduced into parliament for affecting any person or persons with pains and penalties short of death, without any conviction in the ordinary course of judicial proceedings. It differs from a bill of attainder in this, that the punishment inflicted by the latter is death.

Bill of parcels. The account between the seller and buyer containing particulars of the goods bought and of their price.

Bill of particulars. A specific statement by a plaintiff to a defendant of what he seeks to recover by his action. Also a statement of a defendant's set off.

Bill of peace. A bill filed in Chancery for quieting litigation by a person threatened with a multiplicity of actions, all involving the same point. The bill is brought for the purpose of establishing and perpetuating a right claimed by the plaintiff, the right being of a nature to be controverted by different persons at different times, and by different actions. Its object is to secure repose from perpetual litigation and is justified by the doctrine that there should be an end to litigation.

Bill of review. A bill in Chancery for reviewing a judgment either (1) upon error appearing on the face of the decree; or (2) by leave of the court, upon oath made of the discovery of new evidence which could not have been had or used at the time when the decree was made.—*Mozley.* See REVIEW OF JUDGMENT.

Bill of revivor. See REVIVOR.

Bill of rights. A declaration delivered by the Lords and Commons to the Prince and Princess of Orange, 13th Feb. 1689, and afterwards enacted in Parliament, when they became king and queen, declaring illegal certain acts of the late king. The object of it was to insist on the rights and liberties asserted therein, as being the true ancient and indubitable rights of the people of the kingdom.—*Mozley.*

Bill of sale. An assignment in writing of chattel personal. It may be absolute or by way of mortgage. The method of transferring a ship.

Bill of sight. A document furnished to the Customs officer by an importer of goods, who, being ignorant of their precise quality and quantity, describes the same to the best of his knowledge and information.—*Mozley.*

Bill of store. A kind of license granted at the customs-house to merchants, to carry such stores and provisions as are necessary for their voyage, custom free.—*Tomlins.*

Bill of sufferance. A license granted to a merchant, to suffer him to trade from one English port to another, without paying custom.—*Tomlins.*

Billet. A soldier's quarters in a civilian's house. Also the ticket which authorizes him to occupy them.

Billeting soldiers. Soldiers are said to be "billeted" when they are dispersed among the several innkeepers and victuallers throughout the kingdom.

Billets of gold. Wedges or ingots of gold.

Bills of mortality. Are the returns of the deaths which occur in a particular district.

Bipartite. Of two parts.

Birretum. Birettum. Birretus. The cap or coif of a judge or sergeant-at-law.

Birt. (*Ind.*) A grant or endowment to any person for his maintenance or for religious or charitable objects. It also signifies proprietary rights whether acquired by purchase, inheritance or grant, heritable and transferable, subject to the payment of revenue either to the Government or to the Raja or Zemindar.

Bishenprit. (*Ind.*) See SANKALP.

Bishop (*episcopus*). The principal officer of the church in each diocese. He is the chief of the clergy within his diocese, but is subordinate to the Archbishop of the province to whom he is sworn to pay obedience.—*Mozley.*

Bishop's Court. An ecclesiastical court held in the cathedral of each diocese, the judge whereof is the bishop's chancellor, who judges by the civil canon law; and if the diocese be large, he has his commissaries in remote parts, who hold *consistory courts* for matters limited to them by their commission.—*Wharton.*

Bishopric. A diocese or see of a bishop.

Black Acts. Acts printed in the old black letter during the dynasty of the Stuarts in Scotland.

Black book. A book kept in the Exchequer containing a collection of treaties, charters, &c.

Black cap. The full head-dress of a judge; which is worn when sentence of death is passed upon an offender. It is a vulgar error that the head-dress worn by the judge in pronouncing sentence of death is assumed as an emblem of the sentence. It is part of the judicial full dress, and is worn by the judges on occasions of especial state.—*Wharton.*

Black mail. A certain rate of money, corn, cattle or other consideration, anciently paid, in the northern counties, unto some inhabiting near the borders, allied with certain persons known to be great robbers and spoil-takers within the said counties, for protection and safety from the danger of such as did usually rob and steal in those parts. The robbers were called *moss-troopers.* Also rents paid in grain or baser money were called *reditus nigri*, or *black mail* or *rents*, as opposed to *reditus albi* or *white rents*, which were payable in silver.—*Mozley.*

Black Rod, Gentleman Usher of the. A chief officer of the King, deriving his name from the *Black Rod* of office which he carries. During the session of Parliament he attends

on the peers, and to his custody all peers impeached for any crime or contempt are first committed.

Black-ward. A sub-vassal, who held ward of the king's vassal.

Blanch holding. An ancient tenure of the law of Scotland on account of illustrious services to the state, and glory obtained in war, the duty payable being trifling, as a penny, or pepper-corn, if required.

Blank acceptance. An acceptance written on the paper before the bill is made, and delivered by the acceptor. Under such circumstances, the acceptor will be charged to the extent warranted by the stamp.—*Wharton.* See Act XXVI of 1881 (Nego. Instru.), s. 20.

Blank bar. Also called *common bar.* This was a plea *in bar* which the defendant sometimes pleaded in an action of trespass, when he wished the plaintiff to point out with greater particularity the place where the trespass was committed.—*Mozley.*

Blank bonds. Bonds, known in the practice of the Scotch law, where the creditor's name was left Blank, and which passed like bills by mere delivery, the bearer being at liberty to put in his name and sue for payment; they were declared void by the Act 1696, c. 25. —*Tomlins.*

Blank indorsement. *See* ENDORSEMENT.

Blanks. Certain void spaces sometimes left by mistake in judicial proceedings or written instruments and which, if anything material be wanting, render the same void.—*Tomlins.*

Blasphemy (*blasphemia*). The offence of denying the being or providence of the Almighty, or contumelious reproaches of our Saviour Christ; also all profane scoffing at the Holy Scripture, or exposing it to contempt or ridicule.—*Mozley.*

Blended fund. A fund consisting partly of the proceeds of real estate or of the sale thereof, and partly of the proceeds of the conversion of personal estate, or of personal estate.

Blockade. An operation of war by which one of the belligerents is able so to apply his force to one of the enemy's ports or coast lines as to prevent the ingress or egress of ships. Any attempt on the part of a neutral ship to enter or leave a blockaded place is deemed a breach of blockade, and exposes the vessel to seizure and confiscation.

Blood (*sanguis*). Kindered. Lineage. That quality of relationship which enables a person to succeed to another by descent. *See* ATTAINDER. The *whole* blood is where persons have the same parents or ancestors; the *half* blood is where they have the same father but different mothers.—*Rawson.*

Bloodwit. Blondveit. An amerciament for bloodshed, a customary fine.

Bloody-hand. *See* BACKBERINDE.

Board. A body of persons having delegated to them certain powers of the central government, as the Board of Trade, the Board of Admiralty, the Local Board, the Board of Directors, &c.

Boarding house. A keeper of such a house is bound to take ordinary care of the goods of his guest therein and will be liable for gross negligence occasioning loss; but his liability is not so extensive as that of an innkeeper; a contract for board and lodging is not a contract for land within the meaning of the Statute of Frauds.—*Brown.*

Boat-note. When any goods are waterborne for the purpose of being landed from any vessel and warehoused or cleared for home consumption, or being shipped for exportation on board of any vessel, there shall be sent, with each boat-load or other separate despatch, a boat-note specifying the number of packages so sent and the marks and numbers or other description thereof. Each boat-note for goods to be landed shall be signed by an officer of the vessel, and like-wise by the officer of Customs on board, if any such officer be on board, and shall be delivered on arrival to any officer of Customs authorized to receive the same.—*Act VIII of* 1878 (*Sea Customs*), *s.* 76.

Boc. A charter.

Boc-land. Bock-land, Book-land. Also called charter-land or deed-land. It was land held by a short and simple deed under certain rents and free services, and in effect differed in no respect from the free-socage lands.—*Wharton.* *See* FOLKLAND.

Bock-hord. Book-hoard. Bochord. A hoard for books, *i. e.*, a place where books, writings or evidences are kept.

Body of an instrument. The main and operative part of an instrument, as opposed to the recitals and other introductory parts and signatures.

Body politic. The nation. A corporation.

Bolting. A private arguing of cases by students in the Inns of Court. Now discontinued.

Bona. According to the Civil Law, this term includes all sorts of property moveable and immoveable.

Bond. A bound is an instrument under seal, whereby one person becomes bound to another for the payment of a sum of money, or for the performance of any other act or thing. The person thus bound is called the *obligor*, and he to whom the bond is given the *obligee*. And this obligation may be either by or to one or several persons. If a bond be merely for the payment of money, or for the performance of some particular act, without any condition in or annexed to it, the bond is said to be *single*. But there is in general a condition added to the bond in the nature of a defeasance, stipulating that if the obligor duly performs the act specified, the obligation shall be void, otherwise that it shall remain in full force; this is called a *conditional* bond. —*Broom's Com. Law.*—*Har Narain* v. *Beni Pershad* (8 O. C. 77).

Bond includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be.—*Act IX of* 1908 (*Limitation*), *s.* 2 (*3*).

For the purpose of the Stamp Act, *bond* includes (*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be; (*b*) any instrument attested by a witness, and not payable to order or bearer, whereby a person obliges himself to pay money to another; and (*c*) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.—*Act II of* 1899 (*Stamp*), *s* 2 (5).

Bond-creditor. A creditor whose debt is secured by a bond.

Bond-note. A written description of goods intended to be shipped, delivered by the exporter or his agent to the officer of customs.

Bond of corroboration. (*Sc. L.*) An additional obligation granted by the obligor of a bond to the obligee or his representative, whereby he corroborates (confirms or strengthens) the original bond.—*Rawson.*

Bond-tenants. A name sometimes given to copy-holders and customary tenants.

Bondage. Slavery; a kind of tenure or occupation.

Bonded goods. Imported goods deposited in a government warehouse until duty is paid. Such warehouse is called a bonded warehouse.

Bondsman. A surety.

Bonitarian right. (*Civ. L.*) The right of possession.

Bonus. Premium or advantage. An occasional extra dividend given by a company to its shareholders. A gratuity.

Book-debts. This includes all such debts as, in the ordinary course of carrying on business, would be entered in books, although not actually entered. An assignment of "all" book debts "due and owing or which, during the continuance of this security, may become due and owing" to the grantor, is not too vague to include future debts (*Tailby* v. *Official Receiver*, 58 L. J. Q. B. 75; 13 App. Cas. 523). A bequest of "book-debts" held to include the testator's share of trade debts of a partnership (*Toplis* v. *Vanderheyde*, 9 L. J. Ex. Eq. 27; 4 Y & C. 173).—*Stroud.*

Book-land. *See* BOC-LAND.

Book of responses. (*Sc. L.*) An account which the directors of the Chancery kept to enter all non-entry and relief duties payable by heirs who take precepts from Chancery.

Booty of War. Property captured by an army. It belongs by right to the Crown, but is usually granted to the captors, whose claims to it are decided by the Admiralty Division of the High Court.—*Rawson.* Prize of War on land, as opposed to prize at sea.—*Mozley.*

Bordarii. Bordamanna. Boors; husbandmen; cottagers.

Bord-brigch. A breach or violation of suretyship, pledge-breach, or breach of mutual fidelity.

Border-warrant. (*Sc. L.*) A warrant granted by a judge ordinary on either side of the border between England and Scotland, on the application of a creditor, for arresting the person or effects of a debtor residing on the opposite side until he finds security *judicio sisti.*

Bord-halfpenny. A small toll by custom paid to the lord of the town for setting up *boards*, tables, booths, &c., in fairs and markets.—*Tomlins.*

Bord-lands. The demesnes which lords keep in their hands for the maintenance of their *board* or table.

Bordlode. Bordage. A service required of the tenent to carry timber out of the woods of the lord to his house; or it is said to be the quantity of food or provision which the *bordarii or bordmen* paid for their *bordlands.*

Bord service. A tenure of board lands.

Borough. A town that sends a burgess or burgesses to Parliament; also called a *Parliamentary Borough.*

Borough English. The custom which prevails in certain ancient boroughs and copyhold manors, of lands descending to the youngest son instead of to the eldest. It is based on the assumption that the youngest son, on account of his tender age, is not so capable as the rest of his brethren to keep himself. Unlike Gavelkind, the mode of descent in borough English is confined to lineal descendants, and does not extend to collaterals.—*Brown.*—*Wharton.*

Borough-reeve. An officer of a borough.

Boscage (*boscagium*). That food which wood and trees yield to cattle. To be quit *de boscagio* is to be discharged of paying any duty of wind fall wood in the forest.

Bote. (*Sax.*) An obsolete term signifying necessaries for house-keeping or husbandry; *e. g.*, *house-bote* is a sufficient allowance of wood form off the estate to repair or burn in the house, and sometimes termed *fire-bote*; *plough-bote* and *cart-bote*, wood to be employed in making and repairing all instruments of husbandry; *hay-bote*, or *hedge-bote*, wood for repairing of hays, hedges, or fences. It also signifies compensation or reparation for any damage or injury done, as *man-bote*, compensation or amends for a man slain. To give boot is to give by way of compensation. —*Wharton.*—*Mozley.*

Bote is an ancient Saxon word, and sometimes signifieth amerciament or compensation, as *Theftbote*, *Manbote*; or freedom from

the same, as *Brigbote Castlebote, Burgbote* (Co. Litt. 127a).—*Stroud.* *See* BRIGBOTE.

Boteless. Bootless. Remediless; fruitless; as when we say "it is bootless to attempt" such a thing: that is, it is vain to attempt it.

Botha. A booth, stall, or standing in a fair or market.

Bothaglum. Boothage. Dues paid to the lord of the manor for the pitching of booths in a market or fair.

Bottom. A valley; a ship.

Bottomry. Bottomree. Bummaree (*fœnus nauticum*). A maritime bond in the nature of a mortgage of a ship, when the owner borrows money to enable him to carry on his voyage, and pledges the keel or bottom of the ship as a security for the repayment. In which case it is understood that, if the ship be lost, the lender loses his whole money; but if it returns in safety, then he shall receive back his principal, and also the premium or interest agreed on.—*Moxley.*

Bottomry-bond. *See* BOTTOMRY.

Bough of a tree. A symbol which gave seisin of land, to hold of the donor *in capite.*

Bought and sold notes. Are copies of entries and memoranda made by brokers of their transactions in buying and selling stock, and delivered to the vendors and purchasers for whom they act. The copy of any such entry, delivered to the purchaser is called the *bought* note; the copy delivered to the vendor is called the *sold* note.—*Moxley.* They furnish the evidence of the contract, and, if they agree, bind the principals, the broker having authority to sign for both. In case of a discrepancy in the terms of the two notes, there is a want of that *assensus ad idem* which is necessary to a binding contract.—*Brown.*

Bound. Boundary. The limit or dividing line of two pieces of land. *See* ABUTTALS.

Boundary mark. Any erection whether of earth, stone or other material, and also any hedge, unploughed ridge, strip of ground or other object, whether natural or artificial, employed or specified by a competent authority in order to designate the boundary of any division of land. See Bom. Act V of 1879 (Land Revenue Code), s. 3 (9).

Bound bailiffs. Sheriff's officers who serve writs, make arrests, &c. They are usually *bound* in an obligation with sureties for the due execution of their office, and are thence called *bound bailiffs. See* BAILIFF.

Bounty. A premium given by government to manufacturers and others to encourage particular industry. *See* DRAWBACK.

Bow-bearer. An under officer of the forest, sworn to oversee, and true inquisition make of all manner of trespasses done, either to vert or vension, of which he was to make presentment in the next court of Attachment, without any concealment had to his knowledge.—*Moxley.* *See* ATTACHMENT OF THE FOREST.

Box days. Days appointed by the Scotch Court of Session, on which papers are appointed to be "lodged," *i. e.*, deposited with the proper officer of the Court to be filed.

Bragbote. *See* BRIGBOTE.

Brahma. (*Hin. L.*) One of the approved forms of marriage. The gift of a daughter, clothed only with a single robe, to a man learned in the Veda, whom her father voluntarily invites and respectfully receives, is the nuptial right called *Brahma.*

Brahmana. The first of the four classes of Hindus, *i. e.*, the priests.

Brawling. Quarreling, or chiding, or creating a disturbance in a church or church-yard.

Breach. The breaking of a duty or a contract is called a breach, and the word is specially used in the following expressions:—

Breach of Close. Unlawfully entering upon another person's land.

Breach of Covenant or Contract. A non-fulfilment of covenant or contract.

Breach of the Peace. A disturbance of the public peace.

Breach of Pound. Taking by force, out of a pound, things lawfully impounded.

Breach of Prison. The escape from arrest, of a person lawfully arrested for a crime.

Breach of Privilege. An act or default in violation of the privilege of either house of parliament, as, for instance, by false swearing before a Committee of the House, or by resisting the officers thereof in the execution of their duty.

Breach of Promise (violatio fidei). Violation of a promise; a phrase used especially with reference to the non-fulfilment of a promise to marry.

Breach of Trust. A violation by a trustee of the duty imposed upon him by the instrument creating the trust.—*Moxley.* A breach of any duty imposed on any trustee as such, by any law for the time being in force, is called a *breach of trust*—*Act II of* 1882 (*Trusts*), *s.* 3. *See* CRIMINAL BREACH OF TRUST.

To *assign* breaches, in an action, is to specify them in the pleadings.

Breaking a close. An unlawful entry on another's land; for every man's land is in the eye of the law enclosed and set apart from his neighbour's.

Breaking bulk. This signifies opening a box or parcel of goods; a phrase used especially with reference to the fraudulent conduct of a bailee entrusted with a box of goods, who causes the box to be broken open for the purpose of appropriating the goods or for other fraudulent intention.—*Moxley.* Making use of an article; this prevents a buyer from objecting to it and returning it to the seller. —*Rawson.*

Breaking of arrestment. (Sc *L.*) This is the contempt of law committed by an arrestee who disregards the arrestment used in his bands, and pays the sum or delivers the goods arrested to the debtor. The breaker is liable to the arrester in damages.—*Wharton.* *See* ARRESTMENT.

Breed-bate. A barrister.

Brehon. The Irish name of a judge.

Brenagium. A payment in bran, which tenants anciently made to feed their lord's hounds.

Breve. Any writ directed to the Chancellor, judges, sheriffs or other officers, or to a defendant, so called from the *brevity* of it.

Brevet. A commission conferring on an officer a degree or rank immediately above that which he holds in his particular regiment, without, however, giving him increased pay.

Brevet d'invention. In French Law, a patent for an invention.

Bribery. The crime of offering any undue reward or remuneration to any pulic officer of the Crown, or other person entrusted with a public duty, with a view to induce his behaviour in the discharge of that duty. The taking of such reward is as much bribery as the offering it.—*Brown.*

Bridewell. A house of correction.

Bridle-path. *See* HIGHWAY.

Brief (*brevis*). An abridgment of a client's case written out by the solicitor for the instruction of counsel in a civil or criminal proceeding.—*Mozley.* A writ. A letter.

Brigbote. Brugbote. Bragbote. Contribution to the repair of bridges, walls and castles It signifies also freedom from giving aid to the repair of bridges.—*Mozley* *See* BOTE.

British India. British India shall mean all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India —*Act X of* 1897 (*General Clauses*), *s.* 3 (7).

Broad arrow. The mark (→) on government stores indicating that they belong to the Crown.

Brocage. Brockerage. The wages or commission of a broker.

Brocards. Law maxims.

Brode-halfpenny. Broad-halfpenny. *See* BORD-HALFPENNY.

Broken stowage. That space in a ship which is not filled by her cargo.

Broker. A grinder or breaker into small pieces (from the French word *broceur*, a person who breaks into small pieces); because he that is of that trade draws the bargain into particulars not forgetting to grind out something for his own profit. There is another sort of brokers, commonly called *pawn brokers* (*see* PAWN) who have a shop, and let out money to necessitous people, upon pawns, not without extortion. These we may call more properly *friperers.* A broker, in modern times, is an agent between the contracting parties in mercantile transactions.—*Mozley.* There are various sorts of brokers now employed in commercial affairs, *e.g.*, exchange and money-brokers, stock-brokers, ship-brokers, and insurance-brokers, who are respectively employed in buying and selling bills of exchange, or promissory notes, railway-scrip, goods, stocks, ships, or cargoes, or in procuring freights or charter-parties. Where a broker is employed to buy or sell goods, he is not entrusted with the custody or possession of them, and is not authorized to buy or sell in his own name. He is strictly, therefore, a middleman, or intermediate negotiator between the parties.—*Wharton.*

Brokers and meddlers in litigation. *See* MAINTENANCE, CHAMPERTY.

Brokerage. The commission or per-centage paid to brokers on the sale or purchase of bills, funds, goods, &c.

Brothel. A brothel is the same thing as a bawdy house. In its legal acceptation it applies to a place resorted to by persons of both sexes for the purpose of prostitution (*per* Willes, J., *Singleton*, v. *Ellison*, 1895, 1 Q. B. p. 608).

Brugbote. *See* BRIGBOTE.

Buggery. *See* SODOMY.

Building lease. A lease of land for a long term of years, usually 99, at a rent called a ground rent, the lessee convenanting to erect certain edifices thereon according to specification, and to maintain the same, &c., during the term.—*Wharton.*

Building Societies. *See* BENEFIT BUILDINGS SOCIETIES.

Bull. A word used in Stock Exchange. One who speculates for a rise in the market. *See* BEAR. One who buys stock with a view to gain by a rise in price. Hence the phrase "bull and bear transactions" signifies speculations for the rise and fall of stock. Also an instrument granted by the Pope of Rome, containing his decrees, commandments, or other acts. —*Mozley.*

Bull baiting. *See* BAITING.

Bulletin. An official notice of a public transaction or matter of public importance.

Bullion. The ore or metal whereof gold is made. Uncoined gold and silver in mass,

Bum-bailiff. A person employed to dun one for a debt; the baliff applied to arrest for debt. *See* BAILIFF, BOUND BAILIFF.

Burden of proof (*onus probandi*). The duty of proving one's case. This rests on the party who affirms; therefore, on the plaintiff in general, and only on the defendant so far as he alleges any new fact in his defence or other pleading.—*Brown.*

Whoever desires any Court to give judgment as to any legal right or liability de-

pendent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.—*Act I of* 1872 (*Evi.*), *s.* 101.

Burg. Burgh. *See* BOROUGH.

Burgage-holding. A tenure by which lands in royal boroughs in Scotland are held of the sovereign. The service was watching and warding.

Burgage-tenure. A tenure whereby burgesses, citizens or townsmen, hold their lands or tenements of the king or other lord, for a certain yearly rent.

Burgbote. *See* BRIGBOTE.

Burg-breche. A fine imposed on the community of a town, for a breach of the peace, &c.

Burgess. An inhabitant of a borough or town. A representative of a borough in Parliament. One who is entitled to vote on the election of a municipal council.—*Rawson.*

Burgessour. A burglar.

Burghware. A citizen or burgess.

Burglary (*burgi latrocinium*). The crime of house breaking by night; and it consists either (1) in breaking into a house by night with intent to rob or do some other felony; or (2) in breaking out of a house by night, after having committed a felony therein, or after having entered with intent to commit a felony.—*Mozley.* Burglary is the breaking and entering of the dwelling-house of another in the night-time with intent to commit a felony therein.—*Broom's Com. Law. See* HOUSE-BREAKING.

Burgmote. A court of a borough.

Burking. Burkism. A species of murder named from Burke, the first known criminal by whom it was perpetrated. His victims were killed by pressure or other modes of suffocation, and the bodies were sold to the surgeons for dissection. He was tried and hanged in 1829.—*Mozley.*

Burlaw. Bye-law.

Burning. *See* ARSON.

Butlerage of wines. Otherwise called "prisage," was an ancient right belonging to the Crown of taking two tuns of wine from every ship (English or foreign), importing into England twenty tuns or more. But this was, by charter of Edward I, exchanged into a duty of 2s. for every tun imported by merchant strangers, and was then called "butlerage," because paid to the king's butler, and also "prisage," because it was a *taking* or purveyance for wine to the king's use.—*Mozley.*

Butwara. (*Ind.*) Partition. Shares. A formal division of property into parts.

Buying of pleas. *See* MAINTENANCE.

By-laws. Bye-laws. Laws made by local boards, corporations, and companies, under powers conferred by acts of parliament; thus we speak of the bye-laws of a borough; the bye-laws of a railway company, &c. And, independently of statutory powers, bye-laws made by a corporation aggregate are binding on its members, unless contrary to the laws of the land, or contray to and inconsistent with their character, or manifestly unreasonable, or against common benefit, in which case they are void.—*Mozley.*

C

Caballst. A factor or broker in French commorce.

Caduciary right. (*Sc. L.*) The Crown's right of escheat to the estate of a deceased person on failure of heirs.

Calendar month. *See* MONTH.

Calendar of prisoners. A list of prisoners' names at a quarter sessions or assizes, with the crimes with which they stand charged, and the dates of their committal, &c.

Calingula. (*Ind.*) An outlet or sluice for carrying off the surplus water of a reservoir.

Call order. *See* BALANCE-ORDER, JUDGMENT, ACTION ON.

Call to the Bar. The conferring upon a student of an Inn of Court the rank or degree of barrister-at-law. *Call day*, the day in each term, on which students are called to the bar.

Calling the plaintiff. When a plaintiff or his counsel, seeing that sufficient evidence has not been given to maintain the issue, withdraws, the crier is ordered to call the plaintiff three times, and if neither he nor any person for him appear, he is non suited, the jurors are discharged without giving a verdict, and the action is at an end, and the defendant recovers his costs. The phrase was synonymous with non-suiting the plaintiff.

Calling upon a prisoner. The demand made upon a prisoner, after verdict of guilty found against him, whether he has any reason to give why sentence should not be passed.

Calls. The payments (or demands therefore) of the amounts unpaid on the shares of companies, or of any part or parts of such amounts. They are recoverable as a debt due from the shareholder or member of the company to the company.—*Brown.*

Calumny, oath of. (*Sc. L.*) An oath formerly taken by a party, at the commencement of a cause, that the facts set forth therein were true.

Cambist. A person who deals in promissory notes or bills of exchange; a broker.

Camera. The judge's private room behind the court. Cases are sometimes heard there by him, especially in divorce matters.

Can be. This means "can reasonably be" (*per* Knight Bruce, L. J., *Wicker* v. *Hume*, 21 L. J. Ch. 406).

Cancellation of adhesive stamps. Whoever affixes any adhesive stamp to any instrument chargeable with stamp-duty, and which

has been executed by any person, shall, when fixing such stamp, cancel the same so that it cannot be used again; and whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again. Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped. The person required to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials, or the name or initials of his firm, with the true date of his so writing or in any other effectual manner.—*Act II of* 1899 (*Stamp*), *s.* 12.

Cancellation of instruments. The rescission of any contract or instrument, whether negotiable or not. There can be no cancellation without the intention of doing so. Bonds and deeds are cancelled by tearing off the seals; but the cancellation does not extend to divesting any estate or interest which has already vested under the deed.—*Brown.*

Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the court may, in its discretion, so adjudge it, and order it to be delivered up and cancelled. If the instrument has been registered under the Indian Registration Act, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.—*Act I of* 1877 (*Specific Relief*), *s.* 39.

Cannot. The word includes a legal inability as well as a physical impossibility.—*Stroud.*

Canon. A cathedral dignitary appointed sometimes by the Crown, and sometimes by the bishop A rule of law.

Canon law. A body of Roman ecclesiastical law, compiled in the twelfth, thirteenth and fourteenth centuries from the opinions of the ancient Latin fathers, the decrees of General Councils, and the decretal epistles and bulls of the Holy See. In England, the canon law (or canons of the church) consists of certain ecclesiastical laws or constitutions which were ratified after the Reformation by 25 Hen. VIII. c. 19 so far as they are not repugnant with the law of the land. They were revised in 1603 and again in 1865.

Canons of inheritance or *descent.* The rules directing the descent of real property in case of intestacy.

Canonist. A professor of ecclesiastical law.

Capacity (*capacitas*). An ability, or fitness to receive; and in law it is where a man, or body politic, is able to give or take lands, or other things, or to sue actions.

Capital. The net amount of property belonging to a merchant after deducting the debts he is owing. The term, however, more strictly means the sum of money which a merchant, banker or trader adventures in any undertaking, or which he contributes to the common stock of a partnership. Also the fund of a trading company or corporation.

Uncalled capital. In company law, the uncalled capital on any share is the money which its holder is bound to the company to pay to it when required by the proper authority (*per* Lindlay, L. J., *In re Pyle Works*, 44 Ch. D. 583).

Capital felonies. Those crimes upon conviction of which the offender is condemned to be hanged. The only offences now punishable with death are high treason and murder.

Capital punishment. The punishment of death is frequently termed capital punishment; and those offences are called capital offences for which death is the penalty allotted by law.

Capitation. A tax raised on each person in consideration of his labour, industry, office, rank, &c.

Capitulary. A code of laws.

Capitulation. The treaty which determines the conditions under which a place besieged is abandoned to the commanding officer of the besieging army. An agreement by which the prince and the people, or those who have the right of the people regulate the manner of government.—*Wharton.*

Captator. A person who obtains a gift or legacy through artifice.

Caption (*captio*). That part of a legal instrument, as a commission, indictment, &c., which shows where, when and by what authority it is taken, found, or executed. Thus, when a commission is executed, the commissioners subscribe their names to a certificate, declaring when and where the commission was executed. The caption of an indictment is the preamble, stating the court in which the indictment was preferred, when and where held, and generally the names of twelve at least of the grand jurors. The word caption is also used (rather vulgarly) for an arrest.

Capture (*captura*). The arrest or seizure of a person or thing. The word is specially used of the seizure of a ship or cargo, &c., at sea by a belligerent in time of war.

Carcelage. Prison-fees.

Care and diligence. The amount of care and diligence required in law of persons in different legal relations varies from the lowest to the highest degree; and the liability of such persons for damages arising from their negligence is inversely proportionate to the degree of care and diligence that is legally required of them. Trustees are required to discharge their duties with the extremest diligence, so much so that nothing but strict

compliance therewith will protect them; and they are required to exercise such matters as are left to their discretion with as much care and diligence as they apply in their own business. But with the exception of trustees, voluntary and gratuitous agents are required to show a less degree of diligence, the depository least of all; and on the other hand, paid agents are required to show the utmost diligence, and persons incidentally interested (like pledges) a medium degree of diligence. —*Brown*. *See* BAILMENT.

Carnal knowledge of a woman. Sexual intercourse with a woman, as by adultery or rape. Carnal knowledge means the penetration to any the slightest degree of the organ known, by the male organ of generation.—*Stroud*. *See* RAPE.

Carrier. A person who undertakes to transport the goods of other persons from one place to another for hire. A person who holds himself out as a carrier of the goods of all persons who think fit to employ him for hire, is a common carrier of such goods as he publicly professes to carry. It is not, however, every person who undertakes to carry goods for hire that is deemed a *common* carrier. All persons carrying goods for hire, as proprietors of waggons, masters and owners of ships, lightermen, stage-coachmen, and the like come under the denomination of common carriers. A person who carries passengers only is not a common carrier. To bring a person within the description of a common carrier, he must exercise it as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to transport goods for hire, as a business, not as a casual occupation, *pro hac vice*. The two obligations of a common carrier are (1) to carry for everybody, and (2) to answer for all things carried as insurers. The law casts upon the common carrier a duty to carry, which no one else is bound to do except upon agreement. The liability of carriers is limited by statute, provided they have put up notices as required by statue, and such notices have come to the knowledge of their customer. Railway and canal companies are common carriers, but their contracts of carriage are required by stafute to contain no conditions but what are reasonable. Excepting as otherwise expressed in the special contract, or as protected by statute, a carrier is liable as an insurer of the goods carried, *i.e.*, for their absolute safe delivery.

Common carrier denotes a person, other than Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately.—*Act III of* 1865 (*Common Carriers*), s. 2.

To make a man a *common carrier*, his employment must be habitual; it must be a public business, so that he would be liable for a refusal to carry. One undertaking jobs for special bargains, and not professing to carry generally, is not a common carrier. A hackney coachman, or cabman, or cabman playing for passengers is not such. A general ship or boat carrying goods for all who offer, is such, but not where the letting is to particular individuals on specific contracts; and similarly one who removes household furniture on special contract on each occasion is not a common carrier.—*Collett on Torts*.

A common ferryman is a common carrier, and is bound to provide safe and secure ferry boats, and safe slips and landing stages, and all proper means and appliances for the safe transit of persons who may have occasion to use the ferry for themselves, or for the transit of their horses and carriages, luggage and merchandize.—*Ibid*.

Carrying costs. A verdict is said to "carry costs" in those cases where, by law it involves the payment of costs by the unsuccessful party to the party in whose favour the verdict is given, without any discretion on the part of the judge.—*Mozley*.

Carry on. The phrase *carry on* implies a repetition or series of acts (*per* Brett, L. J., *Smith* v. *Anderson*, 50. L. J. Ch. 52).

Carry over. A phrase used in Stock Exchange. This is where the buyer, not wishing to pay for what he has bought on the day appointed, gets the settlement "carried over" or adjourned to a subsequent settling day.—*Stroud*.

Cartel. Chartel. A letter of defiance or challenge to a single combat; in use heretofore to decide difficult controversies at law which could not otherwise be determined. A *cartel* is now used for the instrument or writing for settling the exchange of prisoners of war; and a *cartel ship*, for the ship used on such occasion, which is privileged from capture.—*Tomlins*.

Carucage (*carucagium*). A tribute imposed on every plough, for the public service.

Case, action on the. *See* TORT.

Case reserved. *See* RESERVING POINTS OF LAW.

Case special. *See* SPECIAL CASE.

Case stated. A statement of facts prepared by one court for the opinion of another on a point of law. A case stated by justices or by a police Magistrate for the opinion of a superior court in a matter of law. A counsel who opens a case before a jury is also said to "state the case" to the jury.—*Mozley*.

Cassation. A making null or void of any unjust or illegal act or decision. In French law, a decision emanating from the sovereign authority by which a decree or judgment is quashed (*cassatur*). The Court of Cassation in France is the Supreme judicial tribunal and court of final resort.

Cash. This is a stricter term than "money." In *Beales* v. *Crisford* (13 L. J. Ch. 26; 13 Sim. 592) it was held that neither a Promissory Note payable to order, nor Long Annuities,

nor Columbian Bonds came within "Cash or monies so called." Bank of England Notes, and it would seem other Bank Notes, would pass under a bequest of "Cash" (*Miller* v. *Race*, 1 Burr. 452; 1 Sm. L. C. 491).—*Stroud.*

Cash notes. *See* BANKERS' CASH NOTES.

Castigatory. An engine of correction in which a common scold was placed, for the purpose of being plunged in water. It was also called trebucket, cucking-stool, ducking-stool.

Casting an essoign. Alleging an excuse for failure to appear in an action.

Castle-ward (*castle-gardum*; *wardum castri.*) An imposition laid upon such of the king's subjects as dwell within a certain compass of any castle, towards the maintenance of such as watch and ward the castle.

Casual ejector. The nominal defendant, Richard Roe, in an action of ejectment was so called, 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* EJECTION.

Casual evidence. A phrase used to denote (in contradiction to *pre appointed evidence*) all such evidence as happens to be adducecable of a fact or event, but which was not prescribed by statute, or otherwise arranged beforehand to be the evidence of the fact or event.—*Brown.*

Casualties of superiority. Payments from an inferior to a superior, that is, from a tenant to his lord, which arise upon *uncertain events*, as opposed to the payment of rent at fixed and stated times.

Catching bargain. Any transaction entered into by a person, who from his youth, ignorance or the pressure of his necessities is unable to make a fair bargain with the other party, where the transaction is grossly one-sided and unfair by reason of such incapacity.—*Encycl. L. E.* A purchase from an expectant heir for an inadequate consideration.

Catchpole. A name formerly given to a sheriff's deputy, or to a constable, or other officer whose duty it is to arrest persons.

Cattle. Beasts of pasture, neither wild nor domastic. Under the Cattle-trespass Act (I of 1871), s. 3, cattle includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.

Cattle-trespass. *See* ANIMALS.

Seizure of cattle damaging land. The cultivator or occupier of any land, or any person who has advanced cash for the cultivation of the crop or produce on any land, or the vendee or mortgagee of such crop or produce, or any part thereof, may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto, or to any crop or produce thereon, and send them or cause them to be sent, within twenty-four hours, to the pound established for the village in which the land is situate. All officers of police shall, when required, aid in preventing (*a*) resistance to such seizures, and (*b*) rescues from persons making such seizures.—*Act I of* 1871 (*Cattle-trespass*), *s.* 10, *as amended by Act I of* 1891.

Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments, and the like, and officers of police, may seize or cause to be seized, any cattle doing damage to such places and the like, or the sides or slopes of such places, or found straying *thereon*, and shall cause them to be sent within twenty-four hours to the nearest pound.—*Ibid.*, *s.* 11.

Cattle trespassing in a reserved forest, or in any portion of a protected forest which has been lawfully closed to grazing, shall be deemed to be doing damage to a public plantation, and may be seized and impounded under *s.* 11 *of Act I of* 1871 by any forest officer or police officer.—*Act VII of* 1878 (*Indian Forest*), *s.* 69.

The word 'public road' in ss. 11 and 26 of the cattle trespass Act, 1871, shall be deemed to include a railway, and any railway-servant may exercise the powers conferred on officers of police by the former of those sections.—*Act IX of* 1890 (*Indian Railways*), *s.* 125 (4).

Nothing contained in the Cattle trespass Act prohibits any person whose crops or other produce of land have been damaged by trespasser cattle from suing for compensation in any competent Court. But any compensation paid to such person under the Act by order of the convicting Magistrate shall be set off and deducted from any sum claimed by, and awarded to him as compensation in such suit. —*Act I of* 1871, *ss.* 29 *and* 30.

By the Roman Law, and it should be so by every law, he who takes or drives out the cattle of another person feeding on his ground or doing any other damage, is responsible for any violence doing hurt to the cattle, or for driving them in any other manner than he would his own, and if he causes any damage to the cattle, he is bound to make it good. A public pound-keeper will not be liable for any precedent tortious act in taking the cattle, of which he could know nothing. He is bound to take and keep whatever is brought to him at the peril of the person who brings it, without any judgment, direction, examination, or warrant; and if the things have been wrongfully taken, the person bringing them to the pound, and not the pound-keeper, is responsiable for the wrong.—*Collett on Torts.*

Cause. A suit or action; motive or reason; that which produces an effect.

Cause-list. The list of causes or actions made out for each day during the sittings of the courts, and exhibited in a conspicuous place in each court, with the names of the solicitors for each litigant.

Cause of action. The ground on which an

action can be maintained, as when we say that such a person has no cause of action. But the phrase is often used to signify the matter of the complaint or claim on which a given action is in fact grounded, whether or not legally maintainable.—*Mozley*. A right to sue or bring action (*Chandra Mohan* v. *Biswambhar*, 1 B. L. R., O. C., 42). The term "cause of action," as used in ss. 31 and 45 of the Code of Civil Procedure (XIV of 1882; see now Act V of 1908, O. I, R. 9, and O. II, RR. 3, 6), is there used in the same sense as it is used in English law, *i. e.*, a cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to be proved (*Salima Bibi* v. *Sheik Muhammad*, 18 All. 131; *Musa Yakub* v. *Manilal*, 7 Bom. L. R. 20; 29 Bom. 868; *Moti Lal* x. *Suraj Mal*, 6 Bom. L. R. 1038; *Dulichand* v. *Lallah Kurmi*, 1 N. L. R. 4; *Ma Nyein* v. *Ma Kon*, 3 L. B. R. 56).

Caution. A species of bail; security. Also called *cautionry*. *Cautionment*, in French law, is the becoming *surety* in English law.

Cautioner. A person who becomes surety for another.

Caveat. An intimation made to the proper officer of a court of justice to prevent the taking of any step without intimation to the party lodging the caveat who is interested to appear and object to it. A process to stop the institution of a parson, and more frequently to stay the probate of a will, the issue of letters or administration, a license of marriage, &c. The person filing or entering a caveat is called the *caveator*. For the form of caveat see Act X of 1865 (*Succession*), s. 252, and Act V of 1881 (Prob. and Admin.), s. 71.

Ceap. A bargain; anything for sale; chattel; also cattle, as being the usual medium of barter.

Ceapgild. Payment in cattle; market price.

Cellular confinement. Such confinement, with or without labour, as entirely secludes a prisoner from communication with, but not from sight of, other prisoners.—*Act IX of* 1894 (*Prisons*), *s.* 46 (10).

Censure. A custom observed in certain manors in Devon and Cornwall where all persons above the age of sixteen are cited to swear fealty to the lord and to pay a poll-tax. Also a judgment which condemns some book, person or action, or more particularly a reprimand from a superior. In ecclesiastical law, a spiritual punishment.

Census. A numbering of the population.

Certificate. A statement, usually in writing, given by a person having some official status, relative to some matter within his official knowledge or authority.

Certificate of sale. A document granted to the purchaser of property at a court sale, showing that the property was sold to him. The property vests in the purchaser on completion or confirmation of the sale and payment of the full price. In order to perfect his title, it is not necessary that he should obtain a sale certificate, or should be put into possession by the court. It is competent to him to prove his purchase *aliunde*, and the confirmation of the sale in his favour is *prima facie* evidence of his title to the property (*Muzaffar* v. *Ali Husain*, 5 All. 297; *Jaganuath* v. *Baldeo*, 5 All. 305; *Tara Prasad* v. *Nand Kishore*, 9 Cal. 842; 12 C. L. R. 448).

Certification. (*Sc. L.*) Notice given to a party in a cause of the course that will be followed in case he does not appear to obey the order of the court.

Certified copy. A copy signed and certified as true by the official in whose custody the original is.

Every public officer having the custody of a public document which any person has a right to inspect shall give that person, on demand, a copy of it, on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies. Any Officer who by the ordinary course of official duty is authorized to deliver such copies shall be deemed to have the custody of such documents within the meaning of this section.—*Act I of* 1872 (*Evi.*), *s.* 76.

Cess. Cesse. Cessment. An assessment or tax.

Cesser. The ceasing or termination. The coming to an end, *e. g.*, of a term or annuity.

Proviso for cesser. A proviso inserted in a will or deed, whereby the operation of the instrument or of some part of it is to cease under circumstances mentioned in the proviso.

Cesser of annuity. An annuity will cease upon any event limited for its duration; similarly under a proviso for cesser upon bankruptcy.

Cesser of a term. Long terms of years are frequently created in wills and settlements, and less frequently in mortgagee-deeds, for the purpose of securing the money thereby made payable to the persons and at the times therein expressed. Usually the instrument itself contains an express proviso, that the term shall cease when the money is fully raised and paid.—*Brown*.

Cession (*cessio*). A ceasing, yielding up, or giving over. It also means the vacancy created by an incumbent of a living in taking another benefice. 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.—*Brown.*

Cessionary. (*Sc. L.*) An assignee.

Cessionary bankrupt. One who gave up his estate to be divided among his creditors.

Cessor. A tenant of land who neglects his duties to which he is bound by his tenure.

Chafewax. Chaffwax. An officer in Chancery that fitted the wax for the sealing of the writs and such other instruments as were there made out. The office is now abolished.

Chakran tenure. (*Ind.*) In former times there used to be grants of land or revenue for the support of servants of various kinds. These resemble the conditional *jageer*, the holder being bound to perform certain services as the condition of retaining the privileges granted. Holdings of this kind are frequently called *service tenures* or *chakran tenures.*

Challenge. An exception taken either against things (*e. g.*, as against a plaintiff's declaration in an action) or jurors. There are two kinds of challenge of jurors—either (1) to the *array*, by which is meant the whole jury as it stands arraigned in the panel; or (2) to the *poll* by which is meant one or more of the several particular persons or heads in the array. *See* ARRAY. A Challenge to fight is an indictable offence, and no words of provocation, however aggravating, can justify it.

Chamber. The place where cetrain assemblies are held; also the assemblies themselves.

Chamber of commerce. Associations of merchants, manufacturers, capitalists and others concerned with commerce, established in many towns and districts for the protection and promotion of merchants and industrial interests in general. Their chief object is to obtain and communicate to their members useful information relating to commercial matters and to take united action in regard to public measures which affect the interests of commerce and manufactures.—*Encycl. L. E.*

Chamberlain (*camerarius.*) The word is variously used of (1) The Lord Great Chamberlain of England to whose office belongs the Government of the palace at Westminster; (2) The Lord Chamberlain of the King's Household, the King's Chamberlain, to whose office it specially appertains to look to the King's chamber and wardrobe, and to govern the underservants belonging to the same (3) The Chamberlain of London, who is the receiver of the rents and revenues belonging to the city.—*Mozley.*

Chambers. The offices of a judge or of a barrister are called by this name. *Quasi*-private rooms, in which judges dispose of points of practice and other matters not sufficiently important to be heard and argued in court.

Chambers of the King (*regiæ cameræ*). The havens or ports of the kingdom are so called in ancient records.

Champertors. Those who move pleas or suits, or cause them to be moved, either by their own procurement, or by others, and sue them at their proper costs, to have part of the land in variance, or part of the gain.

Champerty. Champarty (*campi partitio*, a dividing of the land). A bargain with the plaintiff or defendant in any suit, to have part of the land, debt or other thing sued for, if the party that undertakes it prevails therein; whereupon the champertor is to carry on the party's suit at his own expense. It is a species of maintenance and such agreements are void at common law. The giving part of the lands in suit, after the end of it, to the counsellor for his reward, is not champerty, if there be no precedent bargain relating to such gift. But if it had been agreed between the counsellor and his client before the action brought, that he should have part for his reward, then it would be champerty—*Tomlins.* 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 to simply mortgage the property in litigation with a view to raising the requisite funds.—*Brown.*

Champerty is a species of "maintenance" and of the same character, but with the additional feature of a condition or bargain providing for a participation in the subject matter of the litigation (*Pitchakutti* v. *Kamala*, 1 Mad. H. C. 153).

Champerty is maintenance in which the motive of the maintainor is an agreement that if the proceeding in which the maintenance takes place succeeds, the subject matter of the suit shall be divided between the plaintiff and the maintainor.—*Stroud.*

The English laws of maintenance and champerty are not of force as specific laws in India, either in the mofussil or in the presidency towns. The ground on which contracts of the nature of champerty and maintenance should be held by the Indian Courts to be invalid is that they are contrary to public policy. An agreement to supply funds to carry on a suit in consideration of having a share in the property if recovered, is not necessarily opposed to public policy, since cases may easily be supposed in which it would be in furtherance of right and justice that a suitor, who had a just title to property, and no means to support it, should be assisted in this way. But agreements purporting to be made to meet such cases, when found to be extortionate and unconscionable so as to be inequitable, or to be entered into for improper objects, as for the purpose of gambling in litigation, or of injuring others by encouraging unrighteous suits, or of obtaining a spoil, or of disturbing the peace of families, are contrary to public policy, and ought not to have effect given to them, (*Ram Coomar* v. *Chunder Kanto*, 2 Cal. 233;

L. R. 4 I. A. 23; *Raghunath* v. *Nilkanth*, 20 Cal. 843; *Tarachand* v. *Suklal*, 12 Bom. 559; *Gopal Ramchandra* v. *Gangaram*, 14 Bom. 72; *Raja Mohkam Singh* v. *Raja Rup Singh*, 15 All. 352; *Chedambara* v. *Renja*, 13 B. L. R. P. C. 509; *Chunderkant* v. *Ramcoomar*, 13 B. L. R., O. C., 530; *Nuthoo Lall* v. *Budree Pershad*, 1 N.-W. P. 1; *Gossain Ramdhan* v. *Gossain Dalmir*, 14 Cal. W. N. 191).

See MAINTENANCE.

Champion (*campio*). He that fights a combat, either in his own cause, or in the quarrel of another. *Champion of the king* (*campio regis*), an officer whose duty it is, at the coronation of the king, when the king is at dinner, to ride armed into Westminster Hall, and, by a herald, make a challenge that if any person shall deny the king's title to the Crown, he is there ready to defend it; which done, the king drinks to him, and sends him a gilt cup with a cover full of wine, which he has for his fee.—*Mozley*.

Chance. Misfortune; accident; deficiency of will. Where a man commits an unlawful act, by misfortune or chance, and not by design, it is a deficiency of the will, as here it observes a total neutrality, and doth not cooperate with the deed; which therefore wants one main ingredient of a crime. It is to be observed, however, generally, that if any *accidental* mischief happens to follow from the performance of a *lawful* act, the party stands excused from all guilt. But if a man be doing anything *unlawful*, and a consequence ensues which he did not foresee or *intend*, as the death of a man or the like, his want of foresight shall be no excuse, for being guilty of one offence in doing antecedently what is in itself unlawful, he is criminally guilty of whatever consequence may follow the first misbehaviour.—*Tomlins*. See Act XLV of 1860 (Penal Code), s. 80.

Chance-medley. A casual affray. Such killing of a person as happens either (in self-defence) on a sudden quarrel, or in the commission of an unlawful act, without deliberate intention of doing any mischief at all.—*Tomlins*. Chance-medley, or *per infortunium*, is when one is slain casually, and by mis-adventure, without the will of him that doth the act, whereupon death ensueth (Co. Litt. 287 b).—*Stroud*.

Chancellor (*chancellarius*). A word used in several senses. (1) *Lord High Chancellor*, who presides over the Court of Chancery, and is Speaker of the House of Lords; he is a Privy Councillor by virtue of his office. (2) *Chancellor of the Duchy of Lancaster*, who presides at the court of the Duchy to judge and determine controversies relating to lands holden of the king in right of the Duchy of Lancaster. (3) *Chancellor of the Exchequer*, the minister of state who has control over the national revenue and expenditure. (4) *Chancellor of a University*, who is the principal officer of the university. His office is, for the most part, honorary. (5) *Chancellor of a Diocese*, the officer appointed to assist a bishop in matters of law.—*Mozley*.

Chancery (*cancellaria*). The High Court of Chancery is the court presided over by the Lord Chancellor. In this court there are two distinct tribunals, the one *ordinary*, being a court of common law, the other *extraordinary*, being a court of equity. But the so-called "extraordinary" jurisdiction of the court is now its *ordinary* jurisdiction, and the so-called "ordinary" jurisdiction is only occasionally brought into exercise, the chief province of the Court of Chancery now being to administer that large portion of our law which is distinguished from the common law, and which is termed *equity*.—*Mozley*.

Changer. Chaunger. An officer belonging to the mint who exchanges coin for bullion brought in by merchants or others.

Charge. The word is used in various senses. (1) The address delivered by the presiding judicial officer to the grand jury or petty jury, at assizes or sessions, instructing them in their duties. (2) The bishop's address to his clergy at a visitation. (3) A criminal accusation against any one. (4) An allegation in a bill in equity which the plaintiff does not know to be true, or at least cannot prove, but which he suspects to be true, and as to which he wishes to have the answer of the defendant. An incumbrance on land or on a fund is often called a "charge."—*Mozley*. A charge is said to be a thing done that bindeth him that doth it, or that which is his, to the performance thereof; and discharge is the removal or taking away of that charge.—*Tomlins*.

"The word 'charge,' the word 'bind' and the word 'oblige,' whatever may be the ordinary use by conveyancers of one or the other, in the English language and the legal language mean the same. To 'bind' means to charge, to 'charge' means to bind, 'oblige' means to charge or bind. All these words are absolutely, in my opinion, synonymous,' (*per* James, L. J., *Re Florence Land and Public Works Co.*, 10 Ch. D. p. 546).

Where immoveable property of one person is by act of parties or operation of law, made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 100. *See* VENDOR'S LIEN.

A mortgage does, whereas a charge does not, involve a transfer of an interest in specific immoveable property. A mortgagee can follow the mortgaged property in the hands of a transferee from the mortgagor, whereas a charge can be enforced against a transferee, only if it is shown that he has taken with notice of the charge (*Royzuddi Sheikh* v. *Kritarthanath*, 4 Cal. L. J. 219; 33 Cal. 985).

A mere covenant not to alienate property is insufficient to create a charge (*Sivami a* v. *Venkata*, 24 M. L. J. 474; Mad. W. N., 1913, p. 337).

The failure to comply with the provisions for attestation contained in s. 59 of the Trans. of Pro. Act does not convert a mortgage transaction into a charge (*Narayan Babaji* v. *Lakshmandas*, 7 Bom. L. R. 934).

Charge-sheet. A paper kept at a police station to receive each night the names of the persons brought and given into custody, the nature of the accusation, and the name of the accuser in each case. It is under the care of the inspector on duty.—*Wharton.*

Charges. Expenses; costs.

Charging order. An order obtained from a court or judge by a judgment-creditor binding the stocks or funds of a judgment-debtor with the judgment-debt.

Charitable uses and trusts. These are trusts in favour of hospitals, the people and such like. According to the preamble of stat. 43 Eliz. c. 4, passed in 1601, charitable uses include the following uses of land or other property:—(1) For the relief of aged, impotent and poor people; (2) for maintenance of sick and wounded soldiers; (3) for maintenance of schools of learning, free schools, and scholars in universities; (4) for repair of bridges, ports, havens, causeways, churches, sea-banks and highways; (5) for education and preferment of orphans; (6) for relief, stock or maintenance of houses of correction; (7) for marriages of poor maids; (8) for aid or help of young tradesmen, handicraftsmen, and persons decayed; (9) for relief and redemption of prisoners and captives; (10) for aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes.

Charitable purpose includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.—*Act VI of* 1890 (*Charitable Endowments*), s. 2.

The words *charitable purposes* have acquired a technical meaning in the Presidency of Bombay, and in that sense they include all purposes within the meaning of statute 43 Eliz. c. 4 (*per* Serjeant, C. J., *University of Bombay* v. *Municipal Commr. for the City of Bombay*, 16 Bom. p. 227).

A trust for a Hindu idol and temple is to be regarded as one created for *charitable purposes* within the meaning of s. 539 of the Civ. Pro. Code 1882 [ss. 92, 93 of the Code of 1908] (*Manohar Ganesh* v. *Lakshmiram*, 12 Bom. 247).

In the construction of a deed of *wakf* the words 'charitable' and 'religious' must be taken in the sense in which they are understood in Mohomedan Law (*Meer Mahomed* v. *Sashti Charan*, 19 Cal. 412).

Charity. The word 'charity' in its widest sense denotes all the good affections men ought to bear towards each other; in its most restricted and common sense 'relief to the poor' (*per* Sir W. Grant, M. R., *Morris* v. *Bishop of Durham*, 9 Ves. 405).

Charity in its legal sense comprises four principal divisions:—(1) trust for the relief of poverty; (2) trust for the advancement of education; (3) trust for the advancement of religion; (4) trust for other purpeses beneficial to the community, not falling under any of the preceding heads (*Commissioners for Income Tax* v. *Pemsel*, 1891, App. Cas. p. 58). *See* CHARITABLE USES.

Where a will is in the native language, and the word *dharma* or *dharam* is used, the word is held too vague and uncertain for the gift to be carried into effect by the Civ. Pro. Code, the word *dharm* or *dharam* including many objects not comprehended in the word *charity* as used in English law (*Gangabai* v. *Thavar*, 1 Bom. H. C., A. C., 71). *See* DHARMA, SUPERSTITIOUS USES.

Charity, as defined in Courts of equity, is not equivalent to the thoroughly Hindu word *dharma* which implies the performance of acts considered meritorious in the Hindu religion, many of which could by no latitude of construction be brought within the term 'charity' (*Advocate-General* v. *Damodhar*, Perry's Oriental Cases, p. 530). *Dharma* appears to be as wide as the words philanthropy or piety, or charity in its untechnical sense (*per* Farran, J., *Vindravandas* v. *Cursondas*, 21 Bom. 666).

Chartel. *See* CARTEL.

Charter (*charta*). Written evidence of things done between man and man. *Charters of the king* are written instruments granting certain privileges or exemptions to towns or corporations. *A charter of pardon*, whereby a man is forgiven a felony or other offence committed against the king's crown and dignity. *Charter of the forest* comprises the laws of the forest. Charters of private persons are deeds and instruments under seal for the conveyance of lands, &c., and the purchaser of lands shall have all the *charters*, deeds, and evidences as incident to the same, and for the maintenance of his title.

Charter-land. Land held by deed under certain rents and free services, which in effect differed nothing from free-socage lands. It was also called *book-land*. *See* BOC-LAND.

Charter-party (*charta partita*, a deed or writing divided.) A mercantile instrument, by which one who would export goods from his country or import them from abroad, engages for the hire of an *entire* vessel for the purpose, at a freight or reward thereby agreed for. Upon the execution of such an instrument, the ship is said to be *chartered* or *freighted*, and the party by whom she is engaged is called the *charterer* or *freighter*. But where, instead of taking the entire vessel, the owner of goods merely bargains for their conveyance, on board of her, for freight (other goods being at the same time conveyed for other proprietors) she is described not as a *chartered*, but as a *general* ship; and in this

case no *charter-party* is usually executed, but merely a *bill of lading*.—*Mozley*. A charter-party is so called because when notaries were less common there was only one instrument made for both parties; this they cut in two, and gave each his portion, joining them together at their return, to know if each had done his part.

Chartered ship. A ship hired or freighted.

Charterer. A person who charters or hires a ship under a charter-party for a voyage or for a certain period. Also a Cheshire freeholder.

Chase. A privileged place for the preservation of wild beasts of chase, intermediate between a forest and a park. A chase differs from a forest, chiefly in that it is not subject to the forest laws. If the king, seised of a forest, grants to another in fee, the grantee has no forest, because he has not the power to create judges or officers to hold forest courts, but he has a chase—*Stroud*. *See* PARK.

Chattels (*catalla*). Goods moveable and immoveable except such as are in the nature of free-hold or parcel of it. The name is given to things which in law are deemed personal property. Chattels are divided into *chattels real* and *chatels personal*; chattels real being interests in land which devolve after the manner of personal estate, as leaseholds. As opposed to freeholds, they are regarded as personal estate. But as being interests in real estate, they are called *chattels real* to distinguish them from moveables, which are *chattels personal*.—*Mozley*.

Chattels personal are, strictly speaking, things moveable: which may be annexed to or attendant on the person of the owner, and carried about with him from one place to another. Such are animals of various kinds, household furniture, moneys, jewels, corn, articles of clothing, and everything which can properly be transferred from place to place. —*Broom's Com. Law*.

Things personal, however, are not confined to moveables; for as things real comprise not only the land itself, but such incorporeal rights as issue out of it, so things personal include not only those tangible subjects of property which are capable of locomotion, but also the incorporeal rights or interests which may grow out of or be incident to them. This class (to which may be assigned the term of *incorporeal chattels*) comprehends among other species, patent right and copyright.—*Brown*.

Chattel interest in land. An interest in land or real estate which for most purposes is subject to the law of personality.

Chaud-medley. The killing of a man in an affray in the *heat* of blood or passion. *See* CHANCE-MEDLEY.

Cheating. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or his likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to cheat. A dishonest concealment of facts is a deception within the meaning of this section.—*Act XLV of* 1860 (*Penal Code*), *s*. 415.

Cheating by personation. A person is said to cheat by personation if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is. The offence is committed whether the individual personated is a real or imaginary person.—*Ibid*., *s*. 416.

Cheators. Cheaters. *See* ESCHEATORS.

Chela. (*Ind*.) A disciple. A pupil. A slave brought up in the house; a favourite slave.

Cheque. A cheque is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand. —*Act XXVI of* 1881 (*Nego. Instr*.), *s*. 6.

A cheque may be drawn in favour of a specified person or payable to his order or payable to bearer. But (unlike an ordinary bill of exchange) it gives no right of action upon it to the person in whose favour it is drawn, and is worth nothing until acted upon; and the authority to act upon it is withdrawn by the donor's death.

Where a banker having sufficient funds of a customer, refuses to cash a cheque of such customer, the latter may have an action in tort without showing special damage (*Marzette* v. *Williams*,, 1 B. & Ad. 415; *Rolins* v. *Steward*, 14 C. B. 595.)

For presumptions as to cheques *see* NEGOTIABLE INSTRUMENT.

See CROSSED CHEQUES, FLASH CHEQUE.

Chevage (*chevagium*). A tribute or sum of money formerly paid by such as held land in villenage to their lords in acknowledgment, and was a kind of head or poll money.

Chevisance. An agreement or composition between a creditor and debtor. An unlawful bargain or contract in poin of usury.

Chief Baron. The title given to the judge who presided over the Court of Exchequer. The office is now abolised and merged in that of Chief Justice of England.

Chief Justice. The title given to the heads of the Courts of King's Bench and Common Pleas. The title is in general given to the principal judicial officer of any superior court of justice within his Majesty's dominions.

Chief-rents. Certain established rents payable to the lord of a manor by the free-holders thereof; also denominated quit rents because thereby the tenant goes free of all other services.

Chief, tenants in. Those who hold lands immediately of the king in right of his Crown and dignity; otherwise called tenants *in capite*.

Child-stealing. *See* KIDNAPPING.

Childwit. A fine or penalty of a bondwoman unlawfully begotton with child.

Chimin. A way. It is divided into two sorts, the king's highway and a private way; the former being one by which the king's subjects have free liberty to pass; the latter being one by which one man or more have liberty to pass, either by prescription or by charter, through another man's ground.—*Mozley. Chimin in gross*, where a person holds a way principally and solely in itself. *Chimin appendant*, where a person has it as appurtenant to some other thing; as if he rent a close or pasture, with covenant for ingress and egress through and over other land, over which otherwise he might not pass.—*Tomlins*.

Chiminage. A toll due by custom for having a way through a forest.

Chimney-money. A Crown duty for every fire-place in a house; otherwise called "fumage," "fuage," "hearth-money," and "smoke-farthings." Now abolished.

Chirograph. A public instrument of gift or conveyance written on two parts of the same piece of parchment with some words or letters of the alphabet between them, through which the parchment was cut, either in a straight or indented line, in such a manner as to leave half the word on one part and half on the other. This practice has long since been disused.—*Mozley*.

Chirographer of fines (*chirographus finium*). That officer in the common pleas who engrosseth fines acknowledged in that Court into a perpetual record, after they are examined and passed in the other offices, and that writes and delivers the indentures of them to the party; and this officer makes out two indentures, one for the buyer, another for the seller; and also makes one other indented piece, containing, the effect of the fine, which he delivers to the *custos brevium*, which is called the *foot of the fine*.—*Tomlins*. *See* FINE.

Chitta. (*Ind.*) An account particular, for land or cash; a rough draft; a day book.

Hatchitta. A note of hand.

Chivalry (*servitium militare*). Signifies that peculiar species of tenure by which lands were formerly held, called tenure by knight's service. It is of a martial and military nature, and obliges the tenant to perform some noble or military office unto his lord.—*Brown*. *See* COURT OF CHIVALRY, GUARDIAN IN CHIVALRY.

Chop-Church (*ecclesiarum permutatio*). A nickname given to those that used to exchange benefices; as to *chop* and *change* is a common expression.

Chorchittee. (*Ind.*) An instrument or writing of divorce.

Chose. A thing. The word is generally used in combination with others; as *chose local, chose transitory, chose in action, chose in possession*.

Chose local is such a thing as is annexed to a place, as a mill, &c.

Chose transitory is a thing moveable and may be taken away or carried from place to place.

Chose in action otherwise called *chose in suspense*, is a thing of which a man has not the possession or actual enjoyment, but has a right to demand by action or other proceeding, as a debt, bond, &c. The phrase is sometimes used to signify a right of bringing an action, and at other times the thing itself which forms the subject matter of that right, or with regard to which the right is exercised; but it more properly includes the idea both of thing itself and of the right of action as annexed to it. Thus a debt conveys the idea not only of the thing itself, *i. e.*, the debt, but also of the right of action or of recovery possessed by the person to whom the debt is due. An assignment of any debt or other legal chose in action may be made by writing under the hand of the assignor, of which express notice has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to claim such debt, &c. Such assignment is effectual in law to pass the legal right in such debt, &c., from the date of such notice, and remedies for the same. *See* ACTIONABLE CLAIM.

Chose in action is where a man hath cause or may bring an action for some duty due to him, as an action of debt upon an obligation, an action of covenant, of trespass, or the like; and, indeed, wherever a thing is *not in possession*, but where for recovery of it, a man is driven to his action (and consequently enjoys *a right* merely), such thing is called a *chose in action*.—*Broom's Com. Law*.

Chose in action is not co-extensive with 'actionable claim' (*Shib Lal* v. *Azmatullah*, 18 All. p. 267).

Chose in possession is a thing of which a person has not only the right to enjoy but also the actual enjoyment.

Chowdhry. (*Ind.*) Under the old Hindu system of land revenue, the fiscal head of a pergunnah or *bisi* (a division consisting of a number of villages) was called a *Chowdhary, Bissoi, Khandadhipati*, or *Deshmukh*. It was his duty to preserve the peace and collect the revenue of the pergunnah and transmit it to the treasury.

Christian Courts. *See* COURTS CHRISTIAN.

Church-scot. Customary obligations paid to the parish priest; from which duties the religious sometimes purchased an exemption for themselves and their tenants.

Chur land. (*Ind.*) An island; land thrown

up by a large navigable river; land situated between two branches of a river.

Churle. In Saxon times, a tenant at will, of free condition, who held land of the Thanes on condition of rents and services. The Churles were of two kinds; one that rented an outlying portion of the lord's estate, like our farmers; the other that tilled and manured the demesnes (yielding work and not rent), and were therefore called his *sockmen* or *ploughmen.—Tomlins.*

Cinque Ports (*quinque portus*). The five most important havens in England, lying on the coast towards France, *viz.*, Dover, Sandwich, Romney, Hastings and Hythe; to which Winchelsea and Rye have since been added.

Circuits. Certain divisions of England and Wales, appointed for the Judges to go formerly twice a year, but more recently oftener and at no precisely fixed periods, to administer justice in the several counties.

Circuit paper. A paper containing a programme of the circuits of the judges, and the times when, and the places where, the assizes will be held.

Circuity of action (*circuitus actionis*). This is where a party to an action, by an indirect and circuitous course of legal proceeding makes two or more actions necessary, in order to obtain that justice between all the parties concerned in the transaction, which by a more direct course might have been gained in a single action. As in an action on a contract in which the defendant instead of giving in evidence a breach of warranty in mitigation of damages, allows the plaintiff to recover the full amount of the contract in the first action, and then subsequently commences against him a cross action to regain the amount to which the consideration had failed. The desire to avoid circuity of action was one of the principal reasons that lead the court of Chancery to assume concurrent jurisdiction (*i. e.*, in fraud, &c.) with the courts of Common Law.—*Brown.*

Circular notes. These are instruments in the nature of letters of credit drawn by bankers upon their foreign correspondents in favour of persons travelling abroad. The correspondents must be satisfied of the identity of the applicants before payment; and the requisite proof of such identity is usually furnished upon the applicant's producing a letter with his signature, by a comparison of the signatures.

Circulating medium. A phrase applied to money, which may be exchanged for all sorts of other property.

Circulation. A bank note "in circulation" means a note which is passing from hand to hand as a negotiable instrument; and when returned to the Bank (or any of its branches), it ceases to be "in circulation" or "outstanding" (*Bank of Africa* v. *Colonial Government*, 57 L. J. P. C. 66; 13 App. Cas. 215; 8 L. T. 427).—*Stroud.*

Circumduction of the term. (*Sc. L.*) A judicial declaration that the time allowed to either party for giving evidence has elapsed.

Circumstantial evidence. Presumptive proof, when the fact itself is not proved by direct testimony, but is to be inferred from circumstances, which either necessarily or usually attend such facts.—*Wharton.* That evidence which may be afforded by particular circumstances. It is called circumstantial evidence in contradistinction to that species of evidence which is of a more positive and unequivocal nature. Whence the latter is sometimes called *direct* evidence, and in that case circumstantial is designated *indirect.* Sometimes, also, it is called the doctrine of presumptions; because when the fact itself cannot be proved, it may be presumed by the proof of such circumstances as either necessarily or usually attend such facts, being in the former case conclusive, and in the latter more or less cogent only.—*Brown.*

Circumvention. Fraud or deceit.

Citation (*citatio*). A summons to a party to appear; applied particularly to process in the Scotch Courts, and in the ecclesiastical courts; and also to the commencement of proceedings in the probate court. It is analogous to the writ of summons at common law. The word is also frequently applied to the quoting of legal cases and authorities in courts of law.

In probate practice, citation is a summons issued when persons having the primary right to a grant of probate or letters of administration neglect to apply for the same, and some person having an inferior interest desires to obtain a grant; the citation, therefore, cites the various persons with the superior interests to appear and calls upon them either to renounce their right or to show cause why the applicant should not obtain a grant. In Divorce practice, a citation is served on the respondents, requiring them to appear and answer the allegations in the petition filed against them.—*Encycl. L. E.*

Civil. The word stands for the opposite of criminal, of ecclesiastical, of military, or of political.

Civil Bill Courts. The local courts of civil jurisdiction in Ireland; analogous to that of county courts in England.

Civil commotion. An insurrection of the people for general purposes, though it may not amount to rebellion.

Civil death. A man was said to be civilly dead when he had entered a monastery and being professed in religion became *dead* in law, or when he had become outlawed, or when he had become attainted of treason or felony. A man civilly dead was held in law, for most purposes, especially those connected with property, to be as if actually dead and therefore if an estate were granted to any one for his life generally, it would determine by such civil death. For which reason, in con-

veyance, the grant is usually made "for the term of a man's *natural* life," which can only determine by his *natural* death. The 33 & 34 Vic. c. 23 now provides that after the passing of that Act no judgment or conviction of or for any treason or felony, or *felo de se*, shall cause any attainder or corruption of blood, or any forfeiture or escheat. A person who has been absent and not heard of for a period of seven years is, for many purposes, presumed to be dead. See Act I of 1872 (Evi.), s. 108 and Act XLV of 1860 (Penal Code), s. 494.

Civil law. That law which every people has established for itself; in other words, the law of any given state. The estabtished law of every particular nation, commonwealth or city. It is the same as that which is called *municipal law*. The term *civil law*, in its particular signification, however, usually means the Roman Law, as comprised in the Institutes, Code, and Digest of the Emperor Justinian.

Civil list. An annual sum granted by parliament at the commencement of each reign, for the expense of the royal household and establishment, as distinguished from the general exigencies of the State.

Civil proceeding. A process for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits by the Crown (*Bradlaugh* v. *Clarke*, 52 L. J Q. B. 505, 8 App. Cas 354).—*Stroud.*

To the purely civil matters or proceedings might be referred the entire theory of and practice connected with private rights, wrongs and remedies, the pleadings in actions; the practice to be observed therein; anything, in short, connected with, or auxiliary or incidental to, the conduct of an action.—*Broom's Com Law.*

Civil remedy. A remedy open to a private person as opposed to a criminal prosecution which is brought by the Crown. To be *civilly* responsible for any act or omission means to be liable in an action or other proceeding at the suit of a private person or corporation, or (in certain cases) at the suit of the Crown suing as for a private wrong.

Civil service. The term properly includes all functions under the Crown except military and naval functions. The principal Civil Service Offices are the Treasury, War Office, Home Office, Inland Revenue Office and Post Office.—*Wharton.*

Civilization. A law; an act of justice, or judgment which renders a criminal process civil; performed by turning an information into an inquest, or the contrary.—*Wharton.*

Claim (*clameum.*) A challenge of interest of anything which is in another's possession, or at least out of a man's own possession.

A claim is a demand of right a challenge of interest of something which is not in the possession of the claimant. A *remedy* is the legal means to recover a right It is not easy to define what constitutes a 'claim' as distinguished from a *remedy*, for the former appears to include the latter to some extent (*per* Field, J., *Kalidhun* v. *Shiba Nath*, 8 Cal. p. 495; 11 C. L. R. p. 70).

Claim continual. Continual claim is a claim made from time to time, to land or other thing of which we cannot, without danger, attempt to take possession. As, if I be dispossessed of land, into which, though I have a right unto it, I dare not enter, for fear of death or beating. It behoveth me to hold on my right of entry to the best opportunity of me and mine heir, by approaching as near it as I can once every year as long as I live; and so I save the right of entry to my heir. This effect of a continual claim is now abolished.—*Mozley.*

Claim in equity. In simple cases, where there was not any great conflict as to facts, and discovery from the defendant was not sought, but a reference to chambers was nevertheless necessary before final decree, which would be as of course, all parties being before the court, the summary proceeding by claim was sometimes adopted, thus obviating the recourse to plenary and protracted pleadings. Now abolished.—*Wharton.*

Claim of liberty. A suit or petition to the king in the Court of Exchequer, to have liberties and franchises confirmed there by the king's attorney-general.

See STATEMENT OF CLAIM.

Clandestine mortgage. The mortgage of land already mortgaged for valuable consideration, with concealment of the fact of its prior mortgage which is in force, so as to defraud the second mortgagee.

Clarendon, Constitutions of. Certain constitutions made by the parliament at Clarendon, in Wiltshire, A. D. 1164, in the tenth year of the reign of Henry II, whereby the king checked the power of the pope and his clergy, and greatly narrowed the total exemption they claimed from secular jurisdiction.

Clause irritant. Clause resolutive. Clause irritant is a provision which makes a penalty be incurred, and the obligation to be null for the future, clause resolutive is a provision whereby the contract to which it is affixed is, for non performance, declared to have been null from the beginning.—*Tomlins.* By clause irritant in a deed or settlement, the acts or deeds of a tenant for life or other proprietor, contrary to the conditions of his right, become null and void; and by the resolutive clause such right becomes resolved and extinguished.—*Wharton.* *See* IRRITANCY.

Clause rolls. *See* CLOSE ROLLS.

Clearance. A certificate given by the collector of a port, in which it is stated that the master or commander (naming him) of a ship or vessel named and described, bound for a port named, and having on board goods described, has entered and cleared his vessel according to law. This certificate, or *clearance*,

evidences the right of the vessel to depart on her voyage; and *clearance* has therefore been properly defined as a *permission to sail.*—*Bouvier.* *See* TRANSIRE.

Clear annuity or legacy. The gift of a "clear" annuity or legacy exempts from *Legacy Duty.* And this construction is not altered by a special direction that one annuity is te be "free of legacy duty," which direction is omitted as regards another annuity in the same will. But the word "clear" alone will scarcely exempt even a testamentary annuity from *Income Tax,* but coupled with other apt words (in a will, but not in a deed) it would do so.—*Stroud.*

Clear days. A phrase used to indicate the calculation of days from one day to another, excluding both the first and last day.

Clearing. A settlement of accounts as between different partnerships or companies engaged in the same trade, profession or occupation. A method adopted by London banks for exchanging their drafts and settling the difference. The word is used almost exclusively in reference to bankers and railway companies. *Clearing-house,* the place where *clearing* is carried on.

Clear yearly rent. A rent clear of all outgoings, &c., usually borne by the tenant; but subject to such (*e. g.*, Land Tax) as are borne by the landlord.—*Stroud.*

Clement's Inn. One of the Inns of Chancery. *See* INNS OF CHANCERY.

Clergy (*clerus*). The assembly or body of clerks or ecclesiastics, being taken for the whole number of those who are *de clero Domini,* of our lord's lot or share, and are separate from the noise and bustle of the world, that they may have leisure to spend their time in the duties of the Christian religion. The term now comprehends all persons in *holy orders,* and in ecclesiastical offices, *viz.*, archbishops, bishops, deans and chapters, archdeacons, rural deans, parsons (who are either rectors or vicars) and curates; to which may be added parish clerks.—*Tomlins.* *See* BENEFIT OF CLERGY.

Clergyable. An offence was said to be clergyable when it was one to which the benefit of clergy extended. *See* BENEFIT OF CLERGY.

Clerical error. A mistake made by a clerk in copying or engrossing a legal document.

Clerk. (*clericus*). Originally a learned man or man of letters, whence the term is appropriated to churchmen who are called clerk, and now clergymen; nobility and gentry being bred to the exercise of arms, and none left to cultivate the science but ecclesiastics. In another sense the word means those that by their function or course of life practise their pen in any court, or otherwise; of which *clerks* there are various kinds in several offices, &c.

Clerk of the Court. It is not within the province of the Clerk of the Court to issue judicial orders on any subject. He is merely a ministerial officer of the Court, and any act which he is competent to perform must be of that character only (*Goshain Jug Roop* v. *Chingun Lal,* 2 N.-W. P. 46).

Client. A person who seeks the advice of a lawyer or commits his cause to the management of one, either in prosecuting a claim, or defending a suit in a court of justice. A solicitor, also, in reference to the counsel he instructs, is spoken of as a *client.* It has also become common of late to use the word in reference to other professions.

Clifford's Inn. An Inn of Chancery. *See* INNS OF CHANCERY.

Clog on equity of redemption. The doctrine that a provision or stipulation which will have the effect of clogging or fettering the equity of redemption, is void, might be expressed in this form—"Once a mortgage always a mortgage and nothing but a mortgage" The meaning of this is that the mortgagee shall not make any stipulation which will prevent a mortgagor, who has paid principal, interest, and costs, from getting back his mortgaged property in the condition in which he parted with it (*per* Lord Davey, *Noakes & Co., Ld.* v. *Rice,* 1902, A. C. 24; *Rajmal* v. *Shivaji,* 4 Bom. L. R. 966; 27 Bom. 154, 156; *Ramaswami* v. *Chinnan,* 11 M. L. J. R. 132; 24 Mad. 449). For example, a subsequent money-bond, by which the mortgagor binds himself not to redeem the previous mortgage until the bond is paid off (*Sheoshankar* v. *Parma,* 26 All. 559; 24 All. W. N. 123; 1 All. L. J. 282; *Rugad Singh* v. *Sat Narain,* 27 All. 178; 25 All. W. N. 208; 1 All. L. J. 572). But a contract to pay debts *secured* on the same property is enforceable (*Durga Pershad* v. *Dukhi Roy,* 2 Cal. W. N. 791); so also a clause in a mortgage not to redeem it until a *previous* debt on a khata was paid, the court holding the previous debt as secured on the property as a charge by way of mortgage (*Hari* v. *Vishnu,* 6 Bom. L. R. 313; 28 Bom. 349, F. B.). A proviso empowering the mortgagor to redeem before the expiry of the term, cannot be regarded as a clog on redemption (*Kauleshar* v. *Raghubir,* 1 All. L. J. 224). Where a mortgagee stipuled for a right to pre-empt, and he was to pay, not the market-price, or the price offered by a stranger, but the amount fixed in the mortgage, *Held,* that the stipulation was oppressive (*Ramasami* v. *Chinnan,* 11 M. L. J. R. 132; 24 Mad. 449). *See* GAHAN LAHAN, ONCE A MORTGAGE.

The law does not permit any clog on the equity of redemption; but it is open to the mortgagor and mortgagee to enter into a contract *subsequently* to the mortgage for the sale of the mortgaged property to the mortgagee (*Kanhaya Lal* v. *Narhar,* 27 Bom. 297; 5 Bom. L. R. 140).

Close. A field or piece of land parted off from other fields or common land by banks, hedges, &c. A word most frequently used for a person's land; thus an unwarrantable entry

upon a person's land is called breaking his close. *See* BREAKING A CLOSE.

The word *close* is ambiguous and may mean the quality or description of land, as well as the land itself (*Heath* v. *Milward*, 4 L. J. C.P. 292; 2 Bing. N. C. 298; 2 Sc. 160). "Close" in a declaration in trespass included the subsoil as well as the surface (*Cox* v. *Glue*, 17 L. J. C. P. 162; 5 C. B. 533).—*Stroud.*

Close of pleadings, the conclusion, when issue has been joined. *Close of a bankruptcy*, when the property has been realised and distributed. *Closing evidence in Chancery*, the expiration of the time limited for filing affidavits.

Close rolls (*rotuli clausi*). *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, and are thence called *writs close*, and are recorded in the *close rolls*, in the same manner as others are in the *patent rolls*, or open letters.—*Brown.*

Clough. A valley. Also an allowance in weight for the turn of the scale, on buying goods wholesale by weight.

Club. A voluntary association founded on contract for social or other purposes. It is not, however, a company, a partnership, or even a collection of co-owners. The court will not interfere with the decision of a club expelling a member, if such decision has been arrived at *bona fide*, and in accordance with the rules of the club (*Gompertz* v. *Goldingham*, 9 Mad. 319). A proprietary club is one in which the expense and risk is borne by a contractor who is paid by members' subscriptions.—*Rawson.*

Club-law. Regulation by force; the law of arms.

Co-adjutor. An assistant, helper, or ally. A bishop appointed in aid of a bishop incapacitated by permanent mental infirmity from the due performance of his episcopal duties.

Coal-note. A kind of promissory note in the coal trade, bearing on it the words "value received in coals."

Cocket (*cockettum*). A seal appertaining to the king's custom-house. A sealed document given to the master of an outward-going ship, certifying that the vessel has been duly cleared by the officers. *See* CLEARANCE.

Cockpit. A name which used to be given to the Judicial Committee of the Privy Council, the room where it sat being on the site of the old cockpit of Whitehall Palace.

Code. A collection or system of laws. The collection of laws and constitutions made by order of the Emperor Justinian in 528 is distinguished by the appellation of "The Code." The *Code Napoleon*, otherwise called the *Code Civil*, is the most celebrated modern Civil Code of France. It composed of thirty six laws passed in 1803 and 1804, which were united in one body under the name of *Code Civil des Francais*. Sometimes, however, the name is extended to the whole of Napoleon's legislation.

Codicil (*codicillus*). A schedule or supplement to a will, when the testator desires to add, explain, alter or retract anything contained in the will. It must be executed with the same formalities as a will.

Codicil means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will.—*Act X of* 1865 (*Succession*), *s.* 3.—*Act XXI of* 1870 (*Hindu Wills*), *s.* 6.—*Act V of* 1881 (*Prob. and Admin.*), *s.* 3.

In the early English writers the term *codicil* was used in a sense resembling that which it had in Roman Law, as meaning an informal testamentary instrument not necessarily dependent on a will. It now means in ordinary parlance a testamentary instrument altering or modifying a will.—*Encycl. L. E.*

Codify. To reduce laws to a code or system. The object of codifying a particular branch of the law is that, on any point specifically dealt with, the law should thenceforth be ascertained by interpreting the language used in that enactment, instead of, as before, searching in the authorities to discover what may be the law as laid down in prior decisions. The language of such an enactment must receive its natural meaning without any assumption as to its having probably been the intention to leave unaltered the law as it existed before (*Norendro* v. *Kamalbasini*, 23 Cal. 563).

Where the law has been codified, it is of little avail to enquire what is the law apart from such codification, and the Courts must look to the code itself as their guide in the matter (*Burn & Co., Ld.* v. *Colin*, 36 Cal. 354; 13 Cal. W. N. 255; 9 Cal. L. J. 190).

Co-emption. The act of purchasing the whole quantity of any commodity.

Coercion. *See* CONTRACT.

Cognates. Relations by the mother's side. *See* AGNATES.

Cognisance. Cognizance. Conusance. The word is used in several senses. (1) The hearing of a thing judicially; a power or jurisdiction. (2) Knowledge upon which a judge is bound to act without having it proved in evidence (see the Ind. Evi. Act, I of 1872, ss. 79 to 90). (3) An acknowledgment of a fine, or confession of a thing done. (4) A cognisance is also a form of defence in the action of replevin, by which the defendant, who acted as bailiff, &c., to another in making a distress, alleged the right or title to be in that person by whose command he acted, and insisted that the goods were lawfully taken as a distress. It differs from an *avowry* in that by an *avowry* the defendant asserts he took the goods in his own right; by a *cognisance* he asserts that he took them as servant for another. (5) A badge on a serving

man's sleeve, whereby he is discerned to belong to this or that master. *Cognisance of pleas*, an exclusive right to try causes within a limited jurisdiction or place.

Cognisor. Cognizor. Cognisee. Cognizee. Cognisor of a fine is the party that passed or acknowledged a fine of lands or tenements to another; the party who levied a fine. Cognisee of a fine was the party to whom the fine of the lands, &c., was acknowledged; the party in whose favour a fine was levied. *See* FINE.

Cognizable offence. Cognizable offence means an offence for, and *cognizable case* means a case in, which a police officer, within or without the presidency towns, may, in accordance with the second schedule to the Code of Criminal Procedure, 1898, or under any law for the time being in force, arrest without warrant.—*Act V of* 18 8 (*Crim. Pro.*), *s.* 4 (*f*).

Cognovit. *See* CONTRACT.

Co-habitation. Living together. Co-habitation does not necessarily imply the daily and nightly residence together of a husband and wife under the same roof. Circumstances of life, such as business-duties, domestic service, and other things may separate husband and wife, and yet notwithstanding there may be an existing state of co-habitation (*Huntable* v. *Huntable*, 68 L. J. C. P. 83).

Co-heir. One of several to whom an inheritance descends.

Co-heiress. A woman who has an equal share of an inheritance with another woman.

Coif (*Coifa*). The badge of serjeants-at-law, who are called serjeants of the coif, from the lawn coif they wore on their heads under their caps when created serjeants.

Coin (*cuna pecunia*). Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.—*Act XLV of* 1860 (*Penal Code*), *s.* 230, *as substituted by Act XIX of* 1872.

The test of whether a coin is money or not, is the possibility of taking it into the market and obtaining goods of any kind in exchange for it. For this its value must be assertained and notorious (*Reg.* v. *Bapu Yadav*, 11 Bom. H. C., A. C., 172).

King's coin is metal stamped and issued by the authority of the King, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the King's dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the King's coin, notwithstanding that it may have ceased to be used as money. For example, Farukhabad rupee which was formerly used as money under the authority of the Government of India, is King's coin, although it is no longer so used.—*Act XLV of* 1860 (*Penal Code*), *s.* 230, *as amended by Act VI of* 1896, *s.* 1.

Counterfeiting coin. *See* COUNTERFEIT.

Collateral (*collateralis*). Indirect; sideways; that which hangs by the side; additional.

Collateral assurance or *collateral security* signifies an assurance beside the principal one. So when a man mortgages his estate as security to a party lending him a sum of money, he also may enter into a bond, as an additional or collateral security. A collateral security is therefore something in addition to the direct security; and in its nature usually subordinate to it; and it is in the nature of a double security, so that when one fails the other may be resorted to.—*Brown*.

Collateral consanguinity, the relationship between persons who descend from a common ancestor, but neither of whom descends from the other. Every person who is descended or propagated from the same stem (*i. e.*, from the same male or female lineal ancestor) from which any other particular person is descended or propagated, and who is neither the immediate parent or progenitor, nor the progeny of such particular person, is denominated a *collateral* relative. *See* CONSANGUINITY.

Collateral contract, where a contract by word of mouth co exists with a contract in writing made at the same time, notwithstanding the general rule that an oral merges in a written contract. *See* CONTEMPORANEOUS ORAL AGREEMENT.

Collateral covenants. *See* COVENANT.

Collateral issue, is an issue, on a criminal charge, arising out of a plea which does not bear on the guilt or innocence of the accused; as where a criminal convict pleads any matter allowed by law, in bar of execution, as pregnancy, pardon, an act of grace, or diversity of person, *viz.*, that he or she is not the same that was attained, &c. These questions of fact are called *collateral* issues.

Collateral power, one not coupled with an interest; less correctly, one in gross *i. e.*, not affecting the estate held by the donee of the power. *See* POWER.

Collateral warranty. *See* WARRANTY.

Collation. The comparison of a copy with its original to ascertain its correctness, or the report of the officer who made the comparison.

Collation to a benefice (*collatio beneficii*). When the bishop is also the patron, and *confers* the living, the presentation and institution are one and the same act, and are called a collation to a benefice. *See* ADVOWSON.

Collation of seals. This was when, upon the same label, one seal was set upon the back or reverse of the other.

Collegatory. A person who has a legacy left to him in common with other persons.

College (*collegium*). A particular corporation, company or society of men, having certain privileges, and endowed with certain revenues, founded by royal license.

Collision of ships. The striking or running foul of one ship against another. When this arises from the neglect of both, each pays the other half the damages sustained. The old common law rule in such cases was that neither vessel recovered.

Collitigant. One who litigates with another.

Colloquium. A talking together, or affirming of a thing. A term in pleading applied to the statement in declaration for libel or slander, that the libellous or slanderous imputation had reference to the plaintiff.

Collusion (*collusio*). A deceitful agreement or compact between two or more persons, for the one to bring an action against the other, to some evil purpose, as to defraud a third person of his right. Collusion in judicial proceedings is a secret agreement between two persons that the one should institute a suit against the other, in order to obtain the decision of a judicial tribunal for some sinister purpose. A judgment obtained by such collusion in a nullity. A judgment obtained by collusion in one action is not pleadable as *res judicata* in a second action (Act I of 1872, Evi., s. 44). Collusion between the petitioner and either of the respondents in presenting or prosecuting a suit for dissolution of marriage is a bar to such suit (Act IV of 1869, Divorce, s. 13).

Colour. The term signifies, in pleading, an *apparent* or *prima facie* right, and the meaning of the old rule that pleadings in *confession and avoidance* should give colour is, 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 requires to be encountered and *avoided* by the allegation of new matter. Thus, if, in an action on a deed of covenant, the defendant pleads a release by the plaintiff, he thereby confesses the plaintiff's *prima facie* right arising out of the covenant. Colour was either *express*, *i. e.*, inserted in the pleading, or *implied*, which was naturally inherent in the structure of the pleading.

Colour of Office (*color officii*) is when an act is evilly done by the countenance of an office; and always taken in the worst sense, being grounded upon corruption, to which the office is as a shadow and colour.

Colour of right means semblance of right.

Colourable. That which is not what it purports or professes to be; deceptive.

Colourable alteration. An alteraction made only for the purpose of evading the law of copyright, which leaves the thing substantially as much an infringement as before.

Combat. A formal trial of a doubtful cause or quarrels by the sword or bastons of two champions. *See* BATTEL, WAGER OF.

Combination. The association or union of two or more persons for some common purpose, such as protecting or furthering their own actual or supposed professional or commercial or industrial interests. In this sense it is employed as a term of approval, for that which is against law or public opinion is styled *conspiracy*.

Unlawful combination. An assembly of worken met to perpetrate unlawful acts. A combination to do something forbidden by the criminal law. *See* CONSPIRACY, UNLAWFUL ASSEMBLY.

Comity of nations. The expression is generally used to indicate the practice adopted by the courts of justice in one country of giving effect (within certain limits) to the laws of another country, and the judgments given by its courts.—*Moxley.* Comity, as between nations, is the recognition by each of the laws of the others, whenever those laws are applicable; and this recognition is limited by the paramount regard which each country has for its own laws and its own citizens.—*Brown.*

Commandite. In French law, a partnership of several persons, of which some contribute their money, and others their talents or industry.

Commencement of an Act. Commencement of an Act or Regulation means the day on which the Act or Regulation comes into force.—*Act X of* 1897 (*General Clauses*), *s.* 3 (12).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (12).

Commendam (*ecclesia commendata*). The holding of a benefice or church living which being void, is commended to the charge and care of some sufficient clerk, to be supplied until it may be conveniently provided of a pastor. Also, when a beneficed parson is made a bishop, and the king gives him power to retain his benefice, he is said to hold it *in commendam*.

Commendatary (*commendatarius*). He that holds a church living or preferment *in commendam*.

Commendation. This was, in Feudal law, where the owner of land placed himself under the protection of a lord, and became his vassal.

Commendators. Secular persons upon whom, during Popery, ecclesiastical benefices were bestowed in Scotland. They were so called because the benefices were commended and intrusted to their oversight; they were not proprietors, but only a kind of trustees.

Commerce (*commercium*). Traffic, trade or merchandize in buying and selling of goods. There is a distinction between commerce and trade; the former relates to our dealings with foreign nations, or our colonies &c., abroad; the other to our mutual traffic and dealings among ourselves at home.—*Tomlins.*

Commissary (*commissarius*). One who is sent or delegated to excute some office or duty as the representative of his superior. In ecclesiastical law, an officer of the bishop who exercises spiritual jurisdiction in distant parts of the diocese. In military affairs, an

officer who has the charge of furnishing provisions, clothing, &c., for an army.—*Wharton.*

Commission (*commissio*). The warrant, authority, or letters patent, which empower men to perform certain acts, or to exercise jurisdiction either ordinary or extraordinary. In its popular sense it frequently signifies the persons who act by virtue of such an authority. There are various sorts of commissions which will be found under the following titles. The word also denotes the bailment called *mandate*; instructions given to an agent; the reward, remuneration or percentage paid to an agent for work done by him.

Commission of Appraisement. A commission to appraise the value of unclaimed goods in the hands of the officers of the Crown.

Commission of Array, issued to send into every county officers to muster or set in military order the inhabitants.

Commission of Assize, empowering the judges to sit on the circuit for the purpose of holding the assizes.

Commission of Bankruptcy, the authority formerly given by the Lord Chancellor to such discreet persons as he should think proper, empowering them to examine the bankrupt in all matter relating to his trade and effects and other matters.

Commission of Charitable Uses, awarded by the Lord Chancellor to inquire of all gifts to such uses, and of all abuses and breaches of trust relative thereto.

Commission of Delegates. A commission under the great seal to certain persons, usually lords, bishops, and judges of the law, to sit upon an appeal to the king in the Court of Chancery in ecclesiastical and admiralty suits. Its functions are now transferred to the Judicial Committee of the Privy Council.

Commission of Gaol delivery, empowering judges to try and deliver every prisoner who shall be in the gaol when they arrive in the circuit town.

Commission of Lunacy, granted by the Lord Chancellor to inquire into the state of mind of an alleged lunatic.

Commission of the Peace. A commission under the great seal appointing persons therein named jointly and separately justices of the peace.

Commission to examine witnesses, issued to a foreign country, or other place out of the jurisdiction of a court in which a suit is instituted, for the purpose of obtaining the evidence of witnesses residing in such foreign country or other place; also issued when the witness resides within the jurisdiction of the court, but is aged and infirm and cannot come to court.

Commission-day. The opening day of an assize; so called because the Judges' commissions were then opened and read in court.

Commissioner (*commissionarius*). A person authorized by letters patent, Act of parliament, or other lawful warrant, to examine any matters, or execute any public office, &c.

Where commissioners were appointed to make a partition, Phear, J., observed—"I have always understood this difference between commissioners appointed by the Court and arbitrators; In the first place, commissioners are the officers of the Court, and act by a majority; whereas private arbitrators make their awards jointly, unless their be a clause in the submission empowering them to make by majority an award binding between the parties (*Rajendra* v. *Ramnarayan*, 3 B. L. R., Ap., 3).

Commitment. Committal. The sending a person to prison by warrant or order, either for a crime, contempt or contumacy. The word is also used for the document or warrant by which a commitment is directed.

The words "commitment," "committed," or "committal to prison" do not mean "received into prison," but mean "when the order is made under which the person is to be kept in prison" (*Mullins* v. *Surrey*, 51 L. J. Q. B. 149, 152). "Committed for trial" means committed to prison with the view of being tried before a judge and jury, and includes a person who is admitted to bail upon a recognizance to appear and take his trial before a judge and jury.—*Stroud.*

Committee. Certain persons elected or appointed, to whom any matter or business is referred, either by a legislative body or by any corporation or society.

Committee means an individual, or body, to which others have committed or delegated a particular duty, or who have taken on themselves to perform it, in the expectation of their act being confirmed by the body they profess to represent or act for (*Reynell* v. *Lewis*, 16 L. J. Ex. 30; 15 M. & W. 526). A committee does not necessarily consist of more persons than one; it simply means a person or persons to whom anything is committed (*Re Scottish Petroleum Co.*, 51 L. J. Ch. 845).—*Stroud.*

Committee of Inspection, appointed by the general body of creditors of a bankrupt, for the purpose of superintending the administration by the trustee of the bankrupt's property.

Committee of a Lunatic or Idiot. A person to whom the maintenance of a lunatic, or the management of his estate, is committed; in the former case the committee is called a committee of the *person* of the lunatic; in the latter case he is called a committee of his *estate.*

Committee of Supply. A committee into which the House of Commons resolves itself for considering the amount of supply to be granted to the king.

Committee of ways and means, for considering the ways and means of raising a supply which has been already voted.

See SELECT COMMITTEE.

Commodate (*commodatum*). A gratuitous loan of a specific chattel. *See* BAILMENT.

Common, right of (*communia*). A right or privilege which one or more persons claim to take or use, in some part or portion of that which another man's lands, waters, woods, &c., do naturally produce, without having an absolute property in such land, waters, woods &c. It is called an incorporeal right, which lies in grant, as if originally commencing on some agreement between lords and tenants, for some valuable purposes, which by age being formed into a prescription continues, although there be no deed or instrument in writing which proves the original contract or agreement.—*Tomlins.* It is chiefly of five kinds—common of *pasture*, of *piscary*, of *turbary*, of *estovers*. and *in the soil*.

Common of pasture is the right of feeding one's beasts on another's land. This kind of common is divided into *appendant, appurtenant, because of vicinage*, and *in gross*. A *common appendant* is a right belonging to the owners or occupiers of arable land, under the lord of a manor, to put commonable beasts upon the lord's waste and upon the lands of other persons within the same manor; commonable beasts are either beasts of the plough or such as manure the ground. *Common appurtenant* arises from no connection of tenure, but may be annexed to lands in other lordships, or may extend to such beasts as hogs, goats or the like, which neither plough nor manure the ground. This kind of common can be claimed only be special grant or prescription. *Common because of vicinage* is where the inhabitants of two townships, which lie contiguous to each other, have usually intercommoned with one another; the beasts of the one straying mutually into the other's fields, without any molestation from either. This is only a permissive right; and therefore either township may inclose or bar out the other, though they have intercommoned time out of mind. *Common in gross*, or at large, is such as is neither appendant nor appurtenant to the land, but is annexed to a man's *person*, being granted to him and his heirs by deed or claimed by prescriptive right.

Common of piscary is the liberty of fishing in another man's water.

Common of turbary is a liberty of digging turf upon another man's ground.

Common of estovers or *estouviers* (*i. e.*, necessaries, from *estoffer*, to furnish) is a liberty of taking necessary wood, for the use of furniture of a house or farm, from off another man's estate.

Common in the soil consists of the right of digging for coals, minerals, stones and the like.—*Mozley.*

Common assault. An assault unaccompanied with circumstances of aggravation.

Common assurances. *See* ASSURANCE.

Common bail. *See* BAIL.

Common bar. *See* BLANK BAR.

Common bawdy house. A house or room, or set of rooms, in any house kept for purposes of prostitution; and it is immaterial whether indecent or disorderly conduct is or is not perceptible from the outside.—*Stroud.*

Common Bench (*Bancus Communis*). A name sometimes given to the court of Common Pleas. *See* COMMON PLEAS.

Common carrier. *See* CARRIER.

Common counts. Counts in a plaintiff's declaration which state the most ordinary causes of action, as for money lent, money received by the defendant for the use of the plaintiff, work and labour, goods sold and delivered, &c

Common day in plea of land. An old phrase signifying an ordinary day in court; a court day.

Common gaming house. Common gaming house means any house, walled enclosure, room, or place in which cards, dice, tables, or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using, or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room, or place, or otherwise howsoever.—*Act III of* 1867 (*Gambling*), *s.* 1.—*Bom. Act IV of* 1887 (*Gambling*), *s.* 8.—*Queen* v. *Sujjad Ali* (3 N.-W. P. 134). In the absence of evidence that a house was used for profit or gain, it cannot be held that it was a common gaming-house (*Queen-Empress* v. *Magan Kala*, Bom. Crim. Rul., No. 9 of 1896). All common gaming-houses are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices, and entice numbers of persons to idleness, whose time might be otherwise employed for the good of the community.

A common gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance, but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of s. 268 of the Indian Penal Code (*Reg.* v. *Hau Nagji*, 7 Bom. H. C., Cr. Ca., 74; *Queen-Empress* v. *Thandavarayudu*, 14 Mad. 364).

Common fine (*finis communis*). A small sum of money paid to the lords by the residents in certain leets; also called *head silver* or *head pence*.

Common form. Proof of a will in common form is the proof of a will by an executor on his own oath before the ordinary or his surrogate, as opposed to proof in more solemn form, *per testes* (by witnesses), when the validity of the will was disputed.—*Mozley.*

Common forms. A term most frequently used to denote forms of precedents in conveyancing.

Common informer. A person who prosecutes

others for breaches of penal laws, or furnishes evidence on criminal trials for no other reason than to get the penalty or a share of it.

Common intendment. Common intent. Ordinary meaning. Common meaning or understanding according to the subject matter of a written instrument, not strained to any extraordinary or foreign sense.

Common jury. See JURY.

Common law (lex communis). The term is used in various senses according to the objects with which it is contrasted. It means the ancient unwritten law of the kingdom embodied in judicial decisions, as opposed to *statute* law or the law enacted by parliament. In thus distinguishing the law into the *lex scriptæ* (written or statute law) and *lex non scriptæ* (unwritten or common law), the latter is used as signifying by it nothing more than that the original institution and authority of the law are not set down in writing, as is the case with Acts of Parliament, but that it receives its binding power as a law from long and immemorial usage and universal reception throughout the realm. The authenticity of these customs, rules and maxims rests entirely upon reception and usage as declared by the judges. Common law, as distinguished from *equity*, is the original and proper law of England administered in the Common Law courts as opposed to the system called *equity* which is administered in the Court of Chancery. But by the Judicature Act all branches of the Supreme Court of Judicature in England are to administer Law and Equity concurrently. Common law is sometimes used to denote the municipal law of England, as opposed to the Roman Civil Law, or other foreign law.

Common nuisance. A nuisance which affects the public in general, and not merely a particular person or a definite number of persons; also called a public nuisance. *See* NUISANCE.

Common Pleas (communia placita), Court of. See COURT OF COMMON PLEAS.

Common scold. See SCOLD.

Common seal. An expression used of the seal of a corporation. A seal used by a corporation as the symbol of the incorporation.

Common Serjeant. A judicial officer attached to the Corporation of the City of London, who assists the recorder in disposing of the criminal and other business of the city.

Common of shack. A peculiar right existing in certain parts of England, particularly in the county of Norfolk. It is the right of individuals who occupy adjoining lands in the same common field to turn out their cattle or other beasts after harvest to feed promiscuously in that field. Common of shack comprises the right to pasture in stubble, to gather fallen acorns or nuts, or fallen mast, or grain shed from husk at harvest, and the liberty of winter pasture.—*Peacock on Easements.*

Common, tenancy in. See TENANCY.

Common traverse. See TRAVERSE.

Common vouchee. See RECOVERY.

Common weal is understood in law to be *bonum publicum* (public good), and is a thing much favoured, and therefore the law tolerates many things to be done for common good, which otherwise might not be done; and hence it is that *monopolies* are *void* in law; and that bonds and convenants to restrain *free trade, tillage*, or the like, are adjudged *void.—Tomlins.*

Commonwealth. The social state of a country, without regarding its form of government; the common weal or public good. It is sometimes used to designate a republican form of government; and especially the period of English history from the execution of Charles I in 1649 to the restoration of the monarchy under Charles II in 1660.

Commonable. A thing over, by, or in respect of, which a right of common may be exercised, *e. g.*, lands, beasts, or messuages.

Commonable beasts are such as are necessary for the ploughing or manuring of land, as horses, oxen, cows and sheep. *See* COMMON.

Commonalty (*populus*; *plebs*; *communitas*). The people of a country. Persons who are not the nobility or peerage; the civil state being composed of the *nobility* and the *commonalty.*

Commonance. The commoners, or tenants, and inhabitants who had the right of common, or commoning in the open field, &c.

Commorancy (*commorantia*). An abiding, dwelling or continuing in any place. Commorancy consists in usually lying in a certain place. The residence together of several persons in a district.

Commorientes. Persons who die by the same accident, or upon the same occasion. When two or more persons perish in one shipwreck or other common calamity, there is no presumption in English law, derivable from age or sex, as to which survived the other or others. A different rule prevails in the French, and prevailed in the Civil, Law.

Commote. Conmote. A commote is a great seigniory or lordship, and may include one or divers manors.

Commutation. Conversion; the change of a penalty or punishment from a greater to a less; or giving one thing in satisfaction of another—as commuting tithes into a rent charge, copy-hold services into money payments, &c., annual payments into one lump payment.

Commutative contract. One in which each of the contracting parties gives and receives an equivalent.

Company. A society of persons joined in a common interect, for the purpose of carrying on some commercial or industrial undertaking.

Limited company. A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them, is called a company limited by shares. A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertke to contribute to the assets of the company in the event of its being wound up, is called a company limited by guarantee. See Act VII of 1913 (Companies), s. 5.

Unlimited company. A company not having any limit on the liability of its members.—*Ibid.*

Private company. A company which (i) by its articles—(*a*) restricts the right to transfer its shares; and (*b*) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty; and (*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company; and (ii) continues to observe such restrictions, limitations and prohibitions.—*Ibid*, *s.* 2 (13).

Compassing. Imagining or contriving. It signifies the purpose or design of the mind or will, and not, as in common speech, the carrying such design into effect.

Compassionate allowance. This is a mere voluntarly bounty, and cnnnot be considered as income.—*Stroud.*

Compearance. (*Sc. L.*) The appearance of a defendant.

Compelling discovery. *See* DISCOVERY.

Compensation. An allowance for the apprehension of criminals. Money paid by a railway company or other parties taking land under an Act of parliament to the owners and occupiers of such land. Money paid for damage caused by any wrong or breach of contract, to the person defrauded or injured. *See* DAMAGE. In Scotch Law, a set off or stoppage whereby a person who is sued for a debt demands that the debt may be compensated with what is owing to him by the creditor.

Compensation of offences (*compensatio criminum*). Where husband and wife had both been guilty of adultery, there was a *compensatio criminum*, *i e.*, the guilt of the one was neutralised by that of the other, and both were restored to the position of innocent persons.

Competency of witnesses. A phrase which denotes that any particular individual proposed to be called as a witness, is receivable as one; and in that meaning, it is commonly contrasted with the *credibility* of the witness. The grounds of incompetency were at one time very numerous, but have been gradually lessened by statute. See Act 1 of 1872 (Evi.), ss. 118 to 134.

Complaint. Complaint means the allegation made orally or in writing to a Magistrate, with a view to his taking action, under the Code of Criminal Procedure, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer.—*Act V of* 1898 (*Crim. Pro.*), *s.* 4 (*h*).

Complainant. One who urges a suit or commences a prosecution against another.

Complice. One who is united with others in an ill-design; an associate; a confederate; an accomplice.

Composition (*compositio*). An amicable arrangement or settlement of a law-suit. An agreement made between an insolvent debtor and his creditors, by which the latter accept a part of their debts in satisfaction of the whole. Such an agreement is called a *composition-deed.* Also an agreement made between the owner of lands and the incumbent with the consent of the ordinary and the patron, that the lands shall, for the future, be discharged from the payment of tithes by reason of some land or other real *recompense* given in lieu and satisfaction thereof; this is called a *real composition.*

Compoundable offences. The following offences punishable under the sections of the Indian Penal Code may be compounded by the persons aggrieved:—Uttering words, &c. with deliberate intent to wound the religious feelings of any person (s. 298). Causing hurt (ss. 323 and 334). Wrongfully restraining or confining any person (ss. 341-2). Assault or use of criminal force (ss. 352, 355, 358). Unlawful compulsory labour (s. 374). Mischief, when the only loss or damage caused is loss or damage to a private person (ss. 426-7). Criminal trespass (s. 447) House-trespass (s. 448). Criminal breach of contract of service (ss. 490-1-2). Adultery (s. 497). Enticing or taking way or detaining with a criminal intent a married woman (s. 498). Defamation (s. 500). Printing or engraving matter knowing it to be defamatory (s. 501). Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter (s. 502). Insult intended to provoke a breach of the peace (s. 504). Criminal intimidation, except when the offence is punishable with imprisonment for seven years (s. 506). The offences of causing hurt and grievous hurt, punishable under s. 324, 325, 335, 337 or 338 of the Indian Penal Code, may, with the permission of the court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused No offence shall be compounded, except as provided by this section.—*Act V of* 1898 (*Crim. Pro.*), *s.* 345.

Compounding. Arranging; coming to terms.

Compounding felony is where a party robbed or otherwise injured by a felony takes a reward from the felon, or, in case of theft, takes back the stolen goods, upon agreement not to prosecute for the felony; this offence is denominated *theftbote*, and is punishable. See ss. 213-4 of the Ind. Penal Code (XLV of 1860).

An agreement the object of which is to stifle a prosecution, *i. e.*, to compound an offence which cannot by law be compounded, is against public policy and cannot be recognized in any way by a court of law (*Dalsukhram* v. *De Bretton*, 6 Bom. L. R. 73).

Compounding misdemeanours signifies entering into an agreement not to prosecute, or to withdraw from a prosecution, for a misdemeanour. It is no offence to compound a misdemeanour (unless the offence is virtually an offence against the public), for the party injured may maintain an action to recover compensation in damages. *See* COMPOUNDABLE OFFENCES.

Compounding for a debt is where the debtor arranges for payment of his debt to the satisfaction of the creditor.

Comprint. A surreptitious printing of another booksellor's copy of a work, to make gain thereby, which was contrary to common law and is restrained by statue.—*Tomlins.*

Compromise (*compromissum*). An adjustment of claims in dispute by matual concession, either without resort to legal proceedings, or on the condition of abandoning such proceedings if already commenced, or by reference to arbitration.

Comptroller. One who observes and examines the accounts of collectors of public money.

Compurgator. One who by oath justifies another's innocence. *Compurgators* were the twelve persons who, when a clerk in holy orders was tried according to the ecclesiastical canons for any felony and made oath of his own innocence, were called upon to swear that they believed he spoke the truth. This was called *wager of law.* This has been supposed to be the origin of trial by jury. It was the rude form of evidence, the modern phase of which is *character-evidence*, *i. e.*, evidence as to the character of the accused.

Concealers (*concelators*). Such as were used to find out concealed lands, *i. e.*, such lands as were privily kept from the king by common persons, having nothing to show for their title or estate therein.

Concealment in equity. This is a branch of actual fraud consisting of *suppressio veri*, the other branch being misrepresentation, which consists in a *suggestio falsi*, and both branches constituting a fraud. But a man is not guilty of concealment if he merely does not tell or holds his tongue, unless he was under an obligation to speak out, *e. g.*, in effecting an insurance upon life or goods, in negotiating family compromises, in making purchases from a man's *cestuis qui trustent* of the trust property, and such like.—*Brown. See* FRAUD, MISREPRESENTATION.

Concluded. The word is often used in the sense of *estopped*, *prevented from.*

Conclusion (*conclusio*). This is when a man by his own act upon record has charged himself with a duty or other thing; a binding act. In this sense it is tantamount to *estoppel* It also means the end or later part of any declaration, pleading, replication, conveyance, &c.

Conclusion to the country. The conclusion of a pleading by which a party "puts himself to his country," that is, denies a material fact alleged by his opponent and appeals to the verdict of jury.

Conclusive proof. When one fact is declared by the Evidence Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.—*Act I of* 1872 (*Evi.*), *ss.* 4, 112, 113.

Concord (*concordia*). An agreement entered into betwen two or more persons, upon a trespass having been committed, by way of amends or satisfaction for the trespass. A compromise. Part of the process by which a fine of lands was levied prior to the abolition of *fines. See* FINE.

Concourse. *Concourse of actions* (Sc. *L.*), where a civil and criminal proceeding go on concurrently.

Concourse of Lord Advocate. The consent of the Lord Advocate to any proceeding to which his consent is necessary.

Concubinage (*concubinatus*). In common acceptation, the keeping of a harlot or concubine. In a legal sense it is used as an exception against a woman suing for dower as the widow of a deceased person, on the ground that she was a concubine and not the wife of the deceased.

Concurrent. Acting in conjunction; agreeing in the same act; contributing to the same event; contemporaneous.

Concurrent covenants. See COVENANT.

Concurrent jurisdiction. The jurisdiction of several different tribunals, both authorized to deal with the same subject matter at the choice of the suitor. Where a pleader resides within the limits of a cantonment, and practises as a pleader within the jurisdiction of a Small Cause Court, both the cantonment Magistrate and the Small CauseCourt judge have concurrent jurisdiction over him to the amounts respectively cognizable by them (*Shapurji Jehangir* v. *Richard Morgan*, Bom. H. C., A. C., 187).

Concurrent writs. Duplicate originals, or several writs running at the same time, for the same purpose, for service on, or arrest of, a person, when it is not known where he is to be found; or for service on several persons, as when there are several defendants to an action.

Condemnation money. The party who fails in a suit or action is sometimes said to be *condemned* in the action, whence the damage to which such failure has made him liable used to be frequently called *condemnation money.*

Condescendence. (*Sc. L.*) The allegation on which a suit is founded; corresponding to the *declaration* in an English action.

Condiction. A repetition.

Condition (*conditio*). A restraint annexed to a thing, so that by the non-performance, the party to it shall receive prejudice and loss; and by the performance, commodity and advantage. Or it is a restriction of men's acts, qualifying or suspending the same, and making them uncertain whether they shall take effect or not. Also it is defined to be what is referred to an uncertain chance, which may happen or not happen.

The term condition is used indifferently to mean either the event upon the happening of which an estate or an obligation is to commence or cease, or the provision or stipulation in the grant or will or contract that the estate or obligation shall depend upon the happening of the event.

Conditions in deed are express conditions.

Conditions in law are implied conditions.

Conditions inherent are such as descend to the heir with the land granted.

Conditions collateral are those which are annexed to any collateral act.

Conditions are likewise *affirmative* which consist of doing; *negative*, which consist of not doing; some are further said to be *restrictive*, for not doing a thing, and some *compulsory*, as that the lessee shall pay the rent, &c,

Also some conditions are *single*, to do one thing only; some *copulative*, to do divers things; and others *disjunctive*, where one thing of several is required to be done.

Conditions are generally classified as *conditions precedent*, which must be performed or satisfied before the estate or obligation can arise, and *conditions subsequent*, upon the performance or occurrence of which its continuance depends. *See* PROVISO.

A *condition precedent* is when a lease or estate is granted to one for life, upon condition that if the lessee pay to the lessor a certain sum at such a day, then he shall have fee simple, in this case the condition precedes the estate in fee; and on performance thereof gains the fee simple.

A *condition subsequent* is when a man grants to another his manor or estate in fee, upon condition that the grantee shall pay to him at such a day such a certain sum, or that his estate shall cease; here the condition is subsequent, and following the estate, and upon the performance thereof continues and preserves the same; so that a condition precedent does *get* and *gain* the thing or estate made upon condition by the performance of it, and a condition subsequent *keeps* and *continues* the estate by the performance of the condition.—*Tomlins.*

Conditional bond. *See* BOND.

Conditional fee. Otherwise called fee simple conditional, properly comprises every estate in fee simple granted upon condition. But the term is usually understood to refer to an estate restrained to some particular heirs, exclusive of others, as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral; or to the heirs male of his body, in exclusion of heirs female, whether lineal or collateral; which the judges of former days construed, not as an estate descendible to some particular heirs, but an estate upon *condition* that the land was to revert to the donor, if the donee had no heirs of his body. This construction of gifts of lands was put a stop to by the passing of the Statute of Westminster II (called the Statute *De Donis*) in 1285, which provided that thenceforth the will of the donor should be observed according to the form expressed in the charter of gift, and the judges determined that the donee had no longer a conditional fee simple, which became absolute the instant issue was born.

Conditional limitation. The phrase is used specially in the two following ways:—(1) Of an estate or interest in land so expressly defined and limited by words of its creation that it cannot endure for any longer time than till a particular contingency happens; that is, a *present* interest, to be divested on a *future* contingency. (2) Of a future use or interest limited to take effect upon a given contingency in derogation of a preceeding estate or interest. This is likewise called a *shifting* or *secondary* use and also an *executory interest*. It is a future estate to come into possession upon a given contingency. Thus, if land be granted to the use of A and his heirs until B returns from Rome, and then to the use of B and his heirs, A's estate is a conditional limitation of the first sort, and B's estate is a conditional limitation of the second sort above mentioned.—*Mozley.*

Conditional sale. *See* MORTGAGE.

Condonation. The pardoning of an offence The word, however, is specially used with reference to the course of conduct by which a husband or wife is held to have pardoned a matrimonial offence committed by the other; as if a husband takes his wife back, knowing that she has committed adultery. No adultery shall be deemed to have been condoned within the meaning of the Indian Divorce Act, 1869, unless where conjugal cohabitation has been resumed or continued.—*Act IV of 1869 (Divorce), s.* 14. The immediate effect of *condonation of adultery* is to bar the party condoning of his or her remedy for the offence in question. But a subsequent repetition of the crime revives the former offence and nullifies the intermediate act of condonation by the injured party.

Conduct-money. Money for the payment of the reasonable expenses of a witness at a trial.

Cone and key. The accounts and keys of

a house. To receive *cone* and *key* is to take the charge of a house.

Confederacy (*confederatio*). A combination of two or more persons to do some damage or injury to another, or to do any unlawful act.

Conference. A meeting between a counsel and solicitor to advise on the cause of their client. *See* CONSULTATION.

Confessing error. The consent by a party in whose favour judgment has been given that such judgment shall be reversed, on allegation by the opposite party of "error" in fact or in law.

Confession (*confessio*). An acknowledgment by a criminal of the offence charged against him when called upon to plead to the indictment. The word was also used in civil matters, as where a defendant confesses the plaintiff's right of action by giving him a *cognovit*; and the judgment thus passed is called *judgment by confession*.

The word 'confession' as used in the sections of the Evidence Act relating to confessions must not be construed as including a mere inculpatory admission which falls short of being an admission of guilt (*Empress* v. *Jagrup*, 5 All. W. N. 131). It must be a full and unqualified admission of the guilt of the person making it (*Re Kapur Singh*, 1 All. W. N. 20).

Confession of defence. Where defendant alleges a ground of defence arising since the commencement of the action, and if the plaintiff is of opinion that the new matter of defence will defeat his claim, he may instead of replying thereto, deliver a confession of such defence, and sign judgment for his costs up to the date of the delivery of such defence; also called *confession of plea*.

Confession and avoidance. Pleadings in *confession and avoidance* are those in which a party pleading *confesses* the facts as stated by his adversary, but alleges some new matter by way of *avoiding* the legal consequences claimed for them. As if a man be sued for assault, he may admit the assault, but plead that he committed it in self-defence. Of pleas of this nature, some are distinguished as pleas in *justification* or *excuse*, others as pleas in *discharge*. The former show some justification or excuse for the matter charged, the latter some discharge or release of that matter, as a plea of release in an action of covenant, wherein the defendant alleges that the plaintiff had, after the breach, released him from all breaches, &c. The effect of the former, therefore, is to show that the plaintiff never had any right of action, because the act charged was lawful; whilst the effect of the latter is to show that, though he once had a right of action, it is discharged or released by some matter subsequent.

Confidential communications. *See* PROFESSIONAL COMMUNICATIONS, PRIVILEGED COMMUNICATIONS.

Confident person. (*Sc. L.*) A person to whom land or other property is granted by voluntary or fraudulent conveyance. He is called "confident" or "confidential" person; the grantor may be supposed to place *confidence* in him. He corresponds to the "volunteer" of English lawyers.—*Mozley*.

Confirmation (*confirmatio*). A species of conveyance by which a voidable estate is made valid and unavoidable, or by which a particular estate is increased, or a possession made perfect. A confirmation is of a nature nearly allied to a release, the operative words being "have given, granted, ratified, approved and confirmed." A confirmation does not strengthen a *void* estate; for it may make a voidable or defeasible estate good, but it cannot work upon an estate that is *void* at law. The ratification by the archbishop of the election of a bishop by dean and chapter under the King's letter missive. The word, in Scotch law, corresponds to admittance, by the lord of a manor, of a new tenant, by which he *confirms* the interest which the new tenant has already acquired in consequence of the surrender to his use on the part of the previous tenant. Confirmation is also the Scotch term corresponding to *probate* and *letters of administration* in England.

Confiscation. Appropriation to the revenue of the Crown. It is not an unusual penalty for offences against laws, whether municipal or international; *e. g.*, for carrying contraband, for the offence of smuggling, &c. Goods appropriated to the fiscus or public treasury were called *bona confiscata*. The word confiscation does not necessarily import that the appropriation is to be made as a penalty for a crime, nor when used in that sense does it necessarily imply that the forfeiture has accrued upon conviction, but it may also be properly used as applicable to appropriation of property by Government as an act of State (*Raja Saligram* v. *Secretary of State*, 12 B. L R, P. C., 167).

Confiscation must be an act done in some way on the part of the government of the country where it takes place, and in some way beneficial to that government; though the proceeds may not, strictly speaking, be brought into its treasury (*Levin* v. *Allnutt*, 15 East, 269).—*Stroud*.

In English law, *forfeiture* is the term ordinarily applied to the exercise of this right.

Conflict of laws. The discordance between the laws of one country and another, as applied to the same subject-matter; as, for instance, in the case of a contract made in one country, and intended to be executed in another; or where a suit is brought in one country, and the parties, or one of them, belong more or less to another.

Conformity, Bill of. A bill filed by an executor or administer, against the creditors of the deceased, for the adjustment of their claims; so called because the plaintiff under-

takes by his bill to *conform* to the decree of the Court, whatever it may be, or the creditors were compelled by the decree to *conform* thereto.

Confusion. (*Sc. L.*; *Fr. L.*) A mode of extinguishing a debt, by the concurrence in the same person of two qualities which mutually destroy one another; as, where a creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either succeeds to the title of the other by any other mode of transfer.

Confusion of goods is where the goods of two persons are so intermixed that the several portions can be no longer distinguished; as if the money, corn or hay of one man be intermixed with that of another. In such cases, if the intermixture be by consent it is supposed that the proprietors have an interest in common, in proportion to their respective shares; but if the intermixture is wilful, without the approbation or knowledge of the other party, and the two properties cannot be separated, the law allows no remedy in such a case, but gives the entire property without any account to him whose original dominion or property is invaded and endeavoured to be rendered uncertain without his consent.—*Tomlins*. For the Indian law see Act IX of 1872 (Contract), ss. 155-7.

Congeable. Lawful, done with permission.

Conjoints. Persons married to each other.

Conjugal rights. The right which husband and wife have to each other's society, comfort and affection. A suit for the restitution of conjugal rights is a suit by a husband to compel his wife to live with him, or by a wife to compel the husband to take her back, and is brought when either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason.

Conjuration (*conjuratio*). A plot or compact made by men combining by oath to do any public harm. Having personal conference with the devil, or evil spirits, to know any secret or to effect any purpose.

Commote. *See* COMMOTE.

Connivance. Signifies shutting of the eye. It is used with reference to a person allowing another to commit an act or offence by pretending not to see it, especially with reference to a husband tacitly encouraging his wife to commit adultery, in order that he may obtain a divorce. Such connivance, if established, will deprive the husband of his remedy.—*Mozley*. See Act IV of 1869 (Divorce), s. 13

Conquest (*conquæstus*). The feudal term for purchase or acquisition. In Scotch law it signifies the coming to an estate by will, deed or other instrument, and is opposed to *descent*, or succession *ab intestato*. It also signifies an addition to a husband's estate which he is enabled to make during marriage.

Consanguinity (*consanguinitas*). Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.—*Act X of* 1865 (*Succession*), *s.* 20.

Lineal consanguinity. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line. Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great grandfather and great grandson in the third.—*Ibid.*, *s.* 21.

Collateral consanguinity. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.—*Ibid.*, *s.* 22. *See* AFFINITY.

Consent. An act of reason accompanied with deliberation. Consent supposes three things—physical power, a mental power, free and serious use of them. Hence it is that if consent be obtained by meditated imposition, circumvention, surprise or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.—*Wharton*. *See* CONTRACT. A consent is not such a consent as is intended by any section of the Indian Penal Code, if the consent is given by a person under fear or injury or under a misconception of fact, or if the person doing the act knows, or has reasons to believe, that the consent was given in consequence of such fear or misconception, or if the consent is given by a persons who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent, or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age. —*Act XLV of* 1860 (*Penal Code*), *s.* 90.

Consent decree. A decree passed by consent of both the parties.

A consent-decree will, except in cases of fraud or collusion, be binding on all parties thereto, so long as it subsists. The exceptional case of fraud or collusion will have to be specifically alleged and substantiated by the party setting it up (*Baikantha Nath* v. *Mohendra Nath*, 1 Cal. L. J. 65).

Judgment or order by consent. A judgment or order passed by consent of the parties,

Usually such a judgment or order is not appealable; and after it has been passed and entered, it cannot even be varied on the ground of mistake, unless for reasons sufficient to set aside the agreement.

Consent rule. An old proceeding in action of ejectment by which the tenant in possession bound himself to admit all fictions necessary under that action for trying the title to the land—everything, in fact, but the title.

Consequential loss, damage or injury. That arising *by consequence* or *collaterally* to one man from the culpable act or omission of another, and not directly and immediately upon it.

Consequential relief. *See* RELIEF.

Conservator. A protector, preserver or maintainer; or a standing arbitrator chosen and appointed as a guarantee, to compose and adjust differences that should arise between two parties, &c.

Conservators of the peace. Officers appointed by the common law for the maintenance of the peace. Some of the conservators of the peace had the power annexed to other offices which they held; others held it merely by itself. Those that were so *virtute officii* still continue, but the latter sort are superseded by the modern justices of the peace, first established in the reign of Edward III.

Conservator of the truce and safe conducts. An officer appointed by the king's letters patent to inquire of offences done against the king's truce and safe conducts upon the main sea, out of the liberties of the *Cinque Ports*.

Consideration (*consideratio*). The price, motive or matter of inducement of a contract. It must be lawful. When, at the desire of the promisor, the promissee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.—*Act IX of* 1872 (*Contract*), s. 2 (*d*). Any act of the plaintiff from which the defendant derives a benefit or advantage, or any labour, trouble, detriment, or inconvenience, performed, taken, or sustained by the plaintiff, however small the benefit or inconvenience may be, may suffice, in law, as a *consideration* to support a promise and to sustain an action *ex contractu*. A prejudice to the promisee incurred at the request of the promisor may be a consideration as well as a benefit to the promisor proceeding from the promisee; but this must be a prejudice on entering into the contract, not a prejudice from the breach of it. A promise without consideration will not support an action.—*Broom's Com. Law.*

Considerations are usually *valuable* (*i. e.*, for money or money's worth). Some considerations are merely *voluntary*, and others are *meritorious* (*i. e.*, for natural love and affection). Valuable and meritorious are sometimes both denoted by the phrase *good consideration*. A consideration, in regard to the time when it operates, is either *executed* or past, *i. e.*, already performed before the making of the defendant's promise, or *executory*, *i. e.*, something to be done or performed after the promise, or *concurrent*, as in the case of mutual promises, or *continuing*, *i. e.*, executed in part only. *See* VALUABLE CONSIDERATION, LAWFUL CONSIDERATION, GOOD CONSIDERATION.

Consignation. The payment of a thing or money by a debtor into the hands of a third person, either because the creditor refuses to accept it, or by prior special agreement between debtor and creditor, or under the authority of the court. It includes the depositing of money with a stakeholder.

Consignment. The sending of goods to another for sale or purchase; also the goods themselves so sent. *Consignor*, he who consigns the goods. *Consignee*, he to whom they are sent.

Consistory Court (*consistorium*). The Court of every diocesan bishop held in their several cathedrals for the trial of all ecclesiastical causes arising within their jurisdiction.

Consolidation (*consolidatio*). The uniting of two benefices into one The uniting the possession, occupancy or profits, &c., of land with the property, and *vice versa*. The fusing many Acts of Parliament into one.

Consolidation of actions. Where in the same Division of the High Court there are several pending actions instituted by the same plaintiff or plaintiffs against divers defendants—then if the question or questions, and consequently the evidence in proof or disproof of them, is substantially the same, the Court will, upon the application of the defendants, order the several actions to be consolidated. The application for such a consolidation rule is most frequently made in actions against underwriters upon policies of insurance.

Consolidation of mortgages or securities. The right of a mortgagee (whether original or by assignment) who holds more than one mortgage by the same mortgagor, though such mortgages may be of different properties and for distinct debts, to insist after the time for redemption has expired that the mortgagor shall not be allowed to redeem one without redeeming the others as well. The right is now abolished by s 17 of the Conveyancing Act 1881 (44 and 45 Vic. c. 41), and in India, by s. 61 of the Trans. of Pro. Act (IV of 1882).

The doctrine of consolidation depends upon a principal altogether different from that upon which *tacking* depends. Because in tacking, the right is to throw together several debts lent on the *same* estate, and to do so under the priority and protection afforded by the legal estate; but in consolidation, the right is to throw together on one estate several debts lent on *different* estates, and to do so without reference to any priority or protection afforded by the legal estate, but solely

upon the equitable maxim that he who seeks equity must do equity.

Conspiracy (*conspiratio*). A combination or agreemet between two or more persons to carry into effect a purpose hurtful to some individual, or to particular classes of the community, or to the public at large; and especially the offence of falsely and maliciously conspiring to indict an innocent man.—*Mozley.*

The gist of the offence of conspiracy is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not (*O'Connel* v. *The Queen*, 10 Cl. & F. 233). The offence has been held to consist in the conspiracy and not in the acts committed for carrying it into effect (*Queen* v. *Kenrick*, 5 Q. B. p. 61).

Conspiracy consists in a combination and agreement by persons to do some illegal act or to effect a legal purpose by illegal means, and the conspiracy is complete, if two or more than two should agree to do an illegal thing: *i. e.*, to effect something in itself illegal or to effect a lawful or indifferent thing by unlawful means. The mere presence of a person in a meeting of conspirators will not *per se* make him a conspirator (*Kalil Munda* v. *King-Emperor*, 28 Cal. 797).

Before 1913, conspiracy was not a substantive offence in India, but only a species of abetment, and the conspirators were chargeable for as many offences as there were offences abetted by conspiracy (*King-Emperor* v *Tirumal*; *King-Emperor* v. *Subbi Reddi*, 11 M. L. J. R. 241, *Kalil Munda* v. *King-Emperor*, 28 Cal. 797). But now, under s. 120 B of the Indian Penal Code (XLV of 1860, as inserted by the Indian Criminal Law Amendment Act VIII of 1913, s. 3), being a party to a criminal conspiracy is punishable as a distinct and substantive offence, and under s. 120 A of the same Code (as inserted by Act VIII of 1813, s. 3), criminal conspiracy is defined thus:—"When two or more persons agree to do, or cause to be done, (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. *Explanation.*—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

Constables Officers appointed to the duty of maintaining the peace, and bringing to justice those by whom it is infringed.

Constablewick, the jurisdiction of a constable; the place within which lie the duties of a constable.

Constitution. Any regular form or system of government. A particular law, ordinance, or regulation made by the authority of any superior. The word is also used of the enactments of the Roman Emperors.

Decree of constitution, in Scotch law, is a decree of which the extent of a debt or obligation is ascertained; or by which a debt is established against the heir or executor of the original debtor.

Construction. Interpretation. 'Construction' as applied to a document includes two things:—(1) the meaning of the words; (2) their legal effect or the effect which is to be given to them. The meaning of the words is a question of fact. The effect of the words is a question of law (*per* Lindlay, L J., *Chatenay* v. *Brazilian S. T. Co.*, 1891, 1 Q. B. p. 85).

Court of construction. A court of Equity or of Common Law, as the case may be, is called the Court of Construction with regard to wills, as opposed to the Court of Probate, whose duty is to decide whether an instrument be a will at all.

Constructive. This is an adjective nearly synonymous with the forced but too frequent sense of the word "implied," meaning that the act or thing to which if refers does not exist, though it is convenient for certain legal purposes, to assume that it does.— *Mozley.*

Constructive fraud is a fraud in the view of a court of equity, although it falls short of actual fraud. It is neither a fraudulent concealment (*suppressio viri*) nor a fraudulent misrepresentation (*suggestio falsi*); nevertheless it is construed to be a fraud—either (1) because it is contrary to the policy of the law or to general public policy, as in the case of marriage brokage contracts; or (2) because it arises from an abuse of the fiduciary relations, as in the cause of gifts from a client to his solicitor; or (3) because it has effects that are unconscionable as regards either the party immediately affected by the fraud or some third party, as in the case of *post obit* bonds. The alleged fraud may, however, be disproved, like every other presumption of the court, by extrinsic or other evidence to the contrary.—*Brown.*

Constructive murder. When murder is committed by several persons in furtherance of the common intention of all, each of such persons is liable for the murder in the same manner as if it were committed by him alone. —*Act XLV of* 1860 (*Penal Code*), *s.* 34. Under this principle, the persons who have not actually taken part in committing the murder, are considered as guilty of murder by construction of law, provided the act was committed by the others in furtherance of the common intention of all (*In the Matter of Golam Arfin*, 4. B. L. R., Ap., 47)

Constructive notice is notice imputed by construction of law. The knowledge which the law implies a party to have had, whether he actually had it or not; thus the law implies that an under lessee has knowledge of the contents of the head lease, whereas he very frequently has not. Whatever is suffi-

ciant to put any person of ordinary prudence on inquiry, is constructive notice of everything to which that inquiry might have led; thus if a man purchases land without any investigation of his landlord's title, he will be deemed to have *constructive notice* of very incumbrance which a proper investigation would have disclosed (*Ramcoomar* v. *John*, 11 B. L. R., P. C., 46.) A person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, s. 229.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 3.

Constructive offence. An offence by construction of law. An offence, for which a man is liable, and which he is deemed by the law to have committed, though in point of fact another actually committed it. For example, when a criminal act is done by several in furtherance of the cummon intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.—*Act XLV of* 1860 (*Penal Code*), *s.* 34. Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.—*Ibid.*, *s.* 114 —*Pro.*, *March 8th*, 1869(4Mad.H.C.R.37).

Constructive taking. Any act short of an actual taking of goods, by which a person shows an intention to convert them to his use, as if a person intrusted with the possession of goods deals with them contrary to the orders of the owner.

Constructive total loss. *See* ABANDONMENT.

Constructive treason, an attempt to establish treason by circumstantiality, and not by the simple genuine letter of the law; an act raised by forced and arbitary construction to the crime of treason, as the acroaching, or attempting to exercise, royal powers.

Constructive trust is a trust which is raised or created, *i. e.*, constructed by a court of equity without regard to the intention of the parties—in this respect differing from an express trust, which is founded upon the express intention, and from an implied or resulting trust, which is based upon the implied intention. Thus, a constructive trust may arise, where a person, who is only joint owner, permanently benefits an estate by repairs or improvements; for a lien or trust may arise in his favour in respect of the sum he has expended in such repairs or improvements. Other examples of constructive trusts are a vendor's lien for unpaid purchase money, and heir-of mortgagee's trust for next of kin.

Consul. An officer appointed by competent authority to reside in foreign countries, to facilitate and extend the commerce carried on between the subjects of the country which appoints him and those of the country or place in which he is to reside. There are usually a number of consuls in every maritime country, and they are usually subject to a chief consul, who is called the *consul general.* A consul is not clothed with the deplomatic character. He is not a public minister, nor entitled to the immunities of such.

Consultary response. The opinion of a court of law on a special case.

Consultation (*consultatio*). A writ whereby a cause, having been wrongfully removed by prohibition from an ecclesastical to a temporal court, is returned thither again. Also a meeting of two or more counsel, with the solicitors instructing them, for the purpose of deliberating or advising. *See* CONFERENCE.

Consummation. The completion of a thing.

Consummation of marriage. The completion of a marriage between two affianced persons by co-habitation; the effective sexual intercourse of newly married couple. Where this is impossible, it is a ground for nullity of morrirge, as distinguished from a divorce which implies a consummation.

Consummation of tenancy by curtesy, is when a husband upon his wife's death, becomes entitled to hold her lands in fee simple or fee tail of which she was seised during the marriage, for his own life, provided he has had issue by her, capable of inheriting. His estate becomes *initiate* upon the birth of a child, and *consummate* on the death of the wife. *See* CURTESY.

Contango. *See* CONTINUATION.

Contemner. One who has committed contempt of court.

Contemporaneous oral agreement. A sort of defence to an action on a written contract, the object of which is to get rid of the written coatract by showing that it is not the contract really entered into by the parties; but the evidence must be very powerful to induce the court to believe that the terms expressed are not the real ones (*Dada Honaji* v. *Babaji*, 2 Bom. H. C., A. C., 36).

When the terms of any contract, grant or other disposition of property have been proved according to s. 91 (of the Evidence Act), no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms, except under some special circumstances. *See* Act I of 1872 (Evi.), s. 92.

Contempt of Court (*contemptus*). A disobdience to the rules, orders, process, or dignity of a court which has power to punish for such offence by attachment. Contempts may be divided into acts of contempt committed *in* the Court and *out of* Court. Among

the former are all unseemly behaviour, as talking boisterously, applauding any part of the proceedings, refusing to be sworn or to answer a question as a witness, interfering with the business of the Court on the part of a person who has no right to do so, and refusing to acquiesce in the ruling of the Court, or speaking disrespectfully of or to the judge or jury or any other person, on the part of one who has a right to speak properly, *i. e.*, either of the parties or his representative. Among the latter (not mentioned above) is the attempting by intimidation to cause any suitor to discontinue his action, kidnapping or corrupting witnesses or attempting to do so, corrupting or attempting to corrupt jurors, obstructing or attempting to obstruct the officers of the Court on their way to their duties, speaking or writing disrespectfully of the authorities of the Court. One may be imprisoned for a contempt done in Court; but for contempt done out of Court, the individual is called upon to show cause why he should not be committed, and is allowed to file affidavits in the matter. Contempt is sometimes punished by a fine.—*Wharton.*

Any act done or writing published, calculated to bring a court or a judge of the court to contempt, or to lower his authority, or to obstruct or interfere with the due course of justice or the lawful process of the court, is a contempt of court. Judges and courts are alike open to criticism; and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, it is not a contempt of court (*In re Narsinha C. Kelkar*, 10 Bom. L. R. 1040; 33 Bom. 240).

Contenement (*contenementum*). A man's countenance or credit by reason of his freehold. A landowner's tenement is so called, when regarded as his means of support, *i. e.*, the lands are the same to the landholder, as his merchandize is to the merchant, or his wainage to the waggoner.

Contentious business. The business of legal practitioners when there is a contest, as opposed to *non-contentious business* when there is no such contest, the term is most frequently used in connection with obtaining probate or administration.

Contentious jurisdiction. The part of the jurisdiction of a court (chiefly a Probate Court) which is over matters in dispute, as opposed to its *voluntary* or non-contentious jurisdiction, which is merely concerned in doing what no one opposes.

Contents and Non-contents. The *contents* are those who, in the House of Lords, express their assent to a bill; the *non-contents* are those who dissent.

Contestation. An issue of controversy.

Contingency. An uncertain event.

Contingency with a double aspect, when one event only is expressed by the party and two events are clearly in his contemplation. This is a construction in favour of the intention, that the intention may not be frustrated. The expression sometimes used to denote the express limitation of one contingent remainder in substitution for another contingent remainder. As, if land be given to A for life, and if he have a son, then to that son in fee, and if he have no son, then to B in fee.

Double contingency. The law will not tolerate or recognise any estate or interest or right dependent upon a double possibility or double contingency. One of its application in law is the rule for the creation of contingent remainders in real estate which cannot be given to a person who is doubly unborn, *i. e.*, to the child of an unborn father. *See* POSSIBILITY

Contingent. Anything is *contingent* when it is liable to failure on the happening or non-happening of an event, condition or state of things.—*Stroud.*

Contingent contract. A contingent contract is a contract to do or not to do something if some event collateral to such contract does or does not happen. A contracts to pay B Rs. 10,000, if B's house is burnt. This is a contingent contract.—*Act IX of 1872 (Contract), s.* 31. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.— *Ibid., s.* 36.

Contingent interest. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified *uncertain* event, or, if a specified *uncertain* event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible. *Exception.*—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income, or so much thereof as may be necessary, to be applied for his benefit, such interest is not contingent.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 21. *See* VESTED INTEREST.

Contingent legacy. A legacy which is to vest in the legatee upon the happening of some specified event, *e. g.*, upon the legatee's marrying or attaining a certain age.

Contingent remainder. An estate in remainder upon a prior estate of freehold, *limited* to take effect, either to a dubious and uncertain person, or upon a dubious and uncertain event. Thus, if land be given to A, a bachelor, for life, and after his death to his eldest son, this remainder to the eldest son of A is *contingent*, as it is not certain whether A will have any son. So, if land be given to A for life, and after his death to B, in case C

shall then have returned from Rome, B's interest during A's life, until C shall have returned from Rome, is a *contingent* remainder. A contingent remainder is defined by Ferne (*Ferne on Contingent Remainders*) as a remainder limited 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 A contingent remainder (1) cannot take effect until the "prior particular estates" (*i.e.*, the interests for life, or otherwise, appointed to take effect before it) have come to an end; also (2) it cannot take effect unless the requisite *contingency* has happened. In the former respect it resembles a *vested remainder*, and differs from an *executory interest*. In the latter, it differs from a *vested remainder* and resembles an *executory interest*. It has the weakness of both these estates, and the strength of neither.—*Mozley*.

Contingent use. A use limited in a conveyance of land, which may or may not happen to vest, according to the *contingency* expressed in the limitation of the *use*. A *use* in *contingency* is such which by possibility may happen in possession, reversion, or remainder.—*Tomlins*.

Continual claim. *See* CLAIM.

Continuance. An adjournment of the proceedings in an action; or, more strictly, the entry on the record expressing the ground of the adjournment, and appointing the parties to re-appear at a given day. *Notice of continuance*, when notice of trial had been given, and the plaintiff was not ready to proceed, instead of countermanding his notice, he might continue it to any sitting by notice of trial by continuence. Continuances are not now entered on the record or otherwise.

Continuation. Settlements of accounts are made on the Stock Exchange once a fortnight. If a buyer of stock, &c., is unable to pay for it, or a seller is unable to produce it, they may, by agreement, *carry over* or *continue* the bargain until the next account day. It may be continued *even*; but, as a rule, in the former case the buyer pays a *contango*, which represents a fort-night's interest on the money he is unable or unwilling to pay; in the latter case the seller pays him a *back wardation* or fine for non-delivery.

Continuation, in Stock Exchange, means to sell and to agree to re-buy the same amount of stock at a future day at the same price, plus a sum for the accommodation. It is not a loan, but is a sale and an agreement for re purchase.—*Stroud*.

Continuing guarantee. *See* CONTRACT OF GUARANTEE.

Continuous easement. *See* EASEMENT.

Contraband. Something prohibited by *ban* or *edict;* a prohibited trade; such goods as are prohibited to be imported or exported, bought or sold, either by the laws of a particular state or by special treaties. The most usual application of the term is to such articles as are contraband of war, *i.e.*, munitions and such other articles of merchandise carried in a neutral vessel in time of war as are calculated to assist either of the two belligerents against the other. The latter belligerent is entitled to seize such articles *in transitu*, and in certain cases even to confiscate the ship in which they are carried.

Contracausator. A criminal; one prosecuted for a crime.

Contract (*contractus*). A contract is defined by Cowel as a covenant or agreement with a lawful consideration or cause, and Blackstone defines it as an agreement upon sufficient consideration to do or not to do a particular thing

An agreement enforceable by law is a contract.—*Act IX of* 1872 (*Contract*), *s.* 2 (*h*).

All agreements are contracts if they are made by the *free consent* of parties *competent to contract*, for a *lawful consideration*, and with a *lawful object*, and are not expressly declared to be void under the Contract Act, 1872. Nothing herein contained shall affect any law in force in British India, and not hereby (*i.e.*, by Act IX of 1872) expressly repealed by which any contract is required to be made in writing, or in the presence of witnesses, or any law relating to the registration of documents. —*Ibid.*, *s.* 10.

Who are competent to contract. Every person is competent to contract who is of the age of *majority* according to the law to which he is subject and who is of *sound mind*, and is not *disqualified* from contracting by any law to which he is subject.—*Ibid.*, *s.* 11.

Sound mind. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it, and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.—*Ibid.*, *s.* 12.

Consent. Two or more persons are said to consent when they agree upon the same thing in the same sense.—*Ibid.*, *s.* 13.

Free consent. Consent is said to be free when it is not caused by—(1) Coercion, or (2) Undue influence, or (3) Fraud, or (4) Misrepresentation, or (5) Mistake. Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.—*Ibid.*, *s.* 14.

Coercion. Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter

Condescendence. (*Sc. L.*) The allegation on which a suit is founded; corresponding to the *declaration* in an English action.

Condiction. A repetition.

Condition (*conditio*). A restraint annexed to a thing, so that by the non performance, the party to it shall receive prejudice and loss; and by the performance, commodity and advantage. Or it is a restriction of men's acts, qualifying or suspending the same, and making them uncertain whether they shall take effect or not. Also it is defined to be what is referred to an uncertain chance, which may happen or not happen.

The term condition is used indifferently to mean either the event upon the happening of which an estate or an obligation is to commence or cease, or the provision or stipulation in the grant or will or contract that the estate or obligation shall depend upon the happening of the event.

Conditions in deed are express conditions.

Conditions in law are implied conditions.

Conditions inherent are such as descend to the heir with the land granted.

Conditions collateral are those which are annexed to any collateral act.

Conditions are likewise *affirmative* which consist of doing; *negative*, which consist of not doing; some are further said to be *restrictive*, for not doing a thing; and some *compulsory*, as that the lessee shall pay the rent, &c,

Also some conditions are *single*, to do one thing only, some *copulative*, to do divers things; and others *disjunctive*, where one thing of several is required to be done.

Conditions are generally classified as *conditions precedent*, which must be performed or satisfied before the estate or obligation can arise, and *conditions subsequent*, upon the performance or occurrence of which its continuance depends. *See* PROVISO.

A *condition precedent* is when a lease or estate is granted to one for life, upon condition that if the lessee pay to the lessor a certain sum at such a day, then he shall have fee simple; in this case the condition precedes the estate in fee; and on performance thereof gains the fee simple.

A *condition subsequent* is when a man grants to another his manor or estate in fee, upon condition that the grantee shall pay to him at such a day such a certain sum, or that his estate shall cease; here the condition is subsequent, and following the estate, and upon the performance thereof continues and preserves the same; so that a condition precedent does *get* and *gain* the thing or estate made upon condition by the performance of it, and a condition subsequent *keeps* and *continues* the estate by the performance of the condition.—*Tomlins.*

Conditional bond. *See* BOND.

Conditional fee. Otherwise called fee simple conditional, properly comprises every estate in fee simple granted upon condition. But the term is usually understood to refer to an estate restrained to some particular heirs, exclusive of others, as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral; or to the heirs male of his body, in exclusion of heirs female, whether lineal or collateral; which the judges of former days construed, not as an estate descendible to some particular heirs, but an estate upon *condition* that the land was to revert to the donor, if the donee had no heirs of his body. This construction of gifts of lands was put a stop to by the passing of the Statute of Westminster II (called the statute *De Donis*) in 1285, which provided that thenceforth the will of the donor should be observed according to the form expressed in the charter of gift, and the judges determined that the donee had no longer a conditional fee simple, which became absolute the instant issue was born.

Conditional limitation. The phrase is used specially in the two following ways:—(1) Of an estate or interest in land so expressly defined and limited by words of its creation that it cannot endure for any longer time than till a particular contingency happens, that is, a *present* interest, to be divested on a *future* contingency. (2) Of a future use or interest limited to take effect upon a given contingency in derogation of a preceeding estate or interest. This is likewise called a *shifting* or *secondary* use and also an *executory interest*. It is a future estate to come into possession upon a given contingency. Thus, if land be granted to the use of A and his heirs until B returns from Rome, and then to the use of B and his heirs, A's estate is a conditional limitation of the first sort, and B's estate is a conditional limitation of the second sort above mentioned.—*Mozley.*

Conditional sale. *See* MORTGAGE.

Condonation. The pardoning of an offence The word, however, is specially used with reference to the course of conduct by which a husband or wife is held to have pardoned a matrimonial offence committed by the other; as if a husband takes his wife back, knowing that she has committed adultery. No adultery shall be deemed to have been condoned within the meaning of the Indian Divorce Act, 1869, unless where conjugal cohabitation has been resumed or continued.—*Act IV of 1869 (Divorce), s.* 14. The immediate effect of *condonation of adultery* is to bar the party condoning of his or her remedy for the offence in question. But a subsequent repetition of the crime revives the former offence and nullifies the intermediate act of condonation by the injured party.

Conduct-money. Money for the payment of the reasonable expenses of a witness at a trial.

Cone and key. The accounts and keys of

a house. To receive *cone* and *key* is to take the charge of a house.

Confederacy (*confederatio*). A combination of two or more persons to do some damage or injury to another, or to do any unlawful act.

Conference. A meeting between a counsel and solicitor to advise on the cause of their client. *See* CONSULTATION.

Confessing error. The consent by a party in whose favour judgment has been given that such judgment shall be reversed, on allegation by the opposite party of "error" in fact or in law.

Confession (*confessio*). An acknowledgment by a criminal of the offence charged against him when called upon to plead to the indictment. The word was also used in civil matters, as where a defendant confesses the plaintiff's right of action by giving him a *cognovit*; and the judgment thus passed is called *judgment by confession*.

The word 'confession' as used in the sections of the Evidence Act relating to confessions must not be construed as including a mere inculpatory admission which falls short of being an admission of guilt (*Empress* v. *Jagrup*, 5 All. W. N. 131). It must be a full and unqualified admission of the guilt of the person making it (*Re Kapur Singh*, 1 All. W. N. 20).

Confession of defence. Where defendant alleges a ground of defence arising since the commencement of the action, and if the plaintiff is of opinion that the new matter of defence will defeat his claim, he may instead of replying thereto, deliver a confession of such defence, and sign judgment for his costs up to the date of the delivery of such defence; also called *confession of plea*.

Confession and avoidance. Pleadings in *confession and avoidance* are those in which a party pleading *confesses* the facts as stated by his adversary, but alleges some new matter by way of *avoiding* the legal consequences claimed for them. As if a man be sued for assault, he may admit the assault, but plead that he committed it in self-defence. Of pleas of this nature, some are distinguished as pleas in *justification* or *excuse*, others as pleas in *discharge*. The former show some justification or excuse for the matter charged, the latter some discharge or release of that matter, as a plea of release in an action of covenant, wherein the defendant alleges that the plaintiff had, after the breach, released him from all breaches, &c. The effect of the former, therefore, is to show that the plaintiff never had any right of action, because the act charged was lawful; whilst the effect of the latter is to show that, though he once had a right of action, it is discharged or released by some matter subsequent.

Confidential communications. *See* PROFESSIONAL COMMUNICATIONS, PRIVILEGED COMMUNICATIONS.

Confident person. (*Sc. L.*) A person to whom land or other property is granted by voluntary or fraudulent conveyance. He is called "confident" or "confidential" person; the grantor may be supposed to place *confidence* in him. He corresponds to the "volunteer" of English lawyers.—*Mozley.*

Confirmation (*confirmatio*). A species of conveyance by which a voidable estate is made valid and unavoidable, or by which a particular estate is increased, or a possession made perfect. A confirmation is of a nature nearly allied to a release, the operative words being "have given, granted, ratified, approved and confirmed." A confirmation does not strengthen a *void* estate; for it may make a voidable or defeasible estate good, but it cannot work upon an estate that is *void* at law. The ratification by the archbishop of the election of a bishop by dean and chapter under the King's letter missive. The word, in Scotch law, corresponds to admittance, by the lord of a manor, of a new tenant, by which he *confirms* the interest which the new tenant has already acquired in consequence of the surrender to his use on the part of the previous tenant. Confirmation is also the Scotch term corresponding to *probate* and *letters of administration* in England.

Confiscation. Appropriation to the revenue of the Crown. It is not an unusual penalty for offences against laws, whether municipal or international, *e. g.*, for carrying contraband, for the offence of smuggling, &c. Goods appropriated to the fiscus or public treasury were called *bona confiscata*. The word confiscation does not necessarily import that the appropriation is to be made as a penalty for a crime, nor when used in that sense does it necessarily imply that the forfeiture has accrued upon conviction, but it may also be properly used as applicable to appropriation of property by Government as an act of State (*Raja Saligram* v. *Secretary of State*, 12 B. L. R., P. C., 167).

Confiscation must be an act done in some way on the part of the government of the country where it takes place, and in some way beneficial to that government, though the proceeds may not, strictly speaking, be brought into its treasury (*Levin* v. *Allnutt*, 15 East, 269).—*Stroud.*

In English law, *forfeiture* is the term ordinarily applied to the exercise of this right.

Conflict of laws. The discordance between the laws of one country and another, as applied to the same subject-matter; as, for instance, in the case of a contract made in one country, and intended to be executed in another; or where a suit is brought in one country, and the parties, or one of them, belong more or less to another.

Conformity, Bill of. A bill filed by an executor or administer, against the creditors of the deceased, for the adjustment of their claims; so called because the plaintiff under-

takes by his bill to *conform* to the decree of the Court, whatever it may be, or the creditors were compelled by the decree to *conform* thereto.

Confusion. (*Sc. L.*; *Fr. L.*) A mode of extinguishing a debt, by the concurrence in the same person of two qualities which mutually destroy one another, as, where a creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either succeeds to the title of the other by any other mode of transfer.

Confusion of goods is where the goods of two persons are so intermixed that the several portions can be no longer distinguished; as if the money, corn or hay of one man be intermixed with that of another. In such cases, if the intermixture be by consent it is supposed that the proprietors have an interest in common, in proportion to their respective shares; but if the intermixture is wilful, without the approbation or knowledge of the other party, and the two properties cannot be separated, the law allows no remedy in such a case, but gives the entire property without any account to him whose original dominion or property is invaded and endeavoured to be rendered uncertain without his consent.—*Tomlins*. For the Indian law see Act IX of 1872 (Contract), ss. 155-7.

Congeable. Lawful, done with permission.

Conjoints. Persons married to each other.

Conjugal rights. The right which husband and wife have to each other's society, comfort and affection. A suit for the restitution of conjugal rights is a suit by a husband to compel his wife to live with him, or by a wife to compel the husband to take her back, and is brought when either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason.

Conjuration (*conjuratio*). A plot or compact made by men combining by oath to do any public harm. Having personal conference with the devil, or evil spirits, to know any secret or to effect any purpose.

Conmote. *See* COMMOTE.

Connivance. Signifies shutting of the eye. It is used with reference to a person allowing another to commit an act or offence by pretending not to see it, especially with reference to a husband tacitly encouraging his wife to commit adultery, in order that he may obtain a divorce. Such connivance, if established, will deprive the husband of his remedy.—*Mozley*. See Act IV of 1869 (Divorce), s. 13

Conquest (*conquæstus*). The feudal term for purchase or acquisition. In Scotch law it signifies the coming to an estate by will, deed or other instrument, and is opposed to *descent*, or succession *ab intestato*. It also signifies an addition to a husband's estate which he is enabled to make during marriage.

Consanguinity (*consanguinitas*). Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.—*Act X of* 1865 (*Succession*), *s.* 20.

Lineal consanguinity. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line. Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great grandfather and great grandson in the third.—*Ibid.*, *s.* 21.

Collateral consanguinity. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.—*Ibid.*, *s.* 22. *See* AFFINITY.

Consent. An act of reason accompanied with deliberation. Consent supposes three things—physical power, a mental power, free and serious use of them. Hence it is that if consent be obtained by meditated imposition, circumvention, surprise or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.—*Wharton*. *See* CONTRACT. A consent is not such a consent as is intended by any section of the Indian Penal Code, if the consent is given by a person under fear or injury or under a misconception of fact, or if the person doing the act knows, or has reasons to believe, that the consent was given in consequence of such fear or misconception; or if the consent is given by a persons who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent, or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age. —*Act XLV of* 1860 (*Penal Code*), *s.* 90.

Consent decree. A decree passed by consent of both the parties.

A consent-decree will, except in cases of fraud or collusion, be binding on all parties thereto, so long as it subsists. The exceptional case of fraud or collusion will have to be specifically alleged and substantiated by the party setting it up (*Baikantha Nath* v. *Mohendra Nath*, 1 Cal. L. J. 65).

Judgment or order by consent. A judgment or order passed by consent of the parties,

Usually such a judgment or order is not appealable; and after it has been passed and entered, it cannot even be varied on the ground of mistake, unless for reasons sufficient to set aside the agreement.

Consent rule. An old proceeding in action of ejectment by which the tenant in possession bound himself to admit all fictions necessary under that action for trying the title to the land—everything, in fact, but the title.

Consequential loss, damage or injury. That arising *by consequence* or *collaterally* to one man from the culpable act or omission of another, and not directly and immediately upon it.

Consequential relief. *See* RELIEF.

Conservator. A protector, preserver or maintainer; or a standing arbitrator chosen and appointed as a guarantee, to compose and adjust differences that should arise between two parties, &c.

Conservators of the peace. Officers appointed by the common law for the maintenance of the peace. Some of the conservators of the peace had the power annexed to other offices which they held; others held it merely by itself. Those that were so *virtute officii* still continue, but the latter sort are superseded by the modern justices of the peace, first established in the reign of Edward III.

Conservator of the truce and safe conducts. An officer appointed by the king's letters patent to inquire of offences done against the king's truce and safe conducts upon the main sea, out of the liberties of the *Cinque Ports.*

Consideration (*consideratio*). The price, motive or matter of inducement of a contract. It must be lawful. When, at the desire of the promisor, the promissee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.—*Act IX of* 1872 (*Contract*), *s.* 2 (*d*). Any act of the plaintiff from which the defendant derives a benefit or advantage, or any labour, trouble, detriment, or inconvenience, performed, taken, or sustained by the plaintiff, however small the benefit or inconvenience may be, may suffice, in law, as a *consideration* to support a promise and to sustain an action *ex contractu*. A prejudice to the promisee incurred at the request of the promisor may be a consideration as well as a benefit to the promisor proceeding from the promisee; but this must be a prejudice on entering into the contract, not a prejudice from the breach of it. A promise without consideration will not support an action.—*Broom's Com. Law.*

Considerations are usually *valuable* (*i. e.*, for money or money's worth). Some considerations are merely *voluntary*, and others are *meritorious* (*i. e.*, for natural love and affection). Valuable and meritorious are sometimes both denoted by the phrase *good consideration.* A consideration, in regard to the time when it operates, is either *executed* or past, *i. e.*, already performed before the making of the defendant's promise, or *executory*, *i. e.*, something to be done or performed after the promise, or *concurrent*, as in the case of mutual promises, or *continuing*, *i. e.*, executed in part only. *See* VALUABLE CONSIDERATION, LAWFUL CONSIDERATION, GOOD CONSIDERATION.

Consignation. The payment of a thing or money by a debtor into the hands of a third person, either because the creditor refuses to accept it, or by prior special agreement between debtor and creditor, or under the authority of the court. It includes the depositing of money with a stakeholder.

Consignment. The sending of goods to another for sale or purchase; also the goods themselves so sent. *Consignor*, he who consigns the goods. *Consignee*, he to whom they are sent.

Consistory Court (*consistorium*). The Court of every diocesan bishop held in their several cathedrals for the trial of all ecclesiastical causes arising within their jurisdiction.

Consolidation (*consolidatio*). The uniting of two benefices into one The uniting the possession, occupancy or profits, &c., of land with the property, and *vice versa.* The fusing many Acts of Parliament into one.

Consolidation of actions. Where in the same Division of the High Court there are several pending actions instituted by the same plaintiff or plaintiffs against divers defendants—then if the question or questions, and consequently the evidence in proof or disproof of them, is substantially the same, the Court will, upon the application of the defendants, order the several actions to be consolidated. The application for such a consolidation rule is most frequently made in actions against underwriters upon policies of insurance.

Consolidation of mortgages or securities. The right of a mortgagee (whether original or by assignment) who holds more than one mortgage by the same mortgagor, though such mortgages may be of different properties and for distinct debts, to insist after the time for redemption has expired that the mortgagor shall not be allowed to redeem one without redeeming the others as well. The right is now abolished by s 17 of the Conveyancing Act 1881 (44 and 45 Vic. c. 41), and in India, by s. 61 of the Trans. of Pro. Act (IV of 1882).

The doctrine of consolidation depends upon a principal altogether different from that upon which *tacking* depends. Because in tacking, the right is to throw together several debts lent on the *same* estate, and to do so under the priority and protection afforded by the legal estate; but in consolidation, the right is to throw together on one estate several debts lent on *different* estates, and to do so without reference to any priority or protection afforded by the legal estate, but solely

upon the equitable maxim that he who seeks equity must do equity.

Conspiracy (*conspiratio*). A combination or agreemet between two or more persons to carry into effect a purpose hurtful to some individual, or to particular classes of the community, or to the public at large; and especially the offence of falsely and maliciously conspiring to indict an innocent man.—*Mozley.*

The gist of the offence of conspiracy is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not (*O' Connel* v. *The Queen*, 10 Cl. & F 233). The offence has been held to consist in the conspiracy and not in the acts committed for carrying it into effect (*Queen* v. *Kenrick*, 5 Q. B. p. 61).

Conspiracy consists in a combination and agreement by persons to do some illegal act or to effect a legal purpose by illegal means, and the conspiracy is complete, if two or more than two should agree to do an illegal thing: *i. e.*, to effect something in itself illegal or to effect a lawful or indifferent thing by unlawful means. The mere presence of a person in a meeting of conspirators will not *per se* make him a conspirator (*Kalil Munda* v. *King-Emperor*, 28 Cal. 797).

Before 1913, conspiracy was not a substantive offence in India, but only a species of abetment, and the conspirators were chargeable for as many offences as there were offences abetted by conspiracy (*King-Emperor* v *Tirumal*; *King-Emperor* v. *Subbi Reddi*, 11 M. L. J. R. 241, *Kalil Munda* v. *King-Emperor*, 28 Cal. 797). But now, under s. 120 B of the Indian Penal Code (XLV of 1860, as inserted by the Indian Criminal Law Amendment Act VIII of 1913, s. 3), being a party to a criminal conspiracy is punishable as a distinct and substantive offence, and under s. 120 A of the same Code (as inserted by Act VIII of 1813, s. 3), criminal conspiracy is defined thus:—"When two or more persons agree to do, or cause to be done, (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. *Explanation.*—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

Constables Officers appointed to the duty of maintaining the peace, and bringing to justice those by whom it is infringed.

Constablewick, the jurisdiction of a constable; the place within which lie the duties of a constable.

Constitution. Any regular form or system of government. A particular law, ordinance, or regulation made by the authority of any superior. The word is also used of the enactments of the Roman Emperors.

Decree of constitution, in Scotch law, is a decree of which the extent of a debt or obligation is ascertained; or by which a debt is established against the heir or executor of the original debtor.

Construction. Interpretation. 'Construction' as applied to a document includes two things:—(1) the meaning of the words; (2) their legal effect or the effect which is to be given to them. The meaning of the words is a question of fact. The effect of the words is a question of law (*per* Lindlay, L J., *Chatenay* v. *Brazilian S. T. Co.*, 1891, 1 Q. B. p. 85).

Court of construction. A court of Equity or of Common Law, as the case may be, is called the Court of Construction with regard to wills, as opposed to the Court of Probate, whose duty is to decide whether an instrument be a will at all.

Constructive. This is an adjective nearly synonymous with the forced but too frequent sense of the word "implied," meaning that the act or thing to which if refers does not exist, though it is convenient for certain legal purposes, to assume that it does.— *Mozley.*

Constructive fraud is a fraud in the view of a court of equity, although it falls short of actual fraud. It is neither a fraudulent concealment (*suppressio viri*) nor a fraudulent misrepresentation (*suggestio falsi*), nevertheless it is construed to be a fraud—either (1) because it is contrary to the policy of the law or to general public policy, as in the case of marriage brokage contracts; or (2) because it arises from an abuse of the fiduciary relations, as in the cause of gifts from a client to his solicitor; or (3) because it has effects that are unconscionable as regards either the party immediately affected by the fraud or some third party, as in the case of *post obit* bonds. The alleged fraud may, however, be disproved, like every other presumption of the court, by extrinsic or other evidence to the contrary.—*Brown.*

Constructive murder. When murder is committed by several persons in furtherance of the common intention of all, each of such persons is liable for the murder in the same manner as if it were committed by him alone. —*Act XLV of* 1860 (*Penal Code*), *s.* 34. Under this principle, the persons who have not actually taken part in committing the murder, are considered as guilty of murder by construction of law, provided the act was committed by the others in furtherance of the common intention of all (*In the Matter of Golam Arjin*, 4. B. L. R., Ap., 47)

Constructive notice is notice imputed by construction of law. The knowledge which the law implies a party to have had, whether he actually had it or not, thus the law implies that an under lessee has knowledge of the contents of the head lease, whereas he very frequently has not. Whatever is suffi-

ciant to put any person of ordinary prudence on inquiry, is constructive notice of everything to which that inquiry might have led; thus if a man purchases land without any investigation of his landlord's title, he will be deemed to have *constructive notice* of very incumbrance which a proper investigation would have disclosed (*Ramcoomar* v. *John*, 11 B. L. R., P. C., 46.) A person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, s. 229.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 3.

Constructive offence. An offence by construction of law. An offence, for which a man is liable, and which he is deemed by the law to have committed, though in point of fact another actually committed it. For example, when a criminal act is done by several in furtherance of the cummon intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.—*Act XLV of* 1860 (*Penal Code*), *s.* 34. Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.—*Ibid.*, *s.* 114 —*Pro.*, *March 8th*, 1869(4Mad.H.C.R.37).

Constructive taking. Any act short of an actual taking of goods, by which a person shows an intention to convert them to his use, as if a person intrusted with the possession of goods deals with them contrary to the orders of the owner.

Constructive total loss. *See* ABANDONMENT

Constructive treason, an attempt to establish treason by circumstantiality, and not by the simple genuine letter of the law; an act raised by forced and arbitary construction to the crime of treason, as the acroaching, or attempting to exercise, royal powers.

Constructive trust is a trust which is raised or created, *i. e.*, constructed by a court of equity without regard to the intention of the parties—in this respect differing from an express trust, which is founded upon the express intention, and from an implied or resulting trust, which is based upon the implied intention. Thus, a constructive trust may arise, where a person, who is only joint owner, permanently benefits an estate by repairs or improvements; for a lien or trust may arise in his favour in respect of the sum he has expended in such repairs or improvements. Other examples of constructive trusts are a vendor's lien for unpaid purchase money, and heir-of mortgagee's trust for next of kin.

Consul. An officer appointed by competent authority to reside in foreign countries, to facilitate and extend the commerce carried on between the subjects of the country which appoints him and those of the country or place in which he is to reside. There are usually a number of consuls in every maritime country, and they are usually subject to a chief consul, who is called the *consul general*. A consul is not clothed with the deplomatic character. He is not a public minister, nor entitled to the immunities of such.

Consultary response. The opinion of a court of law on a special case.

Consultation (*consultatio*). A writ whereby a cause, having been wrongfully removed by prohibition from an ecclesastical to a temporal court, is returned thither again. Also a meeting of two or more counsel, with the solicitors instructing them, for the purpose of deliberating or advising. *See* CONFERENCE.

Consummation. The completion of a thing.

Consummation of marriage. The completion of a marriage between two affianced persons by co-habitation, the effective sexual intercourse of newly married couple. Where this is impossible, it is a ground for nullity of morrirge, as distinguished from a divorce which implies a consummation.

Consummation of tenancy by curtesy, is when a husband upon his wife's death, becomes entitled to hold her lands in fee simple or fee tail of which she was seised during the marriage, for his own life, provided he has had issue by her, capable of inheriting. His estate becomes *initiate* upon the birth of a child, and *consummate* on the death of the wife. *See* CURTESY.

Contango. *See* CONTINUATION.

Contemner. One who has committed contempt of court.

Contemporaneous oral agreement. A sort of defence to an action on a written contract, the object of which is to get rid of the written contract by showing that it is not the contract really entered into by the parties; but the evidence must be very powerful to induce the court to believe that the terms expressed are not the real ones (*Dada Honaji* v. *Babaji*, 2 Bom. H. C., A. C., 36).

When the terms of any contract, grant or other disposition of property have been proved according to s. 91 (of the Evidence Act), no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms, except under some special circumstances. *See* Act I of 1872 (Evi.), s. 92.

Contempt of Court (*contemptus*). A disobdience to the rules, orders, process, or dignity of a court which has power to punish for such offence by attachment. Contempts may be divided into acts of contempt committed *in* the Court and *out of* Court. Among

the former are all unseemly behaviour, as talking boisterously, applauding any part of the proceedings, refusing to be sworn or to answer a question as a witness, interfering with the business of the Court on the part of a person who has no right to do so, and refusing to acquiesce in the ruling of the Court, or speaking disrespectfully of or to the judge or jury or any other person, on the part of one who has a right to speak properly, *i. e.*, either of the parties or his representative. Among the latter (not mentioned above) is the attempting by intimidation to cause any suitor to discontinue his action, kidnapping or corrupting witnesses or attempting to do so, corrupting or attempting to corrupt jurors, obstructing or attempting to obstruct the officers of the Court on their way to their duties, speaking or writing disrespectfully of the authorities of the Court. One may be imprisoned for a contempt done in Court; but for contempt done out of Court, the individual is called upon to show cause why he should not be committed, and is allowed to file affidavits in the matter. Contempt is sometimes punished by a fine.—*Wharton.*

Any act done or writing published, calculated to bring a court or a judge of the court to contempt, or to lower his authority, or to obstruct or interfere with the due course of justice or the lawful process of the court, is a contempt of court. Judges and courts are alike open to criticism; and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, it is not a contempt of court (*In re Narsinha C. Kelkar*, 10 Bom. L. R. 1040; 33 Bom. 240).

Contenement (*contenementum*). A man's countenance or credit by reason of his freehold. A landowner's tenement is so called, when regarded as his means of support, *i. e.*, the lands are the same to the landholder, as his merchandize is to the merchant, or his wainage to the waggoner.

Contentious business. The business of legal practitioners when there is a contest, as opposed to *non-contentious business* when there is no such contest; the term is most frequently used in connection with obtaining probate or administration.

Contentious jurisdiction. The part of the jurisdiction of a court (chiefly a Probate Court) which is over matters in dispute, as opposed to its *voluntary* or non-contentious jurisdiction, which is merely concerned in doing what no one opposes.

Contents and Non-contents. The *contents* are those who, in the House of Lords, express their assent to a bill, the *non-contents* are those who dissent.

Contestation. An issue of controversy.

Contingency. An uncertain event.

Contingency with a double aspect, when one event only is expressed by the party and two events are clearly in his contemplation. This is a construction in favour of the intention, that the intention may not be frustrated. The expression sometimes used to denote the express limitation of one contingent remainder in substitution for another contingent remainder. As, if land be given to A for life, and if he have a son, then to that son in fee, and if he have no son, then to B in fee.

Double contingency. The law will not tolerate or recognise any estate or interest or right dependent upon a double possibility or double contingency. One of its application in law is the rule for the creation of contingent remainders in real estate which cannot be given to a person who is doubly unborn, *i. e.*, to the child of an unborn father. *See* POSSIBILITY

Contingent. Anything is *contingent* when it is liable to failure on the happening or non-happening of an event, condition or state of things.—*Stroud.*

Contingent contract. A contingent contract is a contract to do or not to do something if some event collateral to such contract does or does not happen. A contracts to pay B Rs. 10,000, if B's house is burnt. This is a contingent contract.—*Act IX of 1872 (Contract), s. 31.* Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.— *Ibid., s. 36.*

Contingent interest. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified *uncertain* event, or, if a specified *uncertain* event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event; in the latter, when the happening of the event becomes impossible. *Exception.*—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income, or so much thereof as may be necessary, to be applied for his benefit, such interest is not contingent.—*Act IV of 1882 (Trans. of Pro.), s. 21. See* VESTED INTEREST.

Contingent legacy. A legacy which is to vest in the legatee upon the happening of some specified event, *e. g.*, upon the legatee's marrying or attaining a certain age.

Contingent remainder. An estate in remainder upon a prior estate of freehold, *limited* to take effect, either to a dubious and uncertain person, or upon a dubious and uncertain event. Thus, if land be given to A, a bachelor, for life, and after his death to his eldest son, this remainder to the eldest son of A is *contingent*, as it is not certain whether A will have any son. So, if land be given to A for life, and after his death to B, in case C

shall then have returned from Rome, B's interest during A's life, until C shall have returned from Rome, is a *contingent* remainder. A contingent remainder is defined by Ferne (*Ferne on Contingent Remainders*) as a remainder limited 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 A contingent remainder (1) cannot take effect until the "prior particular estates" (*i. e.*, the interests for life, or otherwise, appointed to take effect before it) have come to an end; also (2) it cannot take effect unless the requisite *contingency* has happened. In the former respect it resembles a *vested remainder*, and differs from an *executory interest*. In the latter, it differs from a *vested remainder* and resembles an *executory interest*. It has the weakness of both these estates, and the strength of neither.—*Moxley*.

Contingent use. A use limited in a conveyance of land, which may or may not happen to vest, according to the *contingency* expressed in the limitation of the *use*. A *use* in *contingency* is such which by possibility may happen in possession, reversion, or remainder.—*Tomlins*.

Continual claim. *See* CLAIM.

Continuance. An adjournment of the proceedings in an action; or, more strictly, the entry on the record expressing the ground of the adjournment, and appointing the parties to re-appear at a given day. *Notice of continuance*, when notice of trial had been given, and the plaintiff was not ready to proceed, instead of countermanding his notice, he might continue it to any sitting by notice of trial by continuence. Continuances are not now entered on the record or otherwise.

Continuation. Settlements of accounts are made on the Stock Exchange once a fortnight. If a buyer of stock, &c., is unable to pay for it, or a seller is unable to produce it, they may, by agreement, *carry over* or *continue* the bargain until the next account day. It may be continued *even*; but, as a rule, in the former case the buyer pays a *contango*, which represents a fort-night's interest on the money he is unable or unwilling to pay; in the latter case the seller pays him a *backwardation* or fine for non-delivery.

Continuation, in Stock Exchange, means to sell and to agree to re-buy the same amount of stock at a future day at the same price, plus a sum for the accommodation. It is not a loan, but is a sale and an agreement for re purchase.—*Stroud*.

Continuing guarantee. *See* CONTRACT OF GUARANTEE.

Continuous easement. *See* EASEMENT.

Contraband. Something prohibited by *ban* or *edict*; a prohibited trade; such goods as are prohibited to be imported or exported, bought or sold, either by the laws of a particular state or by special treaties. The most usual application of the term is to such articles as are contraband of war, *i. e.*, munitions and such other articles of merchandise carried in a neutral vessel in time of war as are calculated to assist either of the two belligerents against the other. The latter belligerent is entitled to seize such articles *in transitu*, and in certain cases even to confiscate the ship in which they are carried.

Contracausator. A criminal; one prosecuted for a crime.

Contract (*contractus*). A contract is defined by Cowel as a covenant or agreement with a lawful consideration or cause, and Blackstone defines it as an agreement upon sufficient consideration to do or not to do a particular thing

An agreement enforceable by law is a contract.—*Act IX of* 1872 (*Contract*), *s.* 2 (*h*).

All agreements are contracts if they are made by the *free consent* of parties *competent to contract*, for a *lawful consideration*, and with a *lawful object*, and are not expressly declared to be void under the Contract Act, 1872. Nothing herein contained shall affect any law in force in British India, and not hereby (*i.e.*, by Act IX of 1872) expressly repealed by which any contract is required to be made in writing, or in the presence of witnesses, or any law relating to the registration of documents. —*Ibid.*, *s.* 10.

Who are competent to contract. Every person is competent to contract who is of the age of *majority* according to the law to which he is subject and who is of *sound mind*, and is not *disqualified* from contracting by any law to which he is subject.—*Ibid.*, *s.* 11.

Sound mind. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it, and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.—*Ibid.*, *s.* 12.

Consent. Two or more persons are said to consent when they agree upon the same thing in the same sense.—*Ibid.*, *s.* 13.

Free consent. Consent is said to be free when it is not caused by—(1) Coercion, or (2) Undue influence, or (3) Fraud, or (4) Misrepresentation, or (5) Mistake. Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.—*Ibid.*, *s.* 14.

Coercion. Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter

into an agreement. It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.—*Ibid.*, *s.* 15.

Undue influence. (1) A contract is said to be induced by *undue influence* where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other. (2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another (*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or (*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress. (3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other. Nothing in this subsection shall affect the provisions of s. 111 of the Indian Evidence Act, 1872.—*Ibid.*, *s.* 16, *as substituted by Act VI of* 1899, *s.* 2.

Fraud. Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—(1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) The active concealment of a fact by one having knowledge or belief of the fact; (3) A promise made without any intention of performing it; (4) Any other act fitted to deceive; (5) Any such act or omission as the law specially declares to be fraudulent. Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.—*Ibid.*, *s.* 17.

Misrepresentation. Misrepresentation means and includes (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; (3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.—*Ibid.*, *s.* 18.

Lawful consideration and object. The consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement, of which the object or consideration is unlawful, is void.—*Ibid.*, *s.* 23.

For the classification of actions arising out of contract, *see* PERSONAL ACTIONS.

Executory and executed contracts. An *executory* contract is one in which a party binds himself to do or not to do a particular thing. A contract *executed* is one in which the 'object of contract' is performed. If A agrees to change horses with B, and they do it immediately, in which case the possession and the right are transferred together, we have before us an instance of an *executed* contract. If A and B agree to exchange horses next week, here the *right* only vests, and their reciprocal property is not in possession but in action; the contract, accordingly, in this latter case is *executory* only. A contract may be *executed* as regards one of the parties to it, and *executory* as regards the other; as, for instance, if A on the actual delivery and receipt of B's horse, promises and undertakes to deliver over his own horse to B in the course of the week ensuing.—*Broom's Com., Law.*

Express and implied contracts. An *express* contract is one of which the terms are, at the time of making it, defined in writing or openly uttered and avowed, as where an agreement is entered into whereby either of the parties to it promises the other that something is done already or shall be done at at some future time, or where the goods of a certain kind or quality are ordered,—to be paid for at a specified rate. An *implied* contract, on the other hand, is one which reason and justice dictate, and which the law, therefore, presumes that every man undertakes to perform. In it, accordingly, the law implies, from the antecedent acts of persons, what their obligations are to be; whereas, if an *express* contract be made, the parties themselves thereby define or assume to define them.—*Ibid.*

Contracts may properly be classified under three heads:—(1) Contracts of record, such as judgments, cognovits and recognizances; (2) Contracts by specialty or under seal, which admit of sub-divison into contracts unilateral, as bonds; and contracts *inter partes*, as indentures of demise; (3) Simple contracts, or contracts not under seal, which are either written or verbal.

Contracts of *record* must be considered as of a higher nature than contracts of any other kind; and *special*, as superior in efficacy to *simple* contracts.

Contracts of record. Of contracts of record, the most practically important kind is that constituted by the judgment of a court of re-

cord of competent jurisdiction. A *judgment* of one of the superior courts of common law has these peculiar properties or characteristics. It effects or works a merger of the original cause of action; it operates as an estoppel, and is conclusive as between the parties to it; it does not need any consideration to support it; it binds the land of the judgment-debtor.

Cognovit. A cognovit is a written confession of an action, supposed to be given by the defendant in court, which authorizes the plaintiff, under circumstances specified, to enter up judgment and issue execution thereon against the defendant.

Recognizance. A recognizance is an obligation of record entered into before some court of record or magistrate duly authorized, with condition to do some particular act. A recognizance may be entered into either to the Crown, as where a person enters into recognizances to appear to answer a criminal charge; or to a subject—as where bail is given.

Contracts by specialty or under seal. A contract under seal or *specialty* is a contract in writing, the execution whereof is accompanied with certain solemnities which not merely indicate the assent of the contracting parties, but give to their contract peculiar force and efficacy. An instrument under seal, when used between private persons, is called a deed (*factum*), because it is the most solemn and authentic act that a man can possibly perform with relation to the disposal of his property, or with a view to affecting in any manner his own interests. The instrument in question may be *unilateral* or made by one party only, or it may be *inter partes*, *i. e.*, made between two or more parties. A *specialty*, as already intimated, is distinguished from a *simple* contract in writing by certain solemnities attendant on its execution—*viz.*, by *sealing* and *delivery*. It may indeed be laid down as clear law, that prior to the Statute of Frauds, *signing* was in no case deemed essential to the validity and obligatory force of a deed which had been executed by sealing and delivery. Even now, the absence of the signature of a party to a deed, the subject-matter of which comes within the operation of that statue, would seem to be immaterial, for the object of that enactment was "to prevent matters of importance from resting on the frail testimony of memory alone." It was not intended to apply to instruments already authenticated by a ceremony of a higher nature than a signature or a mark.

Delivery is essential to the due execution of a deed; so that if executed after the day on which it purports to bear date, it takes effect from the day of delivery and not from the day of the date, according to the maxim *traditio loqui facit chartam*, delivery makes the deed speak. A deed has no operation until delivery.

Although the usual practice in delivering a deed is to place the finger upon the seal or wafer (which has, in general, been previously affixed to the instrument), and to repeat the formula "I deliver this as my act and deed," yet it is clear, on the one hand, that delivery without words is sufficient, and, on the other, that a deed may be delivered by words without any act of delivery.

If, moreover, when a deed has been formally sealed and delivered, with apt words of delivery, it is retained by the party executing it, such retention will not *per se* affect the operation of the deed; for the efficacy of a deed depends on its being sealed and delivered by the maker of it; not on his ceasing to retain possession of it. It is also clear, that delivery to a third person, for the use of the party in whose favour the deed is made, provided the grantor parts with all control over the instrument, will make the deed effectual from the instant of such delivery; for the law will presume, if nothing appear to the contrary, that a man will accept what is for his benefit.

Escrow. A deed may however be delivered as an *escrow*, *i. e.*, it may be delivered to a stranger to be kept by him until certain specified conditions be performed, and then to be delivered over to the grantee. If, in point of fact, the deed is delivered not to take effect as a deed until some condition is performed, it will operate as an escrow, notwithstanding the delivery is in form absolute. But if a deed be delivered as an escrow, upon certain conditions, to the party to whom it is made, the delivery is nevertheless absolute, for *in traditionibus chartarum non quod dictum sed quod factum est inspicitur*, in the traditions of writers, not what is said, but what is done is regarded.

Legal consequences of sealing and delivery. The legal consequences which flow from the execution of a written contract by sealing and delivery are most important. Directly that an instrument containing a contract is sealed by the parties thereto, it becomes a *deed*, and as such is clothed with the following properties, which do not attach to a simple contract in writing. It works a merger; it operates by way of estoppel; it requires no consideration to support it (for the Indian law, see Contract Act IX of 1872, s. 25); it will in some cases bind the heir of the covenantor or obligor; it can only be discharged by an instrument under seal, by the judgment of a court of competent authority, or by Act of Parliament.—*Broom's Com. Law.*

The law in India does not distinguish between agreements under seal and by parol, (*Krishna* v. *Rayppa*, 4 Mad. H. C. 98). A bond, although under seal, does not in India of itself import that there has been a sufficient consideration for it (*Mahomed Zahoor Ali Khan* v. *Takooranee Rutta Kunwoor*, 2 N.-W. P. 481).

A *simple* contract is a contract either in writing not under seal, or verbal, or implied

from the acts and conduct of the parties.—*Broom's Com. Law.*

See BILATERAL CONTRACT, CONTINGENT CONTRACT, VOID CONTRACT.

Contract of benevolence. A contract made for the benefit of one of the contracting parties only, *e. g.*, a *mandate* or *deposit.*

Contract of guarantee. A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the *surety*; the person in respect of whose default the guarantee is given is called the *principal debtor*; and the person to whom the guarantee is given is called the *creditor.* A guarantee may be either oral or written.—*Act IX of* 1872 (*Contract*), *s.* 126.

A guarantee is in fact a promise to answer for the payment of some debt, or the performance of some duty, in the event of the failure of another person, who is in the first instance liable for such payment or performance. —*Broom's Com. Law.*

Continuing guarantee. A guarantee which extends to a series of transactions is called a continuing guarantee.—*Act IX of* 1872 (*Contract*), *s.* 129.

Guarantee obtained by misrepresentation. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.—*Ibid.*, *s.* 142.

Guarantee obtained by concealment. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance is invalid.—*Ibid.*, *s.* 143.

Contract of indemnity. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.—*Ibid.*, *s.* 124.

Contract-note. The note sent by a broker to his client advising him of the sale or purchase of any stock or marketable security.

Contractor, liability of employer for acts of. *See* MASTER AND SERVANT.

Contrafaction (*cantrafactio*). A counterfeiting.

Contravention. An act done in violation of a legal condition or obligation; particularly, any act by an heir of entail in opposition to the provisions of the deed of entail.

Contribution (*contributio*). The performance by each of two or more persons, jointly liable by contract or otherwise, of his share of the liability. It frequently arises between sureties, who are bound for the same principal, when upon his default, one of them is compelled to pay the money, or to perform any other obligation for which they all become bound; the surety who has paid the whole, being entitled to receive contribution from all the others for what he has done, in relieving them from a common burden. A suit for this purpose is called a *suit for contribution.* But there is no contribution between *wrong-doers* (*Harnath* v. *Haree Singh*, 4 N.-W. P. 116). Legatees are sometimes compelled to refund and contribute for the payment of debts. In like manner, contribution lies between partners for any excess, which has been paid by one partner beyond his share, or if upon a dissolution he has been compelled to pay any sum for which he ought to be indemnified. In maritime law, *average contribution* is the amount to be contributed by each person towards making good a loss at sea, and is proportioned to the value of the goods he may have shipped. *See* AVERAGE.

The right of contribution arises when two or more persons are liable to discharge a common burden (*Sahu Lalta Prasad* v. *Zahur*, 7 All. L. J. 409).

Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage. Where of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 82.

Contributory. A person liable to contribute to the assets of a joint-stock company which is being wound up, as being a member thereof.

Contributory negligence. In order that a man's negligence may entitle another to a remedy against him, that other must have suffered harm whereof this negligence was a proximate cause. Now I may be negligent, and my negligence may be the occasion of some one suffering harm, and yet the immediate cause of the damage may be not my want of care but his own. Had I been careful, to begin with, he would not have been in danger; but had he, being so put in danger, used reasonable care for his own safety or that of his property, the damage would still not have happened. Thus my original negligence is a comparatively remote cause of the harm, and, as things turn out, the proximate cause is the sufferer's own fault, or rather he cannot ascribe it to the fault of another. In a state of facts answering this general description, the person harmed is by the rule of the common law not entitled to any remedy. He is said to be guilty of *contributory negligence.*—*Pollock on Torts.*

If the plaintiff so far contributed to the damage by his own want of ordinary care and caution, that, but for such negligence or want of care, the misfortune would not have happened, he is the author of his own wrong. But mere negligence will not disentitle the plaintiff, unless by the exercise of ordinary care he might have avoided the consequences of the defendant's negligence; or if the defendant might, by the exercise of caution on his part, have avoided the consequences of the neglect or carelessness of the plaintiff. Thus, if the plaintiff has wrongfully or negligently left his cattles or goods on the road, the defendant may not drive over them, if, by care, he might avoid doing so. The doctrine of *contributory negligence* is really another form of the doctrine that the defendant's negligence must be the proximate, and not a remote, cause of the injury. Where the plaintiff is not himself in any fault, but the injury to him arises from the combined or contributory negligence of two separate persons employed to do separate things, the plaintiff may sue either or both.—*Collett on Torts.*

Doctrine of identification. Another kind of question arises where a person is injured without any fault of his own, but by the combined effects of the negligence of two persons, of whom the one is not responsible for the other. It has been supposed that A could avail himself as against Z, who has been injured without any want of due care on his own part, of the so-called contributory negligence of a third person B. "It is true you were injured by my negligence, but it would not have happened if B had not been negligent also; therefore you cannot sue me, or at all events not apart from B." Recent authority is decidedly against allowing such a defence and it is now quite clear that Z can use both A and B (*The Bernina*; *Mills* v. *Armstrong*, 13 App. Cas. 1 [1888] *overruling Thorogood* v. *Bryan*, 8 C. B. 115; 18 L. J. C. P. 336 [1849] *and Child* v. *Hearn*, L. R. 9 Ex. 176 [1874]. Under the cases overruled, the supposed rule was that if A is travelling in a vehicle, whether carriage or ship, which belongs to B, and is under the control of B's servants, and if A is injured in a collision with another vehicle belonging to Z, and under the control of Z's servants, which collision is caused partly by the negligence of B's servants and partly by that of Z's servants, A cannot recover against Z. The passenger, it was said, must be considered as having in some sense *identified himself* with the vehicle in which he has chosen to travel, so that for the purpose of complaining of any outsider's negligence he is not in any better position than the person who has the actual control. It is difficult to see what this supposed *indentification* really meant. No passenger carried for hire intends or expects to be answerable for the negligence of the driver, guard, conductor, master, or whoever the person in charge may be. He naturally intends and justly expects, on the contrary, to hold every such person and his superiors answerable to himself. Why that right should exclude a concurrent right against other persons who have also been negligent in the same transaction was never really explained.—*Pollock on Torts.*

Where two carriages came into collision caused by negligent driving on both sides, and a passenger is hurt, it has been held that he is *indentified* with his own driver, and can recover damages only from him or his principal. But it seems highly unreasonable to apply the doctrine of contributory negligence to such a case, and there is no valid reason why both the wrong-doers should not be considered liable to a person free from all blame, not answerable for the acts of either of them, and whom they have injured. In any case, the question is, not whether A was the passenger of B or of C, but whether the negligence of B or that of C, was the efficient cause of the wrong. On proof of absolute equality of guilt, there seems, on principle, no reason why B and C should not be dealt with as any other wrong-doers.—*Collett on Torts.*

The same principle applies where one under the care of another is injured and the custodian is also guilty of negligence. If so young as to be incapable of self-protection, the child is in relation to its custodian a mere chattel; if more or less capable, then it is the ordinary case of where A's negligence has resulted in harm to B, but there has intervened an act by a third person C, and the question is whether it was the negligence of A, or the act of C, which was the main and and efficient cause of the injury to B. There is no real identification of the child with its custodian. —*Ibid.*

Controller (*contrarotulator*). An overseer or officer appointed to examine and verify the accounts of other officers. *See* COMPTROLLER.

Contumacy. A refusal to appear in Court when legally summoned; or disobedience to the rules and orders of a Court. The term is used for contempt of Court as regards matters ecclesiastical and the Ecclesiastical Courts. *See* CONTEMPT OF COURT.

Conusance. *See* COGNIZANCE.

Conusant. Knowing or understanding; cognizant.

Convention. The name of an old writ that lay for the breach of a covenant. An agreement. A name given to such meetings of the House of Lords and Commons as take place by their own authority without being summoned by the King. This can only take place at great national crises.

Conventional estates. Estates (*i. e.*, interests in land) expressly created by the acts of parties as opposed to estates which are created by construction or operation of law.

Conventuals. Religious persons united together in a *convent* or house of religion. A *conventual church* is a church attached to such a house.

Conversion. The converting by a man to his own use the goods of another. This will be a ground for an action by the latter for *trover* and *conversion*, or for a prosecution for *larceny* or *embezzlement*, according to circumstances. *See* TRESPASS TO PERSONAL PROPERTY. It also signifies that change in the nature of property by which, for certain purposes, real estate is considered as personal, and personal estate as real, under the doctrine of equity—'equity looks upon that as done which ought to be done.' Thus, money directed to be employed in the purchase of land, and land directed to be sold and turned into money are to be considered as that species of property into which they are directed to be *converted.—Mosley.* When the purposes for which the conversion was to take place *totally* fail, the property is regarded as being what it actually is, and the doctrine of *conversion* is in that case excluded.

Conversion of stock. The change of it from one denomination to another, generally from a higher to a lower.

Conveyance. The transfer of the ownership of property, especially landed property, from one person to another. It also means the written instrument whereby such transfer is effected. Conveyances include gifts, grants, bargains and sales, leases, exchanges, partitions, releases, confirmations, surrenders, assignments, &c. *See* ASSURANCE.

Conveyancers. Those who prepare conveyances and wills; especially the barristers who confine themselves to drawing conveyances, and other chamber practice. Also those persons who, being neither barristers, nor solicitors, nor proctors, employ themselves solely in the preparation of deeds or assurances of property.

Conveyancing. The science of preparing conveyances of property; also the practice of such preparation.

Conveyancing counsel. These are certain barristers, not less than six in number, appointed by the Lord Chancellor, for the purpose of assisting the Court of Chancery, or any judge thereof, with their opinion in the investigation of the title to any estate, in the purchase or mortgage of which it may be proposed to invest money under the control of the Court of Chancery, or to any estate which it may be proposed to sell by order of the Court, or in the settlement of a draft of any conveyance, mortgage, settlement or other instrument which may be required to be done under the jurisdiction of the Court.

Convict (*convictus*). A person found guilty of a crime or offence alleged against him, either by a verdict of a jury or other legal decision. The word in its restricted sense means any person against whom judgment of death, or of penal servitude, is pronounced or recorded by any court of competent jurisdiction, upon any charge of treason or felony.

Conviction. The act of a legal tribunal adjudging a person guilty of a criminal offence. This is where a man, being indicted for a crime, confesses it, or, having pleaded not guilty, is found guilty by the verdict of a jury. A *summary* conviction is where a man is found guilty of an offence on summary proceeding before a police magistrate or bench of justices.

'Conviction' in common parlance, is taken to mean the verdict at the time of trial; but in strict legal sense it is used to denote the judgment of the Court (*per* Tindall, C. J., *Burgess* v. *Boetefeur*, 13 L. J. M. C. 126).

Convocation (*convocatio*). The gener l assembly of the clergy, to consult of ecclesiastical matters. There are two convocations, one for the province of Canterbury, and another for that of York.

Convoy. A ship of war or ships of war, appointed to protect merchantmen against hostile inspection and seizure. In times of war it is frequently desired by a neutral country to protect its own merchant vessels from visit and search by either of the belligerents, and this object it usually endeavours to accomplish by sending one or more of its own ships of war to protect and escort, *i. e.*, *convoy*, the merchant vessels. Also a body of troops, which accompanies provisions, ammunition, or other property for protection.

Coolie. Cooly. (*Ind.*) A porter; a labourer; a carrier.

Co-ordinate and subordinate. These are terms often applied as a test to ascertain the doubtful meaning of clauses in Acts of Parliament. If there be two clauses, one of which is grammatically governed by the other, it is said to be *subordinate* to it; but if both are equally governed by some third clause, the two are called *co-ordinate*.

Co-ordinate Court. A court which has jurisdiction equally with some other Court. A Court has no power to reverse an order of a co-ordinate Court which has determined the precise question after a suit has proceeded to its conclusion in pursuance of that order.—*Palavarapu* v. *Chanduri* (2 Mad. H. C. 349).

Co-parceners (*participes*). Those who have an epual portion in the inheritance of an ancestor. All the co-parceners put together make but one heir, and have but one estate among them. An estate in *coparcenary* is distinguished from an estate held in *common*, in that the former always arises from descent *ab intestato*; the latter arises from a deed or will, or the destruction of an estate in joint tenancy or coparcenary.

The difference between co-parcenership and inheritance is radical. In the case of inheritance, property devolves on death; it survives in the case of co-parcenership; on inheritance new rights are acquired; on survivorship, the enjoyment of existing rights is increased by the removal of one from the body of co-sharers (*Francis Ghosal* v. *Gabri Ghosal*, 8 Bom. L. R. 770; 31 Bom. 25).

Copartnership. *See* PARTNERSHIP.

Copy (*copia*). The transcript or double of an original writing; as the copy of a patent, charter, deed, &c. *See* CERTIFIED COPY, TRUE COPY.

Copyhold (*tenura per copiam rotuli curiæ*). A tenure of land in England for which the tenant has nothing to show but the *copy* of the *rolls*, made by the steward of the lord's court, on such tenant's being admitted to any parcel of land or tenement belonging to the manor. The tenure is at the will of the lord of the manor according to the custom thereof. It is in *manors* only that copy-holders are to be found; and it is by the immemorial *custom* of the particular manor that the copyholder's interest must be regulated. Copyholders were originally villeins or slaves, permitted by the lord, as an act of pure grace or favour, to enjoy the lands at *his* pleasure, being in general bound to the performance of agricultural services, such as ploughing the lord's demesne, carting the manure, and other servile works. The will of the lord originated the custom of the manor, and came at last to be controlled by it.—*Mosley*. It appears that in the reign of Edward I, copyholders were still in the purest state of villenage, cultivating the demesne lands of the lord as serfs merely, and having no certainty of tenure. But that in the reign of Edward III, they enjoyed a compartive certainty of tenure, so long as they performed the accustomed services; and that finally, in the reign of Edward IV, they had an action against their lord for trespass or wrongful ejection. But to the present day copyholds retain some traces of their frail original. Thus, the copyholder is still for some purposes a mere tenant at will of his lands, the freehold therein remaining in his lord, who, therefore is owner of all the mines and minerals under the land, and also of the timber upon it; and the copyholder, although in fee simple, cannot without a forfeiture, lease the lands for a longer term than one year, or commit any waste of the land. Nevertheless, the copyholder when admitted is possessed of a *quasi* seisin of his lands; in other words, he his seised of them as against all the world *other than his lord*. There may be every variety of estates in copyhold lands, whether for life, *per autre vie*, in tail, or in fee simple; but with reference to the estate tail in copyholds, a distinction is taken, some manors admitting, and some not admitting, the estate tail.—*Brown*.

Copyright. Copyright is the exclusive right which an author possesses of multiplying copies of his own work.—*Underhill on Torts*.

Under the Indian Patents and Designs Act (II of 1911), s. 2 (4), copyright means the exclusive tight to apply a design to any article in any class in which the design is registered.

Copyright means the sole right to produce or reproduce a work or any substantial part thereof in a 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 way of 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.—1 & 2 *Geo. V, c.* 46 (*Copyright*), *s.* 1 (2), *applied to India by Act III of* 1914. *See* MUSICAL WORK.

Infringement of copyright. A copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright does anything, the sole right to do which is by this Act (1 & 2 Geo. V, c. 46) conferred on the owner of the copyright; provided that the following acts shall not constitute an infringement of copyright:—(i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary; (ii) When the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model or study made by him for the purpose of the work, provided that he does not theteby repeat or imitate the main design of that work; (iii) The making or publishing of paintings, drawings, engravings or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art; (iv) The publication in a collection, mainly composed of non-copy right matter *bona fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists; Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged; (v) The publication in a newspaper of a report of a lecture in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph affects the provisions in paragraph (i) as to newspaper summaries; (vi) The reading or recitation in public by one person of any reasonable ex-

tract from any published work.—1 & 2 *Geo. V*, *c.* 46, *s.* 2 (1), *applied to India by Act III of* 1914.

Copyright in a work shall also be deemed to be infringed by any person who (*a*) sells or lets for hire, or by way of trade exposes or offers for sale or hire, or (*b*) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright, or (*c*) by way of trade exhibits in public, or (*d*) imports for sale or hire into any part of His Majesty's dominions to which this Act extends—any work which to his knowledge infringes copyright or would infringe copy right if it had been made within the part of His Majesty's dominions in or into which the sale or hiring exposure, or offering for sale or hire, distribution, exhibition or importation took place.—*Ibid.*, *s.* 2 (2), *applied to India by Act III of* 1914.

Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware and had no reasonable ground for suspecting, that the performance would be an infringement of the copyright.—*Ibid.*, *s.* 2 (3), *applied to India by Act III of* 1914.

Publication. 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 delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an archilectural work of art, but the issue of photographs and engravings of works of sculpture and archilectural works of art shall not be deemed to be publication of such works.—*Ibid.*, *s.* 1 (3), *applied to India by Act III of* 1914.

Duration of copyright. The term for which copyright shall subsist, shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years from his death. Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act, thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale, if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work.—*Ibid.*, *s.* 3, *applied to India by Act III of* 1914.

Copyright in translation. In the case of works published in British India, the sole right to produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work. But if within the said period the author or any person to whom he has granted permission publishes a translation of such work in any language, copyright in such work as regards the sole right to produce, reproduce, perform or publish a translation in that language shall not be subject to the limitation prescribed above.—*Act III of* 1914 (*Copyright*), *s.* 4. Before the passing of the Act it was held that a person who translated a book into another language was not thereby guilty of an infringement of copyright (*Munshi Shaikh Abdurruman* v. *Mirza Mahomed Shirazi*, 14 Bom. 586; *Macmillan* v. *Shamsul Ulama M. Zaka*, 19 Bom. 557).

Infringement of copyright. By Act XX of 1847, (see now Act III of 1914), the authors or publishers of books or of articles in periodicals are entitled to the copyright, or exclusive privilege of printing and multiplying copies thereof, during limited periods, and the invasion of such a right may be restrained by injunction, and damages may be also awarded. This is a right existing only by express enactment, and not at common law. A *bona fide* abridgment, or a *bona fide* use of the same common materials in the composition of another book, is not an invasion of copyright. But abridgments are not favoured, and whether an abridgement is a piracy or not, depends not only upon the quantity but the value of the matter extracted; and if the result is, in effect, to substitute the one work for the other, it is a piracy; the point where a damage and consequent injury may be perceived, varies in each case, and cannot be definitely stated. Copying a material portion of a book, rendering it thereby unneeessary to a great extent for any one to refer to the original, is a breach of copyright and will be restrained, though the defendant does not *sell* his book, and only distributes it for use among his own servants and officers. The editor of legal reports has certainly a copyright in his own marginal notes. In America it is held that there can be no copyright in the written judgments delivered by a court; and on principle this seems the only sound doctrine. It seems to be otherwise in England; but any number of persons may take down, or obtain copies of judgments, and publish them without copying from each other. So, generally, all may use the same common materials, but one man may not steal the arrangement and combination of materials used by another, nor save himself trouble and expense by simply copying the other man's matter; the one book need not be a copy of the other, it is enough if it is a servile or evasive imitation of the plaintiff's book. These rules are often applied to such compilations as directories, dictionaries, and guide books. To enable the proprietor of a news-paper, or other periodical to sue in respect of a piracy of any article therein, he must show not merely that the author of the article has been paid for his services but that

it has been composed on the terms that the copyright therein shall belong to such proprietor. There may be a piracy of the illustrations of a book where there are a substantial part of it, or of a book of designs or of an illustrated catalogue. The title of a book may be a material part, and it will be protected, not necessarily because there is any copyright in a title or name,—for as a general rule there is not, since it ordinarily involves no invention, though there might be copyright in a title-page which is really original literary matter,—but on the same ground of protection as to a trade-mark, that the use of the same title is calculated to deceive the public into buying the defendant's book by mistake for that of the plaintiff; and where such danger is shown the use would be restrained. The invasion of literary property may be threefold—(1) open piracy where there is a simple reprinting of another's book; (2) literary larceny, where one man steals for his own book the substance and matter of another book; and (3) ordinary fraud, where one man sells a book under the name or title of another's book, when it is not such at all. The Copyright Act protects against the first two wrongs, and the third is a fraud at common law apart from any such Act. There may be a copyright in a translation whether made by, or given, to the person publishing it. The author of a book clearly immoral, libellous, or seditious, is not entitled to any relief.—*Collet on Torts.*

So, where a work professes to be the work of a person other than the real author, with the object thereby to induce the public to pay a higher price for it, no copyright can be claimed in it (*Wright* v. *Tallis*, I. C. B. 893). ....*Underhill on Torts.*

The word *book* includes every volume, part and division of a volume, pamphlet, sheet of letterpress, sheet of music, chart, map, or plan separately published. Thus, there may be copyright in the wood-engravings of a work, for they are part of the volume. An illustrated catalogue of articles of furniture published as an advertisement by upholsterers, and not for sale, may be the subject of copyright.—*Ibid.*

Honest intention. If, in effect, the great bulk of the plaintiff's publication—a large and vital part of his labour—has been appropriated, and published in a form that will materially injure his copyright, mere honest intention on the part of the appropriator will not suffice.—*Ibid.*

Besides the copyright in literary works, there is also a copyright in various other productions, such as oral lectures, dramatic compositions, engravings, prints, lithographs, drawings, paintings, photographs, and sculptures and models; also in music.

Corsage (*coraagium*). An extraordinary imposition of certain measures of corn, made upon unusual occasions, and in cases of necessity.

Co-respondent. Any person made respondent to or called upon to answer, a petition or other proceeding, jointly with another. But the word has become very much confined, and is applied most exclusively to, a person charged by a husband, suing for a divorce, with adultery with the wife, and made jointly with her, a respondent to the suit.

Cornage (*cornagium*). A kind of tenure, the service of which was to blow a horn when any invasion of the Scotts was perceived; and by this tenure many persons held their lands northward, about the wall commonly called the *Picts Wall.* It was a species of grand serjeanty. This old service of horn-blowing was afterwards paid in money, and the sheriffs accounted for it under the title of *cornagium.*

Corody. Corrody (*corodium*). A sum of money, or allowance of meat, drink and clothing, due to the king from an abbey or other house of religion, whereof he was founder, towards the sustentation of such a one of his servants as he thought fit to bestow it upon.

Coronation oath. The oath which is taken by the sovereigns of England on their coronation, promising "to govern the people of the kingdom and *the dominions* thereunto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the realm."

Coroner. An ancient officer at common law, so called because he has principally to do with pleas of the Crown, or such wherein the sovereign is more immediately concerned. The principal duty of a coroner is to inquire concerning the manner of the death of any person who is slain, or dies suddenly, or in prison. Another branch of his office is to inquire concerning ship-wrecks, and certify whether wreck or not, and who is in possession of the goods. Concerning treasure trove, he is also to inquire who were the finders, and where it is.

Coroner of the King's house, otherwise called the coroner of the verge, is a coroner whose duty is limited to such matters as occur within the verge or within the precincts of the King's palace.

Corporal. An epithet for anything that belongs to the body; as corporal punishment, *i. e.*, whipping.

Corporal oath, so called because the party taking it lays his hand on the New Testament.

Corporation (*corporatio*). Otherwise called *body politic*, is a number of persons united and consolidated together so as to be considered as one person in law, possessing the character of perpetuity, its existence being constantly maintained by the succession of new individuals in the place of those who die, or are removed. It may be created either for trading or for other general purposes, and, as a general rule, must contract under its common seal. Corporations are either *aggre-*

gate or *sole*. Corporations aggregate consist of many persons, several of whom are contemporaneously members thereof, as the mayor and commonalty of a city, or the dean and chapter of a cathedral. Corporations sole are such as consist, at any given time, of one person only, as the king or queen, a bishop, a vicar, &c. The distinction between corporations and trading partnerships is, that in the first the law sees only the body corporate and knows not the individuals, who are not liable for the contracts of the corporation in their private capacity, their share in the capital only being at stake; but in the latter the law looks not to the partnership, but to the individual members of it, who are therefore answerable for the debts of the firm to the full extent of ther assets.

Corporeal and incorporeal property. *Incorporeal* property is so termed because it has no *corpus* and is not tangible or visible, but exists only in legal contemplation. It may indeed *produce* something substantial and beneficial to the owner, as in the instance of the right to tithes; but, being incapable of actual possession, and passing by the deed of mere grant, it is therefore said to *lie in grant*. The possession of *corporeal* property, on the other hand, *e. g.*, houses and land, is capable of actual and visible delivery and transfer, and is therefore said to *lie in livery* (meaning delivery of seisin or possession).—*Broom's Com. Law*. At common law, no incorporeal right or hereditament can be created or transferred otherwise than by *deed*. Such a right is said to lie in *grant* and not in livery, and to pass by the mere delivery of the deed of grant or of assignment, such as a right of common, a right of way.—*Ibid*.

Corporeal property is such as affects the senses, and may be seen and handled by the body, as opposed to *incorporeal property*, which cannot be seen or handled, and exists only in contemplation. Thus, a house is corporeal, but the annual rent payable for its occupation is incorporeal. Corporeal property is, if moveable, capable of manual transfer; if immovable, possession of it may be delivered up. But incorporeal property cannot be so transferred, but some other means must be adopted for its transfer, of which the most usual is an instrument in writing.—*Mozley*.

Corporeal hereditament. That subject of property which is comprised under the denomination of things real, as lands, houses &c.

Correction, house of. A prison for the reformation of petty offenders. *See* HOUSE OF CORRECTION.

Corrector of the staple. A clerk belonging to the staple, appointed to write and record the bargains of merchants there made.

Corroborative evidence. Evidence in support of principal evidence, *e. g.*, in addition to that of the mother, to charge the father of an illegitimate child under the Bastardy Acts. In an action for breach of promise of marriage, and on the ground of adultery, the plaintiff may give evidence, but cannot recover a verdict unless corroborated by other material evidence in support of his evidence (32 & 33 Vic. c. 68).—*Wharton*. Evidence, not admissible, cannot be received as corroborative proof (*Crown* v. *Shamsunder*, 1N.-W. P. 310).

Corruption of blood (*corruptio sanguinis*). This was one of the consequences of an attainder for treason or felony, whereby the blood of an attainted person was said to be corrupted or attainted both upwards and downwards, so that he could neither inherit lands or other hereditaments from his ancestors, nor retain those he was already in possession of, nor transmit them by descent to any heir; but the same escheated to the lord of the fee, subject to the king's superior right of forfeiture; and the person attainted also obstructed all descents to his posterity, whereon they were obliged to derive a title through him to a remoter ancestor. Corruption of blood is now abolished. *See* ATTAINDER.

Corsepresent. An offering made to the church when a corpse came to be buried. Generally the body of the best beast was, according to the law or custom, offered or presented to the priest.

Corsned bread (*panis conjuratus*). A kind of superstitious trial used among the Saxons, to purge themselves of any accusation, by taking a piece of cheese or bread, of about an ounce in weight, called *corsned* or *corsned bread*, and eating it with solemn oaths and execrations, that it might prove poison, or their last morsel, if what they asserted or denied was not strictly true.

Cosenage. Cosinage (*cognatione; consanguineo*). Kindred, cousinship. Also a writ that lay for the heir where the *tresail*, or great grandfather, was seised of lands in fee at his death, and a stranger entered upon the land and abated.

Cosening. Cozenage. An offence whereby anything is done deceitfully, which cannot fitly be called by any special name, as by playing with false dice, or the like.

Coshering. An ancient privilege claimed by lords to lie and feast themselves and their followers at their tenants' houses.

Cost-book Mining Companies. These are partnerships for the purpose of working a mine under local customs, the partners appoint an agent, commonly called a purser, for the purpose of managing the affairs of the mine, and enter in a book, called the cost-book, their names, agreements, and the number of shares taken by each.

Cost, insurance and freight. A price quoted "C. I. F." at a certain place, includes cost, insurance and freight. But it does not necessarily include everything up to delivery; and if the contract stipulates that the goods are "to be shipped," those are important words to show that the goods are at the buyer's risk as soon as placed on board, even

though the price be quoted C. I. F. (*Wancke* v. *Wingren*, 58 L. J. Q. B. 519).—*Stroud.*

Co-stipulator. A joint promisee. *See* ADSTIPULATOR.

Costs (*expensæ litis*). In the prosecution and defence of actions, the parties are necessarily put to certain expenses, or, as they are commonly called, *costs*, consisting of money paid to the king and government for fines and stamp-duties, to the officers of the Courts, and to the counsel and attorneys for their fees, &c. These costs may be considered either as between *attorney* and *client*, being what are payable in every case to the attorney, by his client, whether he ultimately succeed or not; or as between *party* and *party*, being those only which are allowed in some particular cases, to the party succeeding against his adversary. As between *party* and *party* they do not include the whole expenses of the litigant but only those costs which are incurred of necessity; between *attorney* and *client*, they include substantially the whole costs of the action, covering many items of costs actually paid to the solicitor though not strictly necessary for the suit. As between party and party they are *interlocutory* or *final*; the former are given in various interlocutory motions and proceedings in the course of the suit; the latter (to which the term of *costs* is most generally applied) are not allowed till the conclusion of the suit.

Costs de incremento, *i. e.*, costs of increase, or extra costs, those extra expenses incurred, which do not appear on the face of the proceedings, such as witnesses' expenses, fees paid to counsel, attendances, court-fees, &c.

Costs of the day. Whenever one of the parties in an action (*i. e.*, the plaintiff, or defendant) gives notice of his intention to proceed to trial at a specified time, and after having given such notice, neglects to do so, or to countermand the notice within due time, he is liable to pay to the other party such costs or expenses as the latter has been put to by reason of such notice, which costs are commonly called *costs of the day*, *i. e.*, the costs or expenses which have been incurred on the day fixed (by such notice), for the trial. These costs usually consist of the expenses incurred by witnesses and others in coming to the place of trial, and such other expenses as have necessarily been incurred in preparing for trial on the specified day.

Costs in the cause. The costs of an interlocutory proceeding are directed to be *costs in the cause*, when it is intended that they shall be payable in the same manner and by the same parties as the general costs of the action or suit.

The words "costs in the cause" do not mean that these costs will follow the event but that those costs remain to be dealt with by the Court at the hearing (*Templeton* v. *Lawrie*, 25 Bom. 230).

See TAXATION OF COSTS.

Co-surety. A fellow-surety.

Cottier tenure. A tenure in Ireland constituted by an agreement and subject to the following terms:—That the tenement consist of a cottage without land, or with land not exceeding half an acre; that the rent do not exceed £ 5 by the year; that the tenancy be for not more than a month at a time; that the landlord undertake to keep and maintain the cottage in good and tenantable repair.

Couchant. Lying down; squatting. *See* LEVANT AND COUCHANT.

Coucher. Courcher. A factor residing in some foreign country for traffic. Also the general book wherein corporations, &c., register their particular acts.

Council. An assembly of persons for the purposes of concerting measures of state or municipal policy. The members of the council are called *councillors*.

Counsel. Counsellor (*consiliarius*). A person retained by a client to plead his cause in a court of judicature; an advocate. It is frequently used to denote a barrister-at-law, especially in reference to solicitors who consult him.

Counsellor-at-law. A barrister-at-law.

Count (*narratio*). The different parts of a declaration, each of which, if it stood alone, would constitute a ground for action, were the counts of the declaration. Used also to signify the several parts of an indictment, each charging a distinct offence.—*Wharton.* *Count* or *countee* was the most eminent dignity of a subject before the Conquest.

Countenance. Credit; support; estimation.

Counter. The name of two prisons formerly existing in London, the Poultry Counter and Wood Street Counter, afterwards consolidated into one new-built prison, for the use of the city, to confine debtors, peace-breakers, &c. An old word for a serjeant-at-law.

Counter-claim. *See* SET OFF.

Counter-deed. A secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one.

Counterfeit. An imitation of something made without lawful authority, and with a view to defraud by passing the false for the true.

A person is said to counterfeit who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised. It is not essential to counterfeiting that the imitation should be exact. When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended, by means of that resemblance, to practise deception, or knew it to be likely that deception would thereby be practised.—*Act XLV*

of 1860 (*Penal Code*), *s.* 28, *as amended by Act I of* 1889 (*Metal Tokens*), *s.* 9.

Counterfeiting coin. Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extended to seven years, and shall also be liable to fine. A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.—*Ibid.*, *s.* 231.

Counterfeit coin. Counterfeit coin means 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 a coin of a higher denomination. A genuine coin, fraudulently reduced in weight by the removal of the milling and which has received a new milling in order to restore its appearance, is a counterfeit coin (*R.* v. *Hermann*, 48 L. J. M. C. 106; 4 Q. B. D. 284).—*Stroud.*

Countermand (*contramandatum*). The revocation of an act; where a thing done is afterwards, by some act or ceremony, made void by the person who did it, it is either actual, by deed, or implied by law.

Counterpart. The corresponding part or duplicate; the key of a cipher. When the several parts of an indenture are interchangeably executed by the parties thereto, that part or copy which is executed by the grantor is called the *original*, and the rest are counterparts; though of late it is most frequent for *all* the parties to execute *every* part, which renders them all originals. A duplicate copy of a deed is however, frequently called a counterpart.—*Mozley.*

Counter-plea. A replication to aid prayer; *i. e.*, where a tenant for life or other limited interest in land, having an action brought against him in respect of the title to such land, prayed in aid of the lord or reversioner for his better defence; or else if a stranger to an action begun, desired to be received to say what he could for the safe-guard of his estate; that which the demandant alleged against either request was called a *counter-plea*. *See* AID PRAYER.

Counter-security. A security given by one who has entered into a bond or become surety for another; a countervailing bond of indemnity.

Counter-signature. The signature of a secretary or other subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it.

Countors. Serjeants-at-law, whom a man retains to defend his cause and speak for him in court, for their fees. Advocates.

Country. A name for the jury, as coming from the neighbouring country or surrounding parts of the country.

Country cause. A cause in which the *venue* is laid elsewhere than in London or Middlesex.

County Courts (*curiæ comitatus*). Inferior local courts of record for the purpose of providing a cheap and summary mode of procedure where the sum at stake is small. Besides their ordinary jurisdiction, they have jurisdiction in Admiralty matters up to a certain sum, and in Bankruptcy; and have power under various Acts to settle disputes between employers and workmen.

County Palatine. The counties of Chester, Durham and Lancaster, are called counties palatine. They are so called *a palatio* because the owners thereof (the Earl of Chester, the Bishop of Durham, and the Duke of Lancaster) had formerly in those counties *jura regalia* (royal rights) as fully as the king had in his palace. They might pardon treasons, murders and felonies; all writs and indictments ran in their names, as in other counties the king's; and all offences were said to be done against *their peace*, and not, as in other places, *contra pacem domini regis* (against the peace of our lord the king). These counties palatine have been now for the most part assimilated to the rest of England.

County-rate. An imposition levied, limited on the occupiers of land in a county for local purposes.

County Sessions. The general quarter sessions of the peace for each county, held four times a year. They have both civil and criminal jurisdiction.

Court (*curia*). The word has various significations:—(1) The house where the king remains with his retinue; (2) The place where justice is judicially administered; (3) The judges who sit to administer justice; and, in jury trials, the judge or presiding magistrate, as opposed to the jury; (4) A meeting of a corporation, or the principal members thereof: as when we speak of the Court of Aldermen, Court of Directors, &c.

Court Baron (*curia baronis*). The *Court Baron* is a Court incident to every manor in the kingdom, and is held by the steward of the manor, and is of two natures; the one a Customary Court, appertaining entirely to copyholders, in which their estates are transferred by surrender and admittance, and other matters transacted relative to copyhold property; the other a Court of Common Law, which is the baron's or fee-holder's Court, and used to be held for determining by writ of right all controversies relating to the right of lands within the manor, and also for personal actions, where the debt or damages did not amount to forty shillings.—*Brown.*

Court below. See APPELLATE JURISDICTION.

Court Christian (*curia christianitatis*). A name often used to denote an ecclesiastical court. The various species of ecclesiastical courts which took cognizance of religious and ecclesiastical matters were called *courts christian*, as distinguished from the civil courts.

Court, Consistory. *See* CONSISTORY COURT.

Court-lands (*terræ curtiles*; *terræ dominicales*). Domains or lands kept in the lord's hands to serve his family, as distinguished from those granted out to tenants. *See* MANOR.

Court-leet. A court of record held once in the year and not oftener, within a particular hundred, lordship, or manor, before the steward of the leet; being the King's Court granted by charter to the lords of those hundreds or manors. Its office was to view the *frankpledges*, that is the freemen within the liberty; to present by jury crimes happening within the jurisdiction; and to punish trivial misdemeanours. It has now for the most part fallen into total desuetude; though in some manors a "court-leet" is still periodically held for the transaction of the administrative business of the manor.—*Mozley.*

Court-Martial (*curia martialis*). A court with a jurisdiction to try and punish offences against the provisions of the Mutiny Act, and the Articles of War, made by the sovereign in pursuance thereof. Also a court erected under the Acts for the government for the navy, for the punishment of offences against naval discipline; which is called a naval court martial.

Court of Admiralty. *See* ADMIRALTY.

Court of Arches. *See* ARCHES COURT.

Court of Archdeacon. The most inferior Court in the whole ecclesiastical polity, held before a judge appointed by the archdeacon himself, and called his official.

Court of Chancery. *See* CHANCERY.

Court of Chivalry (*curia militaris*). An ancient but long disused court which used to be held before the Lord High Constable and Earl Marshal, in matters criminal and civil. Its criminal jurisdiction was confined to deeds of arms and war; its civil jurisdiction extended to redressing injuries of honour, encroachments in matters of coat-armour or of precedents, or of other like family distinction, —but, *nota bene*, only where there was no remedy at common law, and the petitioner or complainant in this court never obtained pecuniary satisfaction. The Herald's college was and is a sort of successor to this court as regards matters of pedegree and of armour. —*Brown.*

Court of Clerk of the Market. A court incident to every fair and market in the kingdom, to punish misdemeanours therein. *See* COURT OF PIEDPOUDRE.

Court of Common Pleas. Sometimes called the Court of Common Bench, was one of the superior courts of common law; so called because it took cognizance of all actions between subject and subject without exception, and in which the Crown has no interest. Its jurisdiction was altogether confined to civil matters, having no cognizance in criminal cases, and was concurrent with that of the King's Bench and Exchequer in personal actions and ejectment. Since the Judicature Act, 1873, the business of the Court of Common Pleas is transferred to the Common Pleas Division of the High Court of Justice.

Courts of Conscience (*curiæ conscientiæ*). Otherwise called *Courts of Request*, were courts for the recovery of small debts constituted before the passing of the County Courts Act, 1846, in the city of London and other commercial districts. They heard all causes of debt not exceeding the value of forty-shillings, which they examined in a summary way, by the oath of the parties or other witnesses, and made such order therein as was consonant to equity and good conscience. They are now for the most part abolished by the County Courts Act.

Court of Delegates. *See* COMMISSION OF DELEGATES.

Court of Enquiry. A regimental Court for the purpose of hearing complaints of non-commissioned officers and soldiers in any matter respecting their pay or clothing. *See* INQUIRY.

Court of Equity. *See* EQUITY.

Court of Error. An expression applied specially to the Court of Exchequer Chamber and the House of Lords, as taking cognizance of *error* brought. *See* ERROR.

Court of Exchequer. One of the superior courts of Westminster. It is a very ancient court of record, intended principally to order the revenue of the Crown, and to recover the king's debts and duties. It is called the Exchequer, *scaccarium*, from the chequered cloth, resembling a chess-board, which covered the table there, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. The Exchequer consists of two divisions, the *receipt* of the Exchequer, which manages the royal revenue, and the *Court*, or judicial part of it. This Court was, down to the year 1842, subdivided into a Court of equity, and a Court of common law. But by 5 Vic. c. 5, all the equity jurisdiction of the Court of Exchequer is transferred to the Court of Chancery. The Court of Exchequer consists, moreover, of a *revenue* side, and of a common law or *plea* side. On the *revenue* side it ascertains and enforces the proprietary rights of the Crown against the subjects of the realm. On the *plea* side it administers redress between subject and subject in all actions personal. Since the Judicature Act, 1873, the business of the Court of Exchequer is transferred to the Exchequer Division of the High Court of Justice —*Mozley.*

Court of Exchequer Chamber. An intermediate court of appeal between the superior courts of common law and the House of Lords. When sitting as a court of appeal from any one of the three superior courts of common law, it is composed of judges of the other two courts. The power of this court are, since the Judicature Act, 1873, transferred to the Court of Appeal established by that Act.—*Mozley.*

Court of Faculties. *See* FACULTY.

Court of High Commission. *See* HIGH COMMISSION COURT.

Court of Hustings. A court in the city of London analogous to the Sheriff's County Court. Now abolished. But the name is still given to the temporary courts held for the election of members of parliament in every county and borough; and the members are said to go to the hustings to be elected.

Court of King's Bench. One of the superior courts of common law. It is so called because the Sovereign used to sit there in person and the court used to follow the Sovereign's person whereover he went. This Court keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined before itself, or prohibit their progress below. It superintends all civil corporations in the kingdom. It commands magistrates and others to do what their duty requires, in every case where there is no other specific remedy. It protects the liberty of the subject by speedy and summary interposition. It takes cognizance both of criminal and civil causes; the former in what is called the *crown side* or *crown office*; the latter in the *plea side* of the court. Since the Judicature Act, 1873, the jurisdiction of this Court is transferred to the King's Bench Division of the High Court of Justice.—*Mozley.*

Court of Marshalsea (*curia palatii*). The Court or seat of the marshal of the king's house. This court was originally held before the steward and marshal of the king's house, and was instituted to administer justice between the king's domestic servants, in order that they might not be drawn into other courts, and thus deprive the king of their services. Now abolished.

Court of Peculiars. A branch of the court of Arches.

Court of Piedpoudre (*curia pedis pulverizati*. Court of piepowder or powdered foot. A court of record incident to every fair and market, of which the steward of him who owned the toll of the market was the judge. Its jurisdiction extended to all commercial injuries done as between buyers and sellers in that fair or market, and not in any preceding one. So called because they were most usual in summer when the suitors to the court had *dusty feet*, and from expedition in hearing causes proper thereunto before the dust goes off the feet of the plaintiffs and defendants.

Court of Policies of Assurance. A court established for the purpose of determining in a summary way all causes concerning policies of assurance in London. Now abolished.

Court of Queen's Bench. *See* COURT OF KING'S BENCH.

Court of Record. A court whose acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony; which rolls are the *records* of the court. All courts of record are the king's courts, and no other court has authority to fine and imprison; so that every creation of a new jurisdiction with the power of fine or imprisonment makes it instantly a court of record; and to such records frequent recourse is had when any critical question arises, in the determination of which former precedents may give light or assistance, and for other causes. A court not of record, says Blackstone, is the court of a private man, whom the law will not entrust with any discretionary power over the fortune or liberty of his fellow-subjects.

Court of Request (*curia requisitionum*). *See* COURTS OF CONSCIENCE.

Court of Starchamber (*curia camerœ stellatœ*). *See* STRACHAMBER.

Court, Prerogative. *See* PREROGATIVE COURT.

Court Rolls. The rolls of a manor, whereon are entered all surrenders, wills, grants, admissions, and other acts relating to the manor. They are considered to belong to the lord of the manor, and are kept by the steward as his agent; but they are in the nature of public books for the benefit of the tenants as well as the lord, so that it is a matter of course for the courts of law to grant an inspection of the Court rolls in a question between two tenants.—*Mozley.*

Courtesy. *See* CURTESY.

Cousenage. *See* COSENAGE.

Cousin. Any collateral relation except brothers and sisters, and their descendents, and the brothers and sisters of any ancestor. The child of an uncle or aunt is called the *cousin-german*, or the first cousin; and the child, grandchild, &c., of such cousin is called the first cousin once, twice, &c., removed. Peers have always been and still are styled *cousins* of the sovereign.

Cousin german is a synonym for first cousin (*Saunderson* v. *Bailey*, 8 L. J. Ch. 18; 4 My. & C. 56).—*Stroud.*

Couthutlaugh. A person who willingly and knowingly received an outlaw; in which case he was in ancient time subject to the same punishment as the outlaw himself.

Covenant (*conventio*). The agreements of parties *under seal* usually contain stipulations and conventions, called *covenants*, more or less elaborately worded, whereby either party vouches for the truth of certain facts or binds himself for doing or refraining from doing certain things. Thus the grantor of an estate may covenant that he hath a right to convey, or that the grantee shall quietly enjoy the land; a lessee may covenant to pay his rent or to keep the premises in repair. No particular form of words is necessary to create a covenant; any words are sufficient for that purpose which show an intention to be bound by the deed or to do or omit that which is the subject of the covenant; any such words are

sufficient, and some such words are necessary to make a covenant.

Covenants when viewed with relation to each other, will be found to be divisible into three classes:—(1) *Independent* covenant,—that is to say, where either party may recover damages from the other for the injury he may have sustained by a breach of the covenants in his favour, and where it is no excuse for the defendant to allege a breach of the covenants on the part of the plaintiff. (2) Covenants which are conditions and *dependent*,—that is, in which the performance of one covenant depends on the prior performance of another; so that till the prior conditions be performed, the other party is not liable to an action on his covenant. (3) Covenants sometimes called *concurrent*, which are mutual conditions to be performed at the same time; and in these if one party is ready and offers to perform his part, and the other neglects or refuses to perform his, he who is ready and offers thus legally fulfils his engagement, and may therefore maintain an action against the other party for his default, although neither be obliged to do the first act. —*Broom's Com. Law.*

A contracts with B to sell him three numbered shares to be transferred upon payment of the price by B on or before a certain day. *Held*, that the covenants to transfer and pay the price are concurrent (*Imperial Banking and Trading Co.* v. *Atmaram*, 2 Bom. H. C., O. C., 246; *Imperial B. and T. Co.* v. *Pranjivandas*, 2 Bom. H. C., O. C., 258).

Covenants, besides admitting of the classification above given, are also designated, regard being had to their nature and to the subject-matter which they may concern, as *real*, *personal*, or *collateral*. A covenant *real* being such as is annexed to an estate and to be performed on it; such covenant is also called *inherent*; a covenant *personal* being one whereof some person in particular shall have the benefit, or whereby he shall be charged, or one which is to be performed personally by the covenantor alone. The term *collateral*, when applied to a covenant, is commonly used in contradistinction to the term *real* or *inherent*, as above defined. A covenant is said to be collateral when the thing to be done in pursuance of it is merely collateral to the land, and doth not touch or concern the thing demised in any sort, or not so immediately as to pass with it to an assignee. Such a covenant is also said to be *in gross*.

If, for instance, a lessee covenant to pay rent or to repair, or if a lessor grant to his lessee the liberty of taking wood from off the demised premises to burn within his house or to repair his fences during the term, the covenant is *real*; it passes with the land to its assignee, so that he who takes the one becomes immediately subject to the other. On the other hand, a covenant to pay a sum of money, or a covenant by a lessee not to hire certain persons to work in a mill about to be erected on the land demised, would be *personal* to the covenantor, and would not bind his assignee. In this later case the covenant might be said to be altogether *collateral* to the land.

A covenant *running with the land* is a covenant of which successive owners or lessees of the same land are, as such, entitled to the benefit, or liable to the obligation. Covenants in leases extending to a thing *in esse*, parcel of the demise, run with the land (*i. e.*, pass with it from assignee to assignee), and bind the assignee though he be not named—as to repair, &c. And if they relate to a thing not *in esse*, but yet the thing to be done is upon the land demised, as to build a new house or wall, the assignees, if named, are bound by the covenants; but if they in no manner touch or concern the thing demised, as to build a house on other land, or to pay a collateral sum to the lessor, the assignee though named, is not bound by such covenants; or if the lease is of sheep or other personal goods, the assignee though named, is not bound by any covenant concerning them. The reasons why the assignees, though named, are not bound in the last two cases are not the same. In the first case it is because the thing covenanted to be done has not the least reference to the thing demised; it is a substantive, independent agreement. In the case of the mere personalty, the covenant doth concern and touch the thing demised, for it is to restore it or the value at the end of term; but it doth not bind the assignee, because there is no privity, as there is in the case of a realty between the lessor and lessee and his assigns in respect of the reversion.

A convenant, which imposes a burden, does not ordinarily pass with the land so as to bind a subsequent owner; but the position is otherwise where there is privity of estate and the covenant is connected with or concerns the land or estate conveyed. If these conditions are fulfilled, the convenant will run with the land as readily as one conferring a benefit. A restrictive covenant will run with the land if created for the benefit of the land conveyed or of that of which the grantor remains the owner, and is intended to be annexed to such land, for example, a conevant creating or reserving a right in the nature of servitude (*Doyal Chandra* v. *Chunilal*, 12 Cal. L. J. 259).

Again a covenant may be *express* or *implied*, *viz.*, a covenant in *deed* and a covenant in *law*, a covenant in law being an agreement which the law infers or implies from the use of certain words having a known legal operation; for instance, if a man by deed demise land for years, an action for covenant will lie at suit of the tenant after ouster upon the word *demise*, which imports or makes a covenant in law for quiet enjoyment. A general rule applicable in interpreting deeds is this—*expressum facit cessare tacitum*—an express covenant excludes or controls an implied cove-

nant having reference to the same subject-matter.—*Broom's Com. Law.*

An *action of covenant* is an action *ex-contractu*, brought to recover damages for breach of a covenant which is in fact a promise made by *deed under seal*. Now obsolete.

A *covenant to stand seised to uses* was where a person seised of land proposed to convey his estate to his wife, child or kinsman. In its terms it consisted of a covenant by the owner to stand seised to the use of the intended transferee. This conveyance was held to be ineffectual, unless the parties to it stood to one another in the relation of marrige, or of near consanguinity; and it is now wholly obsolete.

Covenants for title. The usual covents for title in the case of freehold lands are five in number:—(1) that the grantor is seised in fee; (2) that he has good right to convey; (3) for quiet enjoyment; (4) free from encumbrances; and (5) for further assurance; and in the case of the grantor retaining any of the title-deeds, then (6) a covenant to produce such title-deeds. A vendor gives all these covenants, but limits them to the acts and defaults of himself and his ancestors (*i. e.*, since the last purchase); a mortgagor also gives all these covenants, but absolutely and without any such qualification or limitation as aforesaid. A trustee or mortgagee transferring the estate, merely covenants that he personally has not encumbered. The covenant for further assurance does not extend to including a covenant to produce, which latter covenant should therefore be expressly added, where it is wanted. The covenants for title in the case of copyholds are substantially the same; and in the case of leaseholds that the lease is valid and not become void or voidable.—*Brown.*

See PERSONAL ACTIONS, PROMISE.

Cover. A deposit of money as a "cover" in Stock Exchange dealings, seems to mean no more than a mere deposit as security in the ordinary sense (*Mundella* v. *Shaw*, 4 Times Rep. 253).—*Stroud.*

Covering note. A preliminary note issued by an assurer to the assured for protection against loss, before a formal policy is issued. Also called a protection note.

Covert baron. An expression used of a wife, to indicate that she is under the protection or influence of her hdsband, who is her *baron* or lord.

Coverture. The condition of a woman during her marriage, because she is then under the cover, influence and protection of her husband.

Covin (*covina*). A deceitful agreement between two or more to injure or defraud another. *Covinous*, fraudulent.

Cowle. (*Ind.*) A engagement or agreement. It refers generally to land taken on an agreement to pay a small but increasing rent for a certain number of years.

Cranage (*cranagium*). A liberty to use a crane for landing goods from vessels at creeks or wharves and to make profit of it; also the money paid or taken for the same.

Craven. Cravent. A word of disgrace and obloquy, pronounced by the vanquished champion in trial by battel. The word is still used of a coward.

Creamer. A foreign merchant; but generally taken for one who has a stall in a fair or market.

Creansor. A creditor.

Creation-money. An annuity formerly sometimes granted to a peer at his creation, the better to enable him to maintain his dignity.

Credit, letter of. *See* LETTER OF CREDIT.

Creditor. He that trusts another with any debt, be it in money or wares. But the word is generally (though less accurately) used in a large sense, to signify any one who has a legal claim against another.—*Mozley.*

Creditors' bill. Creditors' suit. A suit in chancery instituted by a creditor of a deceased person on behalf of himself and all other creditors of the deceased, for the administration of the estate of the deceased for the benefit of his creditors.

Crier. An inferior officer of a court who makes the proclamations required by law, calls the plaintiff who is nonsuited at the trial, and administers the oaths to witnesses.

Crime. A crime, as opposed to a civil injury, is the violation of a right, considered in reference to the evil tendency of such violation as regards the community at large.

Crimes have, from a very early period, been distributed by the law of England into three classes or divisions, *viz.*, *Treasons*, *Felonies*, and *Misdemeanors*.

The prominent feature in the crime of *High Treason* is the violation of the allegiance due from a subject to the sovereign as the supreme magistrate of the state. Between felonies and misdemeanors the distinction at the present day is in great measure arbitrary and very unsatisfactory, a felony being distinguishable from a misdemeanor rather by the consequences which follow on a conviction for the offence than by any particular element or ingredient appearing in it.

Felony is intermediate between treason (which is a higher kind of felony) and misdemeanor, and is distinguishable from both. The crime of felony is of remote origin and was founded upon feudal principles. Thus the main incident of felony in former times was the forfeiture of the tenant's land to the lord of the fee, and this was a necessary consequence of the dissolution, by the misconduct or *felony* of the tenant, of that mutual compact between the two parties which formed the essence of the feudal tenure. Even after felony had ceased to signify merely a failure of the tenant's duty with reference to laws of

feudal allegiance, the term was used as descriptive of a crime which subjected the offender to capital punishment, and which, if he evaded punishment by flight, deprived him of his property and of all civil rights. And at the present day, a conviction for felony, *ipso facto*, induces a forfeiture of the property—real or personal or both—of the offender.

The term *misdemeanor* applies to all crimes of an inferior degree which do not fall within either of the preceding divisions. A misdemeanor is, in truth, according to its ordinary acceptation, any offence lower in scale of crime than felony, and, as above stated, separated from it by a line entirely arbitrary. The question whether a particular act is a felony or a misdemeanor at common law will, in case of difficulty, be determinable by the Judges.—*Broom's Com. Law.*

The distinction between a *crime* and a *tort*, or civil injury, is, that the former is a breach and violation of the *public rights* and duties due to the whole community, considered as such, in its social aggregate capacity, and is said to be committed against the king's peace; whereas the latter is merely an infringement or privation of the civil rights which belong to individuals considered merely in their individual capacity.—*Brown.*

Criminal. A person indicted for a public offence and found guilty.

Criminal breach of trust. Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law describing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willingly suffers any other person so to do, commits criminal breach of trust.—*Act XLV of* 1860 (*Penal Code*), *s.* 405.

Criminal conspiracy. *See* CONSPIRACY, COMBINATION.

Criminal conversation. Adultery. Against an adulteror the husband had an action at common law, commonly known as an action of criminal conversation (*crim. con.*). In form it was generally trespass *vi et armis* (with force and arms), on the theory that "a wife is not, as regards her husband, a free agent or separate person," and therefore her consent was immaterial, and the husband might sue the adulterer, as he might have sued any mere trespasser who beat, imprisoned, or carried away his wife against her will. Actions for criminal conversation were abolished in England on the establishment of the Divorce Court in 1857, but damages can be claimed on the same principles in proceedings for a dissolution of marriage or judicial separation.—*Pollock on Torts.*

Criminal information. *See* INFORMATION.

Criminal intimidation. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. A threat to injure the reputation of any deceased person in whom the person threated is interested is within this section.—*Act XLV of* 1860 (*Penal Code*), *s.* 503.

Criminal letters. A form of criminal prosecution in Scotland, corresponding to a criminal information in England.

Criminal lunatic. *See* LUNATIC.

Criminal misappropriation. Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. A dishonest misappropriation for a time only is a misappropriation within the meaning of this section. A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it. What are reasonable means, or what a reasonable time, in such a case, is a question of fact. It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.—*Act XLV of* 1860 (*Penal Code*), *s.* 403

Criminal trespass. Whoever enters into or upon property in possession of another with intent to commit an offence, or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit criminal trespass.—*Act XLV of* 1860 (*Penal Code*), *s.* 441. *See* HOUSE-TRESPASS,

Croft. A little close adjoining to a dwelling house or homestead, and enclosed for pasture or arable, or any other use.

Cross action. Where a having brought an action against B, B brings an action against A upon the same subject-matter, or arising out of the same transaction, this second action is called a *cross action*. A cross action,

however, is rendered unnecessary in all cases, and the party may now by means of a counterclaim obtain all the benefit which formerly arose from a cross action.—*Brown.* *See* COUNTERCLAIM.

Cross appeal. If both parties to a judgment are dissatisfied therewith, and each accordingly appeals, the appeal of each is called a cross appeal in relation to that of the other.

Cross bill. A bill brought by a defendant in a chancery suit against a plaintiff or a co-defendant, praying relief in reference to the same subject-matter.

Cross demand. A counterclaim. When A makes a demand again B, and B makes a demand against A, B's demand is called a cross demand.

Crossed cheques. *General crossing.* Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed *generally.*—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 123.

Special crossing. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed *specially*, and to be crossed to that banker.—*Ibid.*, *s.* 124.

Payment of crossed cheques. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent, for collection.—*Ibid.*, *s.* 126.

Cross examination. See EXAMINATION.

Cross remainder. This is where each of two grantees has reciprocally a remainder in the share of the other. Thus if an estate be granted, as to one half to A for life, with remainder to his children in tail, with remainder to B in fee simple; and as to the other half, to B for life, with remainder to his children in tail, with remainder to A in fee simple; these remainders are called cross remainders.

Crown. The word is generally used in law to designate the sovereign.

Crown debts. Debts due to the Crown. These are, by various statutes, put upon a different footing from debts due to a subject. It is a prerogative of the Crown to claim priority for its debts before all other creditors and to recover them by a summary process called an *extent.*

In determining whether or not a debt falls under the denomination of a Crown debt, the question is not in whose name the debt stands, but whether the debt, when recovered, falls into the coffers of the State; the nature of the cause of action in respect of which judgment is recovered does not affect the right of the Crown or of the Secretary of State in Council for India to priority (*Secretary of State* v. *Bombay Landing and Shipping Co., Ld.*, 5 Bom. H. C., O. C., 23; *Judah* v. *Secretary of State*, 12 Cal. 445).

Crown lands (*terræ dominicales regis*). The demesne lands of the Crown, which it is now usual for the Sovereign to surrender at the commencement of his reign for its whole duration, in consideration of the Civil List settled upon him. They are placed under commissioners, and the revenue go to the Consolidated Fund. *See* CIVIL LIST.

Crown law. The criminal law.

Crown office. The *Crown side* of the Court of King's Bench, on which it takes cognizance of criminal causes. *See* COURT OF KING'S BENCH.

Crown paper. A list of proceedings pending on the Crown side of the King's Bench Division of the High Court.

Crown side. That jurisdiction of the Court of King's Bench by which it takes cognizance of criminal causes including many questions which are practically of a civil nature. *See* COURT OF KING'S BENCH.

Crown solicitor. The solicitor to the Treasury, who acted, prior to 1879, in state prosecutions as solicitor for the Crown in preparing the prosecution.

Cruelty. Such conduct by a husband or wife as entitles the other party to a judicial separation by reason of danger to life or health.

Cryer. *See* CRIER.

Cucking-stool. *See* CASTIGATORY.

Culpable homicide. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death. Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented. The causing the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.—*Act XLV of* 1860 (*Penal Code*), *s.* 299.

When culpable homicide is murder. Culpable homicide is murder, if the act by which the death is caused is done (1) with the intention of causing death, or (2) if it is done with the intention of causing such bodily injury as

the offender knows to be likely to cause the death of the person to whom the harm is caused, or (3) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, or (4) if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.—*Ibid.*, *s.* 300.

When culpable homicide is not murder. (1) Culpable homicide is not murder, if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident; Provided that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person; that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant; that the provocation is not given by anything done in the lawful exercise of the right of private defence; whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. (2) Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. (3) Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused. (4) Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender's having taken undue advantage or acted in a cruel or unusual manner; it is immaterial in such cases which party offers the provocation or commits the first assault. (5) Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death, with his own consent. —*Ibid.*

Cupable homicide by causing death of person other than person whose death was intended. If a person, doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.—*Ibid.*, *s.* 301.

Culprit. One who is indicted for a criminal offence. This is originally an abbreviation whereby the clerk of the assize, or clerk of the arrains on behalf of the Crown replied to a prisoner's plea of not guilty, that the prisoner *is* guilty (culpable or *culpabilis*) and that the king is ready to prove him so; *prit* (Fr. *pret*, ready). This is therefore in the nature of a replication on behalf of the king *viva voce* at the bar.—*Mozley.*

Cumulative legacy. A legacy, which is to take effect *in addition* to another disposition, whether by the same or another instrument, in favour of the same party; as opposed to a *substitutional* legacy, which is to take effect as a *substitute* for some other disposition. For rules on this subject see Act X of 1865 (Succession), s. 88.

Cumulative remedy. A second mode of procedure in addition to one already available; as opposed to *alternative* remedy.

Curator. A person entrusted with the charge of an estate, or with the conduct of a minor past the age of pupillarity, or with the management of a lawsuit. *See* PUPIL.

Interim curator. A person appointed by the justices of the peace to take care of the property of a felon convict until the appointment by the Crown of an administrator or administrators for the same purpose.

Cure by verdict. This is where some objection to a declaration or indictment, which might have been maintained before verdict given, is no longer maintainable after the jury have delivered their verdict. See AIDER BY VERDICT.

Curiality. The Scotch name for Curtesy.

Curnum. (*Ind.*) A village accountant holding office under Government.

Currency. Coin; bank-notes or other paper money, such as currency notes, issued by authority, and which are continually passing as and for coin.

Currency notes. Promissory notes of the Government of India payable to bearer on demand.—*Act II of* 1910 (*Paper Currency*), *s.* 3.

A currency note, being in legal view money, the property in it passes by mere delivery, and that nothing short of fraud in taking an instrument payable to bearer will engraft an exception upon the rule (*Collector of Salem's Case*, 7 Mad. H. C. R. 233).

Universal currency note. This means a note of the denominational value of five rupees, ten rupees or fifty rupees, or a note of any other denominational value which the Governor-General in Council may, by noti-

fication in the Gazette of India, specify in this behalf.—*Act II of* 1910 (*Paper Currency*), *s.* 2.

Cursitor Baron. An officer of the Exchequer, whose duty it was to examine sheriff's accounts, to administer oaths to officers of excise, &c.

Cursitors. Clerks of the Court of Chancery, who made out original writs, and were called clerks of course.

Curtesy. Curtesy of England (*jus curialitatis Angliæ*). This is the life estate which a husband has in the lands of his deceased wife, which by the common law takes effect where he has had issue by her born alive, and capable of inheriting the lands. Thus, if a wife have lands in tail mail, *i. e.*, descendible to her *male* issue only, the birth of a son will entitle the husband to curtesy, but the birth of a daughter will not. Hence there are four circumstances necessary for the existence of this estate :—(1) A canonical or legal marriage ; (2) Seisin of the wife ; (3) Birth of issue, alive and during the mother's existence; (4) Death of the wife. The husband's title to the curtesy is *initiated* at the birth of issue, and *consummated* at the death of his wife.

Curtilage (*curtilagium*). A garden, yard, or field, or other piece of ground lying near or belonging to a house or messuage ; the limit of the premises in which house-breaking can be committed.

Custodiam. Custodiam lease. A lease from the Crown, under the seal of the Exchequer, whereby the *custody* of lands &c., seized into the King's hands, was demised or committed to some person as custodee or lessee thereof.

Custom (*consuetudo*). Custom is an unwritten law established by long usage and the consent of our ancestors. If it be universal, it is a part of the common law of the land ; if particular, it is then properly a custom.—*Field on Evidence.*

A *particular* or *local* custom may be defined to be an usage which has obtained the force of law, and is, in truth, the binding law within a particular district, or at a particular place, of the persons and things which it concerns. In order to make a particular custom good under English law there are several essentials :—

1. A custom in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the contrary ; so that if any one can show the beginning of it, it is no good custom.

2. A custom must have been *continued* ; because any interruption would cause a temporary ceasing ; the revival gives it a new beginning, which will be within time of memory, and, thereupon, the custom will be void.

3. A valid custom must have been *peaceable*, and acquiesced in, not subject to contention and dispute ; for as such a custom derives its force and authority from common consent, the fact of its having been immemorially disputed, either at law or otherwise, would be a proof that such consent was wanting.

4. A custom must be *reasonable*, or, rather, it must not be unreasonable.

5. A custom ought to be *certain* (*Lachman Rai* v. *Akbar Khan*, 1 All. 440). And, therefore, a custom that lands shall descend to the most worthy of the owner's blood, is void ; for how shall this worth be determined ?

6. A custom, though established by consent, must, when established, be *compulsory*, and not left to the option of every man whether he will use it or no. A custom which a man may obey at his own pleasure is idle and absurd, and indeed no custom at all.

7. Customs must be *consistent* with each other. One custom cannot be set up in opposition to another ; for, if both are really customs, then they are of equal antiquity, and must have been established by mutual consent, which to say of contrary customs is absurd.

8. A custom must not be opposed to public good, for *malus usus est abolendus*.

9. With reference to the interpretation of customs, it will suffice to say that customs, especially where they derogate from the general rights of property must be construed strictly. They are not to be *enlarged beyond the usage* ; they may be abrogated by statute. —*Broom's Com. Law.*

Whether all these requisites are necessary to make a good custom in India has not been decided ; but there are many cases in which *reasonableness* and *certainty* have been insisted upon.—*Field on Evidence.*

A custom may be (1) *Private*, for instance family customs and usages termed *kulachar* or in Upper India *rasm wa raivaj-i-khandan*, or (2) *General*, which is defined to include customs common to any considerable class of persons (s. 48, Explanation, Act I of 1872, Evidence) ; or *Public*, the term *public* being strictly applied to that which concerns every member of the State, and the term *general* being confined to a lesser, though still a considerable portion of the community.—*Amir Ali and Woodroffe's Law of Evidence.*

Besides local customs properly so called, there are, in different parts of the country, certain *usages* existing, which unless excluded expressly or impliedly by agreement between parties, regulate, to some extent, the relation of landlord and tenant, or affect the reciprocal rights of incoming and outgoing tenants, and are usually known as *customs of the country*. A custom belonging to this class need not be shown to have existed immemorially, but will be established on proof of a usage, recognized and acted upon in the particular district, applicable to farms of a like description with that in regard to which its existence is specially asserted. A custom of the country in order that it be good, must be

reasonable and sufficiently definite and certain.

Very similar to the local usages last mentioned, as regards their operation upon the contracts of parties, are particular usages of trade which exist in certain places; and, in order to be effective must be reasonable, and must be proved by apt evidence in courts of justice.—*Broom's Com. Law.*

Custom-house. A house in several cities and post-towns, where the king's customs are received, and all business relating thereto transacted.

Custom of London. The custom peculiar to the city of London, principally with reference to (1) the law of intestate succession; (2) the law of foreign attachment. As regards intestate succession, the goods of a freeman of London, who died intestate, were, after payment of his debts, divided in equal shares between his widow, his children, and his administrator. If the deceased left *only* a widow, or *only* children, they respectively took one moiety, and the administrator the other moiety; if neither widow nor children, the administrator took the whole. And this portion, or the *dead man's part*, the administrator was formerly wont to apply to his own use. The custom of London in this respect is now abolished. The law of foreign attachment, so far as it consists in making debts due to a judgment-debtor available to a judgment-creditor (a process called in England "attachment" and in Scotland "arrestment"), has been extended to the whole of England and Wales.—*Mozley.* *See* FOREIGN ATTACHMENT.

Custom of merchants (*lex mercatoria*). The branch of law which comprises the rules relating to bills of exchange, partnership and other mercantile matters. *See* LAW MERCHANT.

Customary Court Baron. *See* COURT BARON.

Customary easement. *See* EASEMENT.

Customary freehold. A kind of tenure of which the incidents are for the most part similar to those of common copyhold; the principal difference being, that the holding in a customary freehold is not said to be *at the will of the lord.* *See* COPYHOLD.

Customary tenants. Such tenants as hold by the custom of the manor. Thus, copyholders are said to hold "at the will of the lord, according to the custom of the manor"; the will being no longer arbitrary and precarious, but restrained so as to be exerted according to the custom of the manor. *See* COPYHOLD.

Customary tenure. A tenure depending on the custom of a manor. *See* COPYHOLD.

Customs. Duties charged upon commodities on their importation into, or exportation out of, a country.

Customs and services. Duties which tenants owe to their lords by virtue of their tenure; which being withheld from the lord he might have a writ of *customs and services* to compel them.

Cutcherry. (*Ind.*) A public office of the Collector or Tahsildar; a hall of business; a court.

Cynebote. A mulct anciently paid, by one who killed another, to the kindred of the deceased.

D

Dacoity. When *five* or more persons conjointly commit, or attempt to commit, a robbery, or where the whole number of persons conjointly committing, or attempting to commit, a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding is said to commit dacoity.—*Act XLV of* 1860 (*Penal Code*), *s.* 391.

Dakhalnama. (*Ind.*) A deed of possession or occupancy; a document giving right of occupancy.

Dakhila. (*Ind.*) A receipt; voucher; proof; a precedent. A rent receipt.

Damage. Damages (*damna*). Damage is a loss or injury by the fault of another, *i. e.*, by an unlawful act or omission. Damages is the compensation, as fixed by the jury, or the judge, if the case be tried without a jury, payable to a successful plaintiff.

Damage and *damages* are not equivalent terms. Damages are the compensation, in the form of a sum of money, which the court awards for every injury; but the damage which every injury imports is that which is supposed to be compensated by this award of damages, and such damage may consist wholly of a money loss, or partly so, or not at all of such. It is impossible to conceive of an injury or legal wrong that shall not import or result in damage in this sense; and then some award of compensation, however nominal, is obviously incumbent, unless wrongs are to go wholly unredressed.—*Collett on Torts.* *See* INJURY, TORT.

Damages may be said to be of three kinds namely, *nominal*, *substantial* (or *ordinary*), and *exemplary*.

Nominal damages means a sum of money that may be spoken of, but has, in effect, no existence in point of quantity, as one anna damages. Where there has been a bare breach of contract unattended by any loss, this is the measure. So in torts, as in a bare trespass, or invasion of a right of easement, this may be the measure; but it does not follow that, in torts, the mere absence of any appreciable money loss will reduce the damages to this measure, for there may be circumstances of malice or insult.—*Collett on Torts.* Nominal damages are a sum of so little value as compared with the cost and trouble of suing, that it may be said to have 'no existence in point of quantity,' such as a shilling or penny. Infringement of absolute rights like those of personal security and property give a cause of action without regard to the amount of harm done, or to there being harm estimable

at any substantial sum at all. As Holt, C. J., said in *Ashby* v. *White* (2 Lord Raym. 955), a damage is not merely pecuniary, but an injury imports a damage, when a man is thereby hindered of his right.—*Pollock on Torts.*

Substantial or *ordinary damages* are those which are intended as a compensation for the injury sustained, whether it be a breach of contract, or a tort. As to the former the rule is, that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation with respect to damages, as if the contract had been performed. Hence in cases of contract, the measure of damages is generally a matter of account, and the damages given may be demonstrated to be right or wrong; the motive or intention of the defendant will be immaterial. In torts the motive can be inquired into and will be material; but where it is not so, as in many cases of torts to property, the measure of substantial damage is as accurately ascertainable as in actions on contracts. In point of fact such damages are often only in theory a compensation.—*Collett on Torts.* Ordinary damages are a sum awarded as a fair measure of compensation to the plaintiff, the amount being, as near as can be estimated, that by which he is the worse for the defendant's wrong doing, but in no case exceeding the amount claimed by the plaintiff himself. Such amount is not necessarily that which it would cost to restore the plaintiff to his former condition. In other words, compensation, not restitution, is the proper test.—*Pollock on Torts.*

Exemplary (sometimes, but improperly, called *vindictive*) *damages* can only be given in cases of tort. They are substantial damages, but are not the result of calculation, and the only scale by which they can be measured, is the application of a temperate discretion. Where the tort is to the person, or character, or feelings, and the facts disclose fraud, malice, violence, cruelty, or the like, they operate as a punishment, for the benefit of the community, and as a restraint on the transgressor. Hence the condition in life of the defendant is to be considered, since the damages are for example's sake, not as a payment, but as a penalty, and must be proportioned to the means of the offender.—*Collett on Torts.* Exemplary damages are where there is great injury without the possibility of measuring compensation by any numerical rule, and juries have been not only allowed but encouraged to give damages that express indignation at the defendant's wrong rather than a value set upon the plaintiff's loss. Damages awarded on this principle are called exemplary or vindictive. The kind of wrongs to which they are applicable are those which, besides the violation of a right or the actual damage, import insult or outrage. A wanton trespass on land, persisted in with violent and intemperate behaviour; the seduction of a man's daughter with deliberate fraud, or otherwise under circumstances of aggrevation; such are the acts which, with the open approval of the Courts, juries have been in the habit of visiting with exemplary damages. —*Pollock on Torts.*

Compensation for breach of contract. When a contract, or an obligation resembling a contract, has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby, which naturally arose from the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.—*Act IX of* 1872 (*Contract*), *s.* 73. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non fulfilment of the contract.—*Ibid.*, *s.* 75.

Damage-cleer (*damna clericorum*). A fee assessed of the tenth part in the Court of Common Pleas, and the twentieth part in the King's Bench and Exchequer, out of all damages exceeding five marks recovered in those courts, in actions upon the case, covenant, trespass, &c., wherein the damages were uncertain; which the plaintiff was obliged to pay to the prothonotary or the officer of the court wherein he recovered, before he could have execution for the damages.—*Wharton.*

Damage feasant. Damage faisant. Doing hurt or damage; *i. e.*, when one man's beasts are in another man's ground, without license of the tenant of the ground, and there do seed, tread, and otherwise spoil the corn, grass, woods and such like. In such case the owner of the soil may distrain them (*i. e.*, take possession of them) until satisfaction be made him for the injury he has sustained.—*Moxley.* See CATTLE TRESPASS.

Damage without injury. See TORT.

Damdupat. (*Ind.*) A rule of Hindu Law, whereby a creditor cannot recover from the debtor by way of interest an amount greater than the principal amount at a time (*Ramkrishna* v. *Vithoba*, 3 Bom. H. C., A. C., 25; *Narayan* v. *Satvaji*, 9 Bom. H. C., A. C., 83; *Khushalchand* v. *Ibrahim*, 3 Bom. H. C., A. C., 23). The rule only applies when the debtor is a Hindu; it does not operate where the debtor is other than a Hindu (*Nanchand* v. *Bapusaheb*, 3 Bom. 131; *Dawood* v. *Vullubhdas*, 18 Bom. 227; *Harilal* v. *Nagar*, 21 Bom. 38; *Ali Saheb* v. *Shabji*, 21 Bom. 85).

The rule of damdupat limits the arrears of interest recoverable at any one time by the amount of principal remaining due at that time. The amount of interest allowed cannot exceed the balance of principal actually due

at the date of suit (*Dagdusa* v. *Ramchandra*, 20 Bom. 611). The rule applies even though the interest is to be paid in grain (*Anandrao* v. *Durgabai*, 22 Bom. 761).

Where a bond is executed in adjustment of a past debt the principal, for the purpose of the rule of *damdupat*, is the amount of such bond, and not the balance of the unpaid principal actually advanced on the earlier bond (*Sukalal* v. *Bapu*, 24 Bom. 305).

The rule applies both in respect of simple as also of mortgage-debts. It does not however apply where the mortgagee has been placed in possession, and is accountable for profits received by him as against the interest due. But where these profits are by the terms of the bond received for only a portion of the interest on the mortgage-debt, the general rule of *damdupat* will govern such mortgage accounts (*Sundarabai* v. *Jayawant*, 24 Bom. 114; *Nathubhai* v. *Mulchand*, 5 Bom. H. C., A. C., 196).

Dame. The legal title of the wife of a knight or baronet.

Damnification. That which causes damage or loss.

Damnify. To damage; to injure; to cause loss to any person.

Damsel. A young single gentlewoman.

Dan. Anciently the better sort of men in the kingdom had the title of *Dan*, as the Spanards *Don*. The old term of honour for men, as we now say *Master* or *Mister*.

Danegeld. Danegelt. Danegold (*danegildum*). This was an ancient tribute laid upon the Saxons of one shilling upon every hide of lands through the realm by the Danes, for maintaining forces sufficient to clear the British seas of Danish pirates, who greatly annoyed the coasts.

Danelage. The Danish law; such customs of the Danes as were retained in England after the Danes had been expelled. Also the laws which the Danes enacted whilst they had the dominion in England.

Darogah. (*Ind.*) The chief native officer at a police, custom, or excise station; a superintendent; a manager.

Dasiputra. (*Hin. L.*) The son by a female slave.

Dastawez. (*Ind.*) A voucher; a document; any legal paper; a note of hand; a bond; a title deed and the like. Anything in writing producible in evidence, or by which a person may be bound in law; a certificate of any kind.

Dative. A word derived from the Roman law, signifying "appointed by public authority." Thus, in Scotland, an executor-dative is an executor appointed by a court of justice, corresponding to an English *administrator*. *Dative* or *Datif* (*dativus*) also means that which may be given or disposed of at will and pleasure.

Datta. (*Hin. L.*) A son given in adoption (*Datta-putra*); also a gift; a donation; given in marriage; betrothed.

Datta-homam. (*Hin. L.*) A sacrifice by fire, an essential ceremony performed in the adoption of a son.

Dattaka-putra. (*Hin. L.*) A son given in adoption.

A *pallok putra* (a boy brought up in the family) is not an adopted son. Bringing him up does not make him a *dattaka putra* (son adopted by gift) (*Nilmadhab* v. *Biswambhar*, 3 B. L. R., P. C., 27).

Dauphin. The title of the eldest sons of the Kings of France,

Day (*dies*). The *natural* day consists of twenty-four hours and consists of the solar day and the night; and the artificial day begins from the rising of the sun, and ends when it sets. The English, French, Dutch, Germans, Spainards, Portuguese and Egytians, begin their day at *midnight*; the Jews, with the modern Italians and Chinese, begin it at *sun-setting*; the ancient Babylonians, Persians, Syrians, and the modern Greeks, at *sun-rising*; and the Arabians, and modern astronomers, begin it at *noon*. The astronomical day commences at 12 o'clock at noon, but the common or civil day at 12 o'clock at night.—*Tomlins*. In the space of a day all the twenty-four hours are usually reckoned. Therefore, in general, 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. If anything is to be done within a certain time *of*, *from* or *after* the doing or occurrence of something else, the day on which the first act or occurrence takes place is to be excluded from the computation.—*Wharton*. See act X of 1897 (General Clauses), s. 9.

Day, in legal understanding, is the day of appearance of the parties, or continuance of the suit where a day is given.

Days in banc. The days set down by statute or order of the court, when writs should be returned, or the party summoned should appear upon the writ served.

Days of grace. Three days of grace formerly allowed to a person summoned by writ beyond the day named in the writ in which to make his appearance; three days allowed for the payment of a bill of exchange or a promissory note after it has nominally become due. No days of grace are allowed in the case of bills and notes purporting to be payable on sight or on demand.

Day-rule. Day-writ. A rule or order of court, permitting a prisoner in custody in the King's Bench prison, &c., to go out of his prison for one day for the purpose of transacting his business.

Daywere of land. As much arable land as could be ploughed up in one day's work; or one *journey*, as the farmers still call it.

See DEMURRAGE DAYS, LAY DAYS.

Daya. (*Hin. L.*) Portion; inheritance; this is of two kinds—*Apratibandha, i. e.*, without hindrance or impediment, absolute, or direct; and *Sapratibandha, i. e.*, with obstruction, indirect, contingent, or presumptive. The word is also used in the sense of a charge, a plaint, a law-suit.

Daya-bhaga. (*Hin. L.*) A partition of inheritance; a law book relating to the apportionment of heritable property amongst heirs.

Daysman. An arbitrator; an umpire; an elected judge. Also called *deies-man.*

Deacon. The lowest degree of holy orders in the church of England.

Dead. *See* CIVIL DEATH.

Dead freight. When a merchant has shipped only a part of a cargo, the freight payable for the part not shipped is called *dead freight.*

Dead man's part. The remainder of an intestate's moveables, besides that which of right belongs to his wife and children. This part was formerly made use of in masses for the soul of the deceased; subsequently it devolved on the administrator for his own use. This is now abolished. In Scotland, the *dead's part* is that part of a man's moveables which he is entitled to dispose of by will. *See* CUSTOM OF LONDON.

Dead pledge (*mortuum vadium*). A pledge of lands or goods, better known as mortgage. So called because if the mortgagor failed to repay the money on the day fixed, the land, in strictness of law, was gone from him for ever, and so *dead* to him, and if he paid it, the pledge was dead to the mortgagee; as opposed to a *living* pledge (*vivum vadium*), where the rents and profits of the land go towards the repayment of the debt till the sum raised is fully satisfied; here the land subsists and survives the debt, and immediately on the discharge of that, results back to the borrower.

Dead rent. *See* SLEEPING RENT.

Dead use. A future use.

Dean (*decanus*). The chief of the clergy appointed for the celebration of divine service in the bishop's cathedral.

Dean of the Arches. *See* ARCHES COURT.

Death. Where a person has not been heard of for seven years, and his absence is not explainable, the law raises a *prima facie* presumption that he is dead. But that presumption does not in any way fix the *time* of death, of which strict evidence must be given by the party who derives any interest therefrom. *See* CIVIL DEATH, PRESUMPTION OF LIFE OR DEATH.

Death bed gifts. Gifts by dying persons. All such gifts are looked upon with distrust, even when the law does not set them aside altogether or in part. In Scotland, such gifts might formerly be challenged on that account. The object of this law was to protect rich persons from importunity and to save their heirs from mischief.

Deathsman. Executioner; hangman.

Debenture. A bond in the nature of a charge or Government Stock, or the stock of a public company, *e. g.*, a railway company. Debentures are usually in the form of a promissory note, subject to certain strict regulations as to the mode of transfer, and usually have coupons attached to them to facilitate the payment of interest. It also means a custom-house certificate to the effect that an importer of goods is entitled to "draw-back."

Debit. The left-hand page of a ledger, to which all items are carried that are charged to an account.

Deb-sheba. (*Ind.*) Service of God. Worship of God. The right of worshipping an idol.

Debt (*debitum*). A pecuniary liability, whether of certain or uncertain amount; but in its legal sense it is used especially of a liquidated sum due. And whereas in its popular sense it is used especially of the *liability of the debtor*, in a legal sense it is used also of the *right of the creditor*, as the assignment of a debt. Debts are paid in the following order in the course of administration:—(*a*) Crown debts, (*b*) Judgment-debts, (*c*) Recognizances and statutes, (*d*) Special and simple contract debts, (*e*) Voluntary bonds and covenants. Also an action of debt. *See* PERSONAL ACTIONS.

Abatement of debts. *See* ABATEMENT.

Debtee executor. This is where a person makes his creditor his executor.

Debtor. He that owes something to another.

Debtor executor. This is where a creditor constitutes his debtor his excutor.

Debtor's summons. A summons granted against a debtor by a Court of Bankruptcy on the creditor proving that there is due to him from the debtor a liquidated sum of money, requiring the debtor to pay within a time fixed; non-compliance with which is an act of bankruptcy.

Debutter (devutter) property. (*Ind.*) Property dedicated to the service of an idol, God or Gods (*Shayama Charan* v. *Abhiram*, 3 Cal. L. J. 306; 10 Cal. W. N. 738; 33 Cal. 511; *Jugut Mohinee* v. *Sokheemonee*, 10 B. L. R., P. C., 19; *Rumonee Debia* v. *Baluck Doss*, 11 B. L. R. 336, note). Property given for the maintenance of religious worship and of charities connected with it (*Prosunno Kumari* v. *Golab Chand*, 14 B. L. R., P. C., 450). *See* SHEBAIT.

Decapitation. The act of beheading.

Decedent. A deceased person.

Deceit (*deceptio*). Fraud, cheat, craft or collusion used to deceive and defraud another. If a falsehood be knowingly told, with an intention that another person should believe it to be true, and act upon it, and that person has acted upon it, and thereby suffered da-

mage, the party telling the falsehood is responsible in damages in an action for deceipt, there being a conjunction of wrong and loss, entitling the injured party to compensation (*Pasley* v. *Freeman*, 2 Sm. L. C. 62). It is not necessary, in all cases, to show that the defendant knew the representation to be untrue; for if he made the statement for a fraudulent purpose, and without believing it to be true, and with the intention of inducing the plaintiff to do an act, and the act is done to the prejudice of the plaintiff, the defendant is liable. The fraud is the gist of the action, and hence in an action for deceipt the plaintiff must establish that the defendant has made a statement *false in fact* and *fraudulent in intent*. If a man makes a statement *knowing* it to be untrue with the intention that another should act upon it, that obviously is fraud; so also if a man *recklessly*, not caring whether it be true or false, makes a statement with the intention that another should act upon it, that also is fraud. In both cases there is the moral terpitude which is necessary to maintain an action for damages for deceipt. If a man makes a statement which he believes to be *true* but which is in fact *untrue*, even though made with the intention that another should act upon it, this will not suffice to maintain such action.—*Collett on Torts*.

Decennary. A tithing or civil division of the country composed of ten freeholders with their families. The members of a tithing were mutually responsible for each other's good behaviour. Ten decennaries formed a *hundred*. *See* FRANK-PLEDGE.

Decimation (*decimatio*). The punishing every tenth soldier by lot, for mutiny or other failure of duty, was termed *decimatio legionis* by the Romans. Sometimes only the twentieth man was punished (*vicesimatio*), or the hundredth (*centestimatio*). It also means tithing or tenth part.

Deciners. Decenniers. Doziners (*decennarii*). Such as were wont to have the oversight of ten households, and the maintenance of the king's peace.

Decisive oath (*sacramentum decisionis*). In the Civil Law, where one of the parties to a suit, not being able to prove his charge, offered to refer the decision of the cause to the oath of his adversary; which the adversary was bound to accept, or tender the same proposal back again, otherwise the whole was taken as confessed by him.

Declarant. A person who makes a declaration.

Declaration (*declaratio*, *narratio*). A proclamation or affirmation, open expression or publication. At law, a statement on the plaintiff's part of his cause of action, corresponding to the bill of complaint in Equity. It contained a succinct statement of the plaintiff's case, and generally comprised the following parts:—(1) *Title and date* (In the Queen's Bench, the 10th July 1874); (2) *Venue* (Middlesex, to wit); (3) *Commencement* (A. B. by C. D. his attorney sues E. F. for.....); (4) *Body of declaration* (generally consisting of the following parts:—[*a*] *Inducement*, being introductory merely, and rarely requiring proof; [*b*] *Averments*, being usually the allegation of the performance of all precedent conditions, &c., on the plaintiff's part; and [*c*] *Counts*, containing a statement of defendant's breach of contract or other injury); (5) *Conclusion* ("And the plaintiff claims £....."). Declarations are no longer used in actions, but in their place is substituted a statement of claim.

Statutory declaration. An affirmation substituted by law for an oath in certain cases. *See* AFFIRMATION.

Declaration of insolvency. A declaration by any person of inability to pay his debts which, when filed in the Bankruptcy Court, amounts to an "act of bankruptcy." *See* ACT OF BANKRUPTCY.

Declaration of trust. A declaration whereby a person admits that he holds property upon trust for another. The creation of a trust. *See* TRUST.

Declarator. An action whereby it is sought to have some right of property, or of status or other right judicially ascertained and declared; the same as *declaratory action*.

Declarator of property. When the complainer desires he should be declared sole proprietor, and all others discharged to molest him in any way.

Declarator of trust, is resorted to against a trustee who holds property upon titles *ex facie* for his own benefit.

Declaratory action or suit. In the law of Scotland, an action in which some right is sought to be declared in favour of the pursuer (or plaintiff) but where nothing is demanded to be paid or performed by the defender (or defendant). *See* DECLARATORY DECREE.

Declaratory decree. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may, in its discretion, make therein a declaration that he is so entitled and the plaintiff need not, in such suit, ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence he would be a trustee.—*Act I of 1877* (*Specific Relief*), *s.* 42. Execution cannot be obtained on a merely declaratory decree (*Muniyan* v. *Periya*, 1 Mad. H. C. R. 184).

Declaratory relief. A relief sought by a declaratory decree. *See* RELIEF.

Declaratory statutes. Those which declare what the common law is and has been; those which declare the existing law.

Declaring by the bye. An old phrase indicating that the plaintiff filed his declaration against a party already in custody of the Court under process in another suit.

Declinatory plea. A plea of sanctuary, or of benefit of clergy. *See* BENEFIT OF CLERGY.

Declinature. The Scotch expression to indicate that a party objects to the jurisdiction of a judge.

Decoctor. A bankrupt.

Decollation. The act of beheading.

Decoy. A place made for catching wild water-fowl.

Decree (*decretum*). An edict; a law. The sentence of the Court of Chancery delivered on the hearing of a cause, corresponding to the expression *judgment* which was formerly used only in Court of Common Law. The word is also used in Scotland to signify the final sentence of a Court. *See* JUDGMENT.

Decree means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit, and may be either *preliminary* or *final* It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144 (of Act V of 1908), but shall not include—(*a*) any adjudication from which an appeal lies as an appeal from an order, or (*b*) any order of dismissal for default. A decree is *preliminary* when further proceedings have to be taken before the suit can be completely disposed of. It is *final* when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.—*Act V of* 1908 (*Civ. Pro.*), *s.* 2 (2).

Order means the formal expression of any decision of a Civil Court which is not a decree as above defined.—*Ibid.*, *s.* 2 (14).

A *decree* as distinguished from an *order* is final, and is made at the hearing of the cause, whereas an order is interlocutory, and is made on motion or petition; wherever an order may, in a certain event resulting from the direction contained in the order, lead to the termination of the suit, in like manner as a decree made at the hearing, it is called a *decretal order.*—*Brown.*

Decree-holder means any person in whose favour a decree has been passed or an order capable of execution has been made.—*Act V of* 1908 (*Civ. Pro.*), *s.* 2 (3).

Decree nisi. The order made by the Court of Divorce, on satisfactory proof being given in support of a petition, for dissolution of marriage. All decrees for divorce or nullity of marriage are *nisi* (*i. e.*, imperfect) in the first instance, and afer six months are made *absolute* if cause to the contrary be not sooner shown, and the dissolution takes effect, subject to appeal. See Act IV of 1869 (Divorce), s. 16.

Decreet arbitral. (*Sc. L.*) The award of an arbitrator.

Decreet of exoneration. (Sc. *L.*) Discharging trustees, executors, factors, tutors and others.

Decreet of locality. (*Sc. L.*) The adjustment or apportionment of the aggregate stipend due to the minister of a parish in Scotland among the several landowners liable to pay it.

Decreetof modification. (*Sc. L.*) The decree of the Teind Court in Scotland, modifying a stipend to a minister from the teinds (or tithes) of the parish.

Decretal order. A chancery order in the nature of a decree. *See* DECREE.

Decretals (*decretales*). Books of the Canon Law, containing the decrees of sundry Popes.

Decrowning. The act of depriving of a crown.

Dedbana. An actual homicide or manslaughter. *See* REDBANA.

Dedicate. To give up a private road to the use of the public by acts evidencing an intention to do so.

Dedition. The act of yielding up anything; surrendry.

Deed (*factum*). A formal document or writing on paper or parchment duly signed sealed and delivered. It consists of three principal points, *writing*, *sealing* and *delivery*; writing, to express the contents; sealing, to testify the consent of the parties; and delivery to make it binding and perfect. *See* CONTRACT.

A deed is either *deed poll* or *deed indented.* If a deed be made by two or more parties, there ought to be regularly as many copies of it as there are parties; and the deed so made is called an *indenture*, because each part formerly used to be cut or *indented* in the acute angles or in the form of teeth on the top or side, to tally or correspond one with the other. It begins with the words "This indenture," &c., stating the parties at the outset. Formerly no person who was not a party could take any *immediate* estate, interest, or benefit under such a deed. But now under 8 and 9 Vic. c. 106, such an estate, interest, or benefit may be taken under it by a person not a party to it, and a deed purporting to be an indenture, is to have the effect of an indenture though not actually indented. A deed made by one party only is not and never was indented, but was *polled* or shaved quite even, and therefore called a *deed poll*, a *bald* or *shorn* deed, or a *single* deed. It is in the form of a manifesto or declaration, and begins with the words "Know all men," &c. Under such a deed any person may accept a grant. A deed is necessary to almost all dealings with real preperty. It imports *consideration.* The different parts of a deed are:—*Premises*,

Recital, Testatum, Habendum, Tenendum, Reddendum, Covenant.

The word "deed" in the understanding of the common law is an instrument written in parchment or paper, whereunto ten things are necessarily incident, *viz*:—(1) writing; (2) in parchment or paper; (3) a person able to contract; (4) by a sufficient name; (5) a person able to be contracted with; (6) by a sufficient name; (7) a thing to be contracted for; (8) apt words required by law; (9) sealing; and (10) delivery. A deed cannot be written upon wood, leather, cloth or the like, but only upon parchment or paper, for the writing upon them can be least vitiated, altered or corrupted (Co. Litt. 35 b). As to the 9th of the above requirements (sealing) it would seem that wax or wafer must be used. To a *deed poll*, the 5th and 6th of the above requirements would hardly be applicable.—*Stroud.*

Deeds and contracts of the people of India ought to be liberally construed. The form of expression, the literal sense, is not to be so much regarded as the real meaning of the parties which the transaction discloses (*Hanooman Prasad* v. *Mt. Babooee Munjraj Kuari*, 6 Moo. I. A. p. 411).

Deed of composition. *See* COMPOSITION.

Deed of covenant. Covenants are frequently entered into by a separate deed, for title, or for the indemnity of the purchaser or mortgagee, or for the production of title-deeds. A covenant with a penalty is sometimes taken for the payment of a debt, instead of a bond with a condition, but the legal remedy is the same in either case. *See* COVENANT, PROMISE.

Deemed. 'Deemed' is used in various senses. Sometimes it means 'generally regarded'; at other times it signifies 'taken *prima facie* to be'; while in other cases it means 'taken conclusively to be.'—*Encycl. L. E.*

Deemsters. A kind of judges, in the isle of Man, who without process, writing or any charge to the parties, decide all controversies in that island; they are chosen from among the parties themselves.

Defamation (*defamatio*) Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives. It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. An imputation in the form of an alternative, or expressed ironically, may amount to defamation. No imputation is said to harm a person's reputation unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Exception 1. It is not defamation to impute anything which is true, concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good, is a question of fact.

Exception 2. It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther.

Exception 3. It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no farther.

Exception 4. It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings. A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section

Exception 5. It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil, or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

Exception 6. It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author, so far as his character appears in such performance and no farther. A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Exception 7. It is not defamation in a person, having over another any authority conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Exception 8. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of the accusation.

Exception 9. It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Exception 10. It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.—*Act XLV of* 1860 (*Penal Code*), *s.* 499.

The law of defamation which should be applied in suits in India for defamation is that laid down in the Indian Penal Code, and not the English law of libel and slander (*Abdul Hakim* v. *Tej Chander*, 3 All. 815). The rule of English Law, which prohibits, except in certain cases, an action for damages for oral defamation unless special damage is alleged, being founded on no reasonable basis, should not be adopted by the Courts in British India (*Parvathi* v. *Mannar*, 8 Mad. 175).

See LIBEL, SLANDER.

Default. An omission of that which we ought to do; neglect; as in the expression "wilful neglect or default" It also means the *non-appearance* in court at a day assigned. If a plaintiff makes default in appearance, he will be non-suited; and where a defendant makes default, judgment is passed against him by default. Judgment given against a party by reason of such non-appearance, or other neglect to take any of the steps required of him within due time, is called *judgment by default*.

The word default does not necessarily imply any moral obliquity or any breach of contractual obligation. It simply means *non-payment*, failure or omission to pay (*Fakir Chander* v. *Ram Kumar*, 8 Cal. W. N. p. 725, P. C.).

Default is a purely relative term just like *negligence*. It seems nothing more, nothing less, than not doing what is reasonable under the circumstances; not doing something which you ought to do, having regard to the relations which you occupy towards the other persons interested in the transaction (*per* Bowen, L. J., *Re Young & Harston*, 31 Ch. D. 174). Default would seem to embrace every failure by the defendant to perform his contract, unless prevented by superior force over which he had no control such as stress of weather.—*Stroud*.

Default summons. A procedure for the summary recovery of a debt.

Defaulter. One who makes default.

Defeasance (*defeisantia*). A collateral deed, made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be defeated or totally undone. So a defeasance on a bond or recognisance, or judgment recovered, is a condition which, when performed, defeats or undoes it; it is inserted in a separate deed in the same manner as the defeasance of an estate above mentioned. A defeasance differs from a *condition* in this, that a defeasance is made by a separate deed, while a condition is inserted in the same deed or conveyance; a defeasance defeats or puts an end to an instrument; while a condition restrains or qualifies it.

Defeasible. That which may be annulled or abrogated; that which may be defeated, determined or divested.

Defence. A justification, protection, or guard. In law, it means a denial by the defendant of the truth or validity of the plaintiff's complaint. The legal method adopted by a person against whom proceedings have been taken for *defending* or *protecting* himself against them. In civil matters a defence is either (1) by statement of defence, which may be a denial of the plaintiff's right, or may be an allegation of a set off or counterclaim by the defendant which will cover wholly or in part the claim of the plaintiff; or (2) by *demurrer* which seeks to defeat the plaintiff's claim by showing that the facts alleged on his behalf do not show any cause of action to which effect can be given by the court as against the defendant so demurring.

Peremptory defence is a denial by the defendant of the truth or validity of the plaintiff's complaint.

Dilatory defence is one which raises a technical objection to the further prosecution of the action, but does not go to the merits.

See DILATORY PLEA, SELF-DEFENCE.

Defend. In ancient laws and statutes signifies, *to forbid*. In the commencement of a plea, it signifies *deny*.

Defendant (*defendens*). The person sued in an action, or indicted for a misdemeanour. But a person who is charged with felony is more frequently called the *prisoner*.

Defender. In Scotch law, this is the same as defendant in the English law.

Defender of the Faith (*fidei defensor*). A title belonging to the sovereign of England, as that of *Catholic* to the King of Spain, and that of *Most Christian* to the King of France. These titles were originally given by the Popes of Rome. The title of Defender of the Faith was first given by Pope Leo X, to Henry VIII for writing against Martin Luther in behalf of the Church of Rome.

Defeneration. The act of lending money on usury.

Defensive allegation. The allegation by the defendant in an ecclesiastical suit of the facts and circumstances which he has to offer in his defence.

Defensor. An advocate in court; a guardian or protector; a defendant; a warrantor of lands who comes to defend his warranty;

the patron of a church; an officer having the charge of the temporal affairs of a church.—*Bouvier.*

Deferred stock. Stock in a joint stock company is occasionally divided into *preferred*, the holders of which are entitled to a fixed dividend payable out of the net earnings of the whole stock; and *deferred*, the holders of which are entitled to all the residue of the net earnings, after such fixed dividend has been paid to the holders of the *preferred*.—*Wharton.*

Definitive sentence. The final judgment of a spiritual court, in opposition to provisional or interlocutory judgment.

Deforce (*deforciare*). To withhold lands or tenements from the right owner. To deprive another of lands. *See* DEFORCEMENT.

Deforcement (*deforciamentum*). The holding of any lands or tenements wrongfully as against any person who has the right thereto but who has not as yet at any time been in the possession thereof; *e. g.*, where a lessee for years or *per autre vie* holds over after the determination of his interest and refuses to deliver up the possession to the reversioner or remainderman. But where such a tenant holds over without any such refusal to deliver up, he is not a *deforciant*, but only a tenant by sufferance. The deforciant must have come in by right in the first instance; for if the person wrongfully holding come in by wrong in the first instance, he is not a deforciant, but either an *intruder*, a *disseisor* or an *abator*. Deforcement in respect that the deforciant comes in by right in the first instance is like *discontinuance*.

Deforciant. Deforceor. Deforcor. One who deforces. *See* DEFORCEMENT. *Cowel* defines it as one that overcometh and casteth out by force; as if several have right to lands as co-heirs, and one entering keepeth out the rest.

Defraudation. Privation by fraud.

Defunct. One that is deceased; a dead man or woman.

Degradation. Degradation of peers is where a person who has been in the rank of peers has ceased to be such; as when a peeress who is such only by marriage, is married to a commoner; or where a peer is deprived of his nobility by act of parliament. Degradation of ecclesiastics is an ecclesiastical censure whereby a clergyman is deprived of his holy orders; it is *summary* (*i. e.*, by word only), or *solemn* (*i. e.*, by stripping the party degraded of those ornaments and rights which are the ensigns of his order or degree). *See* DEPRIVATION.

Dejeration. A taking of a solemn oath.

Delegates. *See* COMMISSION, DISTRICT DELEGATES.

Delegation. A sending away; a putting into commission; the assignment of a debt to another; the entrusting another with a general power to act for the good of those who depute him.—*Wharton.*

Delegation implies that powers are committed to another person or body which are as a rule always subject to resumption by the power delegating (*Hutten* v. *Clarke*, 25 Q. B. p. 304). It does not imply a parting with power by the person who grants the delegation but points rather to his conferring of an authority to do something which otherwise that person would have to do himself (*Ibid.*, *s.* 395).

Deletion. Erasure.

Delict. *See* TORT.

Delivery. The act of transferring possession. It may be either actual or constructive.

Delivery order is an order addressed by the owner of goods to a person who holds them on his behalf, instructing him to deliver them to a person named in the order.

Writ of delivery is a writ of execution employed to enforce a judgment for delivery of chattels.

Delivery of a bill or note means tranfer of possession, actual or constructive, from one persen to another.

Delivery of a deed. Delivery is a requisite to a good deed. The delivery may be effected either by acts or by words, *i. e.*, by doing something and saying nothing, as merely handing it to the grantee or his agent, or by doing nothing and saying something, as by the executant of the deed placing his finger on the seal and saying "I deliver this as my act and deed." A deed takes effect only from this tradition or delivery. A delivery may be either *absolute*, *i. e.*, to the other party or grantee himself, when the execution perfects the deed, and nothing is left to be done, or *conditional*, which is the handing of the writing to some third person, to be delivered by him as the act and deed of the grantor, when certain specified conditions shall be performed. Until the conditions are performed, the instrument is called an *escrow*, *scrowl*, or *writing*. *See* CONTRACT, DEED.

Delivery of goods. Delivery of goods sold may be made by doing anything which has the effecting of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf. A delivery to a wharfinger or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder. In the absence of any special promise, the seller of goods is not

bound to deliver them until the buyer applies for delivery. In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale; and goods contracted to be sold or to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.—*Act IX of* 1872 (*Contract*), *ss.* 90-4.

Delivery of a will means the same as publication, and consists in executing it in the presence of two witnesses, and declaring it to be your will.—*Stroud* *See* PUBLICATION.

Dem. In such an expression an Doe dem. Smith, dem. means *demise* in the sense of lease; indicating that Doe, as lessee of Smith, is the nominal plaintiff. *Doe dem. Smith*, reads "Doe, on the demise of Smith."

Demand. A claim; a challenging; the asking of anything with authority; a calling upon a person for anything due. A demand is either *in deed* (which may be written or verbal) *i. e.*, an express demand, as a demand for rent, or an application for payment of a debt; or *in law, i. e.*, one which may be done without words, as an entry on land, distress for rent, taking of goods, bringing an action, &c.

Demandant. He who is actor or plaintiff in a real action, because he demands lands. *See* RECOVERY.

Demease. Death.

Demerit. A power to punish according to a person's "demerit" imports only that he shall be punished in the ordinary course of justice, by indictment.—*Stroud*.

Demesne. Demeine. Demain (*dominicum; terra dominicales*). Own. Private. Those lands of a manor which the lord has not granted out in tenancy but which he has reserved in his own hands for his own use and occupation for the maintenance of himself and his family, as opposed to those which are let out to tenants. *See* COURT LANDS, MANOR.

Demesnial. Pertaining to a demesne.

Demi-official. Partly official or authorised.

Demise (*demissio*). A grant by lease, it is applied to an estate either in fee or for term of life or years, but most commonly to the latter; it is used in writs of any estate. The operative word "demise" in a lease implies an absolute covenant on the part of the lessor for the lessee's quiet enjoyment during the term, which, however, may be qualified by a more limited express covenant. The phrase "demise of the Crown" denotes the death of the king or queen, because the kingdom is thereby transferred or *demised* to his successor. Hence the word *demise* is sometimes wrongly used for *decease*. The word *demise* should not be confounded with the word *devise*.

Demise and redemise. The conveyance by *demise* and *redemise* is where there are mutual *leases* made from one to another on each side of the same land or something out of it, *e. g.*, where A grants a lease to B at a nominal rent, and B redemises the same property to A for a shorter term at a substantial rent. *See* REDEMISE.

Demonstrative legacy. *See* LEGACY.

Demur. To stop. To deliver a demurrer. *See* DEMURRER.

Demurrable. A pleading, &c., which fails to allege such facts as would support the claim made by it.

Demurrage. The daily sum payable to the owners of a ship by a merchant, who having hired the ship, detains it for a longer time than he is entitled to do by his contract. Sometimes the delay itself is called *demurrage*.

Demurrage days. Days are sometimes given in favour of the charterer which are called demurrage days. Those are days beyond the "lay days," but during which the amount that he has to pay for the use of the ship is a fixed sum.—*Stroud*. *See* LAY DAYS.

Demurrer. A pleading which admits the facts as stated in the pleading of the opponent, and referring the law arising thereon to the judgment of the court, waits until by such judgment the court decides whether he is bound to answer. A pleading, whereby a party objects to a bill or information, declaration, indictment or other pleading of his adversary, on the ground that it is, on the face of it, insufficient in point of law. Demurrers at law were *general* or *special*; a general demurrer being one expressed in general terms only, and a *special* demurrer, setting forth a particular objection. It should be observed that, whereas a demurrer in an action at law signifies a legal objection taken by *either* party to the other's pleading, in equity the word is applied only to the objection taken by the *defendant* to the bill or information that it is insufficient to entitle the plaintiff to relief.

Demurrer to the evidence may arise where a record or other matter is produced in evidence, concerning the legal consequences of which there is a doubt in law, in which case the adverse party may, if he pleases, demur to the whole evidence; and such demurrer admits the truth of every fact which has been alleged, but denies the sufficiency of them all, in point of law, to maintain or overthrow the issue.

Den and strond. A liberty for vessels to run aground or come ashore.

Denelage. *See* DANELAGE.

Denizen. An alien born who has obtained *ex donatione regis* (from the gift of the king) letters patent to make him an English subject. A denizen is in a kind of middle state between an alien and natural born subject, and partakes of both of them.—*Moxley*.

Denumeration. The act of present payment.

Deodand (*deo dandum*). Any personal chattel which is the immediate occasion of the death of any reasonable creature; which was formerly forfeited to the king, to be applied to pious uses, and distributed in alms by his high almoner; for example, a cart, horse, sword, knife, cudgel, or any other thing by which the death is caused is a deodand.

Departure. A term of law properly applied to a defendant, who first pleading one thing in bar of an action, and being replied unto, in his rejoinder, quits that and shows another matter contrary to or not pursuing his first plea, which is called a *departure from his plea*; also where a plaintiff in his declaration sets forth one thing, and after the defendant has pleaded, the plaintiff in his replication shows new matter different from his declaration, this is a departure.—*Tomlins*

No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.—*Act V of* 1908 (*Civ. Pro.*), *Sch. I, O. VI, R. 7.*

Departure of gold and silver. The parting or dividing of those metals from others that are coarser.

Depeculation. The robbing of the prince or the commonwealth; an embezzling of the public treasure.

Dependent covenants. *See* COVENANT.

Depending. *See* PENDING.

Deponent. A person who gives evidence, whether orally or by affidavit; a witness.

Deportation Transportation; banishment.

Depose. To lay down; to lodge; to degrade from a throne or high office; to affirm in a deposition.

Deposit. The act of entrusting money to a bank is called a *deposit* in a bank; and the amount of the money deposited is also called the *deposit*. A species of bailment by which a person entrusts another with a chattel to keep sefely without a reward. In this sense the Latin form of the word, *depositum*, is more frequently adopted It is, in the Civil Law, divisible into two kinds. (1) *necessary*, made upon some sudden emergency, and from some pressing necessity; and (2) *voluntary*, which arises from the mere consent and agreement of the parties. *See* BAILMENT.

A *deposit of title-deeds* is when the title-deeds of an estate are deposited as a security for the repayment of money advanced; this operates as an equitable mortgage.

Depositary. One with whom anything is lodged in trust, as *depository* is the place where it is put.

Deposition (*depositio*). Written evidence, or oral evidence taken down in writing. The word is also used to signify the depriving a person of some dignity; and it seems to have been at one time taken to signify death,

Depositor. One who makes a deposit.

Deprivation (*deprivatio*). A depriving or taking away; when a bishop, parson, vicar, &c., is deposed from his preferment. It is of two sorts; *deprivatio a beneficio*, whereby a man is deprived of his promotion or benefice; and *deprivatio ab officio* is that whereby a man is deprived of his orders, whica is also called *depositio* or *degradatio*, and is commonly for some heinous crime meriting death, and performed by the bishop in a solemn manner.—*Mozley.* *See* DEGRADATION.

Deputy (*deputatus*). One who governs and acts instead of another, or who exercises an office, &c., in another man's right.

Deraign. To confound, to displace. The word *deraign* and the word *deraignment* may also be used in the sense of *to prove* and *approving*, by disproving what is asserted in opposition to truth and fact.

Derelict (*derelictus*). A thing forsaken or thrown away by its owner with the intention of quitting the ownership thereof. Goods thrown out of a vessel to lighten the same in time of distress are not derelict, for want of the intention. *See* FLOTSAM.

Derelict ship. A vessel forsaken at sea.

Derelict lands. *See* DERELICTION.

Dereliction. This is where the sea shrinks back below water-mark, so that land is gained from the sea; if this gain is gradual, it goes to the owner of the land adjoining; but if it is sudden, the land gained belongs to the Crown. *See* ACCRETION. It also signifies the delivering possession of property by one man to another; but that is not its general acceptation.

Derivative conveyance. A conveyance which presupposes some other conveyance precedent, and serves to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance.

Derivative evidence. This is such evidence as heresay; and strictly speaking, it is not admissible as evidence, except in certain cases. *See* HEARSAY. Derivative evidence is second hand evidence, that is, evidence transmitted through some channel not itself evidentiary; and it is, strictly speaking, distinguishable from secondary evidence. *See* SECONDARY EVIDENCE.

Derogate. To lesson or impair.

Derogation. The act of weakening or restraining a former law or contract. *See* ABROGATION.

Derogatory clause. This is a clause or sentence secretly inserted by the testator in his will, with a condition that no will he may make thereafter shall be valid, unless this clause or sentence be inserted word for word. This is done as a precaution to guard against later wills being extorted by violence or otherwise improperly obtained. Such a clause by English law is invalid, as tending to make the will irrevocable.

Derration. A technical term in commercial law, meaning the departure of the ship from the course of navigation which is either usual and proper, or one expressly agreed to be followed on the voyage, in accordance to which the contract is made.—*Encycl. L. E.*

Descendants. The expression 'descendants' of any ancestor shall extend to all persons who must trace their descent through such ancestor.—*Act XXX of* 1899 (*Inheritance*), *s.* 1.

"Descendants of A," in a Hindu will, would include children and grand children living at his decease, but does not include A's brother or widow (*Arumugam* v. *Ammi*, 1 Mad. H. C. R. 400).

Descent. The title whereby a man on the death of his ancestor intestate acquires his estate by right of representation as his heir-at-law. Where the title to land vests in any one by mere operation of law, such title is said to vest in him by *descent*. As thus used, the term is distinguished from *purchase*, which may be either *devise* or *grant*. *See* PURCHASE.

The word 'descent' shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue.—*Act XXX of* 1839 (*Inheritance*), *s.* 1.

Descent cast. This was where one who had wrongfully possessed himself of another's lands by *abatement*, *disseisin*, or *intrusion*, died, and his estate descended to his heir.

Description (*descriptio*). In deeds and grants there must be a certain description of the *lands* granted, and places where the *lands* lie, and of the *persons* to whom granted, &c., to make them good. See ss. 21 and 22 of Act XVI of 1908 (Registration). *See* PARCEL.

A wrong description of a person will not make a devise void, if there be otherwise a sufficient certainty what person was intended by the testator.

The description of a person is that which tells what he is; and where a statute requires that the name, place of abode and description of a person be given, and only the name and place of abode are given, there is a total "omission of a description," and not an "inaccurate description" (*R.* v. *Tugwell*, 3 Q.B. 704, 37 L. J. Q. B. 275).

Deserter. A soldier or sailor who has deserted from the army or navy.

Desertion. Desertion, in the case of soldiers and marines, is the criminal offence of abandoning the military or naval service without license.

Desertion of children. The abandonment of them. *See* ABANDONMENT.

Desertion of the diet. See DIET.

Desertion of a wife. The abandonment of a wife by the husband, which, coupled with adultery by the husband, is a ground for obtaing a divorce.

Deshumkh. (*Ind.*) A district revenue officer who superintends the cultivation, and reports on the state of the crops, &c. *Semble.* —The usual services of a deshmukh consist in making himself thoroughly acquainted with all circumstances affecting the land revenue in his district, and in communicating such information to the mamlatdar or mahalkari, and the deshmukh is bound to perform or get performed so much writing business as is necessary for the above purposes and no more (*Rangoba* v. *Collector of Ratnagiri*, 8 Bom. H. C, A. C., 107). As the holder for the time being of a *deshmukhi watan* (an hereditary office) has only a life-interest in the allowances pertaining to that *watan*, such allowances, accruing due subsequently to his death, cannot be attached as part of his estate (*Hammantrav* v. *Bhavanrav*, 10 Bom. H. C., A. C., 299).

Deshpande. (*Ind.*) The hereditary revenue accountant of a district or a certain number of villages.

Design. Design means any design applicable to any article, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, stainting, or any other means whatever, manual, mechanical, or chemical, separate or combined, but does not include any trade-mark as defined in ss. 478 and 479 of the Indian Penal Code.—*Act II of* 1911 (*Patents and Designs*), *s.* 2 (5).

Despacheurs. Persons appointed to settle cases of average.

Desperate debt. A hopeless debt; an irrecoverable obligation.

Desponsation. The Act of betrothing persons to each other.

Despot. An absolute prince; one who governs with unlimited authority. It is the title of the princes of Wallachia, Servia, and the neighbouring countries.

Destination. (Sc. *L.*) The nomination of a succession of heirs to a property by the owner thereof.

Destination of goods. Sending goods to their destination means sending them to a particular place, to a particular person who is to receive them there; and not sending them to a particular place without saying to whom (*Ex parte Miles*, 15 Q. B. D. 43).—*Stroud.*

Desuetude. Disuse.

Detainer. Forcible detention of a man's person or property. The wrongful keeping of a person's goods, although the original taking may have been lawful.

Writ of detainer. An obsolete writ which lay against persons imprisoned for debt for

detaining the prisoner in custody until he should be lawfully discharged therefrom; being the form of process for commencing a personal action against one already in prison.

Determinable freeholds. Freeholds which are terminable on a given contingency, specified in the deed creating them.

Determination. The putting an end to; the termination.

The *determination of a term or estate* is the same thing as its "termination"; and does not mean premature extinction, but the coming to an end in any way whatever (*St. Aubyn* v. *St. Aubyn*, 30 L. J. Ch. 920; 1 Dr. & Sm. 611). Hence "*sooner* determination" may be rejected as insensible.—*Stroud.*

Determination of will. An act of the will whereby an estate at will is determined, or put an end to; this need not be by express notice, but it may be effected by any act of ownership done without the consent of the tenant at will; or it may be done by the tenant at will himself declaring that he will no longer hold the possession of the premises, and quitting them accordingly.—*Moxley.*

Determine. To terminate; to come to an end. To decide. The word "determined" means legally decided by a court of competent jurisdiction (*Syud Ghalib Ali* v. *Khilloo*, 3 N.-W. P. 51).

Detinue (*detinendo*). The form of action whereby a plaintff seeks to recover a chattel personal unlawfully detained. It differs from *trover*, inasmuch as in *trover* the object is to obtain *damages* for a wrongful conversion of the property to the defendant's use; but in *detinue* the object is to recover the *chattel itself*. *See* PERSONAL ACTIONS.

Detinue of goods in frank-marriage. A writ formerly available to a wife after a divorce, for the recovery of the goods given with her in marriage.

Deuterogamy. The marrying of a wife after the death of a former wife; a second marriage.

Deva. (*Hin. L.*) One of the approved forms of marriage. The gift of a daughter whom her father has decked in gay attire, when the sacrifice has already begun, to the officiating priest, who performs that act of religion. Now obsolete.

Devasthanum. (*Ind.*) Lands or revenue applied to the support of a temple. Grants to Brahmins and others for officiating in temples, or to those who had dedicated themselves to the Deity.

Devest. Divest. To deprive; to take away; as opposed to *invest*, which is to deliver possession of anything to another. To take away from a person an estate or interest which has already vested.

Deviation. A departure from a plan conceived and agreed upon. In the case of policies of marine insurance it is held that the slightest *deviation* from the voyage marked out in the policy, except under circumstances of absolute necessity, will render the insurance ineffectual. Delay in commencing and prosecuting the voyage, for purposes foreign to the adventure, is also called *deviation*.

Devise (*divisa*). A bequest by a man of his lands and goods by his last will and testament in writing. The giver is called the *devisor*; the person to whom it is given, the *devisee*. At present the term *devise* is principally used with reference to landed property, and *bequeath* and *bequest*, with referenco to personalty. *See* BEQUEATH.

The term *devise* strictly applies to a testamentary gift of lands or real property, but as a matter of fact it is often used as epuivalent to (the verb) *bequeath* or (the noun) *legacy* in testamentary gifts of personal property.—*Encycl. L. E.* The words *devise* and *bequeath* in their ordinary sense signify the declaration of a man's will concerning the successor to his own property after his death. Such a devise or bequest operates by nature of the will, and of that alone.—*Stroud. Devise* and *bequest* may be used promiscuously (*Vicar* v. *Hume*, 21 L. J. Ch. 406).

Devoire (*Fr. L.*) A duty; a tax of custom.

Devolve. To devolve means to pass from a person dying to a person living (*Parr* v. *Parr*, 1 Myl. & K.468; 2 L.J.Ch.167).—*Stroud.*

Devutter property. *See* DEBUTTER.

Dewan. (*Ind.*) A place of assembly. A native minister of the revenue department, and chief judge in civil causes within his jurisdiction; receiver-general of a province. A prime minister under a native prince.

Dewanny Adawlut. (*Ind.*) A court for trying revenue and other *civil* cases.

Dhanijog hundi. (*Ind.*) Hundi payable to *dhani i. e.*, owner (*Kesoram* v. *Ramchandra*, P. J., 1895, p. 551). *Dhani* is not in the ordinary or commercial language of the Bombay Presidency, equivalent to "bearer" in the sense that word is employed in the Paper Currency and Negotiable Instruments Act (*Jetha Parkha* v. *Ramchandra*, 16 Bom. 689). *Lee* SHAHJOG HUNDI.

Dharma. Dharam. (*Ind.*) It literally means that which supports or holds up. The Hindu international law writers use the term *dharma* to signify both religion and law (5 Cal. W. N., p. iii, notes). The objects which can be considered to be meant by that word (*dharma*) are too vague and uncertain for the administration of them to be under any control (*Ranchordas* v. *Parvatibai* (26 I. A. p. 81; 23 Bom. p. 735). *See* CHARITY.

In a will written in the English language and form, a gift to a fund "to be disposed of in charity as my executor shall think right" is a valid charitable bequest, and it will be referred to the proper officer of the court to settle a scheme for the application of the fund to charitable objects by analogy to Act 43 Eliz.

c. 4. Where, however, the will is in the native language, and the word "dharm" or "dharam" is used, the word is held too vague and uncertain for the gift to be carried into effect by the Code of Civ. Pro., the word "dharm" or "dharam" including many objects not comprehended in the word "charity" as understood in English law.—*Gangabai* v. *Thavar* (1 Bom. H. C., A. C., 71).

Dharmakarta. (*Ind.*) The headman of a religious or charitable institution.

Diaconate. The office of a deacon.

Dictores. Arbitrators. Their award is called *dictum*.

Diet (*conventus*). A legislative assembly; a deliberative assembly of princes or estates. A day. Food.

Diets of compearance. (*Sc. L.*) Days on which a party is cited to appear.

Desertion of the diet. (*Sc. L.*) The abandonment of judicial proceedings on a particular indictment or *libe*.

Dieta. A day's journey; a day's work.

Digest. An arrangement of the results (usually transcribed from the marginal or head notes of the reporters) of the decisions of the Courts of law, into various classes or departments in an alphabetical order. The word is specially used with reference to the Digest of the Emperor Justinian (otherwise called the Pandects) in fifty books, containing the opinions and writings of eminent lawyers, digested in a systematical method. It was published on the 16th December 533, and declared to have the force of law from the 30th of that month.

Dignitaries (*dignitarii*). Those who are advanced to any dignity ecclesiastical (*dignitas ecclesiasticales*); as a bishop, dean, archdeacon, &c.

Dignities (*dignitas*). Title of honour; having been originally annexed to land they are considered as real property. They are divided into superior and inferior; as the titles of duke, earl, baron, &c., are the highest names of dignity; and those of baronet, knight, serjeant at law, &c., the lowest.

Dijudication. Judicial distinction.

Dilapidation (*delapidatio*). Decay. The name for ecclesiastical waste committed by the incumbent of a living; which is either *voluntary*, by pulling down, or *permissive*, by suffering the chancel, parsonage-house and other buildings thereunto belonging, to decay. The term is also used to signify that disrepair for which a tenant is usually liable to a landlord at the end of a tenancy under an express agreement to yield up the demised premises in good repair.

Dilatory plea. A plea by a defendant in an action, founded on some matter of fact not connected with the merits of the case, but such as may exist without impeaching the right of action itself. It is put in merely for *delay*. A dilatory plea is either (1) a plea *to the jurisdiction*, showing that, by reason of some matter therein stated, the case is not within the jurisdiction of the Court; (2) a plea *of suspension*, showing some matter of temporary incapacity to proceed with the suit; or (3) a plea *in abatement*, showing some matter of *abating* the action. The effect of a dilatory plea is that it defeats the particular action leaving the plaintiff at liberty to commence, another in a better form. It is opposed to a *peremptory* plea, otherwise called a *plea in bar*, which is founded on some matter tending to impeach the right of action.—*Mozley*.

Diligence. Diligence, in the law of Scotland, means a process whereby persons or effects are attached or seized on execution, or in security for debt, also warrants issued by the courts for the attendance of witnesses, or the production of writings. *See* BAILMENT, CARE AND DILIGENCE.

Diminution (*diminutio*). The act of making less, as opposed to *augmentation*. Where the plaintiff or defendant, on appeal to a superior court, alleges that part of the record is omitted and remains in the inferior court not certified, he is said to allege a *diminution of the record*, and he prays that it may be certified by *certiorari*.

Dimissory letters (*literæ dimissoriæ*). Letters sent by one bishop to another requesting him to ordain a candidate for holy orders, who has a title in the diocese of the former bishop, but is anxious to be ordained by the latter.

Dinarchy. The government of two persons.

Diocesan. Belonging to a diocese.

Diocesan Courts. The consistory courts of the bishops for the trial of ecclesiastical causes arising within their respective dioceses.

Diocese. Diocess (*diœcesis*). The circuit of a bishop's jurisdiction; it is divided into archdeaconries, each archdeaconry into rural deaneries; and rural deaneries into parishes.

Direct. To *direct the jury* means to give the rule of law to the jury; to instruct a jury on any point of law, in order that they may apply it to the facts in evidence before them. The jury is directed by the judge. It is the duty of a judge to give a direction upon the law to the jury so far as to make them understand the law as bearing upon the facts; and if he does not give them an explanation of the law sufficiently comprehensive to enable them to decide the particular issue, it is a misdirection (*Per* Field, J., *Empress* v *Jhuboo Mahton*, 8 Cal. 739).

Direct evidence. Evidence directly bearing upon the point at issue, and which, if believed, is conclusive in favour of the party adducing it, as opposed to *circumstantial* evidence, from which the truth as to the point at issue can be only inferentially deduced.

Direct relationship. The relationship existing between ascendants and descendants in genealogical succession; as opposed to *collateral* relationship. *See* CONSANGUINITY.

Directly. This word as applied to the time of doing an act would seem synonymous with immediately. It does not mean *instantly (per* Cresswell J., *Duncan* v. *Topham*, 8 C. B. 231); it means something different from a contract to be performed within a *reasonable* time (*per* Coltman, J., *Ibid.*, p. 230).

Directory statute. A statute is said to be merely *directory*, when it directs anything to be done or omitted, without invalidating acts or omission in contravention of it; as opposed to *imperative*, which requires a strict compliance with its provisions; and *declaratory*, which merely declares what the common law is. *See* DECLARATORY STATUTES.

Diriment impediments. Absolute bars to marriage, which would make it null *ab initio*.

Disability (*disabilitas*). Incapacity to do any legal act; incapacity for the full enjoyment of ordinary legal rights; incapacity to inherit or take a benefice, which otherwise a man might have done. It is either (1) *absolute*, which, while it continues, wholly disables the person; such were outlawry, excommunication, attainder; or (2) *partial*, as infancy, coverture, lunacy, and drunkenness. The term is used, in a more limited sense, as when it signifies an impediment to marriage, or the restraints placed upon clergymen by reason of their spiritual avocations. Disabilities arise either by the act of an ancestor, or of the party himself, by the act of the God, or of the law.

Disabling statute. A statute which disables or restraints any person or persons from doing that which formerly was lawful or permissible; one restraining and regulating the exercise of a right or the power of alienation. *See* ENABLING STATUTE.

Disaffection. The word "disaffection" in s. 124 A of the Indian Penal Code is used in a special sense as meaning political alienation or discontent, a spirit of disloyalty to the Government or existing authority. An attempt to excite feelings of disaffection to the Government is equivalent to an attempt to produce political hatred to Government as established by law, to excite political discontent, and alienate the people from their allegiance (*Queen-Empress* v. *Bal Gangadhar Tilak*, 22 Bom. 112; *Queen-Empress* v. *Ramchandra Narayan*, 22 Bom. 152). Such feelings are necessarily inconsistent with and incompatible with a disposition to render obedience to the lawful authority of Government, and to support that Government against unlawful attempts to subvert or resist it. The term "disaffection" may be taken as synonymous with "disloyalty." (*Queen-Empress* v. *Amba Prasad*, 20 All. 55; 18 All. W. N. 1). *See* SEDITION.

Any one who, by any of the means referred to in s. 124 A of the Ind. Penal Code, excites, or attempts to excite, feelings of hatred, dislike, ill-will, enmity or hostility towards the Government established by law in British India, excites, or attempts to excite, as the case may be, feelings of "disaffection," as that term is used in s. 124 A.

Disafforest. To throw open; to reduce from the privileges of a forest to the state of common ground; to exempt from the forest laws.

Disafforested. Exempted from the forest laws.

Disagreement The word is used to signify the *disclaimer* of an estate, *i. e.*, the refusal by a grantee, lessee, &c., to accept an estate, lease, &c., made to him; the annulling of a thing that had essence before. No estate can be vested in a person against his will, consequently no one can become a grantee, &c., without his *agreement*; the law implies such an agreement until the contrary is shown, but his disagreement renders the grant, &c., inoperative.—*Wharton*.

Disalt. To disable a person.

Disbar. To deprive a barrister of his privileges and status as such.

Disbench. To deprive a bencher of his privileges.

Disceipt. *See* DECEIT.

Discent. *See* DESCENT.

Discharge. To release; to relieve of an obligation; to deprive of binding force. The word is used in various senses. The *discharge of a bankrupt*, the freeing him from his debts and liabilities under the Bankruptcy Act; *discharge of a surety*, whereby he is released from his liability as surety; *discharging a prisoner*, the release of a prisoner from confinement or custody; *discharging a debt*, the payment of a debt, whereby the debtor is freed from further liability; *discharge of a jury*, an order of a court of justice dismissing a jury on the grounds that they have performed their duties, or are unable to agree in a case before them; *discharge of an order*, the reversal of an order of a court of justice, a rule *nisi* is said to be *discharged* when the court decides that it shall not be made absolute, *i. e.*, that the party who obtained the rule *nisi* shall take nothing, and the suit remain *in statu quo*. *See* RULE.

Whether the words *discharge* and *release* be used as legal terms or not, the word *discharge* has a more general signification than the word *release*; the ordinary meaning of the word *release* when used with reference to a person is to 'set at liberty,' whereas the meaning of the word *discharge* is ordinarily to 'absolve from liability' (*per* Markby, J., *Jankee Singh*, v. *Kalloo Mundal*, 9 W. R. p. 179).

Disclaimer (*disclaimium*). A plea containing an express denial or refusal. The word is used in various senses. (1) Any act whereby a person refuses to accept an estate which is attempted to be conveyed to him; as, for instance, where land is conveyed to an intended trustee without his consent, and he refuses to accept it; or where an executor,

before proving the will of his testator, renounces the executorship. This is called the disclaimer of an estate. *See* DISAGREEMENT. (2) The renunciation, or denial by a tenant, of his landlord's title, either by refusing to pay rent, or neglecting to render him the due services, denying any obligation to pay, or by setting up a title in himself or a third person. This is called disclaimer of tenure, and is a ground of forfeiture of the lease or tenancy. (3) A mode of defence in equity, where the defendant renounced all claim to the subject of the demand made by the plaintiff's bill, and disclaims all interest in the matters in question. (4) The refusal by the trustee in a bankruptcy to accept a burdensome lease or other onerous property of the bankrupt. (5) A renunciation by a patentee of part of his patent.

Disclamation. The Scotch term .for disclaimer of tenure.

Discontinuance (*discontinuatio*). An interruption or breaking off.

Discontinuance of an action. The cessation of an action ; the withdrawal of an action out of court, with liberty to bring a subsequent action for the same cause.

Discontinuance of an estate happened when he who had an estate-tail made a larger estate of the land than by law he was entitled to do, whereby the heir or successor, or those in remainder or reversion, are driven to an action and cannot enter, in which case the estate was good, so far as his power extended to make it, but no further.

Discontinuous easement. *See* EASEMENT.

Discovert. A word applied to a woman who is a widow or unmarried, as not being under the bonds of matrimony, or the disabilities of *coverture*.

Discovery. The act of revealing or disclosing a matter. The Courts of Law were originally unable to compel a litigant to disclose any fact resting merely within his knowledge or discover any document in his power which would aid in the enforcement of a right ; an infirmity which the Equity judges cured, by compelling such a party to disclose the fact, or discover the document, upon his oath, in his answer to a bill of complaint filed by the opposite party, called a *bill of discovery*. Under the present practice, the varieties and mode of obtaining discovery are the same in all the courts, and are briefly the following :—(1) Interrogatories and the Answers thereto. (2) Affidavit of Documents ; (3) Inspection of Documents. The right of a plaintiff in equity to the benefit of the defendant's oath is limited to a discovery of such material facts as relate to the *plaintiff's case*, and does not extend to a discovery of the manner in which the *defendant's case* is to be exclusively established, or to evidence which relates exclusively to his case. See Act V of 1908 (Civ. Pro.), Sch. I, O. XI. *See* AFFIDAVIT, INSPECTION, INTERROGATORY, PRODUCTION. The word is also used in reference to the disclosure by a bankrupt of his property for the benefit of his creditors.

Discredit. To throw double on a witness's evidence by assailing his character, or otherwise.

Discretion (*discretio*). The use of private and independent judgment. When any thing is left to be done according to one's discretion, the law intends it to be done with sound discretion, and according to law, and the court has power to redress things that are otherwise done, notwithstanding they are left to the discretion of those that do them. Discretion is discerning between right and wrong ; and therefore whoever has power to act at discretion, is bound by the rule of reason and law. And though there be a latitude of discretion given to one, yet he is circumscribed that what he does be necessary and convenient, without which no liberty can defend it.—*Tomlins*. *See* JUDICIAL DISCRETION.

When something is left to be done according to discretion of the authority on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the statute, otherwise the act would not fall within the statute. 'According to discretion' means according to the rules of reason and justice, not private opinion (*Rooke's Case*, 5 Rep. 100 a ; *Keighley's Case*, 10 Rep. 140 b ; *Lee* v. *Bude Ry.*, L. R. 6 C. P. 577 ; 40 L. J. C. P. 288); according to law and not humour ; it is to be not arbitary, vague and fanciful, but legal and regular (*R.* v. *Wilkes*, 4 Burr. 2329); to be exercised not capriciously, but on judicial grounds and for substantial reasons (*Re Taylor*, 4 Ch. D. 160; 46 L. J. Ch. 400; *Doherty* v. *Allman*, 3 App. Cas. 728). And it must be exercised within the limits to which an honest man competent to the discharge of the office ought to confine himself (*Wilson* v. *Rastall*, 4 T. R. 757); that is within the limits and for the objects intended by the legislature.—*Maxwell*.—*Stroud*.

Discussion. The process against the principal debtor for whom another is surety. By the Roman Law, sureties were not primarily liable to pay the debt for which they became bound as sureties, but were liable only after the creditor had sought payment from the principal debtor, and he had failed to pay. This is called the benefit or right of discussion It also means the ranking of the proper order in which heirs are liable to satisfy the debts of the deceased.

Disentailing deed. An enrolled assurance barring an entail, whereby the tenant in tail is enabled to alienate the land for an estate in fee simple or any less estate, and thereby to destroy the entail thus converting the entail into an estate in fee.

Disfranchisement. Taking away from one his franchise, immunity, privilege or freedom ; the depriving an indiviaual of his right of voting at a Parliamentary or Municipal election, or a constituency of their right of returning a member to Parliament.

Disgavel. To exempt from the rules of the tenure of gavelkind; to abolish the custom of gavelkind as to any lands or tenements where it has previously existed; this can only be done by an act of Parliament. *See* GAVELKIND.

Disherison. The disinheriting of any person or persons; the act of debarring from inheritance. The person who does so is called the disheritor.

Dishonestly. Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing dishonestly.—*Act XLV of* 1860 (*Penal Code*), *s.* 24. *See* WRONGFUL GAIN.

Dishonest misappropriation. *See* CRIMINAL MISAPPROPRIATION.

Dishonour of a bill. *Dishonour by non-acceptance.* A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill or when presentment is excused, and the bill is not accepted. When the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 91.

Dishonour by non-payment. A promissory note, bill of exchange, or cheque, is said to be dishonoured by non-payment, when the maker of the note, acceptor of the bill, or drawee of the cheque, makes default in payment upon being duly required to pay the same.—*Ibid.*, *s.* 92.

Where a drawee in case of need is named in a bill of exchange or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.—*Ibid.*, *s.* 115. *See* PETH.

Disincarcerate. To set at liberty; to free from prison.

Disinherison. *See* DISHERISON.

Disloyalty. *See* DISAFFECTION.

Disorderly houses. The following houses are disorderly houses, that is to say, common bawdy houses, disorderly places of entertainment. A disorderly inn is an inn kept in a disorderly manner and suffered to be resorted to by persons of bad character for any improper purpose.—*Stroud.*

Disparagement Inequality or unsuitableness in marriage; the matching an heir in marriage under his degree or against decency. *See* PARAGE.

Dispauper. When a person by reason of his poverty is admittad to sue *in forma pauperis*, if, afterwards, before the suit be ended, the same party have any lands or personal estate fallen to him, or be guilty of anything whereby he is liable to have his privilege taken from him, then he is put out of the capacity of suing *in forma pauperis* and is said to be *dispaupered*. See Act V of 1908 (Civ. Pro.), Sch. I, O. XXXIII, R. 9.

Dispensation. An exemption from some laws; a permission to do something forbidden; an allowance to omit something commanded. The canonistic name for a *license*. *See* ABROGATION.

Dispone. (*Sc. L.*) To transfer or alienate.

Disproved. A fact is said to be disproved when, after considering the matters before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.—*Act I of* 1872 (*Evi.*), *s.* 3.

Disseise. To dispossess; to deprive. *Disseisor*, the person who puts another out of his freehold. *Disseisee*, the person disseised or put out of his freehold.

Disseisin (*Fr. dissaisin*). A wrongful putting out of him that is seised of the freehold, that is, wrongful disturbance and ouster of one in freehold possession of land. In the case of *abatement* or *intrusion*, the wrongful entry is when the possession was *vacant*; but *disseisin* is an attack upon him who is in *actual* possession and turning him out; it is an ouster from a freehold in deed, as *abatement* and *intrusion* are ousters in law. *Disseisin* always implies a wrong, but *dispossessing* may be by right or by wrong.

Dissenters. Persons who do not conform to the Established Church.

Dissolution. The act of breaking up; as, dissolution of partnership, dissolution of parliament, dissolution of marriage, &c. Dissolution of an injunction is tantamount to discharging or reversing it. *Dissolution* is applied to an injunction in Chancery, as *discharge* is to a rule *nisi* in Common Law.

Distrain. To make seizure of goods or chattels by way of distress. *See* DISTRESS. He who makes such a seizure is called *distrainer* or *distrainor*.

Distraint. Seizure. A distress.

Distress (*districtio*). The taking of a personal chattel out of the possession of the wrong-doer into the custody of the party injured, to procure a satisfaction for the wrong committed, or as a pledge for the redressing an injury, the performance of a duty, or the satisfaction of a demand. The word is most frequently used with reference to the taking by a landlord without legal process, of goods or cattle of the tenant for the non payment of rent. The term *distress* is also applied to the thing taken or distrained.

Distresses. Pledges taken by the sheriff from those who came to fairs, for their good behaviour, which, at the end of the fair, were delivered back, if no harm was done.

Distress infinite. A distress that has no bounds with regard to its quantity, and may be repeated from time to time, until the stubbornness of the wrong doer is overcome; such are distresses for fealty or suit of court, and for compelling jurors to attend.

Distribution. The act of dealing out to others. The word is specially used for the division of the personal estate of an intestate among the parties entitled thereto as next of kin.

Distributive finding of issue. This is where the issue is found in part for the plaintiff, and in part for the defendant.

District Delegates. The High Court may from time to time, appoint such judicial officers as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases within such local limits as it may from time to time prescribe: Provided that in the case of High Court not established by Royal Charter, such appointment be made with the previous sanction of the Local Government. Persons so appointed shall be called District Delegates.—*Act X of* 1865 (*Succession*), s. 235 *A*, *as added by Act VI of* 1881 (*District Delegates*), s. 2.

Disturbance. A wrong done to some incorporeal hereditament, by hindering or disquieting the owners in their regular and lawful enjoyment of it. Blackstone enumerates five kinds of this injury, *viz.*, (1) Disturbance of *franchise*; (2) disturbance of *common*; (3) disturbance of *way*; (4) disturbauce of *tenure*; (5) disturbance of *patronage*.

Disturber. A bishop is so styled who refuses or neglects to examine and admit a patron's clerk (*i. e.*, a clergyman presented by a patron to a living) without good reason assigned or notice given.

Dives costs. The ordinary costs as distinguished from those paid by a person suing *in forma pauperis*.

Diversity of person. A plea by the prisoner in bar of execution, alleging that he is not the same as the person attained or convicted, upon which the jury is immediately empannelled to try the collateral issue as to the identity of the person.

Divest. *See* DEVEST.

Dividend. A share; the part alloted in division; the periodical income (*i. e.*, interest) arising from public funds, stocks, shares, &c.; the proportion of a bankrupt's estate available to his creditors. The word also signified one part of an indenture.

Preference dividend is substantially interest to this extent, that the failure of profits wherewith to pay it in one year will be made good out of any profits that may be made in a subsequent year.—*Stroud*. *See* PREFERENCE SHARES.

Divine service, tenure by. A tenure by which tenants were obliged to do some special divine services, as to sing so many masses, to distribute such a sum in alms, and the like.

Divisional Courts. Courts consisting of two or more judges of the High Court, which transact certain business which cannot be disposed of by a single judge, *i. e.*, appeals from County Courts.—*Rawson*.

Divisions of the High Court. They are now three, *viz*, Chancery; Probate, Divorce and Admiralty; and King's Bench; the Common Pleas and Exchequer Divisions having in 1881 been consolidated with the latter.

Divorce (*divortium*). The legal separation of husband and wife This is of three kinds—(1) Divorce *a mensa et thoro* (from bed and board), which is where a marriage is just and lawful *ab initio*, but for some supervenient cause it has become improper or impossible for the parties to live together, *e. g.*, in the case of intolerable ill-temper, or adultery in either of the parties. This kind of divorce is now called a *judicial separation*. Its effect is to place the parties in the position of single persons, except that neither party can lawfully marry again in the life time of the other. (2) Divorce *a vinculo matrimonii* (from the bond of marriage), for some cause or impedement existing *prior* to the marriage, *e. g.*, consanguinity. This is a declaration that the marriage is a nullity, as having been absolutely unlawful *ab initio*. This kind of divorce enables the parties to contract marriage at their pleasure, and bastardises the issue, if any. (3) Divorce *a vinculo matrimonii*, for some, cause *subsequent* to the marriage, *e. g.*, adultety coupled with cruelty or desertion, on the part of the husband, or simple adultery on the part of the wife; but the wife cannot obtain it for the simple adultery of the husband. The effect of this kind of divorce is to dissolve the marriage, and allow the parties to marry again, but it does not bastardise the issue.

According to Hindu law, there can be no divorce, except by custom (*Sundari* v. *Pitambari*, 2 Cal. L. J. 97; 9 Cal. W. N. 1003).

Dock. The place in a court of criminal law, in which a prisoner is placed during his trial.

Dock warrant. A document given to the owner of goods imported and warehoused in the docks as a recognition of title to the goods, on the bills of lading and other proofs of ownership being produced. A dock warrant is negotiable and passes from hand to hand by endorsement and delivery, so as to vest the property in the goods mentioned therein in the holders thereof. Dock warrants are also pledged with bankers and others for loans as mercantile securities, representing the value of the goods described in them.

Docket. Docquet. A brief writing on a small piece of paper or parchment, containing the effect of a greater writing. A register of judgments. Also the copy of a decree in Chancery, made out and left with the Record and Writ Clerk, preparatory to enrolment. Under the early law of bankruptcy, when the proceedings to make a man bankrupt were *ex parte*, the petitioning creditor was said to *strike the docket*.

Doctor and Student. A book containing certain dialogues between a doctor of divinity

and a student at common law. It is treated in a popular way, with the freedom and language of conversation, conveying, by means of objections and their answers, not an unsatisfactory accounts of many principles and points of the common law. The author is said to be one Saint Germain; and the book was written in the time of Henry VIII.

Doctors' Commons. A place near St. Paul's Church-yard where the principal Ecclesiastical and Admiralty Courts used to be held until the year 1857.

Document. The word 'document' denotes any matter written, expressed or described upon any substance, by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, as evidence of that matter. It is immaterial by what means, or upon what substance, the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not. Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.—*Act XLV of* 1860 (*Penal Code*), *s.* 29.—*Act I of* 1872 (*Evi.*), *s.* 3.—*Act X of* 1897 (*General Clauses*), *s.* 3 (16).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (16). *See* INSTRUMENT, PUBLIC DOCUMENTS.

Document of title to goods. This includes any bill of lading, dock warrant, order for the delivery of any goods, bought and sold note, or other document used in the ordinary course of business as proof of possession or control of goods.

Document of title to lands. Any deed, map, paper, or parchment, being or containing evidence, in whole or in part, of a person's title to lands.

Documents, affidavit of. *See* AFFIDAVIT, DISCOVERY.

Documentary evidence. *See* EVIDENCE.

Doe, John. The name of the fictitious plaintiff in the old action of ejectment. Otherwise called *Goodtitle* or *Goodright*. *See* EJECTMENT.

Dog. *See* ANIMALS.

Dog draw. *See* BACKBERINDE.

Dole. A part or portion of a meadow which is divided. To *dole* out alms is to divide or distribute alms.

Dole meadow. One wherein the shares of divers persons are marked by doles or land marks.

Dolg-bote. A recompense or amends for a scar or wound.

Domboc. Dombec. *See* DOME-BOCH.

Dome. Doom. A judgment, sentence or decree.

Dome-book (*liber judicialis*). A book composed under the direction of Alfred for the general use of the whole kingdom, containing the local customs of the several provinces of the kingdom. This book was said to have been extant so late as the reign of Edward IV, but it is now lost.

Domesday. Domesday-book (*liber judiciarius*). An ancient record made in the reign of William the Conqueror, containing a survey of the lands in England. It was begun by five justices, assigned for that purpose in each county in the year 1081, and finished in 1086.

Domesmen. Judges or men appointed to doom and determine suits or controversies. *See* DAYSMAN. Hence falling of domes (otherwise called *falsing of dooms*) is the Scotch phrase for reversing of judgment, or annulling of decrees.

Domestic animals. Animals (whether quadruped or not, and not absolutely (*ferœ naturæ*) which either by habit or special training live in association with man. Thus linnets trained as decoy birds are domestic animals, and so is a cock. Parrots may become, but young unacclimatised parrots are not, domestic animals; nor, *semble* is a performing bear a domestic animal.—*Stroud.* Rooks are animals *ferœ naturæ* (*Hannam* v. *Mockett*, 2 B. & C. 934). *See* ANIMALS.

Domestic servants. Domestic or menial servants are servants employed in a house, or in rendering personal services to, or in a close personal relation with, the employer. The term includes not only ordinary household servants, but grooms, gardeners and the like (See *Nicoll* v. *Greaves*, 33 L. J. C. P. 259).

"It has been held in England that a distinction was to be drawn between in-door and out-door servants, among the whole body of servants who are in a greater or less decree personal to the master and minister to his ordinary wants in and about the house, and *domestic* has been held to designate those employed and dwelling in-doors in contradistinction to those employed and dwelling out of doors . .. The like reasons, however, certainly do not seem to me to arise out of the circumstances in this coutry, whether forming the household establishment of native gentlemen or of English residents (*per* Phear, J, *Dhanno Serang* v. *Upendra Mohan Tagore*, 8 B. L. R. O. C., 242-3). In *Bhim Das* v. *Upendra Mohan Tagore* (9 B. L. R., Ap., 4) a washerman and iron-man was held not to be a domestic servant.

Domicile. The place in which a man has his fixed and permanent home, and to which whenever he is absent, he has the intention of returning; and that is generally construed to be the place at which he usually keeps his wife and family or household goods In the case of infants and married women, their domicile is that of their parents or husband.

That place is properly the domicile of a person in which he has voluntarily fixed the habitation of himself and his family, not for

a mere special and temporary purpose but with a present intention of making it his permanent home unless and until something shall occur to induce him to adopt some other permanent home (*per* Kindersley, V.-C., *Lord* v. *Colvin*, 28 L. J. Ch. 361, 366). *See* DWELLING-PLACE.

Two things must concur to constitute domicile—(1) the residence, and (2) the intention of making it the home of the party. Domicile is of three sorts—Domicile by birth; domicile by choice; and domicile by operation of law. The first is the common case of the place of birth or origin; the second is that which is voluntarily acquired by a party; and the last is consequential, as that of the wife arising from marriage. The acquisition of a new domicile is only complete when the former domicile is definitively abandoned, and an actual removal is made to the place of the acquired domicile. But for the re-acquisition of the original domicile, the definitive abandonment of the acquired domicile when followed up, or rather when evidenced, by one step towards a return to the original domicile is sufficient. The law of a man's domicile for the time being (whether original or acquired) determines all his personal capacities and incapacities, and also regulates the distribution or devolution of his personal estate or moveable property in case of his death intestate.

The law of domicile regulates capacity to contract (*Kashiba* v. *Shripat*, 19 Bom. 697). The *lex loci contractus aut actus* determines the capacity of a person to contract, and reference ought not to be made to the law of his domicile of origin (*Hearsey* v. *Girdharee*, 3 N.-W. P. 338).

Domina. A title given to honourable women, who anciently in their own right of inheritance held a barony.

Dominant heritage or tenement. Dominant owner. *See* EASEMENT.

Dominical. That which denotes the Lord's day, or Sunday.

Dominicide. The act of killing one's lord or master.

Donary. A thing given to sacred uses.

Donative advowson. *See* ADVOWSON.

Donatory. (*Sc. L.*) The person on whom the king bestows his right to any forfeiture that has fallen to the Crown.

Donatrix. A female giver.

Donee. Donor. *See* GIFT.

Doom. *See* DOME.

Doomsday-book. See DOMESDAY.

Dormant. Sleeping; private. *Dormant claim*, a claim in abeyance. *Dormant partner*, one who takes no part in the partership affairs, nor is known to the world as a partner, but who receives the profits of the partnership; a sleeping partner.

Dotal. Relating to the portion or dowry of a woman.

Dotation. The act of giving a dowary or portion; endowment in general.

Double adultery. *See* ADULTERY

Double avail of marriage. *See* AVAIL OF MARRIAGE.

Double complaint or **quarrel** (*duplex querela*). A complaint in the nature of an appeal from the ordinary to his next immediate superior, as from a bishop to an archbishop. This complaint is available to a clergyman who, having been presented to a living is refused institution by the ordinary.

Double insurance. This is where a person being insured by one policy, effects another on the same subject with other insurers. In this case he may recover the amount of his actual loss against either set of insurers. But as insurance is a contract of indemnity only, the law will not allow him to recover beyond that amount; and if he obtain full satisfaction upon either of his policies, the underwriters upon this are entitled to contribution from the underwriters upon the other. *See* RE-ASSURANCE.

Double plea (*duplex placitum*). Double pleading or duplicity in pleading arises either in the declaration or any subsequent pleading on the allegation of several distinct matters in support of, or in answer to, a single demand, any one of which matter would be sufficient of itself to support the demand, or to answer it. Such duplicity in pleading must be avoided, the rule being that every plea must be confined to one single point.

Double portions, rule of. According to the rule of English law as to double portions, when the two provisions are of the same nature, or there are but slight differences, the two instruments afford intrinsic evidence against a double provision; but when the provisions are of a different nature, the two instruments afford intrinsic evidence in favour of the double provision. This rule may well be borne in mind as a principle of equity, justice and good conscience, in ascertaining the intention of a Hindu testator from the terms of his will (*Jagjivandas* v. *Brijdas*, 7 Bom. L. R. 229).

Double possibility (*potentia remota*). A possibility on a possibility, a remote possibility; as where a remainder in land is limited to a son John or Richard of a man that has no son of that name; the supposed *double* possibility being, 1st, that the man would have a son, and, 2nd, that the son would be called John or Richard, as the case might be. Such a remainder was formerly held illegal, but this doctrine is now quite exploded.—*Mozley.*

Double proof. As a general rule, the creditor of a partnership (to whom the partners are bound jointly and severally) is not allowed in bankruptcy to rank as a creditor both against the joint estate of the partnership and against the separate estate of any partner, when both estates are bankrupt; but he must elect to prove either against the joint

estate or against the separate estate. But to this general rule against double proof there is an exception made in the case of distinct contracts entered into with regard to distinct estates, in which latter case (both estates being in bankruptcy) double proof is allowed. —*Brown.* *See* JOINT AND SEPARATE ESTATES.

Double quarrel. *See* DOUBLE COMPLAINT.

Double rent. This is a penalty on a tenant holding over after *his own notice* to quit has expired, until the time of his quitting possession. This payment of double rent is claimed under 11 Geo. II, c. 19, s. 13.

Double value. Double the yearly value of lands payable by a tenant for life or years who wilfully holds over (*i. e.*, continues in possession) after the expiration of his term, and after notice by the landlord requiring him to quit, under 4 Geo. II, c. 28, s. 1.

Double waste. A tenant is said to commit double waste, who, being bound to repair, suffers a house to be wasted, and then unlawfully fells timber to repair it.

Dowable. Entitled to dower.

Dowager (*dotata; dotissa*). A widow endowed; applied to the widows of princes, dukes, earls, and other great personages.

Dowager queen. The widow of the king.

Dower (*dotarium*). The portion which a widow has of the lands of her husband at his decease, for the sustenance of herself and the education of her children. This extends by the common law to the third part of the lands and tenements whereof the husband was solely seised for an estate of inheritance during marriage; and may be enjoyed for the life of the the widow. But, in order to entitle a widow to dower out of the land, the husband's estate or interest therein must be such that their common issue might have inherited it. If, therefore, a man have lands to himself and the heirs of his body by his wife A, a second wife B would not be entitled to dower out of such lands. Now the Dower Act of 1833 (3 & 4 Wm. IV, c. 105) places a wife's right of dower entirely at the mercy of her husband. By the Roman Law *dower* is that which a wife brings to her husband in marriage; it is sometimes spoken of as *dowry*.—*Mozley.* *See* DOWRY, MUHR.

Dowl and deal. A division.

Dowress. A widow entitled to dower; otherwise called a *tenant in dower.*

Dowry (*dos mulieris*). The word was in ancient times applied to that which the wife brings her husband in marriage; otherwise called *maritagium*, or marriage goods; but these are termed more properly goods given in marriage, and the marriage portion. This word is often confounded with *dower*, though it has a different meaning.—*Tomlins.* *See* DOWER.

Dozen peers. These were twelve peers assigned at the instance of the barons in the reign of Henry III, to be privy councillors to the king or rather conservators of the kingdom.

Draft. Draught. This signifies a cheque or bill of exchange, or other negotiable instrument; an order in writing to pay money. Also the rough copy of a legal document, &c., to be settled previously to engrossment.

Drawback. The remitting or paying back upon the exportation of a commodity of the duties previously paid on it. A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all. It differs in this from a *bounty*, that the latter enables a commodity to be sold for *less* than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost.—*Wharton.*

Drawer. Drawee. The maker of a bill of exchange or cheque is called the *drawer*; the person thereby directed to pay is called the *drawee.*—*Act XXVI of* 1881 (*Nego. Instr.*) s. 7.

Drawee in case of need. When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be restored to in case of need, such person is called a *drawee in case of need.* —*Ibid.*

Draw-latches. Thieves and robbers.

Drift of the forest (*agitatio animalium in foresta*). An exact view or examination of a forest chase, &c., that it may be known what cattle are in the forest, whether it be over charged or not, and whose beasts they are, and whether they are commonable.

Driftland. Drofland. Dryfland. A yearly rent paid by some tenants to their landlords for driving cattle through the manor, to fairs and markets.

Driftway. *See* WAY.

Drishta bandhaka. (*Ind.*) An instrumens by which real substantial visible property it mortgaged (*Venkata v. Parvati*, 1 Mad. H. C. R. 460). *See* BANDHAKA.

Drofdenn. Among the Saxons, a grove or woody place where cattle were kept; and the keeper of them was called *drofman.*

Droitural. Relating to right.

Droitural actions. Actions in the nature of a writ of right as opposed to *possessory* actions. *See* WRIT OF RIGHT.

Drunkenness. *See* INTOXICATION.

Dry blows. *See* DURSLEY.

Dry exchange (*cambium siccum*). A term invented in former times for the disguising and covering of usury, in which something was pretended to pass on both sides whereas in truth nothing passed but on one side, in which respect it was called *dry.*

Dry multures. Quantities of corn paid to a mill whether the payers grind of not. *See* MULTURE.

Dry rent. A rent reserved without clause of distress.

Dry trustree. *See* BARE TRUSTEE.

Duarchy. A form of government where two reign jointly.

Duchy Court of Lancaster. A tribunal of special jurisdiction, held before the chancellor of the duchy or his deputy, concerning equitable interests in lands holden of the king in right of the Duchy of Lancaster. The proceedings in this Court are the same as were those on the Equity side of the Court of Chancery; and the Court of the Chancery has concurrent jurisdiction with the Duchy Court.

Ducking-stool. *See* CASTIGATORY.

Duel (*duellum*). In ancient law, a legal combat between persons in a doubtful case for the trial of the truth. In modern times, a combat with weapons between two persons upon some quarrel precedent.

Dues. Certain payments; rates or taxes.

Duffadar. (*Ind.*) A head peon; a native officer of irregular horse, under a jamadar.

Dufter. (*Ind.*) Records; the place where records are kept.

Dulocracy. A government where servants and slaves have so much license and privilege that they domineer.

Duly stamped. *See* STAMPED.

Dum (or **dumb**) **bidding.** In sales at auction, a reserve price secretly fixed, on the understanding that no bidding should avail unless equal to that.

Duplicate. Second letters patent granted by the Lord Chancellor in the same terms as the first when the latter were void. A copy or transcript of a deed or other writing. The ticket given by a pawnbroker to the pawner of a chattel.

Duplicity in pleading. *See* DOUBLE PLEA.

Durbar. (*Ind.*) A court or levee.

Duress (*durities*). A constraint or compulsion. Of this there are two kinds—(1) Actual imprisonment where a man actually loses his liberty; (2) Duress *per minas* (by threats) where the hardship is only threatened and impending. Duress by threat has been thus divided—through fear (1) of loss of life, (2) of loss of member, (3) of mayhem, (4) of imprisonment. By Common Law, a contract made during duress is not void, but voidable. The rule in Equity is that where a person is not a free agent, and is not able to protect himself, the Court will protect him, and will set aside a contract made under duress. *See* CONTRACT. Duress by threat is also an excuse for some crimes, though not all. It is to be observed that the compulsion which takes away guilt must be the fear of no less than present death, or grievous bodily harm; for the mere apprehension of having houses burned, or goods destroyed or injured, is not sufficient.—*Wharton.* See Act XLV of 1860 (Penal Code), s. 94. Duress is either to the *person* or to the *goods*, the object of placing either the person or the goods under duress being to extort money in excess of what (if anything) is rightfully owing.—*Brown.*

An award founded on a deed of consent, set aside on proof being given that the consent had been obtained by duress (*Subhanji* v. *Bhavanrav*, 1 Bom. H. C., A. C., 173). *See* COERCION.

Durkhast. (*Ind.*) A proposal to cultivate or rent land; a bid; a request. An application for execution of a decree.

Dursley. Blows, without wounding or blood; dry blows.

Dutch auction. The setting up of property for sale by auction above its value, and gradually lowering the price till some person takes it.

Duty. A tax; an impost; an imposition. Also an obligation.

Dutiable. Liable to pay duty.

Dwayamushyayana. (*Hin L.*) A son to two fathers, the natural and the adoptive. He is taken either by an express agreement that his relationship to his natural family shall continue, or by the fact that the only son of one brother is taken in adoption by another brother, in which case the double relationship appears to be established without any special contract.

Dwell. 'To dwell,' 'dwelling,' are expressions nearly equivalent to 'reside,' 'residence.' A person may dwell in two or more places, and a Member of Parliament residing in London for about three months in the year would 'dwell' there as well as at his country seat.—*Stroud.* A corporation can only dwell where it carries on business. See *Taylor* v. *Crawland Gas Co.* (24 L. J. Ex. 233). *See* RESIDENCE, RESIDENT.

Dwelling-place. The fixed and permanent home of a man's wife and family, and to which he has always the intention of returning, will constitute his dwelling place within the meaning of the Civil Procedure Code (*Fatima* v. *Sakina*, 1 All. 51; *Kashee Nath Kier* v. *Deb Kristo Raman*, 16 W. R. 240, 244). A man may have more than one dwelling-place (*Orde* v. *Skinner*, L. R. 7 I. A. p. 205; 13 All. 91).

Dysnomy. The act of making bad laws.

Dyvour. An old Scotch term for a bankrupt.

E

Earl Marshal. The officer who, jointly with the Lord High Constable, presided over the Court of Chivalry. He was also a judge of the Marshalsea Court, now abolished.

Earmark. A mark for the purpose of identifying anything which is a subject of property. Money has no earmark.

Earnest. The sum paid by the buyer of goods in order to bind the seller to the terms of the agreement; money paid as part of a larger sum, or goods delivered as part of a larger quantity; anything given as security to bind a bargain. As the name denotes, it

is given to show that the purchaser is in *earnest*, and not either trifling or intending at deception; it is originally no part of the price of the goods, and therefore is forfeited on the customer's default; but if he duly accepts and pays for the goods when made, then the earnest counts as part of the price.

The practice of giving something to signify the conclusion of the contract, sometimes a sum of money, sometimes a ring or other object, to be re-paid or re-delivered on the completion of the contract, appears to be one of great antiquity and very general prevalence. The earnest did not lose that character because the same thing might also avail as part-payment. In the case of an earnest, if the purchaser makes default, the earnest is forfeited, while in the case of a part-payment, if the purchase is completed, the sum is to be taken in part-payment (*per* Fry, L. J., *Horne* v. *Smith*, 27 Ch. D. 101, 102). According to the law of vendor and purchaser the inference is that a deposit is paid as a guarantee for the performance of the contract, and when the contract goes off by default of the purchaser, the vendor is entitled to retain the deposit (*per* Pollock, B., *Collins* v. *Simson*, 11 Q. B. D. 142, 143).

Easement. For the purpose of the Limitation Act, *easement* includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another.—*Act IX of* 1908 (*Limitation*), *s.* 2 (5).

Acquisition of the right to easement. Where the access and use of light or air to and for any building have been *peaceably* enjoyed therewith *as an easement*, and *as of right*, *without interruption*, and for *twenty* years, and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative), has been *peaceably* and *openly* enjoyed by any person claiming title thereto, *as an easement*, and *as of right*, *without interruption*, and for *twenty* years, the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible. Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested. Where the property over which a right is claimed under this section belongs to Government, the above provisions shall be read as if for the words *twenty years* the words *sixty years* were substituted. Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment, by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to, or acquiesced in, for one year after the claimant has notice thereof, and of the person making or authorizing the same to be made. *Ibid.*, *s.* 26.

Exclusion in favour of reversioner of servient tenement. Provided that, when any land or water upon, over, or from which any easement has been enjoyed or derived, has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time for the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.—*Ibid.*, *s.* 27.

But ss. 26 and 27 of the Limitation Act (of 1877 or of 1908), and the definition of *easement* contained in that Act are not in force in the territories to which the Indian Easements Act extends *viz.*, in Madras, the Central Provinces, Coorg, Bombay, the North-Western Province and Oudh. See s. 3 of the Indian Easements Act (V of 1882), and Act VIII of 1891, s. 1.

The Indian Easements Act defines *easement* thus:—An easement is a right which the owner or occupier of certain land possesses as such for the beneficial enjoyment of that land, to do and continue to do something or to prevent and continue to prevent something being done in, or upon, or in respect of, certain other land not his own.—*s.* 3.

Dominant and servient heritages and owners. The land for the beneficial enjoyment of which ths right exists is called the *dominant heritage*, and the owner or occupier thereof the *dominant owner*; the land on which the liability is imposed is called the *servient heritage*, and the owner or occupier thereof the *servient owner*.—*Ibid.*

In the above two paragraphs, the expression *land* includes also things permanently attached to the earth; the expression *beneficial enjoyment* includes also possible convenience, remote advantage and even a mere amenity; and the expression *to do something* includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage, or anything growing or subsisting thereon.—*Ibid.*

Easements are either *continuous* or *discontinuous*, *apparent* or *non-apparent*. A *continuous* easement is one whose enjoyment is, or may be, continual without the act of man. A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement. A *discontinuous* easement is one that needs the act of man for its enjoyment. A right of way annexed to A's house over B's land. This is a discontinuous easement. An *apparent* easement is one, the existence of which is shown by some permanent sign which, upon

careful inspection by a competent person, would be visible to him. Rights annexed to A's land to lead water thither across B s land by an acquiduct and to draw off water thence by a drain The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements. A *non-apparent* easement is one that has no such sign. A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement — *Ibid*, *s.* 5.

Easements of necessity. If an easement on one property is *necessary* for the enjoyment of another property, and without which that property could not be enjoyed, the easement is called an easement of necessity. A sells B a field. It is inaccessible except by passing over A's adjoining land, or by trespassing on the land of a stranger. B is entitled to a right of way over A's adjoining land to the field sold. Owing to the partition of joint property A becomes the owner of an upper room in a building and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.—*Ibid.*, *s.* 13. An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.—*Ibid.*, *s.* 28. An easement of necessity is extinguished when the necessity comes to an end.—*Ibid.*, *s.* 41.

Acquisition of easements by prescription. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years, and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years, and where a right of way or other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years, the right to such access and use of light or air, support, or other easement, shall be absolute. Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Nothing is an *enjoyment* within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Nothing is an *interruption* within the meaning of this section, unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof, and of the person making or authorizing the same to be made. Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

In the case of an easement to polute water, the said period of twenty years begins when the polution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if, for the words *twenty years* the words *sixty years* were substituted.—*Ibid.*, *s.* 15.

Exclusion in favour of reversioner of servient heritage. Provided that when any land upon, over, or from which any easement has been enjoyed or derived, has been held under, or by virtue of, any interest for life, or any term of years exceeding three years from the granting thereof, the time for the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last mentioned period of twenty-years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.—*Ibid.*, *s.* 16.

Rights which cannot be acquired by prescription. Easements acquired under s. 15 are said to be acquired by *prescription*, and are called *prescriptive rights*. None of the following rights can be so acquired :—(*a*) a right which would tend to the total destruction of the subject of the right or the property on which, if the acquisition were made, liability would be imposed ; (*b*) a right to the free passage of light or air to an open space of ground; (*c*) a right to surface water not flowing in a stream, and not permanently collected in a pool, tank, or otherwise ; (*d*) a right to underground water not passing in a definite channel.—*Ibid.*, *s.* 17.

Customary easements. An easement may be acquired in virtue of a local custom. Such easements are called *customary easements*. —*Ibid.*, *s.* 18.

The benefit or right is called an easement ; the corresponding burden or duty is called a servitude, and is a dismemberment of the right of dominion or absolute property. The basis of all easements is the assent of another, either by grant or aquiescence, and they are thus distinguished from natural rights, but privileges in extensions of such rights are really easements An easement exists for the benefit of the dominant owner alone, and hence it confers no right on the servient owner to its continuance. A privilege granted to one personally, unconnected with the enjoyment by him of land, is not an easement,

but a mere personal contract, operating between the parties, and not binding upon the land affected, in the hands of others. Hence A cannot grant to B *personally* a right of way over his land, so that it should be annexed as an incident to the estate.—*Collett on Torts.* See LICENSE.

Affirmative (positive) and negative easements. The most ordinary instances of easements are the rights of air or light, of way, and of artificial watercourses. A right to receive light or air from across a neighbour's property may be acquired so that nothing can be done thereupon (as by building &c.,) substantially to interfere with that right. This is an instance of a negative easement. The other two instances are affirmative easements.—*Ibid.*

Easements are divided into *positive* and *negative* easements. Positive easements are those which involve a right in the dominant owner to do something on the servient tenement; negative easements give him no right of doing any such thing, but only impose an obligation on the servient owner to refrain from doing something on his own tenement, and thereby involve a right in the dominant owner to enjoy a benefit or advantage over the servient owner's tenement. Examples of the former class are a right of way, and all *profits a prendre*, they being rights to take or appropriate something from or in the servient land, examples of the latter are a right to light, or to air, or the uninterrupted flow of an artificial watercourse from the servient into the dominant tenement. The obligation of the servient owner on the other hand, is always of a negative character. In the case of positive easements, he is bound to abstain from obstructing the act which the dominant owner is entitled to do on his land; in the case of negative easements, he is bound to abstain from using, or doing something on, his land which would interfere with the right of enjoyment which the dominant owner has over it. He is always under some restriction depriving him of some one of the ordinary rights of enjoyment or use of his property which as an owner he would otherwise have, he is never bound to *do* anything for the benefit of the dominant owner, as such. In acquiring a title by prescription to a positive easement, the enjoyment of the benefit involves a trespass on the tenement over which the benefit is enjoyed, as in the case of a way or in the case of a *profit a prendre*; but in such acquisition of a negative easement, the enjoyment involves no trespass on the burdened tenement, but is simply a lawful user, by the acquirer of the right, of his own tenement.—*Michell on Easements.*

See LICENSE, LIGHT, QUASI-EASEMENTS, WATER.

Easterling. A coin struck by Richard II, which is supposed to have given rise to the name of sterling, as applied to English money.

Easter term. A law term, formerly called a moveable term, but afterwards fixed, beginning on the 15th of April, and ending on the 8th of May, in every year.

Eaves. The edge of a roof built so as to project over the walls of a house, in order that the rain may drop thereform to the ground, instead of running down the wall.

Eaves droppers. Persons who listen under walls and windows, or the eaves of a house, to harken after discourse, and thereupon to frame slanderous and mischievous tales.

Eberemorth. Eberemors. Eeberemurder. See ABEREMURDER.

Ecclesiastic. Ecclesiastical. Something belonging to or set apart for the church, as distinguished from *lay, civil* or *secular*, with regard to the world.

Ecclesiastical Commissioners. Those appointed to regulate and improve the management of matters connected with the Established Church, such as providing for the cure of souls.

Ecclesiastical Corporations. Those created for the furtherance of religion and for the perpetuation of the rights of the church, the members of which are exclusively spiritual persons; they are of two kinds—corporations sole, *viz.*, bishops, certain deans, parsons and vicars; and corporations aggregate, *viz.*, deans and chapters, and formerly prior and convent, abbott and monks, and the like.

Ecclesiastical Courts (curiæ ecclesiasticæ). These are the Archdeacon's Court, the Consistory Courts, the Court of Arches, the Prerogative Courts, the Faculty Court, and the Privy Council, which is the Appeal Court.

Edict (*edictum*). An ordinance or command. A statute. A proclamation or prohibition. A law promulgated.

Edictal citation. In Scotland, a citation against a foreigner not within Scotland, but who has a landed estate there, or against a native who is out of Scotland.

Edition. An edition consists of as many copies as are issued to the public at a time. Where a work is stereotyped, every fresh issue is a new edition (*Reade* v. *Bentley*, 27 L. J. Ch. 254).

Education Training up the young in general learning; not teaching for a business or profession.—*Stroud.*

Effect. The effect of a cause is anything which would not have happened but for that cause; and it is none the less an effect of such a cause because it has been developed or accelerated by something supervening.—*Stroud.*

Effects. A man's property; goods and chattels. The word *effects* (and even the words *goods* or *chattles*) will, it seems, comprise the entire personal estate of the testator unless restrained by the context within narrower bonds. "Effects" standing alone, will not comprise realty. But in *A. G., British Honduras* v. *Fristoe* (50 L. J. P. C. 18; 6 App. Cas. 143). The Privy Council thought

that the word *effects* would pass lands and the word was certainly sufficient to pass a privilege of cutting logwood on a definite piece of land.—*Stroud.*

Effectual adjudication. A legal security for a debt on the estate of the debtor in Scot land, corresponding to a completed *elegit* in English law. *See* EXPIRY OF THE LEGAL.

Effeerers. Persons appointed to set and assess fines in courts-leet, &c. *See* AFFEERORS.

Effeiring. (*Sc. L.*) Corresponding to; relating to.

Effractor. One that breaks through; a burglar that breaks open houses to steal.

Egistment. Agistment. *See* AGIST

Elk to a reversion. (*Sc. L.*) A writing whereby a mortgagor of land in Scotland makes the land a security for a second or further advance of money by the mortgagee. It also indicates the additional loan so advanced.

Elk to a testament. (*Sc. L.*) An addition or supplement to the inventory made up by an executor of the goods of the deceased.

Either. Originally 'either' had much of the meaning of 'both.' For some centuries, however, its normal meaning has been 'one or other' (*per Rigby*. L. J., *In re Peakworth*; *Smith* v. *Parkinson*, 1899, 1 Ch. D. 650).

Ejectment. The *mixed* action at common law to recover the possession of land (which is real), and damages and costs for the wrongful withholding of the land (which are personal). The action originated as far back as the reign of Edward III, and was then a species of personal action brought to recover damages only for the ouster. But towards the end of the 15th century the possession, it was decided, might be recovered by it. From that time until the C. L. P. Act, 1852, the action was encumbered to a very large extent with fictions, being in some such form as this —John Doe *v.* Richard Roe. The form of bringing the action was as follows:—The real claimant, whom we will call Smith, made a formal entry on the premises, and there, being in possession, delivered a lease to one Doe (the fictitious lessee) and left *him* in possession, and there he (Doe) stayed, till the prior tenant Brown, or some other person (Roe), turned him out. For this injury Doe, the lessee (the fictitious plaintiff) was entitled to his action of ejectment against the tenant in possession Brown or his *casual* or *imaginary ejector* Roe whichever it was, that ousted him, to recover back his term and damages. And subjoined was a *notice to appear*, addressed to the tenant in possession, informing him that Roe was sued as a *casual ejector* only, and would make no defence, and advising him (the tenant in possession) to defend his own title; otherwise he, Roe, would suffer judgment to be had against him, and the tenant would be turned out of possession. The declaration was the first step in the action, and was framed in trespass and ejectment between Doe *v.* Roe; it was served upon the tenant in possession, who or his landlord thereupon obtained a *consent rule* of the Court to appear and defend the action admitting the fictitious lease, entry, and ouster, and consenting to defend the action upon the strength of his *title* and nothing else. Thus the action of ejectment, which in its origin was one for the disturbance of the possession of a lessee, came ultimately to be the recognized method of trying titles to land. These absurdities were abolished by the C. L. P. Act, 1852, which directed that a writ in a prescribed form was to be addressed, on the part of the claimant, to the party in possession, by name, and generally to all persons entitled to defend the possession of the premises therein described; commanding such of them as deny the claimant's title to appear in Court and defend the possession of the property. By the Judicature Act the name of the action was changed to "Recovery of Land."

Ejuration. Renouncing or resigning one's place.

Ekjaddi. (*Ind.*) Persons descended from a common ancestor through a male line (*Chattar Singh* v. *Kalyan*, 23 All. 32; *Moulvie Hahy Bux* v. *Koki*, Punj. Rec., No. 37 of 1895).

Elder Brethren. The name of the masters of the Trinity House, by whom the affairs of the corporation are managed. *See* TRINITY HOUSE.

Election (*electio*). This is when a man is left to his own free will to take or do one thing or another which he pleases. It is more frequently applied to the choosing between two rights by a person who derives one of them under an instrument in which an intention appears (or his implied by a court of law or equity) that he should not enjoy both.

Where a man by his will professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election. A person who, in his individual capacity, takes a benefit under the will, may, in another character, elect to take in opposition to the will. Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will,

if the legatee claims that thing, he must relinquish the *particular* gift, but he is not bound to relinquish any *other* benefil given to him by the will.—*Act X of* 1865 (*Succession*), *ss.* 167-72.—*Act XXI of* 1870 (*Hindu Wills*), *s.* 2.

Where a person professes to transfer property which he has no right to transfer, and, as part of the same transaction, confers any benefit on the owner of that property, such owner must either elect to confirm such transfer, or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of, subject, nevertheless, where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer, and in all cases where the transfer is for consideration, to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him. This rule applies whether the transferor does or does not believe that which he professes to transfer to be his own. A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly need not elect A person who, in his one capacity, takes a benefit under the transaction, may in another dissent thereform. *Exception* —Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the *particular* benefit, but he is not bound to relinquish any *other* benefit conferred upon him by the same transaction.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 35.

The word election is also commonly applied to the choosing of officers or representatives from a greater number for an office.

Election Judges. Judges of the High Court elected under the Parliamentary Elections Act 1868 (31 & 32 Vic. c. 125) for the trial of election petitions.

Election petition A petition complaining of an undue return of a member to serve in parliament.

Elector. He that has a vote in the choice of any officer; constituent.

Electorial franchise. The phrase denotes most commonly the qualifications of persons entitled to elect members of parliament, whether in counties or in boroughs; although it may also apply to the qualifications (now entirely repealed) of persons entitled to become candidates for election.—*Brown.*

Eleemosynary corporations. Corporations constituted for the perpetual distribution of the free alms or bounty of the founder, to such persons as he has directed.

Eligible. As applied to the selection of persons, the word means either 'legally qualified' or 'fit to be chosen' (*per* Lord Chelmsford, *Baker* v. *Lee*, 8 H. L. Ca. 495 522).

Elimination. The act of banishing or turning out of doors; rejection.

Elinguation. The punishment of cutting out the tongue.

Elisors. Where the sheriff and coroners are challenged for partiality, two independent persons or *elisors* may be appointed to choose a jury, and their return is final.

Eloigne. Eloine. To remove or send away. Thus if goods liable to distress be carried out of a county, or concealed, the sheriff might "return" (*i. e.*, state by endorsement on the writ) that the goods are eloigned, *elongata*, carried to a distance, to a place to him unknown.—*Mozley.*

Eloignment. Removal; withdrawal; sending to a distant place.

Elopement. This is where a married woman, of her own accord, goes away, and departs from her husband, and lives with an adulterer.

Elsewhere (*alibi*). When an accused person in order to show that he could not have committed the offence with which he is charged, sets up as his defence that he was *elsewhere* at the time when the crime is alleged to have taken place, this defence is called an *alibi*.—*Mozley.* This defence, necessarily, is not confined to criminal trials.

Emancipation (*emancipatio*). (*Rom. L.*) The word originally signified selling out of one's possession by the form of *mancipation*. By a law of the Twelve Tables, a father was not allowed to sell his son more than three times; and if a son was manumitted after being three times sold by his father, he became free. Afterwards a threefold sale became a matter of form for giving freedom to a son; and hence the modern use of the word *emancipation*.—*Mozley.*

Embargo. A stop, arrest or detention of ships; a prohibition imposed in time of war by a belligerent state upon merchant ships against their leaving port for a time specified.

Embarrass. To embarrass means to state in a party's pleading, matter that he is not entitled to make use of. A defence is not embarrassing by reason of alleging several inconsistent statements of fact.—*Stroud.*

Embassador. *See* AMBASSADOR.

Embassy. Embassage. The message or commission given by a sovereign or state to a minister, called an ambassador empowered to treat or communicate with another sovereign or state; also the establishment of an ambassador.

Embezzlement. The appropriation to his own use by a clerk or servant of the money or property received by him for and on account of his master or employer. It differs from *larceny* properly so called, inasmuch as embezzlement is committed in respect of property which is not at the time in the actual

or legal possession of the owner, whilst in the latter it is. *See* THEFT.

Emblements. The profits of land sown with corn; the growing crops of those vegetable productions of the soil which are annually produced by the labour of the cultivator. They are deemed personal property, and pass as such to the executor or administrator of the owner, if he dies before he has actually cut, reaped or gathered the same.—*Wharton.* Emblements is the right which the occupier of land (or his personal representatives) has to reap in peace the crop which he sowed, when his occupation has been determined by his death or otherwise unexpectedly comes to an end from a cause beyond his control (Co. Litt. 55a 56a).—*Stroud.* The general rule as to emblements sown by an outgoing tenant, whose estate ends before harvest time is that the outgoing tenant or his representatives shall have the crop if the termination of the estate has arisen from the act of God or the will of the landlord, but not if the termination of the estate is due to effluction of time, or any act of forfeiture committed by the tenant —*Mozley.* The doctrine of emblements extends not only to corn sown, but to roots planted, or other annual artificial profits.—*Tomlins.* See Act IV of 1882 (Trans. of Pro.), s. 108 (*i*).

Embraceor. He that, when a matter is in trial between party and party, comes to the bar with one of the parties having received some reward so to do, and speaks in the case; or privately labours the jury, or stands in the court to survey and overlook them, whereby they are awed and influenced, or put in fear or doubt of the matter. But lawyers, attorneys, &c., may speak in the case for their clients, and not be embraceors.—*Tomlins.*

Embracery. An attempt to influence a jury corruptly on one side by promises, persuations entreaties, money, entertainments and the like. Even to pre-instruct a jury is embracery.

Emendals (*emenda*). An old word still made use of in the accounts of the Society of the Inner Temple; where so much in *emendals* at the foot of an account on the balance thereof signifies so much money in bank or stock of the house, for reparation of losses, or other emergent occasions.

Emergent year. The epoch or date whence any people begin to compute their time.

Eminent domain (*dominium eminens*). The right which every state or sovereign power has to use the property of its citizens for the common welfare. This right is the true foundation of the right of taxation.

Eminent right (*jus eminens*). The right of a state over the persons and property of its citizens. The right, so far as it concerns property, is called *eminent domain.*

Empanel. Empannel. The writing or entering by the sheriff, on a parchment schedule or roll of paper, the names of a jury summoned by him. *See* IMPANEL.

Emparlance. *See* IMPARLANCE.

Emperor (*imperator*). The highest ruler of large kingdoms and territories; a title anciently given to renowned and victorious generals of armies, who acquired great power and dominion.

Implead. To indict; to prefer a charge against; to accuse. *See* IMPLEAD.

Employ. A contract to employ does not generally mean to find actual employment; it rather means to retain and pay a person, whether employed or not; but if employed, then to be employed in the work only in respect of which the contract is made.—*Stroud.*

Enabling statute. A statute enabling persons or corporations to do that which, before it was passed, they could not do.

An enabling statute is a statute which makes it lawful to do something which would not otherwise be lawful. Such statutes or Acts are passed for a variety of purposes; for instance, to authorise the taking of land compulsorily to carry out some public work, or to legalise what would otherwise be a public or private nuisance.—*Encycl. L. E.*

Encroachment. An unlawful gaining upon the right or possession of a neighbour. *See* INCROACHMENT.

Endogamy. A marriage within one's family or tribe; for instance, the marriage of a man with his first cousin, *i. e.*, the daughter of his father's sister or brother, or with his own aunt or niece. Opposed to *exogamy.*

Endorsement. Endorser. Endorsee. *See* INDORSEMENT.

Endowment. An endowment is property, whether real or personal, devoted to some specific or particular purpose or trust; and does not embrace property devoted to the general purposes of a charity.—*Stroud.* The word signifies (1) the giving or assigning dower to a woman; (2) the setting or reserving of a sufficient portion for a vicar towards his perpetual maintenance; (3) any permanent provision for the maintenance of schools; (4) a permanent provision out of lands or money for any institution or person.

Enemy (*inimicus*). An alien or foreigner who, in a public capacity and in a hostile manner, invades any kingdom or country.

Pirates and *robbers* are never recognized as enemies (for the consequences of whose attacks carriers are liable, unless their liability has been varied by statute or express contract), the word *enemy* applying to States. The word *enemies* or *king's enemies*, or *queen's enemies*, in bills of lading and charterparties, is probably confined to the enemies of the sovereign of the stipulator; it certainly includes them.—*Stroud. See* REBELLION.

Enfeoff. To vest in another by means of a *feoffment* the legal estate in lands. *See* FEOFFMENT.

Enfeoffment. The act of investing with any dignity or possession; also the instru-

ment or deed by which a person is invested with possession. *See* FEOFFMENT.

Enfranchise. To make free or incorporate a man into any society, &c. It is also used where one is made a free *denizen*, which is a kind of incorporation in the *commonwealth*.

Enfranchisement. This is when a person is incorporated into any society or body politic; it signifies the act of incorporating. He that by charter is made a *denizen*, or freeman of England, is said to be *enfranchised*, and let into the general liberties of the subjects of the kingdom; and he who is made a citizen of London, or other city, or free burgess of any town corporate, as he is made partaker of those liberties that appertain to the corporation is in common sense of the word, a person *enfranchised*.—*Tomlins*. So a villein was *enfranchised*, when he was made free by his lord. The word is now used principally in three different senses:—(1) Of the manumission of slaves by their masters, or by an act of the supreme legislature within whose jurisdiction they are; (2) Of giving to a borough or other constituency a right to return a member or members to parliament; (3) Of the conversion of copyhold into freehold, giving the lord of the manor a compensation in money, secured if necessary by a mortgage, in lieu of his manorial rights.—*Mozley*.

English mortgage. *See* MORTGAGE.

Englishry, law of. A law enacted by William the Conqueror to repress the increasing practice of assassination of Normans by discontented and turbulent English. Under the law, the hundred in which the assassinated person was found was made liable to a heavy amercement; and every assassinated person was to be presumed to be a Norman, unless proofs of his "Englishry" were made by his four nearest relatives.

Engross. To copy in a fair and clerkly hand.

Engrossing. The buying up, in gross or wholesale, large quantities of corn or any commodity, with intent to sell it at a high and unreasonable price. The fair copying by a clerk of a deed or other legal instrument. *Engrosser*, one engaged in engrossing.

Enlarge. To put off, or extend the time for doing anything. Thus, to *enlarge* a rule signifies extending the time for doing that which by a rule of court is required to be done.

Enlargement of time. *See* EXTENSION OF TIME.

Enlarging an estate (*enlarger l'estate*) is where a man's *estate* (*i. e.*, interest) is increased; as, where there is an estate in A for life, with remainder to B and his heirs, and B releases his estate to A, A's estate is said to be *enlarged* into a fee simple.

Enlarging statutes. *See* REMEDIAL STATUTES.

Enrolment. Inrolment (*irrotulatio*). The registering, recording, or entering of any lawful act in the *rolls* of the Chancery or elsewhere. Prior to the Judicature Act, decrees in Equity which were enrolled could only be altered by Appeal to the House of Lords, or by bill of review. In some cases deeds are required to be enrolled in Chancery, in order that they may have validity.—*Mozley*. The enrolment of a deed upon the records of a court does not make it a record, but it thereby becemes a deed recorded. For there is a difference between a matter of record, and a thing recorded to keep in memory. A record is the entry on parchment of judicial matters controverted in a court of record, and whereof the court takes notice; but an inrolment of a deed is a private act of parties concerned of which the court takes no cognizance at the time when it is done.—*Brown*.

Enschedule. To insert in a list, account, or writing.

Entail. The word signifies an estate tail, especially with reference to the restraint which such an estate imposes upon its owner, or, in other words, the points wherein such an estate differs from an estate in fee simple. Sometimes it is used differently, so as to signify a succession of life estates, as when it is said that "an entail ends with A. B," meaning that A. B. is the first person who is entitled to bar or cut off the entail, being in law the first tenant in tail.—*Mozley*.

Enter. To enrol; to inscribe upon the records, or upon an official list.

Entering judgment in an action takes place by transcribing the proceedings on a parchment roll and depositing this roll, and filing it as a record in the office of the Court.

Entering short. This is when a banker, having received an undue bill from a customer, does not carry the amount directly to the credit of the latter, but "enters it short," as it is called, *i. e.*, notes down the receipt of the bill in the customer's account, with the amount and the time when due. Whether, however, any given bill is to be regarded as "a short bill" (*i. e.*, not to be treated as cash) must depend not so much upon whether it has been "entered short," as upon the surrounding circumstances, and the general mode of dealing between the parties.

See ENTRY.

Enterpleader. *See* INTERPLEADER.

Entire contract. A contract wherein everything to be done on the one side must be performed before the consideration is due from the other; as opposed to an apportionable or severable contract.

Entire services. A contract to render a person's entire services precludes him from accepting any other employment (*Woodworth* v. *Sudgen*, 32 S. J. 742).—*Stroud*.

Entire tenancy. This signifies a sole possession in one man, called severalty, in con-

tradiction to a *several* tenancy, which implies a tenancy jointly or in common with others.

Entirety. The whole; completeness; as contradistinguished from a moiety.

Tenancy by entireties. Where an estate is conveyed or devised to a man and his wife *during coverture*, they are said to be tenants by entireties, *i. e.*, each is said to be seised of the *whole* estate, and neither of a part; neither can alienate it alone; so that, in default of a joint alienation the estate goes to the survivor.

Entitled. This means entitled *in interest*, or entitled *in possession*. The interpretation is in each case a question of construction.—*Encycl. L. E.* Entitled may mean entitled *in possession* as well as *in reversion* or *remainder* (*per* Kindersley, *Archer* v. *Kelly*, 29 L. J. Ch. p. 912), but it seems that a mere contingent interest depending on the happening of some future event will not be comprised in the words 'entitled to.'—*Stroud.*

Entry. Enrolment; inscription; putting down a mercantile transaction in a book of account. The actual taking possession of lands or tenements by entering upon the same. Actual entry (*ingressus*) on land is necessary in certain cases, *e. g.*, to constitute a seisin in deed, and to perfect a common law lease. Since the introduction of modern conveyances, which do not require livery of *seisin*, entry is seldom made except to take repossession, in which case it must be peaceable.

Right of entry. A right to enter and take possession of lands or tenements without bringing an action to recover the same, a remedy allowed in various cases by common or statute law, or by the deed by which an estate (*i. e.*, a person's interest in land) is marked out and limited.

Writ of entry. A writ by which a party claiming the right of possession to lands disproved the title of tenant or possessor, by showing the unlawful means by which he entered or continued possession. This writ, having been long superseded by the action of *ejectment*, has been abolished.

In Scotch law, *entry* refers to an acknowledgment of the title of the heir, &c., to be admitted by the superior.

See FORCIBLE ENTRY.

Enure. To operate; to take effect; to be available; to result; as when we say that a transaction *enures* to the benefit of A. B., we mean that A. B. gets the benefit of it. Thus, a release in fee from a reversioner to his prior tenant *enures* by way of the enlargement of the particular tenancy into a fee simple; also a grant by one joint tenant to another will *enure*, *i. e.*, (operate) as a release.

Equitable. That which exists or can be reached only by virtue of or through a court of *equity*.

Equitable assets. Assets of a deceased person, which cannot be made available to a creditor of the deceased but through the medium of a court of equity. Equitable assets are so either in their own nature (*e. g.*, separate estate of married women), or by act of the party (*e. g.*, estates charged with the payment of debts).

Equitable assignment. Prior to the Judicature Acts, 1873 5, a legal assignment could only be effected by deed, and then only in those cases in which the property dealt with was in its own nature assignable; but when the property was not legally assignable, equity held that the purported assignment, if by deed, was complete, because it could not be made more complete at law. Further, every species of property was assignable in equity, and a mere appropriation was good as an equitable assignment. For example, an order (even by word of mouth) from a creditor to his debtor to pay over to a third person (to whom the creditor was indebted) money or any portion of money owing by the debtor to the creditor was considered as a good equitable assignment of the debt. But as regards land an equitable assignment could not be by word of mouth simply, but by reason of the Statute of Frauds is required to be in writing.—*Brown.*

Equitable defences at common law were defences to an action at common law on *equitable* grounds *i. e.*, on grounds which prior to the passing of the Common Law Procedure Act, 1854, would have been cognizable only in a court of Equity.

Equitable estate. An estate or interest in land not fully recognised as such except in a court of *Equity*, and for which a court of *Equity* affords the only remedy, such as express or implied trusts which are not converted into a legal estate, an equity of redemption, constructive trusts, and equitable charges.

Equitable lien. *See* LIEN.

Equitable mortgage. A mortgage recognised in a court of *Equity* only. It may be either by conveyance, or deposit of title deeds accompanied or not accompanied with a written memorandum. Where the mortgagor at the time of making the mortgage is not himself possessed of the legal estate and merely conveys what he has to the mortgagee, the mortgage is of necessity equitable only as passing only an equitable estate. Again, where the mortgagor merely deposits the title deeds relating to an estaste in the hands of the mortgagee, and either by word of mouth or by memorandum in writing it is agreed between the mortgagor and the mortgagee that the deposit shall continue so long as the money lent or to be lent is owing, that is an equitable mortgage by deposit of title deeds, and it is as efficacious as any other equitable mortgage. Such mortgages are recognized only in the towns of Calcutta, Madras, Bombay, Karachi, Rangoon, Moulmein, Bessein and Akyab (Trans. of Pro. Act IV of 1882, s. 59, as amended by Act VI of 1904). A written agreement only to make a mortgage creates an equitable lien on the land.

The mere possession of title-deeds coupled with the existence of a debt does not necessarily lead to a presumption of an equitable mortgage by deposit of title deeds. To make out such a mortgage, it must also be proved that the intention of the depositor was to create a security (*Jethibai* v. *Putlibai*, 14 Bom. L. R. 1020).

An equitable mortgage under s. 59 of the Trans. of Pro. Act, 1882, needs three facts to be proved:—(1) a debt, (2) deposit of title-deeds, and (3) an intention that the latter should be a security for the former. No writing is necessary to create the mortgage. It comes into being by the mere conjunction of certain facts. There must be evidence of intention to connect deposit of title-deeds with the loan borrowed. The mere fact that there was a subsequent or contemporaneous loan is not sufficient in law to warrant a presumption, apart from any other evidence, that the contemporaneous or antecedent deposit of title-deeds was necessarily made as security for the loan (*Behram Rashid* v. *Sorabji*, 16 Bom. L. R. 35).

It is not necessary to the validity of an equitable mortgage that the property to which the title-deeds deposited relate should be situated within the limits of one of the towns where such mortgages are allowed (*The Himalya Bank* v. *F. W. Quarry*, 15 All. W. N. 97). It is competent to create in Bombay an equitable mortgage by deposit of title-deeds of property situated outside Bombay (*Behram Rashid* v. *Sorabji*, 16 Bom. L. R. 35). An equitable mortgagee by deposit of title-deeds has the right to sue for foreclosure or sale (*Manekji* v. *Rustomji*, 14 Bom. 269).

Equitable mortgage by conveyance. Where the legal estate in lands has been conveyed to a first mortgagee, and the mortgagor makes a second mortgage by conveyance, he necessarily conveys only what he has, that is, an equitable estate; and this second mortgage is therefore called an equitable mortgage by conveyance.

Equitable waste. *See* WASTE.

Equity (*æquitas*). Equity is defined to be a correction or qualification of law, generally made in that part wherein it faileth or is too severe; in other words, the correction of that wherein the law, by reason of its universality, is deficient. *Cowel* describes equity as being of two sorts, and these of contrary effects; for the one doth abridge and take from the letter of the law, the other doth enlarge and add thereto. And the instance of the first kind he gives is that of a person acquitted of a capital crime on the ground of insanity or infancy; the instance he gives of the latter is that of the application of a statute to *administrators*, which in its terms applies to *excutors* only. But these usages of the term are comparatively rare at the present day. Perhaps we may define equity as that portion of English jurispudence which at least from the reign of Henry VIII to the year 1841, was administered exclusively by the Court of Chancery and the Court of Exchequer, and since then by the Court of Chancery only.—*Mozley*. As the Courts of Equity had in early times a power of framing and adopting new remedies to particular cases, which the Common Law Courts did not possess, and in doing so allowed themselves a certain latitude of construction, and assumed in certain matters, such as trusts, a power of enforcing moral obligations which the Courts of Law did not admit or recognize, there grew up by degrees a characteristic distinction between the rules of Equity and Common Law which has only been lately abolished by the Judicature Acts, 1873 and 1875, whereby those rules have in certain points been assimilated—*Rawson*. There are, or used to be, three jurisdictions in Equity, *viz.*, the exclusive, the concurrent, and the auxiliary jurisdictions; the *exclusive* jurisdiction being that in which Equity had jurisdiction and Law had not; the *concurrent*, that in which Equity and Law had jurisdiction equally; and the *auxiliary*, that in which Law had exclusive jurisdiction, and Equity was only the handmaid of Law therein.—*Brown*.

The equitable jurisdiction of the Court of Chancery owed its origin to the petitions for redress of private grievances which were, in early times, addressed to the King or his council, in cases when the remedies provided by the criminal law were inadequate or unavailable. It was founded upon the judicial authority forming part of the Royal prerogative under which so late as the reign of James I, the King still claimed power to intervene in matters of private right. In the 14th century it became the regular course to refer these petitions to the Chancellor, and soon afterwards the petitioners began to address themselves to him directly. The jurisdiction of the Chancellor sitting alone can be traced as far back as the reign of Richard II. The frequency of such applications to the Chancellor led to the institution of a regular Court.—*Encycl. L. E.*

Equity is used in the sense of the right or obligation attaching to a property or contract; thus a person is said to have *better equity* than another.

Collateral equities, in the law of bills of exchange, are those (such as *set off*) which arise without special agreement between the parties.

Equity Courts. The Court of Chancery in its various branches; also the Courts which administer the system which, among the superior Courts, is peculiar to the Court of Chancery.

Equity draftsman. A barrister who draws pleadings in equity. Pleaders in equity are so called.

Equity feeds the estoppel. *See* FEED.

Equity looks upon that as done which ought to be done. *See* CONVERSION.

Equity of redemption. A mortgagee, although he has in the eye of the law become absolute owner of the mortgaged property, after breach of the condition of repayment of the loan within the strict time, yet is compelled by a Court of *Equity* to convey the legal estate to the mortgagor, if the latter applies to redeem the mortgage before foreclosure or sale, on payment of the mortgage debt with interest and costs. This right to redeem or buy back the mortgaged estate is called the mortgagor's *equity of redemption*. *See* REDEEM, CLOG ON EQUITY.

Equity to a settlement. The claim of a wife to have some portion (usually one half) of property coming to her husband in *her* right during the coverture settled on herself and her children (*Toolseemoney* v. *Maria*, 11 B. L. R. O. C., 144). This claim was originally enforced by a Court of Equity, whenever the husband had to invoke its assistance for the purpose of getting possession of the property, on the principle that he who seeks equity must do equity. It has however now been settled that this equity may be asserted actively by the wife. And by the Married Women's Property Act, 1882 (45 and 46 Vic. c. 75), every woman married after that Act shall have as her seperate property *all* real and personal estate which shall be acquired by or devolve upon her after marriage.

Equity side of the Exchequer. The Court of Exchequer sitting as a Court of Equity. The equitable jurisdiction of the Exchequer was abolished in 1841.

Equity of a statute. The sound interpretation of a statute, the words of which may be too general, too special, or otherwise inaccurate and defective. A case is said to be within the equity of a statute when it falls within its spirit and intent, though apparently excluded by the letter.

Erasure. *See* ALTERATION, INTERLINEATION.

Errant. A word attributed to justices that go on circuit, and to bailiffs travelling from place to place to execute process.

Error. An error in pleading or in the process; the writ which is brought for remedy of this oversight is called a writ of error (*breve de errore corrigendo*).

Bringing an error is an appeal against the judgment, grounded either on the suggestion of some *fact* which renders the judgment erroneous, or on some error of *law* apparent on the face of the proceedings. Proceedings in *error* are now abolished by the Judicature Act, 1875, except in criminal cases, *appeal* being substituted in civil cases.

A *writ of error* is that properly which lies to redress false judgment given in any court of record. After final judgment had been signed in an action, the unsuccessful party, if desirious of disputing the matter afresh, might bring a writ of error, being a writ which was sued out of Chancery, and which was addressed to the judges of the court in which the judgment had been given, commanding them in some cases to examine the record themselves, and in others to send it to another court of appellate jurisdiction.

See COURT OF ERROR.

Escambio. A license granted to one for making over bills of exchange to another beyond the sea; for no merchant could exchange or return money beyond sea without the king's license. Now abolished.

Escape (*escapium*). A violent or privy evasion out of some lawful restraint.

Voluntary escape happens when a prisoner escapes with the consent of the keeper, sheriff or other person who has him in charge

Negligent escape happens where the escape is against the will of the sheriff or other such officer.

When the prisoner is by force or fraud released by others against the will of the custodian, it is termed *rescue*.

Escape-warrant. A process addressed to all sheriffs, &c., throughout England, to retake an escaped prisoner.

Escheat (*escaeta*). An obstruction of the course of descent, by which land naturally results back by a kind of reversion to the original grantor or lord of the fee, who takes it as *ultimus hæres* upon the failure, natural or legal, of the intestate tenant's family. Escheat is either for want of an heir (*propter defectum sanguinis*), when the tenant dies without heirs; or by the tenant's blood being attainted by felony (*propter delictum tenentis*). This latter form differs from a *forfeiture* of goods and chattles in that a forfeiture always went to the crown, but an escheat to the immediate lord, who might or might not be the king. Escheat or forfeiture for felony is now abolished, except in the case of outlawry.

Escheator (*escaetor*). An officer anciently appointed by the Lord Treasurer, &c., in every county, to make inquests of titles by *escheat* due to the king in the county whereof he was the escheator, and to certify the same in the Chancery or the Exchequer.

Escrow. A writing under seal delivered to a third person, to be delivered by him to the person whom it purports to benefit, when certain specified conditions shall have been performed or satisfied; until which time it does not acquire the force of a deed. Otherwise called a scroll or writing. If however, it be delivered to the *grantee*, the delivery is absolute and the deed takes immediate effect. *See* CONTRACT, DELIVERY.

Escuage (*scutagium*). A kind of tenure by knight's service, called *service of the shield* (*servitium scuti*), whereby the tenant was bound to follow his lord into the wars at his own charge.

Eslisors. *See* ELISORS.

Esnecy (*æsnesia*). A private prerogative allowed to the eldest coparcener, where an estate descends to daughters for want of an

heir male, to choose after an inheritance is divided.

Esplees (*expletiæ*). The products or full profits of land; as the hay of the meadows, the herbage of the pasture, corn of the arable land; the rents, services, and such like issues.

Esquire. Esquier. Originally one who attended a knight in time of war and did carry his shield. There are several sorts of esquires:—(1) The eldest sons of knights and their eldest sons in perpetual succession; (2) the eldest sons of younger peers, and their eldest sons in like perpetual succession; (3) esquires created by the king's letters patent or other investure, and their eldest sons; (4) esquires by virtue of their offices; as justices of the peace, &c.; (5) barristers-at-law; (6) esquires of the Knights of the Bath, each of whom constitutes three at his installation; (7) all foreign peers.—*Mozley*. Chiefs of ancient families are esquires by prescription.

According to Sir Edward Coke, every one is entitled to be termed an esquire who has the legal right to call himself a gentleman.—*Encycl. L. E.*

Essart. *See* ASSART.

Estate. The condition and circumstance in which an owner stands with regard to his property. An interest in land. Estates may be variously classified:—

I. According to the *quantity* of interest, the primary division of estates is into such as are *freehold* and such as are *not freehold*.

The principal freehold estates are:—(1) Estates in fee simple, (2) estates in fee tail, or otherwise called estates tail; (3) estates for life.

An *estate in fee simple* is that which a man hath to hold to him and his heirs. It is the most extensive estate of inheritance that a man can possess; it is the entire property in land, and to it is attached the right of alienation to the full extent of the interest which is vested in the tenant himself, or for any smaller estate. For the limited form of this estate, *see* CONDITIONAL FEE.

An *estate in fee tail* is that which a man hath to hold to him and the heirs of his body or to him and particular heirs of his body. By the statute *De Donis Conditionalibus* (13 Edw. I, st. 1, c. 1, passed in 1285), an estate so limited devolved, at the death of the donee, on his issue; and, on the failure of issue, reverted to the donor and his heirs. In the construction of this statute the judges held that the donee had an estate which they called a *fee tail*. This estate thus assumed the form of a perpetual entail until the reign of Edw. IV, when it was held by the judges that an estate tail might be *barred* by the collusive and fictitious proceeding called a *common recovery* (*see* RECOVERY), and thus turned into an estate in fee simple. And in the reign of Henry VIII, the process called *fine* (*see* FINE) was made effectual to enable a tenant in tail to bar his issue, but not the remainderman or the reversioner. Fines and recoveries were abolished by 3 & 4 Wm. IV. c. 74, passed in 1833, and now an estate tail may in general be barred by a simple disentailing deed to be inrolled in Chancery within six months, in cases where it could, previously to the Act, have been barred by fine or recovery. But estates tail of which the reversion is in the Crown cannot be barred so far as regards the reversion; and estates tail created by act of parliament cannot in general be barred. So, a tenant in tail after possibility of issue extinct cannot bar his estate.

All estates of inheritance created by gift or will, so far as they are inconsistent with the general law of inheritance, are void as such, and by Hindu law no person can succeed as heir to estates described in terms which in English law would designate estates tail (*Jotindra Mohan Tagore* v. *Ganendra Mohan Tagore*, 9 B. L. R., P. C., 377).

An *estate for life* is in general an estate to one for his own life. But an estate during widowhood is also reckoned among estates for life.

In addition to these three kinds of estate we may notice the following kinds which are less than freehold:—(4) An estate for years; (5) an estate at will; (6) an estate at sufferance.

An *estate for years* is often spoken of as *a term of years*. The instrument by which it is created is called a *lease* or *demise*, and the estate itself is called a *leasehold interest*. It is generally made subject to covenants and conditions.

An *estate at will* is where lands and tenements are let by one man to another to have and to hold at the will of the lessor, and the tenant by force of this lease obtains possession.

An *estate at sufferance* is where one comes into possession under a lawful demise, and after such demise is ended, wrongfully continues the possession.

Besides these several divisions of estates, there is another species, called an *estate upon condition*, which is an estate whose existence depends upon the happening or not happening of some event. Under these are included—(7) Estates held upon condition *implied*; (8) estates held upon condition *expressed*. Under these last, may be included—(9) Estates held in mortgage; (10) estates by statute merchant or statute staple, (11) estates held by *elegit*.

II. Estates may also be divided with regard to the *time* at which the quantity of interest is to be enjoyed. Thus, an estate may be—(1) An estate in possession; (2) an estate in expectancy.

An estate in *possession* implies a right of present possession, involving a right of entry; that is, the right of entering upon and taking

possession of the land withheld, where that can be done without breach of the peace.

An estate in *expectancy* is of two kinds—an estate in *reversion* and an estate in *remainder*, the distinction between the two being as follows:—(1) When a person grants an estate for life, or other estate of limited interest to another, such estate is called a *particular estate*, and the residue remaining in the grantor is called his *reversion*. (2) When a person grants an estate for life, or other *particular estate*, to one man, and the residue to another, the interest of the latter is called a *remainder*, though it is often spoken of as a *reversion*.

III. Estates may further be divided, with respect to the number and connection of their owners, into—(1) Estates in *severalty*, (2) estates in *joint-tenancy*; (3) estates in *coparcenary*; (4) estates *in common*.—*Mozley*. See the different titles.

Estate clause. A clause added to the discription of the parcels in a conveyance, &c., and which purports to pass all the estate, claim &c., of the grantor. By the Conveyancing Act, 1881, s. 63, its insertion is for the future rendered unnecessary.

Estates of the Realm. The three branches of the Legislature—the Lords Spiritual; the Lords Temporal, who sit together in one House of Parliament; and the commons, who sit by themselves in the other

Esterling. *See* STERLING.

Estoppel. The word comes from a French word *estoupe*, from whence the English word *stopped*, and it is called an estoppel, or conclusion, because a man's own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth (Co. Litt. 352 a).—*Stroud*.

The doctrine of estoppel is thus laid down —Where one, by his words or conduct, wilfully causes another to believe 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 averring against the latter a different state of things as existing at the same time. By the term *wilfully*, above used, we must understand, if not that the party represents that to be true which he knows to be untrue, at least that he *means* his representation to be acted upon, and that it is acted upon accordingly; and if, whatever a man's real intention may be, he so conducts himself that a reasonable man would take him to mean a representation, and [illegible] act upon it, and the act upon it as true, the party making the representation would be equally precluded from contesting its truth; and conduct, negligence or omission, where there is a duty cast upon a person by usage of trade or otherwise to disclose the truth, may often have the same effect.—*Broom's Com. Law*.

When one person has by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.—*Act I of* 1872 (*Evi.*), *s.* 115. The belief above referred to must be a belief in a fact and not in a proposition of law (*Rajnarain* v. *Universal Life Assurance Co.*, 7 Cal. 594; 10 C. L. R. 561). An admission on a point of law is not an admission of a *thing* so as to make the admission matter of estoppel within the meaning of s. 115 of the Evidence Act (*Jagwant Singh* v. *Silan Singh*, 21 All. 285).

There can be no extoppel where the truth of the matter regarding which a statement is made is known to both parties to the transaction (*Mohori Bibee* v. *Dhurmdas*, 7 Cal. W. N. 441; 5 Bom. L. R. 421; 30 Cal. 539; 30 I. A. 114, P. C., *Narayan* v. *Raoji*, 28 Bom. 393; 6 Bom. L. R. 417).

When estoppel is pleaded, the facts relied upon as leading to it should be precise and unambiguous (*Aba* v. *Sonubai*, 3 Bom. L. R. 832, *Mouji* v. *National Bank of India*, 35 Bom. 499; *Gajanan* v, *Nilo*, 6 Bom. L. R. 864; *Raghunathji* v. *Varjivandas*, 7 Bom. L. R. 836).

The representation must be as to some state of facts alleged to be at the time actually in existence. If the representation relates to promises *de futuro*, it can be binding not as an estoppel, but as a contract (*Jethabhai* v. *Nalhabhai*, 6 Bom. L. R. 428, 28 Bom. 399; *Dhondo* v. *Keshav*, 7 Bom. L. R. 179, 184).

The plea of *res judicata* proceeds upon grounds of public policy properly so called, whilst an *estoppel* is simply the application of equitable principles between man and man—two individual parties to a litigation (*per* Mahmood, J., *Sita Ram* v *Amir Begam*, 8 All. 333).

There are three kinds of estoppel—(1) Estoppel by record; (2) estoppel by deed or speciality; (3) estoppel by matters *in pais*.

Estoppel by record The principle of, or justification for, this kind of estoppel is, that no one shall aver against a record, *i. e.*, a judgment or verdict of the court, so long as that judgment remains unreversed. A record imports such absolute and incontrovertible verity, that no person against whom it is producible shall be permitted to aver against it. A record concludes the parties thereto, and their privies, whether in blood, in law, or by estate, upon the point adjudged, but not upon any matter collateral or adjudged by inference. A judgment in an action *in rem* is absolutely binding upon all the world.

Estoppel by deed. Inasmuch as a deed is a solemn and authentic act, a man shall always be *estopped* by his own deed, or not permitted to aver or prove anything in contradiction to what he has once so solemnly and deliberately avowed. The principle is that, where a man has entered into a solemn en-

gagement by deed under his hand and seal as to certain facts, he shall not be permitted to deny any matter which he has so asserted.—*Broom's Com. Law.*

Estoppel in pais. The principle of this kind of estoppel is that a man shall not aver the contrary of that which by his previous conduct he deliberately led other persons to infer, and they have inferred accordingly, and would now be prejudiced pecuniarily if the contrary averment was admitted. On this principle, a tenant cannot dispute his landlord's title

Estoppel of tenant. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.—*Act I of* 1872 (*Evi.*), *s.* 116.—*Vasudev* v. *Babaji* (8 Bom. H.C., A.C., 175).

Estoppel of acceptor of a bill, bailee or licensee. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license. *Explanation.*—(1) The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn. (2) If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.—*Ibid.*, *s.* 117.

The doctrine of estoppel is not, however, allowed to cover a fraudulent or illegal contract.

Estoppel against estoppel. A brought a pauper suit, and virtually denied possession of certain property. B petitioned to dispauper A, alleging that A was possessed of such property. The court decided that A was in possession and rejected her prayer to be allowed to sue as a pauper. *Held*, in a subsequent suit by A's representative against B's representative for the property, that even if A's allegation, found to be false, could be treated as an estoppel, B's allegation, found to be true, would also be an estoppel, and "estoppel against estoppel setteth the matter at large," but that, although A's allegation was receivable evidence against A and her representative, they were not concluded by such allegation and the decision thereon.—*Civa Rau* v. *Jevana Rau* (2 Mad. H.C.R. 31).

Estoppel by acquiescence. *See* ACQUIESCENCE.

Feeding the estoppel. *See* FEED.

Estovers (*estoverium*). Nourishment or maintenance. Wood or fuel which a tenant for life is entitled to out of the estate. Also the alimony allowed to a wife was sometimes called her *estovers*.

By the grant of estovers will pass housebote, haybote, and ploughbote. But if a man grant to me estovers out of his manor, I may not by this grant cut down any of the fruit trees within his manor.—*Stroud.*

Estrays. Such valuable animals as are found wandering in any manor or lordship, the owner whereof is not known; in which case the law gives them to the king as the general owner and lord paramount of the soil; they now most commonly belong to the lord of the manor, by special grant from the Crown.

Estreat (*extractum*). A true extract, copy, or note, of some original writing or record, and especially of fines, amercements, &c., entered on the rolls of a court, to be levied by the bailiff or other officer.

Estrepe. To make spoils in the land to the damage of another, as of the reversioner, &c. To commit waste.

Estrepement (*estrepamentum*). Any spoil made by tenant for life, upon any lands or woods, to the prejudice of him in reversion; it also signifies the making land barren by continual ploughing. Waste, voluntary or permissive, by a tenant for life or years.

Evasion. The act of escaping by means of artifice; a trick or subterfuge.

The word *evade* is capable of being used in two senses, one which suggests underhand dealing, and another which means nothing more than the intentional avoidance of something disagreeable (*per* Lord Hobhouse, *Simms* v. *Registrar of Probates*, 1900, A. C., 323; also *Bullivant* v. *Attorney-General for Victoria*, 1901, A. C., 196).

Eves-droppers. *See* EAVES DROPPERS.

Eviction. A recovery of land, &c., by form of law; dispossession. The word applies to every kind of expulsion in fact. *See* EJECTMENT.

Evidence (*evidentia*). Proof, either written or unwritten, of allegations in issue between parties.

Evidence means and includes (1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry; such statements are called *oral* evidence, (2) all documents produced for the inspection of the court; such documents are called *documentary* evidence.—*Act I of* 1872 (*Evi.*), *s.* 3. All facts except the contents of documents, may be proved by oral evidence.—*Ibid.*, *s.* 59. The contents of documents may be proved either by primary or by secondary evidence.—*Ibid.*, *s.* 61.

Evidents. (*Sc. L.*) Title-deeds.

Evocation. (*Fr. L.*) Withdrawing a case from the cognizance of an inferior court.

Exaction. A wrong done by an officer or one in pretended authority, by taking a reward or fee for that which the law allows not. The difference between *exaction* and *extortion* is this; *extortion* is when an officer extorts more than his due, when something is due to him; and *exaction* is when, he wrests a fee or reward where none is due.—*Tomlins.*

Examination of witnesses. An interrogation of witnesses on oath. The examination of a witness by the party who calls him shall be called his *examination-in-chief.* The examination of a witness by the averse party shall be called his *cross examination.* The examination of a witness, subsequent to the cross-examination, by the party who called him shall be called his *re-examination.*—*Act I of* 1872 (*Evi.*), *s.* 137. One co-defendant whose interests are separately represented may cross-examine another (*Narasimma* v. *Kistnama*, 1 Mad. H. C. R. 456).

Examiners in Chancery. Officers appointed to examine witnesses in town in causes pending in that court.

Examiners of the Court. Barristers appointed to examine witnesses out of Court.

Exannual roll. A roll into which the fines which could not be levied, and the bad debts, were formerly transcribed in the sheriffs' accounts in the Exchequer.

Excambiatores. The word anciently meant *exchangers* of land. It now signifies *brokers*, or those employed to exchange lands.

Excambion. (*Sc. L.*) A contract whereby one piece of land is exchanged for another.

Exception (*exceptio*). A stop or stay to an action; an objection: a denial of a matter alleged in bar to an action. Thus, for instance, an exception to a defendant's answer in Chancery is an objection taken to it for some cause allowed by the practice of the Court, as insufficiency, or scandal and impertinence. *Exception* in deeds and writings, is a saving clause therein, preventing certain things passing which would otherwise pass thereby; something excepted from the grant. *See* RESERVATION. *Exception*, in the Scotch and the Roman Law, means defence.

Day of exception. The day (following defendant's non-appearance) on which the plaintiff might have entered an exception to prevent the defendant's essoign or excuse being received.

See BILL OF EXCEPTIONS.

Excerpts. Extracts.

Exchange (*excambium*; *cambium*). A building or other place where merchants, agents, bankers, brokers and other persons concerned in commerce meet at certain times to confer and treat together of matters relating to exchanges, remittances, payments, adventures, assurances, freights, and other mercantile negotiations, both by sea and land.—*Wharton.*

The *King's Exchange* is the place appointed by the king for *exchange* of bullion, gold, silver, plate, &c., for the king's coin.

An *exchange of land* is a mutual grant of equal interest in lands or tenements, the one in consideration of the other. The instrument by which an exchange is effected is called a *deed of exchange.*

Exchange of property (*permutatio*). When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing, or both things being money only, the transaction is called an exchange. A transfer of property in contemplation of an exchange can be made only in manner provided for the transfer of such property by sale.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 118.

See BILL OF EXCHANGE.

Exchangeors. Those that return money by bills of exchange.

Excheat. *See* ESCHEAT.

Exchequer (*scaccarium*). The department of State having the management of the royal revenue. It consists of two divisions, the first being the office of the receipt of the Exchequer, for collection of the royal revenue; the second being a Court for the administration of Justice.—*Mozley.* *See* COURT OF EXCHEQUER.

Exchequer bills and bonds. Instruments issued by the Exchequer, under authority of Parliament, and containing an engagement on the part of the Government for the repayment of the principal sums advanced, with interest in the meantime.

Exchequer Division. A division of the High Court of Justice, to which the special business of the Court of Exchequer was specially assigned under the Judicature Act, 1873. Now merged in the Queen's Bench Division from Feb. 1881.

Exchequer of Pleas. The Court of Exchequer sitting otherwise than as a court of revenue.

Excise. The name given to duties or taxes laid or certain articles produced and consumed at home, amongst which spirits have always been the most important; but, exclusive of these the duties on the licenses of auctioneers, brewers, &c., and on the licenses to keep dogs, kill game, &c., are included in the excise duties.—*Wharton.*

Excommencement. (*Fr. L.*) Excommunication.

Excommunication (*excommunicatio*). An ecclesiastical censure. It is described as twofold, the greater and the lesser. By the former a person was excluded from the communion of the church, from the company of all Christians, and incapacitated from performing any legal act, *e. g.*, serving upon juries, being a witness in any Court, bringing an action to recover lands or money due to him;

the latter merely debarred him from the service of the church &c., excluding him from the sacraments, and this is now the only incapacity that arises from a sentence of excommunication, the others being abolished.

Exculpation, letters of. (*Sc. L.*) A warrant granted at the suit of a prisoner for citing witnesses in his own defence.

Excusable homicide. A kind of homicide involving some error or omission so trivial that the law excuses it from the guilt of felony. It is of two sorts:—(1) *Per infortunium* (by misadventure), where a man doing a lawful act without any intention of hurt, unfortunately kills another; (2) *Se defendendo* (in defending one's self), where a man kills another upon a sudden affray, merely in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling.

Excuss. To seize and detain by law. *Excussion*, seizure by law.

Executant. He who executes a document.

Execute. To carry into force an order made in a judicial proceeding. To give legal effect to a deed or other writing by signature or otherwise.

Executed. Executory. These words are used in law in a sense very nearly equivalent to *past* (or *present*) and *future*, respectively, in other words, they denote the sense of *complete* and *incomplete*.

Executed and executory considerations. A consideration for a promise may be executed or executory, according as the consideration precedes the promise or not; and its character in this respect is determined by the relation which it bears in point of time to the promise, as being prior or subsequent. *See* CONSIDERATION.

Executed and executory contracts. A contract is said to be *executed* when it is completely performed; it is said to be *executory* when it is not yet completely or only incompletely as yet performed; as, if A and B agree to exchange horses, and they do it immediately; here the possession and the right are transferred together, and the contract is *executed*; but if they agree to exchange next week; here the right only vests, and their reciprocal *property* in each other's horse is not in *possession*, but in *action*, and the contract is *executory*. A contract executed, which differs nothing from a grant, conveys a *chose in possession*; a contract executory conveys only a *chose in action*. *See* CONTRACT.

Executory devise. A disposition of land by will by which a future estate is allowed to be limited contrary to the rules of the old common law is called an *executory devise*. *See* EXECUTORY LIMITATION.

Executed and executory estate or interest. An estate in possession, whereby a present interest passes to the tenant, is sometimes called an *executed* estate, as opposed to the *executory* class of the estates which depend for their enjoyment on some *subsequent* circumstances, event or contingency.

Executed remainder. A vested remainder, which *see*.

Executory remainder. A contingent remainder, because no present interest passes.

Executed and executory trust. An *executed* trust is one where the trust estate is completely defined in the first instance, no future instrument of conveyance being contemplated An *executory* trust is a trust where the party, whose benefit is designed, is to take through the medium of a future instrument of conveyance to be executed for the purpose. A trust is said to be *excuted* when it is completely created or declared, and *executory*, when the words of the trust are merely directory, and point to some future instrument as being necessary to complete the declaration or creation. It might at first be supposed that an executed trust was a trust fully administered by the final distribution, on the part of the trustee, of the trust property among the parties entitled thereto; and that an executory trust was a trust not yet fully administered. "All trusts" says Lord St. Leonards in *Egerton* v. *Brownlow* (1 H. L. Cas. 210) "are in a sense executory, because a trust cannot he executed except by conveyance, and therefore there is always something to be done. But that is not the sense which a court of equity puts upon the term *executory trust*." An *executory* trust is where the author of the trust has left it to the court to make out from *general expressions* what his intention is. An *executed* trust is where you have nothing to do but to take the limitations he has given, and convert them into legal estates.

Executed and executory use. On a conveyance to A to the use of B, the use in B is said to be *executed* by the Statute of Uses. But a use in land, *in futuro*, on a condition independent of any preceding estate or interest in the land, is an *executory* use, because it is not executed by the Statute of Uses till the fulfilment of the condition on which it is to take effect; such a use is also called a springing use.

Execution (*executio*). The putting in force the sentence of the law in a judicial proceeding, as *execution* of a writ or decree.

Execution of criminals. The act of the executioner in putting the criminal to death.

Execution of deeds. The signing, sealing and delivery of them by the parties as their own acts and deeds in the presence of witnesses.

Execution of an instrument. The signing an instrument.

Executioner. He that inflicts capital punishment; he that puts to death according to the sentence of the law.

Executive. The branch of Government which is entrusted with enforcing the laws; as distinguished from the *legislative* and *ju-*

dicial branches. The supreme executive power in the kingdom is vested in the King or Queen for the time being. The body that deliberates and enacts laws is *legislative*; the body that judges and applies the laws in particular cases is *judicial*; and the body that carries the laws into effect, or superintends the enforcement of them, is *executive*.

Executor. A person appointed by a testator to carry out the directions and requests in his testamentary provisions after his decease. His duties are :—(1) To perform the funeral of the deceased in a suitable manner; (2) to prove the will of the deceased; (3) to make an inventory of the goods and chattels of the deceased, and to collect the goods so inventoried, and to take proceedings to collect the debts due to the deceased; (4) to pay, *first*, the debts of his testator, and *then* the legacies bequeathed by the will; and to distribute the residue, in default of any residuary disposition among the next of kin of the testator. An executor is the legal personal representative of the testator, and the testator's rights and liabilities devolve for the most part upon him. A person appointed executor is not on that account bound to accept the office.—*Mozley*.

An executor is of two kinds (1) A lawful executor; and (2) an executor *de son tort* (of his own wrong), by intermeddling without authority with the estate of the testator after his death.

Executor of his own wrong (*de son tort*). A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong. *Exceptions.*—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong. Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.—*Act X of* 1865 (*Succession*), *ss.* 255-6. —*Navazbai* v. *Pestonji* (21 Bom. 400).

Executor according to the tenor. Where a will contains no appointment of executors, excepting such an appointment as may be vaguely implied or inferred from the general purview or tenor of the will, the court appoints an executor to execute the will according to its tenor, and the person so appointed is called by this name.

Where an application for probate was made by an universal legatee, and there were no words in the will, from which it could be gathered that he was to do any acts falling within the office of an executor, such as to pay the debts of the deceased and generally to administer the estate, *held*, that he was not an executor, by necessary implication, usually known as an "executor according to the tenor," and therefore not entitled to probate under ss. 6 and 7 of the Prob. and Admin. Act V of 1881 (*Radhakisan Marwari* v. *Mt. Sona Bai*, 1 N. L. R. 164).

Executor of an executor. The interest in a testator's estates and effects, vested in his executor, at the decease of the executor, devolves upon such executor's executor; but in the case of the decease of an administrator, a fresh administration must be granted; for this reason that, whereas an executor is appointed by the testator, an administrator derives his authority from the Court of Probate. —*Wharton*.

Executory. Performing official duties. Contingent; incomplete; future. *See* EXECUTED. Also the personal estate of a deceased.

Executory limitation. A limitation of a future interest by deed or will; if by will, it is also called an *executory devise*. *See* EXECUTED.

Executrix. Feminine of executor. A female executor.

Exemplary damages. *See* DAMAGE.

Exemplification. A copy or transcript. A certified copy.

Exemption (*exemptio*). Immunity; freedom from imposts; a privilege to be free from service or appearance.

Exempts. Persons privileged, or not bound by law.

Exhibt. The name given to any particular document or other object which in the course of a cause is *exhibited*, *i. e.*, produced by either party. Such documents, when numerous, are usually marked with the letters of the alphabat as a convenient mode of referring to and distinguishing them.

Exhibition. An allowance for meat and drink, usually made by religious appropriators of churches to the vicar. The benefaction settled for the maintaining of scholars in the universities, and depending on the foundation, are called *exhibitions*. *Exhibition*, in the Scotch law, signifies the production of deeds; and an *action of exhibition* is an action for compelling production of the same.

Exigible. Demandable; requirable. *See* MUHR.

Exogamy. Marrying outside one's family. A prohibition against marriage between persons belonging to the same family or tribe. Opposed to *endogamy*.

Exoneration. Relieving part of the estate of a deceased person, charged with a debt, by the payment of the debt out of another part thereof. This may be by law, or by the special

direction of the deceased in his will. It is either *absolute* or *relative*; when relative, the property remains liable and is proceeded against after the property, which is liable before it, is exhausted.

Expatriation. The forsaking one's own country, and renouncing allegiance, with the intention of becoming a permanent resident and citizen in anoter country.

Expectancy. *In expectancy*, relating to something *in futuro*.

Estates in expectancy. Interests in land which are limited or appointed to take effect in possession at some future time; also called *expectant estates*; they are of two sorts at common law—one created by the act of the *parties*, called a *remainder*; the other by the act of *law*, called a *reversion*.

Expectant heir. A person to whom property is assured on the death of another person.

Expediment. The whole of a person's goods and chattels, bag and baggage.

Expeding letters. (*Sc. L.*) To *expede letters*, means to make out principal copies of writs and judgments, and prepare them for formal completion.

Expeditate. To cut out the ball of a dog's forefeet, for the preservation of the royal game. Such act of mutilation was called *expeditation*.

Expenditors. Disbursers of taxes raised for the repairs of sewers.

Expenses. Expenses mean actual disbursements, not allowances for loss of time (*Jones* v. *Carmarthen*, 10 L. J. Ex. 401; 8 M. & W. 605).—*Stroud*.

Experts. Skilled witnesses called to give evidence on the art or mistery with which they are specially conversant; witnesses who give evidence upon matters of science, *e. g.*, professed judges of handwriting.

When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of hand-writing, the opinions upon that point of persons specially skilled in such foreign law, science, or art or in questions as to identity of handwriting are relevant facts. Such persons are called experts. —*Act I of* 1872 (*Evidence*), *s.* 45.

Evidence of an expert should be approached with considerable care and caution, especially where much depends upon such evidence (*Panchu Mondul* v. *Emperor*, 1 Cal. L. J. 385). In the case of expert witnesses there exists a tendency to support the view which is favourable to the side which employs them, so that it is difficult to get from them an independent opinion (*Boisogomoff* v. *Nahapiet Jute Co.*, 29 Cal. 32; 6 Cal. W. N. 495, 501).

It is not safe to convict on the mere result of a critical examination of thumb impression made by an expert. *Per* Geidt, J.,—A jury is not bound to accept the opinion of an expert upon thumb impressions without corroboration of their own intelligence as to the reasons which guided him to his conclusions (*King-Emperor* v. *Abdul Hamid*, 9 Cal. W. N. 520; 32 Cal. 759). Where in a charge to a jury the judge omits to call the attention of the jury to the fact that the evidence of an expert should be approached with considerable care and attention and to the actual thumb impression or mark on the document, and gives his own opinion to the jury upon the result of a comparison of thumb marks, instead of leaving it to the jury to form their own opinion, the charge to the jury is vitiated by misdirection and the accused may be prejudiced by such a charge (*Panchu* v. *Emperor*, *Supra*). A judge should not elect himself into an expert, nor should he slightly treat proper medical evidence (*Empress* v. *Harpat*, 3 All. W. N. 189).

Expilation. Robbery; the act of committing waste upon land to the loss of the heir; abstracting the goods of a succession.—*Wharton*.

Expiry of the legal. (*Sc. L.*) The expiration of the time allowed to a debtor for redeeming an *adjudication* (*i. e.*, a judgment debt which by the decree of a court of Justice has been made an incumbrance on land). An action of *declarator of expiry* (a proceeding in the nature of a bill of foreclosure) is still necessary for the *adjudger* (*i. e.*, the creditor) before the debtor's right of redemption is gone.—*Moxley*. *See* EFFECTUAL ADJUDICATION.

Explees. *See* ESPLEES.

Expletive justice. *See* ATTRIBUTIVE JUSTICE.

Explosive. Explosive means gunpowder, nitro-glycerine, dynamite, gun cotton, blasting powders, fulminate of mercury or of other metals, colored fires, and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect; and includes fogsignals, fireworks, fuzes, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined. —*Act IV of* 1884 (*Explosives*), *s.* 4 (1).

Explosive substance. This shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement, or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement. —*Act VI of* 1908 (*Explosive Substances*), *s.* 2.

Express. That which is not left to implication.

Express contract. A contract expressed in words, or by signs which custom or usage has made equivalent to words. *See* CONTRACT.

Express malice. *See* MALICE.

Express promise. *See* PROPOSAL.

Express trust. A trust which is clearly expressed by the author thereof, or may fairly be collected from a written document.

Expromission (*expromissio*). (*Rom. L.*) A species of novation, as a creditor's acceptance of a new debtor, who takes the place of the old debtor, who is discharged. It differed from *delegation* in that the consent of the original debtor was not necessary.

Expromissor. A surety; a bail.

Expropriation. Compulsory taking of property for compensation, *e. g.*, by railways. The surrender of a claim to exclusive property. In French law, the compulsory realization of a debt by the creditor out of the lands of his debtor, or the usufruct thereof; it is confined first to the lands (if any) hypothecated, but afterwards it extends to other lands.

Expurgation. The act of purging, purifying or cleansing, as where a book is published without its objectionable passages.

Extend (*extendere*). To extend is to value the lands or tenements of a judgment debtor, or one whose recognizance is forfeited, so that by the yearly rent, the creditor may in time be paid his debt.

Extension of time. Various times having been fixed by the rules of procedure for the doing of certain acts and the taking of certain steps in the course of legal proceedings, the court will (upon sufficient grounds) grant one or more extensions of such times, provided the application to extend be made before the current or normal time has expired, but (excepting as a very special favour) not afterwards. This extension of time will only be granted when the court has a discretion to do so, not when the court has no discretion in the matter.—*Brown.* An indulgence by giving further time to pay a debt, or perform an obligation.

Extent (*extendi facias*). A writ or commission to the sheriff for the *valuing* of lands and tenements and goods and chattels of a judgment debtor. A writ of execution to recover debts of record due to the *Crown*. It differs from an ordinary writ of execution at the suit of a *subject*, because under it the lands and goods of the debtor may be taken at once in order to compel the payment of the debt. It is of two kinds.—(1) *Extent in chief*, made by the Crown to recover its own debt, by which the sheriff is directed to cause the lands, goods and chattels of the debtor to be appraised at their full value and to be seized into the hands of the sovereign; (2) *Extent in aid*, made to recover a debt due to a crown-debtor from a third person; in other words, issued against a debtor of the crown-debtor, to *aid* his payment of the crown debt. The extent of the *Crown*, has priority over all executions of the *subject*. Writs in the nature of extent were formerly issued by private persons in certain cases.

Extinguishment. The destruction or cessation of a right, either by satisfaction, or by the acquisition of one which is greater. Thus a *debt* is extinguished by payment, or by the creditor's acceptance of a higher security; *e. g.*, a bond instead of a simple contract; an *easement* is extinguished by release or by acquiring the tenement over which the easement existed.—*Rawson.* Extinguishment is an effect of consolidation; thus, if a man purchase lands out of which he has a *rent*, the property and rent are consolidated, and the rent is said to be extinguished, for no one can have a rent issuing out of his own lands; so if a *lessee* or tenant for life purchases a reversion, his estate for years or life is extinguished, being merged in the reversion; an extinguishment of *copyhold* is effected when the freehold and copyhold interest are united in the same person, as in the tenant by enfranchisement, or in the lord by escheat, forfeiture, descent, or surrender to his use.—*Moxley.*

Extortion. An unlawful or violent wringing of money or money's worth from any man; any oppression under colour of right, as the demanding of a fee or present, which is not due, by colour of office. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits 'extortion.'—*Act XLV of* 1860 (*Penal Code*), *s.* 383.

See EXACTION, ROBBERY.

Extra costs. *See* COSTS.

Extract. An authenticated copy of some deed or other writing which has been registered in some public or judicial record. In Scotch law, a certified copy of the proceedings in an action and of the judgment pronounced; in which case it contains an order for execution to follow on it in terms of the decree which has been pronounced.

Extractor. (*Sc. L.*) The official person by whom the extract of a decree or other judicial proceeding is prepared and authenticated.

Extradition. The surrender of a person by one State to another. The word is generally applied to the surrender of a person accused of a crime to a foreign jurisdiction, where it was committed, in order that he may be tried there. It is recognized as a duty, independent of treaty, by international law; but is usually the subject of treaty terminable at one year's notice.

Extrajudicial. Out of the regular course of legal procedure. Any act done or word spoken by a judge, outside the authority and jurisdiction which for the time being he is exercising, is called *extrajudicial*. An *extrajudicial dictum* is the same as an *obiter dictum*.

Extraordinary jurisdiction. The jurisdiction of a superior court to call for and revise the proceedings of an inferior court, in

cases where the inferior court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Such jurisdiction is exercised only in cases where there is no appeal, and where other legal remedies of the parties have been exhausted. See Act V of 1908 (Civ. Pro.), s. 115, and Act V of 1898 (Crim. Pro.), s. 439.

Extraparochial. Outside of any parish; not united to, or forming part of, a parish. Anything priviledged and exempt from the duties of a parish.

Extra-territoriality. Immunity from a country's laws, such as that enjoyed by ambassadors, whereby they are supposed to carry their own country with them, and to plant it down on the site of the embassy. The like fiction attends the sovereign everywhere, also vessels of war, and (to a more limited extent) merchant vessels also.

The words 'extra territoriality' denote a fiction by which the house and land occupied by a foreign sovereign or his ambassador was treated in law as part of his dominions, and that it is a convenient word to denote any grant of privileges belonging to that class (*Secretary of State for Foreign Affairs* v. *Charlesworth Pulling & Co.*, 26 Bom. 1; 28 I. A. 121, P. C.).

Extravagantes. Those decretal epistles which were published after those of Pope Clament V (published, 1413), and not at first incorporated into the cannon law.

Eye-witness. One who gives testimony to facts seen by himself.

Eyre, Justices In (*justiciarios itinerantes*). The old name for judges of assize, who were said to be *itinerant* or *errant* when they were on circuit. *See* ITINERANT.

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F. The letter with which *felons*, &c., were branded and marked with a hot iron, on their being admitted to the benefit of clergy.

Fabricating false evidence. *See* FALSE EVIDENCE.

Fabrick lands. Lands given towards the building or repairing of cathedral and other churches, *ad fabricam reparandum*; for in ancient times almost every person gave by his will more or less to be applied in repairing the *fabrick* of the cathedral or parish church where he lived.

Facility of disposition. This is where one is easily imposed upon and induced to do deeds to his own prejudice, when combined with any fraud or circumvention on the part of another. This is a ground for the interference of equity.

Fac simile probate. This is where the probate copy of a will is a *fac simile* of the original will. It is allowed in cases where the construction of the will may be affected by the appearance of the original paper.

Fact. Fact means and includes (1) anything, state of things, or relation of things, capable of being perceived by the senses; (2) any mental condition of which any person is conscious.—*Act I of* 1872 (*Evi.*), *s.* 3.

Facts in issue. The expression 'facts in issue' means and includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows. Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.—*Act I of* 1872 (*Evi.*), *s.* 3.

Factor. An agent employed to sell goods or merchandise consigned or delivered to him by or for his principal, for a compensation commonly called *factorage* or *commission*. Hence he is often called a commission merchant or consignee, and the goods received by him for sale are called consignment. He is a *home* factor when he resides in the same state or country with his principal; and a *foreign* factor when he resides in a different state or country. He differs from a *broker* in this, that he may buy and sell in his *own* name, and is entrusted with the *possession* and disposal of goods, and has a special property in, and a lien on, them; yet neither can delegate his authority, unless conferred by usage of trade or the assent of his principal.—*Wharton.* In Scotch law, a land agent.

A factor is an agent, but an agent of a particular kind. He is an agent entrusted with the possession of goods for the purpose of sale. That is the true definition of a factor (*per* Cotton, L. J., *Stevens* v. *Biller*, 25 Ch. D. p. 37).

There are two extensive classes of mercantile agents, namely, *factors* who are entrusted with the possession as well as the disposal of property; and *brokers* who are employed to contract about it without being put in possession.—*Smith's Mercantile law.*—*Ex parte Dixon* (4 Ch. D. p. 137).

Factors' general lien. *See* BANKERS' GENERAL LIEN.

Factorage. The wages, commission or allowanec made to a factor by a merchant.

Factory. A place where a number of *factors* or traders reside in a foreign country, for the convenience of trade, in order to negotiate for their masters or employers. A building in which goods are manufactured.

Factory means any premises wherein, or within the precincts of which, steam, water or other mechanical power or electrical power is used in aid of any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, for transport or for sale any article or part

of an article.—*Act XII of* 1911 (*Factories*), *s.* 2 (3).

Textile factory. This means a factoty wherein is carried on any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, for transport or for sale cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoanut fibre or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof; Provided that the term *textile factory* shall not be deemed to include the following factories, *viz* :—cloth printing works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, silk filatures, factories for ginning cotton, decorticating fibre, pressing cotton, jute or other fibre, rope works and hat works.—*Act XII of* 1911 (*Factories*), *s.* 2 (9).

Faculty (*facultas*). A license or authority; a privilege or special dispensation granted by the ordinary to a man by favour and indulgence to do that which by law he ought not to do, *e, g.*, to marry without banns, to erect a monument in a church, to remove bodies previously buried, &c. And for the granting of these privileges, there is an especial court under the Archbishop of Canturbury, called the *Court of Faculties*, and the chief officer thereof, *Master of the Faculties*, who has power to grant dispensations.

Faculty of Advocates. The college or society of advocates in Scotlond. *See* ADVOCATES.

Faggot vote. This is where a man has a bare formal qualification to vote for members of parliament, without possessing the substance which the vote should represent, as if he is enabled to buy property, and at the same time mortgages it to its f ll value for the mere sake of the vote and merely for influencing the result of an election; such a vote is called a faggot vote. A fraudulent conveyance for this purpose does not give the vote; neither does a fraudulent devise by will.

Failing of record. This is where a defendant having pleaded any matter of record in bar of the action, fails to prove it within the time given, or brings in such a one as is no bar to the action; he is then said to fail of his record.

Faint (feigned) action. An action in which the words of the writ are true, yet for certain causes the party bringing it has no title to recover thereby. Whereas in a *false action* the words of the writ are false.

Faint pleader. Faint pleading. A false, covinous, or collusive manner of pleading, to the deceit of a third party.

Fair. A solemn or greater sort of market granted to any town by privilege, for the more speedy and commodious providing for such things as the subject needeth. A fair is a greater species of market, recurring at more distant intervals. No fair can be held without grant from the Crown, or a prescription which supposes such grant.

Faisal. (*Ind.*) A decree; judgment; a decision; adjustment of a quarrel; settlement of a debt.

Faisla. The word *faisla* represents the judgment, not the order or decree. See *Jagarnath* v. *Jadoo Roy* (4 C. L. R. p. 388).

Fait. A deed or writing.

Faitours. Evil-doers; idle-livers; vagabonds.

Fakir. (*Ind.*) A Musulman beggar; a poor man; a mendicant.

Faldage. A privilege which anciently several lords reserved to themselves, of setting up *folds* for sheep within their manors, the better to manure them. A fold-course, *i. e.*, a common of pasture for sheep.

Fald-fee. A compensation, fee or rent paid anciently by some customary tenants for the privilege of faldage, *i. e.*, to fold their sheep upon their own land.

Falk land. *See* FOLK LAND.

Fallow land. Land ploughed, but not sown, and left uncultivated for a time after successive crops.

False action. *See* FAINT ACTION.

False claim. By the forest laws, this is where a man claims more than is his due, and is amerced and punished for the same.

False document. *See* FORGERY.

False evidence. Whoever, being legally bound by an oath, or by any express provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence. A statement is within the meaning of this section whether it is made verbally or otherwise. A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.—*Act XLV of* 1860 (*Penal Code*), *s* 191.

Fabricating false evidence. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement, may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said to fabricate false evidence.—*Ibid.*, *s.* 192.

Making any number of false statements in the same deposition is one aggregate case of giving false evidence. Charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition.—*Pro.*, *May 1st*, 1871 (6 Mad. H.C.R., Ap., 27).

False grandfather. False grandmother. *See* TRUE GRAND-FATHER.

False imprisonment (*falsum imprisonamentum*). A trespass committed against a person, by arresting and imprisoning him without just cause, contrary to law; or where a man is unlawfully detained without legal process; it is also used for a writ which is brought for this trespass.—*Tomlins.*

False imprisonment, or the unlawful detention of a man's person, is an invasion of his general right of liberty. Any the least confinement, as forcibly detaining a man in the public street, without sufficient legal authority, will be an imprisonment. Actual contact is not necessary, but any restraint put upon the freedom of another, by show of authority or force, is sufficient. If a person is commanded by a constable to go with him, and the order is obeyed, and they walk together in the direction pointed out by the constable, that is constructively an imprisonment, though no actual force be used. False imprisonment assumes an *entire* restriction of free motion; and hence it involves the notion of boundry or circumscribing limits; not that these need necessarily be physically defined, if they are actually constituted by the effectual control of a power and will exterior to one's own. Hence a restraint, though wrongful as to *one* direction, leaving freedom as to all *others*, is not a false imprisonment; but such a restraint, when against right, must necessarily be at least actionable.—*Collett on Torts.*

False imprisonment is usually made the subject of a civil action, but it is also indictable at the suit of the Crown. *See* WRONGFUL CONFINEMENT, WRONGFUL RESTRAINT.

False judgment (*falsum judicium*). A writ which lay to amend errors in the judgment or proceedings of an inferior court, *e.g.*, a county court, court baron, or other court, not being a court of record.

False Latin. Before the statute directing law proceedings to be in English, if a Latin word was significant, though not good Latin, yet an indictment, declaration or fine should not be made void by it; but if the word was not Latin, nor allowed by the law, and it were in a material point, it made the whole vicious.—*Tomlins.*

False oath. *See* FALSE EVIDENCE, PERJURY.

False personation. The offence of personating another for the purpose of fraud. *See* CHEATING BY PERSONATION.

False plea. *See* SHAM PLEA.

False pretence. Any false statement whereby a person, knowing it to be false, obtains from another, for himself or for his own benefit, any chattel, money or valuable security, with intent to cheat or defraud any person. *See* CHEATING. This offence, though closely allied to larceny, is distinguishable from it, as being perpetrated through the medium of a mere fraud. *See* LARCENY.

False proof of debt. A fictitious proof of debt in bankruptcy.

False property-mark. *See* PROPERTY-MARK.

False representation. *See* CHEATING, DECEIT, FRAUD, MISREPRESENTATION.

False return. *See* RETURN.

False trade-description. False trade-description means a trade-description which is untrue 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 untrue 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.—*Act IV of* 1889 (*Merchandise Marks*), *s.* 2 (3).

False trade-mark. *See* TRADE-MARK.

Falsify. To prove a thing to be false. To tamper with any document, whether of record or not, by interlineation, obliteration, or otherwise. To represent facts falsely, as for instance to state a pedigree falsely. *Falsifying judgment or verdict*, reversing the same. The word, as occurring in the phrase "with liberty to surcharge and *falsify*" means to impugn as false or erroneous certain items or entries in an account. *See* SURCHARGE AND FALSIFY.

Falsing of dooms. (*Sc. L.*) The old term for an appeal; *doom* is the sentence of a court, and the *falsing of dooms* is proving the injustice of that sentence.

Famacide. A slanderer.

Fanatics. The name used for dissenters.

Fang. A thief taken *with the fang* is one caught having the stolen property upon him.

Faraiz. (*Meh. L.*) The legal knowledge of dividing inheritance according to the Mahomedan Law.

Farikh khat. (*Ind.*) A written release.

Farm. Ferm. Land let on lease under a rent, generally payable annually. *To farm let* are usual, though not necessary, words of operation in a lease.

Faryndon Inn. The old name of Serjeants' Inn. *See* SERJEANTS' INN.

Farzand. (*Ind.*) Offspring; progeny; a son or daughter; a child.

Farzi. (*Meh. L.*) This is an Arabic term, signifying a purchase in a fictitious name. It is synonymous with *Benami*, a sale or purchase made in the name of some other than the actual vendor or purchaser.—*MacN. Meh. Law.*

Grants obtained in *Farzi*, or fictitious or substituted names, are not illegal by the Mehomedan Law; and the property conveyed by such grant is vested in the person to whom the grant is actually made and not necessarily in the person whose name is made use of. A grant obtained by the acquierer in the substituted name of a female relation (with the apparent intention of enabling her to take the estate at her death), is of no avail in Mehomedan Law, against the right of the legal heirs of the real grantee. However objectionable the system of *benami* transactions may be in theory, it is legal and in common use. It is consequently incumbent on the Court to recognize it. The person in whose name the purchase is made (the name of the real purchaser not appearing in the transaction) is called *Ism Farzi*.—*Ibid.* *See* BENAMI.

Fasid. (*Ind.*) Vicious. Imperfect. Invalid.

Fasli. (*Ind.*) The official revenue year.

Fasli ryots. Those paying according to the yearly crops produced were called *fasli ryots*, as distinguished from those paying a fixed rate for the *beegah*, who were called *hari ryots*.

Fast days. Days of abstinence and mortification appointed by the church. They may also be appointed on special occasions by royal proclamation, and on such days no legal business is transacted.

Fastermans. Fastingmen. Sureties who were fast bound to answer for each other's peaceable behaviour.

Fautors Favourers or supporters of others; abettors of crimes, &c.

Feal. Tenants by knight-service swore to their lords to be *feal* and *leal*, *i. e.*, to be faithful and loyal.

Feal and Devot. A right in Scotland, similar to the right of turbary in England for fuel, &c. *See* COMMON.

Fealty. The *special* oath of fidelity or mutual bond of obligation between a lord and his tenant; the oath taken at the admittance of every tenant, to be true to the lord of whom he holds his land; the *general* oath being the allegiance performed by every subject to his sovereign, better known as the oath of allegiance. It is usually mentioned with *homage*, but differs from it, being an obligation permanent, which binds for ever; and these differ in the manner of the solemnity, for the oath of *homage* is taken by the tennnt kneeling, but that of featly is taken standing; *homage* being the acknowledgment of tenure; and featly, the vassal oath of fidelity. *Fealty* comprehends the following obligations:—(1) *Incolume*, that the tenant do no bodily injury to the lord; (2) *tutum*, that he do no secret damage to him in his house, or anything which is for his defence; (3) *honestum*, that he do him no injury in his reputation; (4) *utile*, that he do no damage to him in his possession; (5) *facile* and (6) *possibile*, that he render it easy for the lord to do any good, and not make that impossible to be done which was before in his power to do. The term *fealty* is applied not only to the oath, but to the actual tie which binds the vassal to his lord. The oath of fealty is in practice never exacted.

Federal government. A government formed by the aggregation of several States, previously independent, in such a manner that the sovereignty over each of the States resides thenceforth in the aggregate of the whole, while each of the States, though losing its individual sovereignty, retains nevertheless important political powers within its territory, and shares the sovereignty of the entire federadation with the other States, and (in general) with a new legislative or executive body having a limited jurisdiction over the entire area of the federation, and called "the general government."—*Moxley.* The Swiss confederation, and the United States of North America, are instances of federal Governments.

Fee (*feudum*). A reward or recompense for services. The true meaning of this word is the same with that of *feud* or *fief*. In the northern laguages it signified a conditional stipend or reward. These feudes, fifes or fees were large districts or parcels of land allotted by the conquering general to the superior officers of the army, and by them dealt out again in smaller parcels to the inferior officers and deserving soldiers. The condition annexed to them was that the possessor should do service faithfully, both at home and in the wars, to him by whom they were given. A fee or feud is therefore defined by *Spelman* as being the right which the vassal or tenant hath in land, to use the same and take the profits thereof to him and his heirs, rendering to the lord his due services. Hence the word fee is used to signify an estate of inheritiance, being the highest and most extensive interest which a man can have in *feud*; and when the term is used simply, without any adjunct, or has the adjunct of *simple* annexed to it, it is used in contra distinction to a *fee conditional* at common law, or a *fee tail* under the *Statute de Donis*, importing an absolute inheritance descendible to heirs general, and liable to alienation at the pleasure of the owner, whether by will or deed, to the full extent of his interest, or for a smaller estate.—*Moxley.* *Fee* is an estate of inheritance divided into three species:—(1) fee simple absolute; (2) qualified or base fee; (3) fee tail, formerly fee conditional.—*Wharton.* *See* CONDITIONAL FEE, ESTATE, FEE SIMPLE.

Fee-base. *See* BASE-FEE.

Fee conditional. *See* CONDITIONAL FEE.

Fee expectant (*feudum expectativum*). Where lands are given to a man and his wife in frank marriage, to have and to hold to them and their heirs, in this case they have fee simple; but if they are given to them and the heirs of their *body*, they have tail and fee-expectant.

Fee farm. Fee farm rent. This is when the lord upon creation of the tenancy grants an estate in fee, reserving to himself and his heirs, either the rent for which it was before let to farm, or was reasonably worth, or at least a fourth part of the value; the rent appears to be called fee-farm, because a grant of land reserving so considerable a rent is indeed only letting lands to farm in fee simple instead of the usual method of life or years. This is a species of holding or tenure of a mixed nature, partly freehold and partly leasehold only, and the rent in fee simple is created usually in lieu of or as part of the purchase money upon a purchase of lands.

Fee simple. A freehold estate of inheritance *i. e.*, limited to a man and his heirs. It is the most absolute interest which a man can possess in land. It stands at the head of estates as the highest in dignity and the most ample in extent, since every other kind of estate is derivable thereout, and mergeable therein. Fee simple estates are of the following varieties:—(1) *Fee simple absolute*, being an estate given to a man or woman and his or her heirs and assigns absolutely, and not subject to any condition either precedent or subsequent. This is the highest estate both in quality and in quantity that is known to the English law. (2) *Fee simple conditional*, being an estate given to a man and the heirs of his body in certain copyhold hereditaments and in personal annuities, where the *Statute de Donis* does not apply; the condition here is invariably one, *viz.*, the begetting of living issue. (3) *Fee simple defeasible*, being an estate in fee simple absolute, so far as regards all conditions *pcecedent* of which there are none, but defeasible, *i. e.*, capable of being defeated, by some condition or event *subsequent*, upon the happening of which an executory interest usually starts up and destroys it. (4) *Fee simple qualified*, being an estate in fee simple absolute, so far as regards all conditions precedent and subsequent, but having a *concurrent* condition annexed to its duration, *e. g.*, being and remaining lords of the manor of Dale. (5) *Fee simple base*, being merely a base fee.—*Brown.* *See* BASE FEE, CONDITIONAL FEE, ESTATE.

Fee simple estate quasi. Where an estate for life is granted to the tenant *par autre vie* and his heirs, he takes an estate in fee simple during the life of the *cestiu que vie*. *See* QUASI FEE SIMPLE.

Fee tail. *See* ESTATE, TAIL.

Feed. To lend additional support. To strengthen *ex post facto*. An accuring or subsequently acquired interest is said to feed an estoppel when it enables a person to give effect to a grant previously made, which previous to such accruer had no efficacy except by way of estoppel; thus the interest, when it accrues, is said to *feed* the estoppel. *See* Act I of 1877 (Specific Relief), s. 18, and Act IV of 1882 (Trans. of Pro.), s. 43. *See* ESTOPPEL.

The principle of the English law which allows a subsequently acquired interest to feed, as it is said, the estoppel, has been extended to this country by s. 18 of the Specific Relief Act (*per* Mitter, J., *Ram Narain* v. *Prayag*, 8 Cal. 144). But this right though available against the mortgagor or vendor cannot prevail against a *bona fide* purchaser for value without notice of the previous mortgage or sale (*Ram Awatar* v. *Tulsiram*, 5. C. L. R. 227).

Feeding the estoppel is a maxim of law to which effect is given in ss. 41 and 43 of the Trans. of Pro. Act IV of 1882 (*Pandiri Bangaram* v. *Karumoory*, 8 M. L. T. 285).

A very common case where the application of this maxim is seen, is where a vendor or mortgagor, having a defective title at the time of sale or mortgage, subsequently acquires a good title, he is estopped by his conduct to say that he had not the complete title at the time of his executing the deed of sale or mortgage. This is otherwise expressed that the subsequently acquired estate feeds the estoppel.

A, holding a certain village on service tenure, mortgaged it to B by way of zuri-peshgi lease for 21 years. Shortly afterwards the landlord got a decree against A by which A's right was extinguished. In execution of this decree the landlord took possession of the village; but some years afterwards granted to A a perpetual lease of the same village. It was held in a suit against A, instituted by the assignee of B's rights in the zuri-peshgi, that A must, out of his subsequently acquired estate, make good the zuri-peshgi (*Loot Narain* v. *Showkhee Lal*, 2 C. L. R. 382). See also *Pranjivan* v. *Baju* (4 Bom. 34), *Dolichand* v. *Nirban* (5 Cal. 253; 4 C. L. R. 150), *Vishnu* v. *Tatia* (1 Bom. H. C., A. C., 22), *Sevaram* v. *Ali Baksh* (3 All. 805).

Where a man promised to marry a lady, who had at the time of promise full knowledge that he was married and that he could not marry her then, the question was, could the lady sue for the enforcement of the contract after the death of that man's wife, when the bar to marry was removed, or, in other words, whether the man was bound to make good his promise which he then could. *Held* (following *Paddock* v. *Robinson*, 14 Amer. Rep. 12, where both parties were married at the time of the promise, to the knowledge of each other) that such contract could not be enforced as it was against public policy (*Wilson* v. *Carnley*, 1908, 1 K. B. 729; 12 Cal. L. J. 41n). In the same manner a promise of marriage by a married man in expectation of divorce from his wife as the result of a pending suit is void (*Noice* v. *Brows*, 20 Amer. Rep. 388; 23 Amer. Rep. 213). The reason why the maxim under consideration is inapplicable to such cases is that the parties promised to do something which they knew was illegal.

Fees. Payments of various kinds, *e. g.*,

fees of Court, fees of officers and such like. The *honorarium* so called paid to a barrister or other counsel for his services is his fee.

Feigned action. *See* FAINT ACTION.

Feigned issue. A fictitious issue, or rather a true issue raised by means of a fiction. A proceeding whereby an important point might, by consent of the parties, be determined by a jury, without the formality of bringing an action, or raising it in the pleadings, saving thereby both time and expense. Formerly questions of fact were often raised on a pretended wager between the parties; *e. g*, the plaintiff by fiction alleged that he laid a wager of £ 5 with the defendant that certain goods were his (the plaintiff's) goods, and then averred that the goods were his; whereupon the defendant, admitting the feigned wager, averred that the goods were not the plaintiff's goods, thus raising at once the issue as to the plaintiff's property in the goods. Feigned issues are now abolished.

Fele (feal) homagers. Faithful subjects.

Felon. One who has committed felony.

Felony. Originally the state of having forfeited lands and goods to the Crown upon conviction for certain offences, and then, by transition, any offence upon conviction for which such forfeiture followed, in addition to any other punishment prescribed by law, as distinguished from misdemeanour, upon conviction for which no forfeiture followed. Treason, therefore, was a species of felony; but as capital punishment never entered into the true idea of felony, so it has now long ceased to have necessary connection with it in practice. And by s. 1 of the Felony Act, 1870, forfeiture for treason and felony is abolished; so that the essence of the distinction between felony and misdemeanour is lost though such other differences between the two classes of offences, whether in procedure or otherwise, as existed before that Act, exist still. *See* CRIME.

Feneration (*fœneratio*). Usury; the gain of interest; the practice of increasing money by lending.

Feod. Feud. The same as fee. The right which the vassal had in land, or some immoveable thing of his lord's, to use the same and take the profits thereof, rendering unto his lord such feodal duties and services as belonged to the military tenure; the mere property of the soil always remaining in the lord.—*Tomlins.*

The word feud also signifies implacable hatred, not to be satisfied but with the death of the enemy; and especially a combination of the kindred of a murdered man to avenge his death upon the slayer and all his race. *Feud bote*, a recompence for engaging in a feud or faction fight, and the contingent damages, it having been the custon in ancient times for all the kindered to engage in the kinsman's quarrel.—*Mozley.*

Feodal. Of or belonging to the feod or feud.

Feodal system. *See* FEUDAL SYSTEM.

Feodality. Fealty. *See* FEALTY.

Feodatory. Feudatory. The tenant who held his estate by feudal service; and grantees to whom lands in feud or fee were granted by a superior lord were sometimes called *homagers;* and in some writings are termed *vassals, feuds*, and *feudataries.—Tomlins.*

Feoffee. One put in possession. A person to whom a feoffment is made.

Feoffee to uses. A person to whom a feoffment of lands is made to the use of some other person. Prior to the Statute of Uses (27 Hen. VIII, c. 10, passed in 1536) the feoffee to uses had *legal estate* in the lands so conveyed by feoffment; the claim of the person to whose *use* they were conveyed (called the *cestui que use*) being only an equitable one enforceable by the Court of Chancery. But since, by that statute, uses are turned into legal estates, possession is conveyed to the *cestui que use*, and the latter has now the *legal estate*, his use being *executed* by the statue, and the *feoffee to use* has no longer even a legal estate in the land, but only what is called a *scintilla juris.*

Feoffer. Feoffor. The person who makes a feoffment; he who gives possession of anything.

Feoffment (*feoffamentum*). This is properly a *donatio feudi*, gift of the fee; and it may be defined as the gift of any *corporeal* hereditament to another. But in practice the word is never used in its extensive sense; for by a feoffment is always meant the feudal mode of transferring estates called *feoffment with livery of seisin.* This livery of seisin (*i. e.*, delivery or transfer of possession) is the pure feudal investiture. It is either *in deed* or *in law.* Livery *in deed* is thus performed. The *feoffer* or his attorney goes to the land or house with the *feoffee* or his attorney, and there in the presence of witnesses declares the contents of the feoffment. And then the feoffer doth deliver to the feoffee, a clod or turf, or twig or bough there growing, with words to the effect: "I deliver this to you in the name of seisin of all the lands and tenements contained in this deed." But if it be of a house, the feoffeer must take the ring or latch of the door (the house being empty), and deliver it to the feoffee in the same form. Livery *in law* is made *on* the land, but *in sight of it* only, the feoffer saying to the feoffee, "I give you yonder land, enter and take possession." Here, if the feoffee enters during the life of the feoffeer it is a good livery, but not otherwise, unless he dares not enter, through fear of his life or bodily harm; and then, his *continual claim*, made yearly in due form of law, as near as possible to the lands, will suffice without an entry. *See* CONTINUAL CLAIM. This livery *in law* cannot be given or received by attorney, but only by the parties themselves. Feoffments, having long been disused, have practically been abolished by 8 and 9 Vic. c. 106. Under that Act all

corporeal hereditaments are, as regards the conveyance of the immediate freehold to be deemed to lie *in grant* as well as *in livery*. That is to say, they may be conveyed by deed of grant without anything else.—*Mozley*.

Feoffment of record. *See* FINE.

Feoffment to uses. *See* FEOFFEE TO USES.

Ferm. Fearm. A house or land, or both, let by lease. *See* FARM.

Fermary. A hospital; as friars of the *firmary*.

Fermier. A farmer.

Ferry. A liberty by prescription, or the king's grant, to have a boat for passage upon a river, for carriage of horses and men for reasonable toll; it is usually to cross a large river. A ferry is no more than a common high way, and no action will lie for one's being disturbed in his passage, unless he allege some particular damage. A ferry is in respect of the landing place, and not of the water; the water may be to one, and the ferry to another.—*Tomlins*. The owner of a ferry has a right of action against those who set up a new one so near as to diminish his custom. On the other hand his right implies also a duty on his part to keep up a boat over the stream, if not otherwise fordable, for the convenience of the public; and neglect of this duty will render him liable to a criminal prosecution.—*Mozley*.

Festing men. *See* FASTERMANS.

Festing penny. Earnest given to servants when hired or retained in service.

Feu. Few. A free and gratuitous right to lands, made to one for service to be performed by him, according to the proper nature thereof. The prevailing tenure of land in Scotland, where the vassal, in place of military service, makes a return in grain or in money, called *feu-duty*, analogous to rent. It is in the nature of a perpetual lease. *Feuholding* was formerly deemed an ignoble holding in which, instead of military service, agricultural labour or services were exacted. *To feu* is to lease.

Feud. *See* FEOD.

Feud bote. *See* FEOD.

Feudal. *See* FEODAL.

Feudal action. The same as *real action*.

Feudal possession. The same as *seisin*.

Feudal system. That system of military tenures, according to which allotments of land were made by the Conqueror to the superior officers of his army, and by them to the inferior officers and deserving soldiers, on the condition that the possessor should do service faithfully, both at home and in the wars, to him by whom they were given; for which purpose he took the oath of feality; and in the case of the breach of this condition and oath, by not performing the stipulated service, and by deserting the lord in the battle, the lands were again to revert to him who granted them. At first the lord was the sole judge whether the vassal performed his services faithfully; and the feuds were in consequence held at the will of the lord. Afterwards they became certain for one or more years; after that, they were granted for the life of the feudatory (*i.e.*, the grantee). Afterwards they became extended to his sons, thence to his heirs, so as to admit his male descendants *in infinitum*; thence they became confined to the eldest son; the feudatory, or holder of the feud, not being able to alienate it in his lifetime, or to demise it by will. The feudatories, being under frequent incapacities of cultivating or manuring their own lands, soon found it necessary to commit part of them to inferior tenants, exacting *returns* in service, corn, and cattle, or money; which returns were the original of *rents*. This innovation was an inroad into the previously purely military character of feuds. The guise of a military character, however, continued until the abolition of military tenures in the year 1660 by statute 12 Car. II, c. 24.—*Mozley*.

Fedutory. *See* FEODATORY.

Fiar. (*Sc. L.*) The person in whom the property in anything (whether land or money) is vested, burdened with the right of *life rent*, the person having the *life rent* is called the *life renter*. It corresponds to *reversioner* in English law, who is for the present kept out of possession by the life estate of a tenant for life.

Fiction of law. (*fictio juris*). A supposition of law that a thing is true, without inquiring whether it be so or not, that it may have the effect of truth so far as is consistent with equity. Fictions are those things that have no real essence in their own body, but are so accepted in law for special purposes; they are assumptions of an innocent and even beneficial character, made for the advancement of the ends of justice.

Fiduciary (*fiduciarius*). One who holds anything in trust. A trustee; any one who holds the character of a trustee, or, more accurately, a character analogous to that of a trustee, *e.g.*, agents, guardians and the like.

Fiduciary estate. The estate or interest of a trustee in lands or money, as opposed to the beneficial interest or enjoyment thereof.

Fiduciary relations. The relation in which trustees stand towards their *cestuis que trust*; it is a cardinal principle of Equity that one standing in this species of relation shall not make any profit out of it, and the principle extends even to constructive trustees, that is to say, agents, guardians, partners, directors of companies and promoters of companies. See Act II of 1882 (Trusts), Chap. IX.

The general rule of viewing with disfavour transactions between two persons standing in a fiduciary relation, will not apply where no wrongful advantage has been secured to one of them at the expense of the other (*Roop Lal* v. *Lakshmi Doss*, 29 Mad. 1).

Fief. A fee; a manor; a possesion held by some tenant of a superior. *Fief d'haubert*, the Norman phrase for tenure by knight service.

Fifteenths. An ancient tribute or imposition of money consisting of one-fifteenth part of all the moveable property of the subject. It is said to have been first imposed by Henry II. These *fifteenths* were granted to the Crown from time to time by parliament.

Fightwite. A match for fighting or making a quarrel to the disturbance of the peace.

Filacer. Filazer. Filizer. An officer of the superior Courts of Westminster who filed original writs, &c., and issued processes thereon.

File. A thread, string or wire, upon which writs and other exhibits in courts and offices are fastened or filed, for the more safe keeping of, and ready turning to, the same. A file is a record of the court, and the filing of process of a court makes it a record of it. *To file* is to deposit at an office. *Filing a bill* in equity specifies placing a copy of the bill on the files of the court; the filing of the bill is the commencement of the formal proceedings in a Chancery suit. *Filing of record*, entering amongst the records of the court.

Filiation. The relation of a son to his father; correlative to paternity. *See* AFFILIATION

Final decree or judgment. A decree or judgment awarded at the *end* of an action which entitles the party to obtain at once the fruits of his judgment without any further inquiry being requisite for the purpose of ascertaining its amount, as opposed to an *interlocutory* one.

Finaf process. A writ of execution on a judgment or decree, being the steps taken at the *end* of a successful action for the purpose of realizing the fruits of a final judgment or order, as opposed to a *mesne* process. *See* PROCESS.

Financial year. This means the year commencing on the first day of April.—*Act X of* 1897 (*General Clauses*), s. 3 (19).

Finders. The same as *searchers*, who are employed for the discovery of goods imported, or exported, without paying custom.

Finding. The conclusion or verdict of a court or jury as to a question of fact at issue.

Fine. A sum of money or mulct imposed upon an offender; also called a *ransom*. A sum of money paid by a tenant at his entrance into his land; or by a lessee on a renewal of the lease.

Fine on alienation. A sum of money paid in ancient times to the lord by a tenant whenever he had occasion to make over his land to another; and so even, to the present day, fines are payable by the custom of most manors, to the lord, upon every descent or alienation of a copyhold tenement.

Fine for endowment. A fine anciently payable to the lord by the widow of a tenant, without which she could not be endowed of her husband's lands; now abolished.

Fine of lands and tenements. A species of assurance (now abolished by 3 & 4 Wm. IV, c 74) by matter of record, commonly in use for assuring estate of freehold. It is sometimes called a *feoffment of record* or an *acknowledgment of a feoffment on record* It may be described to be an amicable composition or agreement (*finis concordiæ*) of a suit, either actual or fictitious, by leave of the king or his justices, whereby lands in question became, or were acknowledged to be, the right of one of the parties. In its original it was founded on an actual suit commenced at law for recovery of possession of lands It was called a *fine*, because it put an *end*, not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter. The mode of buying *fines* was regulated by stat. 18 Edw. 1, passed in 1290. The mode was as follows:—The party to whom the land was to be conveyed or assured commenced an action against the other by suing out a writ called a *writ of covenant:* the supposed foundation of which agreement or covenant was, that one should convey the lands to the other, on the breach of which agreement the action was brought. On this there was due to the king, by ancient prerogative, a *primer fine*, amounting to one-tenth of the annual value of the land. The second step was the *licentia concordandi* or *leave to agree*, for in old times a suit commenced could not be abandoned without leave, lest the lord (or king) should be deprived of his perquisites for deciding the same. The leave was granted, but on payment of another fine called the *king's silver*, otherwise the *post fine*, amounting to three twentieths of the annual value of the land. The third step was the *concord* or *agreement* itself by which the lands were acknowledged to belong to the complainant. The party making the acknowledgment was called the *cognizor*, and was said to *levy the fine*. The party to whom the acknowledgment was made was called the *cognizee*, and to him the fine was said to be levied. The acknowledgment was made either openly in the Court of Common Pleas, or before one of the judges of that Court, or before one or more commissioners in the county appointed by a writ of *dedimus potestatem*. The fourth step was the *note* of the fine, being an abstract of the writ of covenant and the concord. This was enrolled of record in the proper office. The fifth part was the *foot* of the fine or *conclusion* of it, which includes the whole matter, reciting the parties, day, year, and place, and before whom it was acknowledged or levied. Of this there were indentures made or engrossed and delivered to the cognizor and the cognizee.—*Mozley.*

A fine was *single*, when an estate was granted to the cognizee, and nothing rendered to the cognizor; or *double*, when there was

a render back again either of the land itself or something out of it, for some new estate. —*Wharton.*

Fine force. This is where a person is *forced* to do that which he can no ways help; so that it seems to signify an absolute necessity or constraint not avoidable. To do a thing *de fine force* is to do it under constraint.

Finers of gold and silver. Those persons who purify and separate gold and silver from coarser metals, by fire and water.

Fire and sword, letters of. These anciently issued from the Privy Council in Scotland, directed to the sheriff of the county authorizing him to call for the assistance of the county to dispossess a tenant retaining possession contrary to the order of a judge or judgment of a court.

Fire bote. Fuels for *firing* for necessary use, allowed by law, to tenants out of the lands, &c., granted to them.

Fire ordeal. *See* ORDEAL.

Fire policy. A policy of assurance which engages that, in consideration of a single or periodical payment of premium to an insurance company, the company will pay to the assured such loss as may occur by fire to his property therein described, within the period or periods therein specified, to an amount not exceeding a particular sum fixed for that purpose by the policy.

Firm. *See* PARTNERSHIP.

First fruits (*primitiæ*). The first year's whole profits of every spiritual living in one year, given in ancient times to the Pope throughout all Christendom. An incident to the old feudal tenures, being one year's profits of the land after the death of a tenant, which belonged to the king. *See* QUEEN ANNE'S BOUNTY.

First impression (*primæ impressionis*) A case of *first impression* is a case for which there is no precedent applicable in all respects.

First instance, court of. The court before which an action is first brought for trial; as opposed to a court of appeal.

Fiscal. Belonging to the exchequer or revenue.

Fishery. The right to take fish. The right is of three kinds—(1) a *free* fishery, (2) a *several* fishery, and (3) a *common of piscary.* A *free* fishery is an exclusive right of fishing in a public river, and is a royal franchise; a *several* fishery is the exclusive right of fishing; a common of piscary is the right of fishing in another man's water. A *free* fishery differs from a *several* fishery, because he that has a several fishery must also be (or at least derive his title from) the owner of the soil, which in a *free* fishery is not requisite. It differs also from a *common of piscary*, in that a *free* fishery is an exclusive right, and a *common of piscary* is not so; and therefore in a *free* fishery a man has property in the fish before they are caught; in a *common of piscary*, not till afterwards. The term is also applied to the fishing grounds, or parts of the sea where at certain seasons numbers of fish are taken. *See* COMMON.

Fish-royal. These are whale and sturgeon, which, when thrown ashore or caught near the coast, are the property of the king, on account of their superior excellence and in recompense for his protecting the shore from pirates and robbers. As regards the whale, it is said that the head belongs to the king, and the tail to the queen.

Fisk. (*Sc. L.*) The right of the Crown to the moveable estate of a person denounced rebel. The Crown's revenue.

Fixed rate of rent. "By the term *fixed rate of rent* I understand not merely fixed and definite sums payable as rent, but also rates regulated by certain fixed principles—such, for instance, as a certain proportion of the gross or of the net produce of every *beegah*, or such a sum of money as would be equal to such a proportion of the produce" (*per* Sir Barnes Peacock, C. J., *Thakurani Dossee* v. *Besheser*, 3 W. R., Act X, p. 108).

Fixtures. Chattels or articles of a personal nature which have been affixed to land. It is a maxim of great antiquity, that whatever is fixed to realty is thereby made a part of the realty to which it adheres, and partakes of all its incidents and properties. By the mere act of annexation a personal chattel becomes a parcel of the freehold itself, *quicquid plantitur solo, solo cedit.* The rule has, however, been greatly relaxed in modern times, and many exceptions to it established in favour of trade. Questions respecting the right to fixtures chiefly arise between three classes of persons—(1) Landlord and tenant; (2) the executors of tenant for life, or tenant in tail, and the remainderman or reversioner; (3) the personal representative and the heir of the deceased owner of the inheritance. As between a landlord and tenant, a tenant may take away things which he has himself affixed to the premises for the purpose of *trade* and *manufacture*, such as vessels and utensils of trade; but it is doubtful whether he may remove substantial and permanent additions to the premises, although built exclusively for the convenience of his trade. Besides trade fixtures, a tenant may remove certain articles which he has set up for the *ornament* and *furniture* of his house, and for his *domestic* use and convenience, provided they are so fixed and connected with the premises as to occasion but little damage in their removal; otherwise the tenant will not be allowed to take them away. A tenant in *husbandry* has not the same privilege as a tenant in trade; for he cannot take away things which he has affixed to the premises for purposes merely *agricultural*; this rule, however, is confined to articles of a strictly agricultural nature; for, if the object of an erection has relation to a *trade* of any descrip-

tion, the tenant may take it away, notwithstanding it is the means or instrument of obtaining the profits of the land. A *nurseryman* or *gardener* is entitled to remove and dispose of trees, shrubs, &c., which he has planted for the purpose of sale. A tenant must remove his fixtures *before* the expiration of his tenancy, for he is not at liberty to insist on his claim afterwards; neither can he, where he has neglected to take away during his term, maintain trover for them against the landlord. As between the executors of tenant for life or tenant in tail and the remainderman or reversioner, the point to be decided between these two classes is, whether chattels annexed to the freehold by a tenant for life, or tenant in tail, become part of the inheritance and pass with it to him in remainder or in reversion, or they are to be considered as part of the personal estate of the deceased tenant for life or tenant in tail, and go to his executors. The executors of tenants for life or tenants in tail are entitled to fixtures created for the purpose of *trade*, even where trade and the profits of land are combined. There is no doubt that the personal representatives of tenants for life, or in tail, would be allowed at least the same privilege, in removing fixtures against the remainderman or reversioner that the personal representatives of a deceased owner in fee have against the heir. For in the case of executor and heir the rule is said to obtain with the utmost rigour in favour of the real estate; and the case of tenant for life, or in tail, has been called an *intermediate* one between that of heir and executor and that of landlord and tenant; and accordingly it seems to be generally understood, that any determination in favour of an executor against an heir will support a similar claim between whatever parties it may arise.—*Tomlins.*

If a tenant or lessee has so fixed any chattel to a house, or so constructed or annexed any building to the land, that it becomes part and parcel of the land, or is not removeable without material or permanent damage to the house or freehold, its removal will be waste. But some things not so permanently annexed may be removed, and things which though attached are by law severable, are called *fixtures*, and are variously named, as trade-fixtures, tenant fixtures or house fixtures, &c. There is a *prima facie* inference from the annexation of a chattel to the freehold, that the property therein vests in the landlord or owner. But things slightly annexed for ornament or convenience, and intended as a temporary, and not as a permanent improvement, may be removed, if it can be done without any or considerable damage. So, what is thus annexed for the more convenient carrying on of a trade or occupation, as machinery, &c., may be removed; and also what is merely accessory thereto (if not of a permanent and substantial nature), as a slight building over an engine.—*Collett on Torts.*

Flagrant necessity. A case of urgency rendering lawful an otherwise illegal act, as an assault to remove a man from impending danger.

Flash cheque. A cheque drawn upon a banker by a person who knows he has not at the time sufficient funds in the banker's hands to meet the cheque.

Fledwite. Flightwite. A discharge from amerciaments, where a person having been a *fugitive* came to the peace of our lord the king of his own accord, or with license.—*Tomlins.*

Flem. An outlaw.

Flemenefrit. Flemenesfrinthe. Flymenafrynthe. The receiving or relieving of a fugitive or outlaw.

Flit. Treason.

Floating capital. Capital retained for the purpose of meeting current expenditure.

Floor of the Court. The part of the Court between the judge and the first row of counsel. Parties who appear in person stand there.

Flotages. Such things as by accident swim on the top of the sea or great rivers.

Flotsam. Floatsam. Any goods that by shipwreck be lost, and lie *floating* or swimming upon the top of the water. These, with other wreck, belong to the Crown, if no owner appears to claim them. *Flotsam*, *jetsam* and *lagan*, are mentioned together. The three are thus distinguished; *jetsam* is where goods are cast into the sea and there sunk, and remain under water; *flotsam* is where they remain swimming on the surface of the waves; *lagan* or *legan*, is where they are sunk in the sea, but tied to a cork or buoy in order to be found again.

Focage (*focagium*). The same as *housebote* or *fire-bote*, *i. e.*, firewood.

Focal. Focale. A right of taking firewood.

Fœticide. Criminal abortion.

Folterers. Vagabonds.

Folcland. *See* FOLKLAND.

Foldage. *See* FALDAGE.

Folgers. (*folgarii*). Menial servants or followers.

Folio. A certain number of words. In conveyances, &c., it amounts to seventy-two; and in parliamentary proceedings, to ninety. In printing, it means the figure at the top or bottom of a page. The largest size of a book.

Folkland. Copyhold lands, so called in the time of the Saxons. Folkland was *terra vulgi* or *popularis*, the land of the vulgar people held in villenage, being distributed among the common *folk*, or people, at the pleasure of the lord of the manor, and resumed at his discretion. The tenants had no certain estate therein, but held the same under the rents and services accustomed or agreed at the will of the lord. It was therefore not put in writing, and not being held by any as-

surance in writing, it was opposed to *book-land* or *charter-land*, which was held by deed. *See* BOC-LAND.

Folk-mote. Folc-mote. A general assembly of the people to consider of and order matters concerning the commonwealth. Any kind of popular or public meeting.

Folk-right. Folc-right The *jus commune* or common law, mentioned in the laws of King Edward the Elder, declaring the same equal right, law, or justice to be due to persons of all degrees.

Footgeld An amerciament or fine for not cutting out balls of great dogs' feet in the forest. *See* EXPEDITATION.

Foot of a fine. *See* FINE.

Forbarre. To bar or deprive one of a thing for ever.

Force. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion or cessation of motion, causes that motion, change of motion, or cesation of motion, in one of the three ways hereinafter described:—(1) By his own bodily power. (2) By disposing any substance in such a manner that the motion, or change, or cessation of motion, takes place without any further act on his part or on the part of any other person. (3) By inducing any animal to move, to change its motion, or to cease to move.—*Act XLV of* 1860 (*Penal Code*), *s.* 349.

Criminal force. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that, by the use of such force, he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.—*Ibid.*, *s.* 350.

Force and arms (*vi et armis*). Words sometimes inserted in indictments, and in declarations for trespass, but now no longer necessary.

Forcible detainer. A forcible holding possession of any lands or tenements, whereby the lawful entry of justices, or others having a right to enter, is barred or hindered. Refusing to restore another's goods, after sufficient amends tendered, the original taking having been lawful, for which injury the usual remedy was *trover*; but if the original taking were unlawful, it is a criminal offence against the public peace.

Forcible entry. The violent entering and taking possession of lands or tenements with menaces, force and arms, or with a multitude of people, and not in an easy and peaceable manner.

Forecheapum, Pre-emption; forestalling the market.

Foreclose down. *See* REDEMPTION.

Foreclosure. Shutting out or exclusion. The forfeiture by a mortgagor of his equity of redemption, by reason of his default in payment of the principal or interest of the mortgage debt within a reasonable time. Foreclosure may be enforced in equity by a proceeding called a *foreclosure suit*. It corresponds very nearly with the *effectual adjudication* of the Scotch Law.—*Mozley. Foreclosure* is one of the remedies of a mortgagee. The claim in the action is for an account of the principal moneys and interest owing on the security, and for a day to be fixed for payment of such amount when ascertained together with the mortgagee's costs; failing such payment at the day ultimately fixed for same, the mortgagor is *foreclosed i. e.*, is *closed off* and debarred from all right or equity of redemption.—*Brown.*

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 67.

Foregift. A payment in advance; a word generally applied to money paid down, in consideration of a lease, by the intended lessee; as opposed to the yearly rent accuring under the lease. A premium for a lease. A foregift is in fact a species of fine. *See* FINE.

Foregoers. The king's purveyors; they were so called from their *going before* to provide for his household.

Forehand rent. Rent payable in advance. The same as a premium or foregift for taking or renewing a lease.

Foreign Strange or outlandish; of another country or society.

Foreign apposer (*forinsecarum oppositor*). An officer in the Exchequer, whose duty it was to examine the sheriffs as to their accounts, and to charge them with monies received.

Foreign attachment. A process by which a debt due to a judgment-debtor from person not a party to the action or suit is made available for satisfying the claim of the judgment-creditor; in other words, it is an attachment of a debt. *See* ATTACHMENT, GARNISHEE.

Foreign bill of exchange. A bill of exchange either drawn abroad or payable abroad, or both. *See* INLAND BILL.

Foreign Court means a Court situate beyond the limits of British India, which has no authority in British India and is not established or continued by the Governor-General in Council.—*Act V of* 1908 (*Civ. Pro.*), *s.* 2 (5).

Foreign judgment means the judgment of a foreign court.—*Ibid.*, *s.* 2 (6). *See* JUDGMENT, ACTION ON.

Foreign judgments are binding upon the parties thereto in British Courts, even though the formalities of procedure, which ought to have been observed by the foreign Court, were not observed (*Gudaru* v. *Maradu*, 2 M. L. T. 269 ; 30 Mad. 292).

Foreign Office. The department of State through which the sovereign communicates with foreign powers ; a Secretary of State is at its head.

Foreign opposer. The same as *foreign apposer.*

Foreign plea. A plea objecting to the jurisdiction of a judge, on the ground that he had not cognizance of the subject-matter of the suit.

Foreign service. The service whereby a mesne lord holds of another, without the compass of his own fee ; or that which the tenant performs either to his own lord or to the lord paramount out of the fee ; it seems also to be used for knight's service.

Foreign state includes any person or persons exercising or assuming to exercise the powers of Government in or over any country, colony, province or people beyond the limits of British India.—*Act IV of* 1874 (*Foreign Recruiting*), *s.* 2.

Foreigners, suits by and against. Provided a contract has been made or has been broken within the jurisdiction, or the party is within the jurisdiction, then, although a foreigner, he is amenable to the jurisdiction as a defendant ; but the courts are not bound to exercise the jurisdiction where the contract was neither made nor broken within the jurisdiction, although they should have seisin by the person of the foreigner. The like rules apply substantially to foreigners being plaintiffs. Where a foreigner is a plaintiff, and is resident out of the jurisdiction, he is obliged to give security for the costs of the action, in the same manner that a British subject would do if he was resident out of the jurisdiction. —*Brown.*

Forejudger (*forisjudicatio*). A judgment whereby a man is deprived of the thing in question. To be *forejudged* the court is when an officer or attorney of any court is expelled the same for some offence, or for not appearing to an action, on a bill filed against him.

Forensic. Belonging to courts of justice.

Forensic medicine. The science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in a court of justice ; the science of *medical jurisprudence*, comprising those matters which may be considered as common ground to both medical and legal practitioners ; as, for instance, inquiries relating to suspected murder or doubtful sanity, Also called *legal medicine* or *state medicine.*

Forest. Waste ground belonging to the king, replenished with all manner of beasts of chase or venery, which are under the king's protection, for his royal recreation and delight. It also means the right of keeping, for the purpose of hunting, the wild beasts and fowls of forest, chase, park, and warren, in a territory or precinct of woods, ground or pasture set apart for the purpose, with laws and officers of its own, established for protection of game ; this is an incorporeal hereditament.

Forest Courts. The courts instituted for the Government of the king's forest in different parts of the kingdom, and for the punishment of all injuries done to the deer or venison, to the vert or greensward, and to the covert in which such deer were lodged. They consisted of the Courts of *Attachment*, *Regard*, *Swein-mote*, and *Justice-seat.* See those titles.

Forest law. The old law relating to the forest , under colour of which the most horrid tyrannies and oppressions were exercised in the confiscation of lands for the purpose of the royal forests.

Ferestage (*forestagium*). The duty or tribute payable to the king's foresters.

Forestalling. Intercepting on the highway. The buying or bargaining for any corn, cattle or other merchandise, by the way, as they come to fairs or markets to be sold, before they are brought thither, to the intent to sell the same again at a higher and dearer price ; this is called *forestalling*, *ingrossing*, or *regrating the market.*

Forester. A sworn officer of the forest appointed by the king's letters patent to watch the vert and venison, to walk the forest both early and late, and to bring trespassers to justice.

Forfang. Forfeng (*antecaptio* ; *preventio*). The taking of provision from any one in fairs or markets, before the king's purveyors are served with necessaries for his Majesty. Also the seizing and rescuing of stolen or strayed cattle from the hands of a thief, or of those having illegal possession of it ; also the reward fixed for such rescue.—*Wharton.*

Forfeiture (*forisfactura*). This is defined by Blackstone to be a punishment annexed by law to some illegal act or negligence in the owner of the lands, tenements or hereditaments, whereby he loses all his interest therein, and they go to the party injured, as a recompense for the wrong, which either he alone, or the public together with him, hath sustained. It may be defined generally as the loss of lands or goods by reason of some act in contravention of law, or of some condition in a written document, expressed or implied. Many of the grounds of forfeiture which formerly existed are now obsolete. And especially, forfeitures for treason and felony are abolished by s. 1 of the Felony Act, 1870 (33 & 34 Vic., c. 23).—*Mozley.*

Forfeiture of marriage (*forisfactura maritagii*). A writ which anciently lay against him who, holding by knight's service, and

being under age, and unmarried, refused her whom the lord offered him without his disparagement, and married another. *See* AVAIL OF MARRIAGE.

Forgavel (*forgabulum*). A small reserved rent in money or quit rent.

Forged document. *See* FORGERY.

Forgery (*crimen falsi*). Whoever makes any false document or part or a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.—*Act XLV of* 1860 (*Penal Code*), *s.* 463.

Making false document. A person is said to make a false document (1) who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of, a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or (2) who, witheut lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or (3) who dishonestly or fradulently causes any person to sign, seal, execute, or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practicd upon him he does not, know the contents of the document or the nature of the alteration. A man's signature of his own name may amount to forgery. The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.—*Ibid.*, *s.* 464.

Forged document. A false document made wholly or in part by forgery is designated a forged document. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.—*Ibid.*, *ss.* 470-1.

Forisfamiliation. The separation of a child from his father's family. A son was said to be forisfamiliated if his father assigned him part of his land and gave him seisin thereof, and the son expressed himself satisfied with such portion.

Fornication. Whoredom; the act of incontinency in single persons; for if either party is married, it is adultery.

Forprise. An exception or reservation. An exaction; or taking beforehand.

Forspeaker. An attorney or advocate in a cause.

Forthcoming. (*Sc. L.*) An action or process by which arrestment (*i. e.*, attachment) is made effectual. The *arrestment* secures the goods or debts (*i. e.*, the debts due to the *debtor*) in the hands of the creditor or holder; the *forthcoming* is an action in which the debt is ordered to be paid, or the effects to be delivered up, to the arresting creditor. It is in the nature of a *foreign attachment*, which see.

Forthwith. Now; as from this moment; henceforth (*per* Kekewich, J., *Keith* v. *National Telephone Co.*, 1894, 2 Ch. D. p. 15).

When a statute requires that something shall be done *forthwith*, or *immediately*, or even *instantly*, it would probably be understood as allowing a reasonable time for doing it.—*Maxwell on Statutes.*—*Re the Application of Sheshamma*, 12 Bom. p. 277). In a contract and the ordinary transactions of life, *forthwith* does not mean *immediately* (*Roberts* v. *Brett*, 11 H. L. Cas. 337), but means *with all reasonable celerity* (*per* Tindal, C. J., *Burgess* v. *Boetefeur*, 7 M & G. 494). *See* IMMEDIATELY.

The word *forthwith* is to be construed according to circumstances. A covenant to insure a man's life, for instance, cannot be complied with in a moment. But where an act required to be done *forthwith* is one which is capable of being done without any delay, no delay can be permitted (*per* Jessel, M. R., *Re Southam*, *Ex parte Lamb*, 19 Ch. D. 169; 1 L. J. Ch. 207).

Forty days' Court. The court of Attachment in forests, or wood-mote court. *See* FOREST COURTS.

Fostering. An ancient custom in Ireland, in which persons put away their children to fosterers. *Fostering* was held to he a stronger alliance than blood, and the foster-children participated in the fortunes of their foster-fathers.—*Moxley.*

Foster-land. Land given for finding food or victuals for any person or persons, as for monks in a monastery. Lands allotted for the maintenance of a person.

Foster-lean. The remuneration fixed for the rearing of a foster-child. Also a nuptial gift; or the jointure or stipend for the maintenance of a wife.

Fouj saranjam. (*Ind.*) A jagir granted upon condition of military service. *See* JAGIR.

Foujdar. (*Ind.*) A magistrate of the police over a large district who took cognizance of all criminal matters within his jurisdiction.

Foujdari. The office or jurisdiction of a criminal magistrate or judge.

Foujdari Adawlut. A criminal court.

Founding hospitals. Hospitals for taking care of infants forsaken by their parents, such being generally the offspring of illegal connections.

Fourch. To delay or prolong an action.

Four corners of an instrument That which is contained on the face of a deed (without any aid from the knowledge of the circumstances under which it is made) is said to be within its four corners, because every deed is still supposed to be written on one entire skin and so to have but four corners. —*Wharton.*

Four seas (*quatuor maria*). The seas surrounding England; divided into the western, including the Scotch and Irish; the northern, or North Sea; the eastern, or German Ocean, and the British Channel.

Foutgeld. *See* FOOTGELD.

Fowls of warren. According to Coke, they are the patridge, quail, rail, pheasant, woodcock, mallard, heron, &c. According to Manwood, they are the pheasant and partridge only.

Franchise. An incorporeal hereditament synonymous with liberty, A royal privilege or branch of the Crown's prerogative subsisting in the hands of a subject. It arises either from Royal grants or from prescription, which presupposes a grant. The kinds are almost infinite, but the principal are bodies corporate, the right to hold courts-leet, fairs, markets, ferries, forests, chases, parks, warrens, fisheries. Sometimes it signifies a privilege or exemption from ordinary jurisdiction, or an immunity from tribute.

Municipal franchise. The right of voting for an alderman or town councillor.

Parliamentary franchise. The right of voting at an election for a member of parliament.

Frank. To *frank* a letter means to send it post free, so that the person who receives it shall have nothing to pay. This is now done in the ordinary way by pre-paying the postage; hence the word *frank* when applied to letters sent by post at the present day, signifies the prepayment of postage. But formerly, when the postage of letters was ordinarily paid by the receiver, the word was applied to the privilege, then enjoyed by members of parliament, peers, &c., of sending letters free of postage by autograph. The privilege was abolished upon the introduction of penny postage in 1840 by 3 & 4 Vic. c. 96.—*Mozley.*

Frankalmoigne. A tenure in *frankalmoigne* or free alms is that whereby a religious corporation holdeth lands of the donor to them and their successors for ever. They were discharged of all other except religious services, such as praying for the souls of the donor and his heirs, dead or alive, and therefore they did no fealty. This tenure differs from the tenure by *divine service* in that the latter required the tenants to do some special divine services in certain, whereas the former, as its name imports, is free.

Frank-bank. *See* FREE-BENCH.

Frank-chase (*libera chacea*). A liberty of free-chase enjoyed by any one, whereby all other persons having ground within that compass are forbidden to cut down wood, &c., even in their own demesnes, to the prejudice of the owner of the liberty.—*Mozley.*

Frank-fee. Freehold lands exempted from all services, but not from homage. Sometimes called an *improper feud*, because free from all service.

Frank ferm. Lands or tenements changed in the nature of the fee by feoffment &c., out of knight service, for certain yearly service.

Frank fold. This is where the lord has the benefit of *folding* his tenants' sheep within his manor for the manuring of his land. *See* FALDAGE.

Frank law (*lex libera*). The benefit of the free and common law of the lands; the rights, immunities and privileges of an ordinary citizen. He that for any offence had lost his *frank-law* could never be impennelled upon any jury or assise, or be permitted to give any testimony. He could not appear in a court in person, but must appoint his attorney therein for him; his lands, goods and chattels were estreated and his body committed to prison. All this is now quite obsolete

Frank marriage. Free marriage (*liberum maritagium*) A tenure in tail special, which arises when a man seised of land in fee simple gives it to another with his (the donor's) daughter, sister, &c., *in free marriage* (*in liberum maritagium*) to hold to them and their heirs, by virtue of which words they have an estate in special tail, and hold the land of the donor quit of all manner of services, except fealty, till the fourth degree of consanguinity be past between the issues of the donor and donee, when they were capable, by the law of the church, of inter-marrying. This tenure has now grown out of use.

Frank-pledge (*franci plegium*). A pledge or surety to the sovereign for the good behaviour of freemen; it being the ancient custom of England, borrowed from the Lombards, that for the preservation of the public peace, every free-born man at the age of fourteen (religious persons, clerks, &c., excepted) should give security for his truth towards the king and his subjects, or be committed to prison; whereupon a certain number of neighbours usually became bound, one for another, to see each man of their pledge forthcoming at all times, or to answer the transgression done by any gone away; and whenever any one offended, it was forth with inquired in what pledge he was, and then those of that pledge either produced the offender within one and thirty days, or satisfied for his offence. This was called *frank-pledge*, and circuit thereof *decenna*, because it commonly consisted of ten house-holds, and

every particular person, thus mutually bound for himself and his neighbours, was called *decennier*, because he was of one *decenna* or another.

Frank-tenement (*liberum tenementum*). The same as *free hold*; used in old times in opposition to *villenage*.

Fratriage. The younger brother's inheritance.

Fratricide. The killing of a brother or sister.

Fraud. *See* CONTRACT, CHEATING, CONSTRUCTIVE FRAUD, DECEIPT. For distinction between fraud and breach of warranty, *see* WARRANTY.

Fraudulent conveyances. All conveyances whether of lands or of goods, contrived of fraud to the end of delaying creditors and others of their lawful actions, suits, debts, or dues are declared to be void, but only as against the creditor who is delayed thereby, his heirs, executors, administrators and assigns, under 13 Eliz. c. 5.

Fraudulently. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.—*Act XLV of* 1860 (*Penal Code*), *s.* 25.

Fraudulent preferences. Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys, in favour of any creditor, with a view of giving such creditor preference over other creditors, is fraudulent and void as against the trustee in Bankruptcy if the debtor become bankrupt within three months (Bankruptcy Act, 1883, 46 & 47 Vic. c. 52, s. 49). *See* UNFAIR PREFERENCE.

Every transfer of property or of any interest therein, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver or the Official Assignee and shall be annulled by the court. But this shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.—*Act III of* 1907 (*Provincial Insolvency*), *s.* 37.—*Act III of* 1909 (*Presidency Towns Insolvency*), *s.* 56.

Fradulent settlement. If a marriage settlement comprise property without which the settlor cannot pay his debts, or contain a covenant for future settlement of property in which the settlor has no present interest, then, if the settlor becomes bankrupt, and the settlement appears to have been made to defeat creditors, the Bankruptcy Court may refuse an order of discharge, as if he had been guilty of fraud (Bankrutcy Act, 1883, 46 & 47 Vic. c. 52, s. 29).

Fray. *See* AFFRAY.

Freeboard (*francbordus*). Ground claimed in some places more or less, beyond or without the fence; it is said to contain two feet and a half.

Free bench (*francus bancus*; *sedes libera*) That estate in copyhold lands which the wife hath on the death of her husband for her dower according to the custom of the manor; but it is said the wife ought to be espoused a virgin, and is to hold the land only so long as she lives sole and continent.—*Tomlins.* The term *free-bench* is equally applicable to the estate which, by the custom of some manors, a husband takes in his wife's copyhold lands after her death, and anciently it was indiscriminately applied to that and to the widow's dower, but now the estate of the husband is called his *curtesy*, while the term *free-bench* is confined to the widow.—*Wharton.*

Free-borough men. Such great men as did not engage like the *frank-pledge* men for their *decennier*.

Free-chapel (*libera capella*). A chapel so called because it is exempt from the jurisdiction of the diocesan.

Free consent. *See* CONTRACT.

Free-course. In mercantile law, this means having the wind from a favourable quarter.

Freedom of a Borough. The right to enjoy the privileges of a freeman. Formerly, these privileges, in many cases valuable either from conferring a limited parliamentary franchise or from other causes, could be sold or given away. But subsequently it was enacted that no man could be admitted a freeman by gift or purchase; this is however qualified by 48 & 49 Vic. c. 29, which enacts in favour of the admission to be honorary freemen of persons of distinction and persons who have rendered eminent services to the borough. *See* FREEMAN

Free fishery. *See* FISHERY.

Freehold. (*liberum tenementum*). That land or tenement which a man holds in fee-simple, fee-tail, or for term of life. If the interest in lands endures, not only during the owner's life, but descends, after his death, to his *heirs*, it is called a *freehold of inheritance*; if it only endures during the owner's life, it is a freehold not of inheritance. An estate to be a freehold must possess two qualities: (1) immobility, *i. e.*, the property must be land or some interest in land; and (2) indeterminate duration, for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold.—*Wharton.* It is said that freehold is of two sorts, freehold *in deed*, and freehold *in law*; the former is the real possession of land or tenements in fee, fee-tail, or for life; the lat-

ter is the right that a man hath to such tenements before entry. The term *freehold* hath likewise been extended to those offices which a man holdeth either in fee or for term of life. A less estate than an estate for life was not deemed worthy of the acceptance of a freeman. But an estate which may come to an end by the voluntary act of the tenant in his life may nevertheless be a freehold. Thus an estate during widowhood is regarded as freehold. The term *freehold* is in practice used (1) in opposition to *leasehold* (2) in opposition to *copyhold*; because a *leasehold* interest, being an estate for a term of years, is but a chattel interest and in law is less than an estate of freehold, however long the term may be; and a *copyhold* interest was originally an *estate at the will* of the lord of the manor, as it is still in name though not in fact, and an estate at will is the smallest estate known to law, and in their origin copyholds were deemed worthy the acceptance only of villeins and slaves. A freehold estate should last for life (unless sooner put an end to by the voluntary act, neglect, or default of the tenant); and the duties or services should be *free*, *i. e.*, worthy the acceptance of a freeman, in other words, the services should be *honourable*, and not servile, in respect of their quality, and *certain* in respect both of their quality and quantity.—*Mozley*. *See* CUSTOMARY FREEHOLD, ESTATE, TENEMENT

Freeholder. One who possesses a freehold estate.

Freeman (*liber homo*). One distinguished from a slave, *i. e.*, born or made free; and these have divers privileges beyond others. The title of a *freeman* is also given to any one admitted to the freedom of a corporate town, or of any other corporate body, consisting, among other members, of those called *freemen*.

Freeman of London. The freedom of the city of London can be obtained in three different methods: (1) by *patrimony*, that is, as the son of a freeman born after the father has acquired his freedom: (2) by *servitude*, that is, by serving an apprenticeship of seven years to a freeman: and (3) by *redemption*, that is by purchase. The last method includes the case where the freedom of the city is obtained by honorary gift, as a mark of distinction for public services. *See* FREEDOM OF A BOROUGH.

Free on board. A term frequently inserted in contracts for the sale of goods to be conveyed by ship, meaning that the cost of shipping is to be paid by the vendor.

Free services. 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 a sum of money, or the like. *See* FREEHOLD.

Free ships. Neutral ships, in time of war.

Free warren. A royal franchise granted by the Crown to a subject for the preservation or custody of beasts and fowls of warren. *See* WARREN.

Freight. The sum payable for the hire of a vessel, or for the carriage of goods therein. *Freighter*, the hirer of a vessel.

Frendwite. A mulct or fine exacted from him who harboured his outlawed friend.

Fresh disseisin. That disseisin which was so recent that a man might formerly seek to defeat it of himself and by his own power without resorting to the king or the law; as where it was not above fifteen days old, or of some other short continuance.

Fresh fine. A fine of lands that has been levied within a year. *See* FINE.

Fresh force. In certain cases, by the usage or custom of a city or borough, a person disseised or otherwise wronged in respect of freehold lands therein might have his remedy by a proceeding called a bill of *fresh force*, or an assise of fresh force, brought forty days after the wrong committed, or title to him accrued.

Fresh pursuit (*recens persecutio*). Instant and immediate following with intent to recapture a thing lost, or a bird or beast escaped, or goods stolen, &c.

Fresh suit (*recens insecutio*). This is when a man is robbed of a thing, and the party so robbed follows the felon immediately, and apprehends and convicts him of the felony by verdict; then the party shall have his goods again. *Fresh suit* is also where a lord comes to distrain for rent or service, and the owner of the beasts drives them into ground not holden of the lord, and the lord follows and takes them. And so in other like cases.

Friborough. Frithburgh. The Norman term for *frank-pledge*.

Friendless man. Frendless man. The old Saxon term for an outlaw; *nam forisfecit amicos suos* (for he has forfeited his friends, and is denied their help).

Friendly societies. Those which provide by the subscription of their members for the maintenance or relief of the members and their families during sickness, old-age, infancy, widowhood, &c.

Friendly suit. A suit brought not in a hostile manner, but by agreement between the parties, the object being to settle some point of law, or do some act which cannot safely be done except with the sanction of a court of justice. A suit brought by a creditor in Chancery against an executor or administrator, being really a suit by the executor or administrator, in the name of a creditor against himself, in order to compel the creditors to take an equal distribution of the assets.

Friperers. *See* BROKER.

Frithbreach (*pacis violatio*). The breaking of the peace.

Frivolous and vexatious complaint. In cases of frivolous and vexatious accusations,

the Magistration is empowered under s. 250 of the Crim. Pro. Code V of 1898 to direct the complainant to pay the accused a compensation not exceeding fifty rupees. The words "frivolous and vexatious" in the section do not exclude "false" (*Beni Madhub* v. *Kumud Kumar*, 9 Cal. W. N. 799; 30 Cal. 123, F. B.; *Emperor* v. *Bindesri*, 26 All. 512; 24 All W. N. 116; 1 All. L. J. 250); for a charge that is false must also be vexatious though not frivolous as well (*Emperor* v. *Bai Asha*, 5 Bom. L. R. 128). But held in *Parsi Hazra*, v. *Bandhi* (28 Cal. 251) that the words indicate an accusation merely for the purpose of annoyance, not an accusation of an offence which is absolutely false; the mere fact that an accusation is false is no proof that it is frivolous and vexatious.

Fruit. The word fruit in legal acceptation is not confined to the produce of those trees which are commonly called *fruit trees*, but applies also to the produce of such trees as oak, elm, &c. (Bayley, J., *Bullen* v. *Denning*, 5 B. & C. 847).

Fuer. To fly; which may be by bodily flight, or by nonappearance when summoned to appear in a court of justice, which is flight in the interpretation of the law.

Fugitation. A sentence passed in Scotland against an accused who absconds, by which all his moveable property falls by escheat to the Crown.

Full age. The age at which a man is competent in law to do anything, which is eighteen years or twenty one years, as the case may be. *See* MINOR. In England, it is twenty-one years.

Full Court. A Court composed of all the judges, members thereof.

Fumage. A tax paid to the sovereign for every house that had a chimney.

Fund. (1) Money or securities devoted to a certain purpose; (2) Capital; hence *to fund* is to capitalize; (3) The *funds* are the public funded debt of the Government; *fund* here meant originally the tax on which the loan was charged.—*Rawson.*

Fungibles (*fungibiles res*). Moveable goods which may be estimated by weight, number, or measure, *i.e.*, of such a nature that they could be replaced by equal quantities and qualities, as grain or coin. They are opposed to jewels, paintings, &c., which are not fungibles, their value differing in each individual, without possessing any common standard.

Furniture. Furniture, as opposed to fixtures consists of the purely moveable articles in a house, which are not completory to any portion of the house, or to any fixture annexd or belonging thereto. For example, chairs are furniture, but window-blinds are fixtures.—*Brown.* *See* FIXTURES.

Furnival's Inn. Formerly an inn of Chancery. *See* INNS OF CHANCERY.

Further advance. Further charge. A second or subsequent loan of money to a mortgagor by a mortgagee either upon the same security as the original loan was advanced upon, or with an additional security. —*Rawson.*

Further assurance. A covenant for further assurance is one of the usual covenants entered into by the vendor for the protection of the vendee's interest in the subject of purchase, to the effect that the vendor will, at the request and cost of the vendee, execute further conveyances, &c., for more perfectly assuring the subject-matter of the conveyance. By virtue of the Conveyancing Act 1881 (44 & 45 Vic. c. 41) such a covenant is *implied* in conveyances made on or after 1st January, 1882.

Further consideration. The postponed and more careful consideration by a judge of a cause, or question in it. If a decree in Chancery directs accounts and inquiries to be taken, the hearing of any question arising out of such inquiries is called a hearing on *further consideration.*

Further directions. When accounts in Chancery, were taken before Masters a hearing after a Master had made his report in pursuance of the directions of the decree, was called a hearing on *further directions.* This stage of a suit is now called a hearing on *further consideration.*—*Mozley.*

Furzundan. (*Ind*) An offspring.

Fusiljasty. (*Ind.*) An extra tax imposed on "one crop" land, when a second crop is raised.

Future estate. An estate to take effect in possession at a future time. The expression is most frequently applied to contingent remainders and executory interests; but it would seem to be also applicable to vested remainders and reversions.

Futwa. (*Ind.*) A judicial decree, sentence, or judgment, particularly when delivered by a Mufti. Plural, *Futawa.*

G

Gabel. Gable. A rent, duty, service or custom yielded or done to the king or any other lord. An excise; a tax on moveables.

Gabhan. (*Ind.*) A building site.

Gafold Rent, tribute or tax.

Gafoldgild. The payment or rendering of tribute, custom, or money. It sometimes denotes usury.

Gafold land. Gaful-land (*terra censualis*). Property subject to the gafold. Land liable to tribute or taxes; and rented or let for rent.

Gage (*vadium*). A pawn or pledge; anything given in security. Goods taken by a sheriff on a writ of attachment for non-appearance.

Estates in gage. Estates held in pledge; such pledges being of two kinds: living pledge

(*vivum vadium*) or *vifgage*, and dead pledge (*mortuum vadium*) or *mortgage*.

Gahan. (*Ind.*) A mortgage; a pawn; a pledge or thing in pawn; land held by mortgage.

Gahan-lahan clause. A clause or proviso in a mortgage deed that if the mortgaged property is not redeemed within a certain fixed time, the mortgage shall be considered as converted into an absolute sale. Such a mortgage, however, is always considered by the courts of equity as redeemable, notwithstanding that such fixed time has expired (*Ramji* v. *Chinto*, 1 Bom. H. C., A. C., 199; *Shankarbhai* v. *Kassibhai*, 9 Bom. H. C., A. C., 69; *Krishnaji* v. *Ravji*, 9 Bom. H. C., A. C., 79).

Where a contract entered into by a mortgagor and mortgagee *subsequent* to the mortgage to sell the lands to the mortgagee was solely due to the erroneous view of both parties about the *gahan lahan* clause in the mortgage-deed, and not the consequence of any transaction *independent* of the mortgage, *Held*, that the conduct and understanding of the mortgagor that the mortgage is irredeemable cannot amount to any acquiescence or estoppel, and that he is entitled to redeem (*Kanhaya Lal* v. *Narhar*, 27 Bom. 297; 5 Bom. L. R. 140). *See* CLOG ON EQUITY, ONCE A MORTGAGE.

Gahan puttra. (*Ind.*) A deed of mortgage.

Gain. Acquisition. Something obtained or acquired. Commercial profits. It is not limited to pecuniary gain. *See* WRONGFUL GAIN.

Gainage (*gainagium*). Gain or profit. The profit that comes by the tillage or cultivation of land; and the draught, plough and furniture for carrying on the work of tillage by the baser kind of *sokemen* or *villeins*.

Gainery. Tillage or agriculture; or the profit accruing thereby or from the beasts employed therein.

Gale. A periodical payment of rent or annuity.

Gambling. *See* GAMING.

Game. All sorts of birds and beasts that are objects of the chase; birds of prey got by fowling or hunting. The word, as defined in the Game Act (1 & 2 Wm. IV, c. 32), includes hares, pheasants, partridges grouse, heath or moor game, black game and bustard, though some of the provisions are directed to deer, woodcocks, snipes, quails, landrails, rabbits and coneys

Gaming. Gambling. Games unlawful (*ludi vani*). The playing any game of chance, as cards, dice, &c., for money or money's worth. Gaming also includes wagering. Gaming in a common gaming house is punishable with fine or imprisonment. See Act III of 1867 (Gambling), s. 4, and Bom. Act IV of 1887 (Gambling), s. 5. Gaming and setting birds and animals to fight in public places is punishable under s. 18 of Act III of 1867 and s. 12 of Bom. Act IV of 1887. Gambling is not ordinarily punishable as an offence; it is only so puhishable when carried on in a common gaming house or in a public street or place. Gambling in a private house is not an offence (*Queen* v. *Khyroo*, 2 N.-W. P. 289; *Queen* v. *Sheoshunker*, 3 N.-W. P. 1; *Queen* v. *Sujjad Ali*, 3 N.-W. P. 134). Under Bom. Act IV of 1887 (Gambling). s 3, 'gaming' includes 'wagering.' *See* WAGER.

If a game is one of skill, it is not an offence under the Gaming Act; if it is a game of mere chance, it is; where the chief element of a game is one of skill, the game is not an offence, although there is an element of chance in it (*Hari Singh* v. *King Emperor*, 6 Cal. L J. 708).—*Bom. Act IV of* 1887 (*Gambling*), *s.* 13.

Gaming-house. *See* COMMON GAMING-HOUSE.

Instrument of gaming. A coin is not an instrument of gaming within the meaning of s. 12 of Bom. Act IV of 1887. The expression 'instrument of gaming' means an implement devised or intended for that purpose (*Queen-Empress* v. *Govind*, 16 Bom. 283, F.B.; following *Imperatrix* v. *Vithal*, 6 Bom. 19). It includes any article used as a subject or means of gaming (*Bom. Act IV of* 1887, *Gambling*, *s.* 3). Cowries are, however, different from coins and may be treated as instruments of gaming when they are used as counters or as means to carry on gaming (Edge, C. J., and Knox, J., *Queen-Empress* v. *Bala Misra*, 19 All. p. 312; *Queen-Empress* v. *Makund Ram*, 25 Cal. 432). Any article which is in fact used as a means of wagering comes within the definition of an 'instrument of gaming,' even though it may not have been specially devised or intended for that purpose (*Queen-Empress* v. *Kanji Bhimji*, 17 Bom. 184).

As defined in Bom. Act IV of 1887 (Gambling), s. 3, instruments of gaming include a single page of paper for registering wagers (*Emperor* v. *Lakhmsi*, 29 Bom. 264.)

Ganancial. A species of community in property enjoyed by husband and wife, the property being divisible between them equally on a dissolution of the marriage.

Gandharva. (*Hin. L*) One of the disapproved forms of marriage. The reciprocal connection of a youth and a damsel with mutual desire is the marriage denominated *gandharva*, contracted for the purpose of amorous embraces, and proceeding from sensual inclination. Now obsolete.

Gang-week. Gang-days (*dies lustrationis*). The time when the bounds of the parish are lustrated or gone over by the parish officers; rogation week.

Gaol. A prison.

Gaol delivery. A commission empowering the judges and others to whom it is directed, to try every prisoner who shall be in the gaol when they arrive at the circuit town.

Gaoler. The master or keeper of a prison, whose duty it is to keep safely such persons as are entrusted to him by lawful warrant.

Gaondars. (*Ind.*) Persons exercising full proprietary right over their land, save that they pay Government revenue through a third party, and also pay *malikana* at a certain rate to such third party as their superior landlord (*Baboo Sheopertab* v. *Baboo Hurshunker*, 5 N.-W, P. 40).

Garble. To sever the dross and dust from spice, drugs, &c. *Garbling* is the purifying and cleansing the good from the bad.

Garbler of spices. An officer of antiquity in the city of London, who may enter into any shop, warehouse, &c., to view and search drugs and spices, and *garble* and make clean the same, or see that it be done. Anciently all drugs, &c., were to be cleansed and garbled before sold on pain of forfeiture, or the value.—*Tomlins.*

Gard. Wardship: care; custody. *See* GUARD.

Garnish To warn.

Garnishee. A person who is *garnished* or warned. The word is specially applied in law to a debtor who is *warned* by the order of a court of justice to pay his debt, not to his immediate creditor, but to a creditor of that creditor. The order is called a *garnishee order*; and the process of laying hold of the debts due to a judgment-debtor, in order to satisfy the demands of the judgment-creditor, in London, Bristol, &c., is called *foreign attachment*; at other places, it is called *attachment of debt*; in Scotland it is called *arrestment.*—*Mozley.*

Garnishment. A warning or notice given to a person to furnish the court with information material to a case before it; or to interplead with the plaintiff. But the term is now generally used in connection with the attachment of debts in the hands of a third party.

Garnishment is a peculiar mode of redress, power being thereby given to a judgment-creditor to attach debts due from any third person, called the *garnishee*, to the judgment-debtor. Such third party has full opportunity allowed him for showing cause against an order on him by a judge to pay such debt to the judgment-creditor, and his liability if disputed may be tried in a suit by the judgment-creditor against the garnishee. Should a lien be suggested by the garnishee on the debt sought to be attached, the party claiming such lien may be ordered to appear before the judge and state the nature and particulars of his claim upon the debt. After due investigation of the matter the judge may order execution to levy the amount due from the garnishee to the judgment-debtor, or may make such other order as he shall think fit.—*Broom's Com. Law.*

Garnisture. A furnishing or proving.

Garranty. *See* GUARANTEE.

Gauger. An officer who ascertains the quantity of wines or spirits for revenue purposes.

Gavel. Tribute; toll; custom; annual rent or revenue.

Gavelgeld. Payment of tribute or toll.

Gavelman. A tenant liable to tribute.

Gavelmed. The duty or service of mowing grass, or cutting a meadowland, required by the lord from his customary tenants.

Gavelet. An ancient and special kind of *cessavit*, or action for recovery of arrears of rent, pecular to Kent and London, when the custom of *gavelkind* continues whereby a tenant, if he withholds his rents and services due to the lord, shall forfeit his land It was intended where no distress could be found on the premises, so that the lord might seize the land itself in the nature of a distress, and keep it a year and a day; within which time, if the tenant came and paid the rent he was admitted to his tenement to hold it as before; but if not, the lord might enter and enjoy the same.

Gavelkind. A tenure which obtains by custom in the county of Kent. Under the tenure, land descends to all the sons equally, and, in default of sons, to the daughters in the ordinary manner; the widow or widower of a deceased tenant takes *half*, and only till marrying again; an infant tenant may alienate by feoffment at fifteen. The custom was retained in Kent only when the Normans introduced the law of primogeniture into the rest of the kingdom. All land in Kent is presumed to be of this tenure unless the contrary is proved.—*Rawson.*

Gazeb. In Mehomedan law, a forcible or unauthorized possession and use of property belonging to another.

Gazette. The official newspaper of the Government, said to have been first published at Oxford in 1665. On the removal of the Court to London, the title was changed to the *London Gazette.* A Government gazette.

Geld. A mulct; compensation; value; price. Money or tribute; the compensation for a crime; a fine or amerciament.

Geldable. Liable to pay tax or tribute.

Gemote. An assembly or court: as *folc-gemote*, the general assembly of the people; *shire-gemote*, County Court; *burg-gemot*, which met thrice in the year; *hundred-gemot*, hundred court; *hal e-gemot*, the Court baron.

Genealogy. History of the succession of families; enumeration of descent in order of succession; pedigree.

Genearch. The head of a family.

General agent. An agent empowered to act *generally* in the affairs of his principal, or at least to act for him *generally* in some particular capacity; as opposed to one authorised to act for him in a particular matter.

General average. *See* AVERAGE.

General averment. *See* AVERMENT.

General demurrer. A pleading at common law which objected to the sufficiency of a pleading in general terms, without showing specifically the nature of the objection. A general demurrer admits of all the facts alleged to be true, and refers the case to the judgment of the court upon the substantial merits.

General issue, plea of. A plea which traverses, thwarts, and denies *generally* the whole of the declaration, information, or indictment, without offering any special matter whereby to evade it; as the plea of *not guilty* in torts or indictments; a plea of *never indebted* in actions of debt; or a plea of *nunquam assumpsit* to actions of simple contract.

General lien. A right to detain a chattel, &c. until payment be made, not only of any debt due in respect of the particular chattel, but of any balance that may be due on general account in the same line of business. A general lien being against the ordinary rule of law depends entirely upon contract, express or implied from the special usage of dealing between the parties. *See* LIEN.

General rules and orders. Rules and orders made by judges of a court of justice for regulating the procedure therein; or by the judges of two or more courts for regulating the procedure in all such courts. Every court of justice has, independently of statute, an inherent power to make rules to regulate its own procedure.—*Moxley.*

General ship. A merchant ship which is open *generally* to the conveyance of goods belonging to *different* owners unconnected with each other; as opposed to a ship *chartered* or *freighted* that is, a ship which is hired entirely by a *single* individual.

General tail An estate tail where one parent only is specified, whence the issue must be derived, as to A and the heirs of his body. *See* TAIL.

General verdict. A verdict which in a civil suit, is absolutely for the plaintiff or for the defendant, or, in a criminal case, is a verdict of guilty or not guilty; as opposed, in either case, to a special verdict, in which the naked facts are stated, and the inference of law left to be determined by the court.

General warrant. A warrant to apprehend all persons suspected, without naming or describing any person in special. Such warrant is illegal and void for uncertainty.

General words. It is usual in conveyances to add to the description *general words* including the various easements and rights that the grantor may have over the property and intend to convey, and also various appurtenances which either legally or by repute form part of the main subject of the grant They begin with "Together with all outhouses, ways," &c. By the Conveyancing Act, 1881 (44 & 45 Vic, c. 41), s. 6, the insertion of these words is for the future rendered unnecessary.—*Rawson.*

Generals of orders. Chiefs of the several orders of monks, friars, and other religious societies.

Generation to generation. The words 'from generation to generation' cannot be called technical words; they are not unfrequently used in common with words of a like kind, such as 'while the sun and moon endure,' in Hindu written instruments, and they do not in their ordinary signification import more than 'absolutely' and 'for ever' (*per* Scotland, C. J., *Arumugam* v. *Ammi*, 1 Mad. H.C.R., 490). They do not create such an estate as to operate as a bar to alienation by sale (*Raja Narsing Dev* v. *Roy Koylash Nath*, 9 Moo. I. A. p. 55; *Satheanama* v. *Saravana*, 18 Mad. p 273).

Gentleman. Under the denomination of gentlemen are comprised all above yeomen; whereby noblemen are truly called gentlemen. As for *gentlemen* (says Sir Thomas Smith) they be made good cheap in this kingdom, for whoever studieth the laws of the realm, who studieth in the universities, who professeth the liberal sciences, and, to be short, who can live idly, and without manual labour, and will bear the port, charge, and countenance of a gentleman, he shall be called master, and shall be taken for a gentleman.—*Tomlins.*

Gentlewoman. A woman of birth above the common. An addition of a woman's state or degree.

German. Brother; one approaching to a brother in proximity of blood; thus the children of brothers and sisters are called cousins-german.

Gesell. The same as vassal.

Gestation The carrying of a child in the womb for the period which elapses between its conception and birth; usually nine months of thirty days or thereabouts. This period is added, where gestation exists, to that which is allowed by the rule against perpetuities. *See* RULE AGAINST PERPETUITY. This is the period which the law recognises as that during which a widow or divorced woman may produce lawful offspring of her deceased or divorced husband. See Act I of 1872 (Evi.), s. 112.

Ghalib-uz-zan. (*Meh. L.*) Strong presumption.

Ghatwali tenure. (*Ind.*) A grant of land by the Government to individuals for the performance of certain police duties. These tenures are heritable but the incomes arising from them cannot be charged or encumbered by the ghatwal in possession so as to bind his successor (*G. Grant* v. *Bangsi Deo*, 6 B L R., A. C., 652; *Madhub Hossein* v. *Patasu*, 1 B. L. R., A. C., 120; *Jogeswar* v. *Nimai*, 1 B. L. R., S. N., 6). The holder of a ghatwali tenure is called the *ghatwal.*

Ghatwali tenures were minor service tenures which originated probably in the earliest times and were adopted by all classes of

rulers They were in fact a kind of *jaghir*, created in frontier territories, so that the holders may be the "wardens of the marches." In Bengal it was the practice for the great zemindars to assign grants of land, generally at the edges of their estates, in selected passes (*ghats*) or other spots suited for forts to cheque the incursions of the forest tribes, as the remuneration of the person or family entrusted with the guardianship of the pass, and of the specified number of armed retainers whom he was bound to maintain This was the general character of the *ghatwali* tenure. The grants were rent-free. The grantees held while they performed the conditions of their grant. Some of the holders were wardens of extensive marches. Other grants were mere for the purpose of checking the ravages of wild beasts. One in particular was given for the destruction of elephants.

Ghazees (*Meh. L.*) Victorious soldiers, particularly when fighting against infidels.

Gift. The old text writers made a gift (*donatio*) a distinct species of deed and describe it as a conveyance applicable to the creation of an estate tail, while a feoffment they strictly confine to the creation of a fee simple estate. It was in consequence of entails being thus originally created that the grantor was called the donor, the grantee in tail the donee, and the entail the gift or donation. This limitation of the word is, however, quite obsolete. Blackstone distinguishes a *gift* from *grant* in that a gift is always gratuitous, whereas a grant is made upon some consideration or equivalent.

Gift is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the *donor*, to another, called the *donee*, and accepted by or on behalf of the *donee*. Such acceptance must be made during the life time of the donor, and while he is still capable of giving. If the donee dies before acceptance, the gift is void.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 122.

Gift how made. For the purpose of making a gift of *immoveable* property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. For the purpose of making a gift of *moveable* property, the transfer may be effected either by a registered instrument signed as aforesaid, or by delivery. Such delivery may be made in the same way as goods sold may be delivered.—*Ibid.*, *s.* 123. *See* DELIVERY OF GOODS.

Gifts in contemplation of death (*donatio mortis causa*). A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will. A gift is said to be made in contemplation of death where a man who is ill, and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness. Such a gift may be resumed by the giver. It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.—*Act X of* 1865 (*Succession*), *s.* 178.

Onerous gift. A gift burdened with an obligation.

Gild. Guild A society or fraternity constituted for mutual protection and benefit. Also used as synonymous with *geld*, *i. e.*, a tax, tribute or contribution.

Gildable. Liable to pay a gild.

Gild-merchant. Merchants privileged to held pleas of land among themselves. *See* PLEA.

Gild-rent. Certain payments to the Crown from any gild or fraternity.

Gisement. Cattle taken in to graze at a certain price; also the money received for grazing cattle.

Gisetaker. A person who takes cattle to graze.

Gist of action. The cause for which an action lies; the ground and foundation thereof, without which it is not maintainable.

Glass-men. These are reckoned amongst wandering rogues and vagrants by old statutes.

Glebe. The land possessed as part of the revenue of an ecclesiastical benefice; land of which a rector or vicar is seised in right of the church.

Gliscywa. A fraternity.

Glove-money. A term applied to extraordinary rewards given to officers of courts, &c.; and money given by the sheriff of a county in which no offenders are left for execution, to the clerk of assize and the judge's officers.—*Tomlins.*

Glove-silver. Money customarily given to servants to buy them gloves, as an encouragement to their labours.—*Tomlins.*

God-bote. An ecclesiastical or church fine, paid for crimes and offences committed against God.

God-gild. That which is offered to God or his service.

God's acre. A churchyard.

God's-penny. Earnest money given to a servant when hired.

Goldsmiths' notes. Bankers' cash notes (*i. e.*, promissory notes given by a banker to his customers as acknowledgments for receipt of money) were originally called in London goldsmiths' notes, from the circumstance that all the banking business in England was originally transacted by goldsmiths.—*Wharton.*

Gomashtah. (*Ind.*) A commissioner; factor; agent; a deputy; an assistant; a native accountant.

Good abearing (*bonus gestus*). Good behaviour. An exact carriage or behaviour to the king and his liege people, whereunto men,

upon their evil course of life or loose demeanour, were sometimes bound. *See* ABEARANCE.

Good consideration. This consists in "blood and natural affection" as opposed to "money and money's worth," which latter constitutes a valuable consideration. Good consideration is, however, used in stat. 13 Eliz. c. 5, to denote a valuable consideration; and generally, the word is too ambiguous for convenient legal use. Considerations are much better distinguished as voluntary, valuable, and meritorious. *See* CONSIDERATION. Marriage is a valuable, and not merely a good consideration (*Chintalapati* v. *Zemindar of Vizianagram*, 2 Mad. H. C. R. 128).

Good faith. Nothing is said to be done or believed in good faith which is done or believed without due care and attention.—*Act XLV of* 1860 (*Penal Code*), *s.* 52.—*Act IX of* 1908 (*Limitation*, *s.* 2 (7). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not.—*Act X of* 1897 (*General Clauses*), *s* 3 (20).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (20).

It may be stated generally that the words "good faith" have no technical legal signification, but are to be taken in their ordinary signification and mean simply honesty in belief, purpose or conduct.—*Encycl. L. E.*

Good jury. A jury of which the members are selected from the list of special jurors.

Goodright. Goodtitle. The name of the fictitious plaintiff in the old action of ejectment. *See* DOE, EJECTMENT.

Goods. The word 'goods' means and includes every kind of moveable property.—*Act IX of* 1872 (*Contract*), *s.* 76. Goods means anything which is the subject of trade or manufacture.—*Act IV of* 1889 (*Merchandise Marks*), *s.* 2 (4). But a Government currency note is not "goods" within the meaning of the Contract Act (*In the Matter of Michell*, 1 C. L. R. 339; *Empress* v. *Jogessur*, 3 Cal. 379).

Goods and chattels. These, in the fullest sense, include any kind of property which, regard being had either to the subject-matter or to the quantity of interest therein, is not freehold. But in practice the expression is most frequently limited to things personal *i. e.*, moveable, especially things moveable in possession, as distinguished from things real, or lands, tenements and hereditaments. It is doubtful whether in a modern will goods and chattels would include leaseholds, these being now regarded in a will as lands.

Good title. "Good title," in a contract of sale of real property, means such a title as will be forced on a purchaser in an action for specific performance, and as would be answer to an action of ejectment by any claimant (*Jeakes* v. *White*, 21 L. J. Ex. 265; 6 Ex. 873).—*Stroud.*

Goodwill. The goodwill of a trade or business comprises every advantage or benefit which has been acquired by carrying on the business (whether connected with the premises in which the business has been carried on, or with the name of the firm by whom it has been conducted or with any other matter carrying with it the benefit of the business) beyond the mere value of the capital, stock, funds, or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers. It is considered a subject of sale along with the stock and premises. A court of equity will not enforce a contract for the sale of a goodwill merely, but will leave the parties to law.

Goodwill may be taken, in the words of Lord Eldon, as the probability that the old customers will resort to the old place (*per* Cotton, L. J., *Pearson* v. *Pearson*, 54 L. J. Ch. 41).

Gosha. (*Ind.*) A corner, retirement. The word is applied to Mahomedan females of respectability who never appear in public. *See* PURDAH NUSHIN.

Gossip. A godfather or sponsor at baptism.

Gossipred. The spiritual affinity arising from persons becoming godfathers and godmothers to children.

Gotra. (*Hin. L.*) Family; lineage; relationship by descent from a common ancestor of the same name.

Gotraja. (*Hin. L.*) A kinsman of the same family and name; the *gentile*, in opposition to *bandhu*, a kinsman of a different family, or cognate. *See* SAPINDA.

Gotrajas are described as descending from one common stock, a male, and derived generally through males, as forming a family, though embracing possibly many females, and such original bond of union is regarded as necessary to the constitution of the *gotra* (per Lord Phillimore, *Bhayah Ram Singh* v. *Bhayah Ugar Singh*, 13 Moo. I. A p. 391).

Government. That form of fundamental rules and principles, by which a nation or state is governed; the state, itself. The word is most frequently used to denote the principal executive officer or officers of a state or territory. The word is also used to indicate the art or science of governing.

Government Pleader includes any officer appointed by the Local Government to perform all or any of the functions expressly imposed by the Civ. Pro. Code on the Government Pleader, and also any pleader acting under the directions of the Government Pleader.—*Act V of* 1908 (*Civ. Pro.*) *s.* 2 (7).

Government Security. Government security includes promissory notes, debentures, stock certificates, and all other securities issued by the Government of India, or by any Local Government, in respect of any loan contracted either before or after the passing of this Act, but does not include a stock-note or a currency-note.—*Act XIII of* 1886 (*Indian Securities*), *s.* 3 (1).

Grace. A faculty, license, or dispensation; also general and free pardon by Act of parliament. *See* ACT OF GRACE.

Days of grace. *See* DAY, MATURITY.

Grafter. A scrivener, notary or attorney.

Graffium. A writing-book, register, or cartulary of deeds and evidences.

Grand assize. A peculiar species of trial by jury, introduced in the time of Henry II, giving the tenant or defendant in a writ of right the alternative of a trial by battle, or by his peers.

Grand distress. A more extensive kind of distress than ordinary, extending to all the goods and chattels of the party destrained within the county; it lay in those cases when the tenant or defendant was attached, and appeared not, but made default; and also when the party made default after appearance.

Grand jury. An inquisition composed of not less than twelve, nor more than twenty-three, freeholders of a county, returned by the sheriff to every session of the peace and every commission of oyer and terminer, and of general gaol delivery, whose duty it is on hearing the evidence for the prosecution only in each bill of indictment, to decide whether a sufficient case is made out on which to send the accused for trial by the common jury; their finding of an indictment is only in the nature of an *inquiry* or *accusation*, afterwards to be tried and determined; they only inquire upon their oath whether there be sufficient cause to call upon the party accused to answer it. There is no grand jury in civil cases; but in criminal cases, the charge is first found or thrown out by the grand jury, who return a true bill or no true bill, according to the evidence before them; and then the indictment (when a true bill is found) is brought before the petty jury for their ultimate decision. *See* BILL OF INDICTMENT, INDICTMENT.

Grand larceny. The name formerly given to the offence of stealing goods above the value of twelve pence.

Grand serjeanty. An ancient tenure whereby the tenant was bound, instead of serving the king *generally* in the wars, to do some honorary service to the king in person, as to carry his banner, his sword, or the like; or to be his butler, champion, or other officer at his coronation. It was in most other respects like knight-service.—*Mozley.* *See* PETIT SERJEANTY, SERJEANTY.

Grant (*donatio*; *concessio*). A grant may be defined generally as the transfer of property by an instrument in writing without the delivery of the possession of any subject matter thereof. This may happen (1) where there is no subject-matter capable of delivery, as in the case of an advowson, patent right, or title of honour: (2) where the subject matter is not capable of *immediate* delivery, as in the case of a reversion or remainder; (3) where, by reason of the subject-matter of the property being in the custody of another or for any other cause, it is impracticable or undesirable to transfer the immediate possession. The person making the grant is called the *grantor*, the person to whom it is made the *grantee*. Where the grantor transfers his whole interest in any subject-matter, the grant is generally called an *assignment*. A grant has always been the regular mode of transferring *incorporeal* hereditaments, as an advowson, &c., and estates in expectancy, because no *livery*, that is, physical delivery, could be made of such estates. For this reason they were said to *lie in grant*; while corporeal hereditaments in possession were said to *lie in livery*. But now stat. 8 & 9 Vic. c. 106 provides that all corporeal tenements and hereditaments shall as regards the conveyance of the immediate freehold thereof, be deemed to *lie in grant* as well as *in livery*. So that the method of conveyance by deed of grant is no longer confined to incorporeal hereditaments and future estates. According to Blackstone, a *grant* is distinguished from a *gift* as being made upon some consideration or equivalent, whereas a gift is gratuitous. But the soundness of this distinction is fairly open to question; the word *grant*, in Scotland, is applied especially to gratuitous deeds. The word *grant* is also frequently used in reference to public money devoted by parliament for special purposes.—*Mozley.*

Title by non-existing grant. After a lengthened period of adverse possession or of adverse enjoyment, a title is acquired to real property either under the Statute of Limitations (for corporeal hereditaments) or under the Statute of Prescription (for incorporeal hereditaments). The titles in these cases have no documentary root; but the law assumes such a root, and that the same has been lost through long time; and this fiction of law is the making title by none-existing or lost grant.—*Brown.*

Grantor. Grantee. *See* GRANT.

Grass hearth. The feudal service of turning up the earth with a plough for the lord.

Grasson. Grassum. Fine paid upon the transfer of a copyhold estate. In Scotland, a fine paid for the making or renewing of a lease

Gratuitous deed. A deed made without consideration or equivalent; such as are made without binding (*i. e.*, good and legal) consideration.

Gravamen. The *gravamen* of a charge or accusation is that part of it which weighs most heavily against the accused: the substantial grievance or complaint. The word is applied specially to grievances alleged by the clergy.

Gray's Inn. One of the Inns of Court. *See* INNS OF COURT.

Great cattle. All manner of beasts except sheep and yearlings.

Great Charter. The *Magna Charta.*

Great men. The expression is sometimes understood of the temporal lords in the higher house of parliament, and sometimes of the members of the House of Commons.

Great Seal. A seal by virtue of which a great part of the royal authority is exercised. The office of the Lord Chancellor, or Lord Keeper, is created by the delivery of the Great Seal into his custody. By art. 24 of the union between England and Scotland it was provided that there should be one Great Seal of Great Britain for sealing writs to summon parliaments, for sealing treaties with foreign states, and all public acts of state which concern the United Kingdom.—*Mozley.*

Great tithes. These are generally held to include tithes of corn, hay and wood: as distinguished from *small* tithes. The distinction, however, is not clear.

Green Cloth The counting house of the king's household was so called from the green cloth upon the table at which the lord steward, the treasurer of the king's house, and other inferior officers sat for transacting the business of the royal household.

Green wax. This signified originally the wax in which the seal of the Court of Exchequer was affixed to the estreats (*i. e.*, the extracted and authorized copies) of fines and amerciaments which the sheriff was directed to levy. Hence the expression *green wax* is applied to the estreats themselves.—*Mozley.*

Gretna green marriage. A marriage celebrated at Gretna Green, in Dumfriesshire in Scotland, where, by the law of Scotland a valid marriage could be contracted by consent alone, without any other formality. When the Marriage Act, 26 Geo II, c. 33, rendered the publication of bans (or a license) necessary in England, it became usual for persons who wished to marry clandestinely to go to Gretna Green, the nearest part of Scotland, and marry according to the Scotch law, where the English marriage service was performed by the village blacksmith But now by 19 & 20 Vic. c. 96, s. 1, no marriage contracted in Scotland by declaration, acknowledgment, or ceremony is valid, unless one of the parties had, at the date thereof, his or her usual place of residence there, or had lived in Scotland for twenty one days next preceding such marriage, any law, custom, or usage to the contrary notwithstanding.

Greve. A word of power or authority.

Grievous hurt. *See* HURT.

Grith. Peace.

Grithbreche. Breach of the peace.

Grocers. This meant formerly those merchants who engrossed all merchandise vendible. *See* ENGROSSING. It is now a particular and well-known trade.

Groom of the stole. An officer of the royal household who has charge of the king's wardrobe.

Gross. Absolute; entire; not depending on another. A word indicating independent ownership of incorporeal property.

A thing *in gross* exists in its own right, and not as an appendage to another thing.

A right *in gross* is one which does not belong to the party invested with it *as being the owner or occupier of specifically determined land*, but is annexed to, or inheres in, his person, being quite unconnected with anything corporeal, and existing as a separate subject of transfer; thus we speak of a common *in gross*, an advowson *in gross*, a villein *in gross*, &c.

An easement *in gross* is an easement, as a right of way and the like, enjoyed by an individual or individuals, not as being owners of some adjoining land; such rights are now called *licenses* only and not easements.

Also powers *in gross* are those powers (not being simply collateral) which are not appendant or annexed to any estate.

Bill of gross adventure. A loan on bottomry, that is, on mortgage of a ship. *See* BILL, BOTTOMRY.

Gross negligence. The greatest negligence. Negligence to which every one attaches great blame (*per* Crompton, J., *Beal* v. *The S. D. Rly. Co.*, 3 H. & C. 377). *See* NEGLIGENCE.

Groundage. A custom or tribute paid for the ground on which a ship stands in port.

Ground annual. Ground rent. An estate created in land by a vendor, who, instead of selling his land for a gross sum, reserves an annual rent from the purchaser; it is in the nature of a perpetual rent charge.

Ground annualer. The owner of a rent charge.

Ground rent. A rent payable for land let on a building lease, on which the lessee erects buildings.

Guarantee. Guaranty. This is where a man contracts as surety on behalf of another an obligation to which the latter is also liable as the proper and primary party. *See* CONTRACT OF GUARANTEE. The word *guarantee*, however, is sometimes used to indicate he to whom guaranty is made.

Guarantor. He who makes a guarantee.

Guardage. State of wardship.

Guardian (*custos; guardianus*). Guardian means a person having the care of the person of a minor or of his property, or of both his person and property—*Act VIII of* 1890 (*Guardians and Wards*), *s.* 4 (2) Such minor is called a *ward.* The father of a child, is called its *guardian by nature.*

Guardian for nurture. A father is so called in respect of the guardianship of all his children; and after the father's decease, the mother.

Guardian in Socage is one who has the care of the *estate* as well as the *person* of a minor; this occurs where the legal estate in lands held in socage descends upon a minor. This guardianship endures until the minor attains the age of fourteen years.

Guardian by election is one appointed by an infant having lands in socage, when the guardianship in socage has terminated by the infant attaining the age of fourteen. This guardian is now almost wholly disused.

Guardian in Chivalry. If the heir of an estate held by chivalry or knight-service was under twenty-one, or, being a female, under fourteen, the lord of whom the land was held was entitled to the wardship of the heir, and was called guardian in chivalry.

Testamentary guardian or *guardian by statute* is a guardian appointed by virtue of 12 Car. II, c. 24, passed in 1660, which provides that a father may, by deed or will, dispose of the custody, after his death, of such of his children as should be infants, or should be born posthumously, to any person he pleases.

Judicial guardian or *guardian by appointment of Chancery.* This happens where a father has died without exercising his power of appointing guardians; also where the father's misconduct is such as to make it improper that his children should continue under his control.

Guardian ad litem. A guardian appointed by a court of justice to represent an infant in an action or suit. *See* NEXT FRIEND.

Guardian by custom. A guardian who is such by local custom.

Guardian of the peace. A person entrusted with the keeping of the peace as conservator thereof.

Guardians of the poor. Persons having the management of parish workhouses and unions; they are elected by the owners of property and rate-payers in the parish.

Guardian in tort or *by intrusion* (*tutor alienus*). This is an indirect guardianship, arising from a person intruding into an infant's property; if he receive the profits belonging to the infant, he must account for them in Chancery, being regarded as the infant's trustee.

Guardians are also appointed of lunatics. *See* COMMITTEE.

Gudhaja. (*Hin. L.*) A son born secretly. He belonged to him on whose bed he was born, *i. e.*, the owner of the mother.

Guest takers. *See* AGIST.

Guidage. A guide's fee; that which is given for safe conduct through a strange land or unknown country.

Guild. A company, fraternity or corporation, associated for some commercial purpose. *See* GILD.

Guildhall. The chief hall of a city or borough-town, for holding courts, and for the meeting of the corporation in order to make laws for the regulation of the city or town, and to administer summary justice.—*Wharton.*

Guild-merchant. A mercantile meeting of a guild. *See* GILD-MERCHANT.

Guilt. Sin; wickedness; crime; criminality.

Guilty. Having committed a crime or tort.

Gule of August. The first day of that month.

Gultwit. Guiltwit. Amends for trespass.

Gwabr merched. A payment for fine made to the lords of some manors on the marriage of their tenants' daughters or otherwise on their committing incontinency.

Gwalstow. A place of execution.

H

Habeas Corpus Act. The 31 Car. II, c. 2, passed in 1679, providing the great remedy for the violation of personal liberty by the writ of *habeas corpus*. The Act is at least next in importance, if not indeed as relates to modern times, superior in its beneficial effect, to *Magna Charta*. This Act has been amended and supplemented by 56 Geo. III, c. 100, passed in 1816. The act may be suspended on occasions of public alarm.

Habentia. Riches.

Habit and repute. These terms are understood in the law of Scotland to express whatever is generally understood and believed to have happened. Under that law marriage may be established by habit and repute where the parties cohabit and are at the same time held and reputed as man and wife; the marriage is presumed from co habitation, or the parties living at bed and board, joined to their being "habit," or held and reputed as man and wife.

Hackney carriage. This means any wheeled vehicle drawn by animals and used for the conveyance of passengers, which is kept, or offered, or plies, for hire.—*Act XIV of* 1879 (*Hackney-carriage*), *s.* 2.

Hadbote. A recompense made for the violation of holy orders, or for violence offered to persons in holy orders.

Hadis. (*Meh. L.*) The traditional sayings and doings of Mahomed, having for the most part the force of laws.

Hallwork folk. Holywork folk, *i. e.*, those who formerly held lands by the service of defending or repairing a church or monument.

Halmsucken. The crime of beating or assaulting a person in his own house. *See* HOMESOKEN,

Hajib-nuksan. (*Meh. L.*) A partial exclusion with respect to inheritance, or substitution of one share for another; as in the case of a wife, who, where there are no children, has a fourth share; but where there are any, only an eighth.

Hajr. (*Meh. L.*) Annulment; disqualification; the invalidity of acts done by a minor, an idiot, a slave, or the like

Hakk. (*Ind.*) A just claim, right or due. A just or legal prescriptive right or claim. A perquisite claimable under the established usage by village officers, &c.

Hakkdar. One who possesses a right.

Hakkiat. Haqiat. Rights and interests. This includes all the rights and interests possessed in landed estates by a proprietor in virtue of his proprietorship, *e. g.*, the rights of a zamindar in the cultivated area, the waste land, the pasture grounds, the tanks, the jungles as well as the village site or *abadi* land on which houses whether occupied by himself or by the ryots are situate (*per* Mahmood, J., *Ishri* v. *Thakur Din* 2 All. W. N. 192, 194). Straight, Brodhurst and Tyrrel, JJ., (Stewart, C. J., concurring), however, held that the share (*haqiat*) of the Khewat referred to the cultivated area only (*Ibid.*, p. 193).

Halakat. (*Ind.*) Homicide.

Halbandi. (*Ind.*) Assessment according to the number of ploughs.

Half blood (*di my sangue*). One not born of the same father *and* mother; one born not from the same *couple* of ancestors, but from a *single* ancestor only.

Half-brother. A brother by the father or mother's side only.

Half seal. A seal formerly used in the Chancery for sealing commissions to delegates to hear appeals in ecclesiastical or maritime causes.

Half tongue (*medietate linguæ*). A jury *de medietate linguæ*, of a moiety of tongue, empannelled to try foreigners, of which one half the number was made up of foreigners. Since 33 & 34 Vic. c 14, foreigners are no longer entitled to this privilege.

Half a year. *See* YEAR.

Hali. (*Meh. L.*) A bondsman. One serving as a labourer in payment of a debt, until the debt is discharged.

Hall. A mansion house or habitation. In the county palatine of Chester, almost every gentleman of quality's seat is called a hall. Public meetings of corporations are called common halls.

Hallage. Tolls paid for goods or merchandise vended in a hall.

Hallmote. Halimote. A court among the Saxons answering to the English court baron. The meeting of tenants of one hall or manor. It is sometimes taken for a convention of citizens in their public hall.

Halymote. A holy or ecclesiastical court. Also the same as halimote.

Halywercfolk. *See* HAILWORK FOLK.

Hambling (or hameling) of dogs. The same as expeditation.

Hamesha. *See* HAR-HAMESHA.

Hamesoken. The offence of violently invading a man's house. Bulglary or housebreaking. *See* HOMESOKEN.

Hanafi. (*Meh. L.*) The first of the four Sunni schools, that founded by Abu Hanifa. Most of the Sunnis are of this school.

Hanaper. A treasury, answering to our modern term *exchequer.*

Hanaper-office. An office belonging to the common law jurisdiction of the Court of Chancery, so called because all writs relating to the business of a subject, and their returns, were formerly kept in a hamper (*in hanaperio*).

Hand-brow. A surety or manual pledge; one of the frank pledges inferior to the head borow. *See* HEAD BOROUGH.

Hand-fasting. Betrothment.

Hand-grith. Peace or protection given by the king with his own hand.

Hand habend. A thief caught in the very fact, having the stolen goods in his hand.

Hand-sale. The custom of shaking hands to bind a bargain or contract. A sale made by shaking of hands (*venditio per mutuam manuum complexionem*). In process of time the word was used to singify the price or earnest given immediately after the shaking of hands or instead thereof.—*Mozley.*

Handsel. Earnest money. *See* HAND-SALE.

Hanse. A society of merchants for the good usage and safe passage of merchandise from one kingdom to another.

Hansgrave. The chief of a company; the head man of a corporation.

Hantelode. An arrest.

Harbinger. An officer of the royal household.

Harbouring an offender. Concealing an offender with the intention of preventing him from being apprehended. For punishment for harbouring an offender see Act XLV of 1860 (Penal Code), s. 216.

Harbouring a servant. An action will not lie for the mere harbouring or sheltering a person who is under a contract of service to another, even with notice of such contract of service (*J. Brukowsky* v. *Thacker*, 6 B. L. R., O. C., 107).

Har-hamesha. (*Ind.*) For ever. Always. Words inserted sometimes in a grant to signify one made for perpetuity, for ever and ever. But the use of the words "always" or "for ever" in a grant of an allowance from a proprietor is not inconsistent with restriction of the interest to the life of the grantee. Where the circumstances under which the grant was made were such as to show that the grant was a personal one in favor of the grantee for his life, and was not intended to operate as a grant of a heritable interest, *held* that the grant was only for life, notwithstanding the use of the word "hamesha." (*Asis-un-nissa*

v. *Tasadduq*, 23 All. 324; *Rameshar* v. *Arjun*, 23 All. 194).

Harlot. *See* HERIOT.

Harness. This signifies all warlike instruments. Also the tackle or furniture of a ship.

Haro. Harron (*clamour de haro*). An outcry after felons and malefactors. *See* HUE AND CRY.

Hasp and staple. The form of the entry of an heir into premises situate in a royal borough in Scotland.

Hathchitta. (*Ind.*) A note of hand; a promissory note.

Hat-money. A small duty paid to the captain and mariners of a ship, called *primage*.

Hauthoner (*homo loricatus*). A man armed with a coat of mail.

Have. In devises the term 'have' in such phrases as 'have issue,' 'the lands which I have' mean have at the date of the testator's death.—*Encycl. L. E.*

Hawkers, pedlars and petty chapmen. Persons travelling from town to town with goods and merchandise.

Hay. A hedge or inclosure. A net to take game.

Hay-bote. Hay-bold. Hedge-bote. A liberty to take thorns and other wood to make and repair hedges, gates, fences, &c., either by tenant for life or years; also wood for the making of rakes and forks, with which men make hay.

Hayward. One who keeps a common herd of cattle of a town; and the reason of his being called hayward may be, because one part of his office is to see that they neither break nor crop the hedges of inclosed ground, or because he keeps the grass from hurt and destruction.

Hazard. An unlawful game at dice.

Hazir zamin. (*Ind.*) Surety or bail for the personal attendance of another.

Hazl. (*Meh. L.*) Jesting; applied to a contract publicly executed, as if of full force and validity, but which the parties are secretly engaged shall be of no effect; if afterwards one of them pretend that the transaction was *bona-fide*, the assertion of the other to the contrary annuls the engagement.

Head-brrow. Headborough. The chief of the frank-pledge, tithing, or decennary, appointed to preside over the rest, being supposed the discreetest man in the borough, town, or tithing. The office of headborough was united with that of petty constable, on the institution of the latter office, about the reign of Edward III.—*Mozley.*

Head-pence. Head-silver. An exaction of a certain sum formerly collected by the sheriff of Northumberland from the inhabitants of that county, without any account thereof to be made to the Crown.

Healgemote. A court baron; an ecclesiastical court. *See* HALYMOTE.

Hearing. The trial of a suit or action by a judge; an investigation of a controversy.

Hearsay evidence. Otherwise called *second-hand* evidence. This is when a person makes a statement on the authority of another A statement made by a witness of what has been said or declared out of Court by a person not a party to the suit. Hearsay evidence is, in general, excluded by the law, but may, in certain cases, be admitted as in questions of pedigree, custom, dying declarations, and those made against the interest of the declarant. See Act I of 1872 (Evi.), s. 32. The exclusion of hearsay evidence is founded on the general principle in the law of evidence that if any fact is to be proved against any one, it ought to be proved in his presence by the testimony of a witness sworn to speak the truth; and the reason of the rule is, that the person who is to be affected by the evidence ought to have an opportunity of interrogating the witness as to his means of knowledge, and concerning all the particulars of his statement.

Hearth-money. A tax whereby a hereditary revenue of 2s. for every hearth in all houses paying the church and poor rates, was granted to the king. Now abolished. *See* CHIMNEY-MONEY.

Hedagium. Toll or customary duties paid at a wharf for landing goods, &c., exemption from which was granted by the king to some particular persons and societies.—*Tomlins.*

Hedge bote. *See* HAY-BOTE.

Hedge-priest. A vagabond priest

Heir (*hæres*). Heir, in the common law, is he that succeeds by right of blood to any man's lands and tenements in fee; that is, he upon whom, by right of blood, the law casts the real estate of a deceased person intestate. In Roman law it signified the universal successor to a deceased person, appointed either by testament or by the law, both as to moveable and immoveable estate; but in the English law, the word is inapplicable to personal estate.—*Mozley.* It is a rule in law, that no one is the heir of a living person (*nemo est hæres viventis*); the heir is called into existence by the death of his ancestor, for no man, in his life time, can have an heir.

Heirs. A term used in conveyances of estates in which it is intended that the fee simple should pass; thus a conveyance to "A and his heirs" gives A an estate in fee simple. The word as thus used is called a word of *limitation* and not of *purchase*, because the heirs of A take nothing *directly* under the grant, but the word is used to *limit* or *mark out* the estate taken by A. Similarly "heirs of the body" is a phrase importing a grant of an estate tail. "Heirs male of the body" imports a grant of an estate in tail male.—*Mozley.* *See* LAWFUL HEIRS, LIMITATION, PURCHASE, RULE IN SHELLEY'S CASE.

Heir apparent. He whose right of inheritance is indefeasible, provided he outlive the

ancestor; he who, if he survive the ancestor, must certainly be his heir; as the eldest son in the lifetime of his father.

Heir presumptive He who, if the ancestor die immediately, would be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born, as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child; or a daughter whose present hopes may be hereafter cut off by the birth of a son.

Heir general or *heir at law.* He who after his father's or ancestor's death has a right to inherit all his lands, tenements and hereditaments, according to the disposition of the law; called in Scotch law, the *heir of line.*

Heir by custom. He who is heir by a particular and local custom, as in borough English lands, the youngest son succeeds his father, while in gavelkind lands, all the sons inherit as parceners, and make but one heir.

Heir by devise (*hæres factus*). He who is made, by will, the testator's heir or devisee, and has no other right or interest than the will gives him.

Heir in tail. The person selected by law to succeed to the estate tail of an ancestor dying intestate.

Heir special A person who is not the heir at common law; *e. g.*, heir by the custom of gavelkind, borough-English, or heir-in-tail.

Heir by destination or *heir of provision.* (*Sc. L.*) One who succeeds another under the express provisions of a deed of grant.

Heir by conquest. (*Sc. L.*) He who succeeds to the deceased in lands and other heritable rights, to which the deceased did not himself succeed as heir to his predecessors; as when a father leaves an estate purchased to his second son.

Heir active. (*Sc. L.*) He who is served heir and has the right of action. *See* SERVICE OF AN HEIR.

Heir passive. (*Sc. L.*) He whom the law makes liable to be heir.

Heir portioners. (*Sc. L.*) This is when women succeed; in that case they have all equal portions.

Right heirs. The expression "may own right heir" or "right heirs" mean, according to the law of England, the heir or heirs of the testator at Common Law (*per* Fry, J., *Re Garland*, 47 L. J. Ch. 714; Ch. D. 213); who, if more than one—*e. g.*, females—take as joint tenants (*Berens v. Fellowes*, 56 L. T. 291; 35 W. R. 356; 3 Times Rep. 425).

Heirdom. Succession by inheritance.

Heiress. A female heir.

Heirloom. This strictly means a *limb* or member of the inheritance. Heirlooms are such goods and personal chattels as shall go by special custom to the heir along with the inheritance and not to the executor or administrator. They are properly ancient portraits of former owners, coats of arms, paintings, and such like, and are to be distinguished from another class of personal chattels, often but improperly called heirlooms, and which are by express words annexed to the inheritance to go along with it, and which are usually (but not necessarily) fixed to the inheritance in such a manner as does not admit of their severance from it without damaging the inheritance; they are in general said to extend to all large household implements not easily moved, and in a more general signification they comprehend all implements of household, as tables, presses, cupboards, bedsteads, wainscot, and such like, which, by the custom of some countries, have belonged to a house during certain descents. *See* HEIRSHIP MOVEABLES.

Heirship moveables. (*Sc. L.*) The moveables which the law withholds from the executor, or next of kin, and gives to heir, that he may not succeed to a house and land completely dismantled. They consist of the best of every thing, meaning furniture, horses cows, oxen, farming utensils, &c., but not including fungibles.—*Tomlins.*

Henchman. One who runs on foot, attending upon a person of honour or worship; a page; a herald.

Henfare. A fine for flight on account of murder.

Henghen. A prison; a gaol; a house of correction.

Herald. An officer who registers genealogies, adjusts ensigns armorial, regulates funerals, and carries messages between princes, and proclaims war and peace.

Herald's College. An ancient royal corporation, established in 1483, which is empowered to make grants of arms and to permit changes of names.

Herbage (*herbagium*). The green pasture and fruit of the earth, provided by nature for the bite or food of cattle; also a liberty that a person has to feed his cattle in the ground of another person, or in the forest, &c.

Herbenger. Harbinger. An officer in the king's house, who goes before and allots the noblemen, and those of the household, their lodgings. An innkeeper.

Herdewich. Herdewic. A grange or place for cattle or husbandry.

Herebannum. A mulct for not going armed into the field, when called upon.

Herebote. The king's edict commanding his subjects into the field.

Hereditaments. Every kind of property that can be inherited, *i. e.*, all such immoveable things, whether corporeal or incorporeal, which a man may have to him and his heirs by way of inheritance, and which, if they are not otherwise devised, descend to him that is next heir, and fall not to the executor as chattels do. It is a word of very great extent comprehending whatever may be inherited or come to the heir, be it real, personal or mixed, and though it is not holden, or lies not in

tenure. By the grant of hereditaments in conveyances, manors, houses, and land of all sorts, rents, services advowsons, &c., pass. —*Tomlins.*

Hereditaments are *corporeal* and *incorporeal. Corporeal* consist of such as affect the senses; such as may be seen and handled by the body; in fact, they mean the same thing as land. *Incorporeal* are not the object of sensation, can neither be seen nor handled, are creatures of the mind, and exist only in contemplation; such as rights and profits annexed to, issuing out of, concerning, or exercisable with, land; they are not the things corporate themselves, but something collateral thereto.

Hereditary Office. Hereditary Office means every office held heditarily for the performance of duties connected with the administration or collection of the public revenue, or with the village police, or with the settlement of boundaries, or other matters of civil administration; the expression includes such office even where the services originally appertaining to it have ceased to be demanded.—*Bom. Act III of* 1874 (*Hereditary Offices*), *s.* 4.

Herefare. A military expedition.

Heregeld. A tribute or tax levied for the maintenance of any army.

Herein Hereinafter. A direction in a will that the legacy duties on the legacies '*herein*' given shall be paid out of the estate, does not extent to legacies given by codicil, even though the codicil is directed to be taken as part of the will (*Early* v. *Benbow*, 2 Coll. 355). *Secus*, where legacies generally are given duty free (*Byne* v. *Currey*, 3 L. J. Ex. 177; 2 Cr. & M. 603). Where a testator by his will charges his lands with the payment of the legacies '*hereinafter*' bequeathed, the charge does not extend to legacies bequeathed by a codicil (*Edmunds* v. *Low*, 26 L. J. Ch. 432; 3 K. & J. 318).—*Stroud.*

Heresy. An offence which consists not in a total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. What in old times used to be adjudged heresy was left to the determination of the ecclesiastical judge; and *heretics* were defined as teachers of erroneous opinions, contrary to the faith and blessed determinations of the holy church.—*Mozley.*

Heretic. *See* HERESY.

Heriot. The best beast or other chattel of a tenant, seized on his death by the lord. The heriot of a military tenant was his arms and habiliments of war, which belonged to the lord for the purpose of equipping his successor. Heriots from freeholders are rare, but heriots from copyholders remain to this day, in many manors, a badge of the ancient servility of the tenure. But the right of the lord, in this as in other respects, is controlled by the custom of the manor. In some cases the heriot consists merely of a money-payment.—*Mozley.*

Heriot sevice is an express reservation by the lord in an original grant of freehold, and consists of the right to the best beast of a tenant dying seised of an estate of inheritance.

Heriot suit is the right to some chattles (not only a beast) of a deceased tenant, reserved in a modern grant or lease of freehold.

Herischild. Military service, or knight's fee.

Heritable and moveable rights. (*Sc. L.*) These correspond substantially to real and personal rights in the law of England. Thus, all rights to land, or connected with land, as mills, fishings, teinds, are *heritable.* And whatever moves itself or can be moved, and is not united to land, is *moveable.* These are the general rules, but subject to exceptions and modifications. The distinction is drawn more from the rights of the heir and executor, than from the nature of the things themselves. The distinction, in the law of England, is between real and personal property; real property answering nearly to the *heritable* rights in Scotland, and personal property to the *moveable* rights.

Heritable bond. (*Sc. L.*) A bond for a sum of money to which is joined, for the creditor's further security, a conveyance of land or of heritage, to be held by the creditor as security for the debt.

Heritable jurisdictions. Grants of criminal jurisdiction bestowed on great families in Scotland with a view to the more easy and expeditious administration of justice. Now abolished.

Heritage. This, in the law of Scotland, as a title to land, corresponds with what is termed *descent* in the law of England; and is opposed to *conquest*, corresponding to purchase, *perquisitio.* The practical distinction between heritage and conquest is now abolished. It also signifies an estate of inheritance.

Heritor. A landholder in a Scotch parish.

Hermaphrodite (*hermaphroditus*). A person that is both man and woman. It is said that as hermaphrodites partake of both sexes, they may give or grant lands or inherit as heirs to any, and shall take according to the prevailing sex.—*Tomlins.*

Hermeneutics. The art of interpretation and construction.

Herring-silver. A composition in money for the custom of supplying herrings for the provision of a religious house.

Hership. (*Sc. L.*) The crime of carrying of cattle by force; it is described as "the masterful driving off of cattle from a proprietor's grounds."

Heuvelborgh. Half-debtor, *i. e.*, a surety for debt.

Heybote. *See* HAYBOTE.

Hiba. Hibat. (*Meh. L.*) A gift.

A gift is defined to be the conferring of property without a consideration. Acceptance and seizin on the part of the donee, are as necessary as relinquishment on the part of the donor. The subject of the gift must be actually in existence at the time of the donation. A *Hiba* or gift is fixed by the *Ijab-i-Kabul* or "acceptance of the verbal gift," and a *Hibanamah* in which the *Ijab* or "verbal offer" alone is written, not the acknowledgment or *Kabul*, and which is not followed by possession, is invalid and cannot be executed.—*MacN. Meh Law.*

Besides the ordinary species of gift, the law enumerates two contracts under the head of gifts, which, however, more nearly resemble exchange or sale. They are technically termed *Hiba bil Iwuz*, mutual gift, or gift for a consideration, and *Hiba ba shurt ool Iwuz*, gift on stipulation, or on promise of a consideration. *Hiba bil Iwuz* is said to resemble a sale in all its properties; the same conditions attach to it, and the mutual seizin of the donee is not, in all cases, necessary. *Hiba ba shurt ool Iwuz*, on the other hand, is said to resemble a sale in the first stage only; that is, before the consideration for which the gift is made has been received, and the seizin of the donor and donee is, therefore, a requisite condition.—*Ibid.*

Hiba-bil-Iwuz or gift for consideration resembles but does not correspond exactly in all its conditions, incidents and consequences, with a sale. A sale pre-supposes some proportion between the consideration paid and the thing received, in *hiba-bil Iwuz* the consideration is utterly inadequate (*Moosa* v. *Ismail*, 12 Bom. L. R. 169).

The fundamental conception of *hiba-bil-iwuz* or a gift for an exchange, as understood in the Mehomedan law, is that it is a transaction made up of two separate acts of donation *i. e.*, of mutual or reciprocal gifts of specific property between two persons, each of whom is alternately donor and donee. It does not include the case of a gift in consideration only of natural love and affection or of services or favours rendered (*Rahim Bakhsh* v. *Muhammad Hasan*, 8 All. W. N. 266).

A sued B on the allegation that in consideration of her promising to marry B's relative C and to reside in his house, B promised to give her a one-third share of a joint and undivided estate called *mauza X*; that he executed a deed of gift in her favour, and the plaintiff married C accordingly, but that afterwards the defendant made a gift of the property to another person. She now sued for possession of the property. *Held*, that the gift was of the nature called *hiba-ba-shart-ul-iwuz*, and being not accompanied with possession was vitiated, which is not the case in cases of *hiba-bil-iwuz* (*Tulsa Begum* v. *Wazirullah*, 4 All. W. N. 66).

See TUMLEEK.

Hiba-bil-musha. Gift of an undivided joint property. *See* MUSHA.

Hibanamah. A deed of gift.

Hidage (*hidagium*). An extraordinary tax formerly payable to the king for every hide of land. The tax was levied, not only in money, but provision of armour, &c.

Hide and gain. Arable land.

Hide of land. Such quantity of land as might be ploughed with one plough in a year, or as much as would maintain a family or mansion house. It is supposed to be sixty, eighty, a hundred, or even a hundred and twenty acres, according to local usage.

Hidgild. Hidegild. A sum of money paid by a villein or servant to save himself from the punishment of whipping.

Hierloom. *See* HEIRLOOM.

High Commission Court. A court of ecclesiastical jurisdiction established by 1 Eliz. c. 1, passed in 1558-9. It was instituted to vindicate the peace of the church, by reforming and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts and enormities. Abolished in 1641 by 16 Car. I, c. 11.

High Court of Justice. By the Judicature Act, 1873 (36 & 37 Vic. c. 66) the former superior courts of Law and Equity have been abolished, and in their place has been established a Supreme Court of Judicature, consisting of the Court of Appeal and the High Court of Justice. The latter contains three *divisions*. *See* DIVISIONS OF THE HIGH COURT, SUPREME COURT OF JUDICATURE.

High misdemeanours. *See* MISPRISON.

High seas. The part of the sea which is more than three miles distant from the coast of a country; within three miles territorial jurisdiction extends, but no farther.

An offence committed on the high seas, but *within* three miles from the coast of British India, as being committed within the territorial limits of British India, is punishable under the provisions of the Penal Code. The ordinary criminal courts of the country have jurisdiction over such offences by virtue of the stat. 12 & 13 Vic. c. 96, ss. 2 and 3, extended to India by stat. 23 & 24 Vic. c. 88. *Semble.*—The Governor General of India in Council has no power to legislate for offences committed on the high seas outside the territorial limits of British India, though he has power to legislate, in respect of offences committed on the high seas, within three miles of its coasts.—*Reg.* v. *Kastya Rama* (8 Bom. H. C., Cr. Ca., 63).

High Steward. An expression used—(1) Of the Lord High Steward, who holds a Court appointed, *pro hac vice*, during the recess of parliament for the trial of a peer indicted for treason or felony, or of misprison of either, but not for any other offence; (2) Of the Lord High Steward of the Royal Household; (3) Of the Lord High Steward of the University

of Oxford or Cambridge, an officer of the University appointed to preside at the trial of any scholar or privileged person of the University on any indictment for treason or felony.—*Mozley.*

High treason. *See* TREASON.

High water mark. That part of the seashore to which the waters ordinarily reach when the tide is highest.

Highway. Highways. Public ways, either on land or water, which every subject of the kingdom has a right to use, They exist either by prescription, by authority of local Acts of Parliament, or by dedication to the use of the public on the part of individuals. A highway may exist in a place which is not a thoroughfare. *See* WAY.

A highway is a way along which the public generally has a right to pass. If the public has a right to pass on foot only, the way is a public *foot path*; if the public has a right to ride or lead a horse along the way, it is a *bridle-path*; if the public has a right to drive cattle along the way, it is a *driftway*; if the public has a right to drive in carts or carriages along the way, it is a *high road.*—*Encycl. L. E.*

Highway rate. A tax for the maintenance and repair of high roads.

Once a highway always a highway. This maxim is founded on the notion that the public cannot release their rights and that there cannot be extinctive presumption or prescription (*S. Sundaram Ayyar* v. *Municipal Council of Madura*, 12 M. L. J. R. 37; 25 Mad. 635).

Higler. A person who carries from door to door, and sells by retail, small articles of provision, &c.

Hine. Hind. A servant, or one of the family; but more properly a servant at husbandry; he that oversees the rest is called the *master hine.*—*Tomlins.*

Hinefare. The loss or departure of a servant from his master.

Hinegeld. A ransom for an offence committed by a servant. *See* HIDGILD,

Hirciscunda. The division of an inheritance among the heirs.

Hireman. A subject.

Hiring. Hiring is a bailment for a reward or compensation. Hiring differs from borrowing only in this, that hiring is always for a price, stipend, or additional recompense; whereas borrowing is merely gratuitous. They are both contracts whereby the possession of goods, with a transient property therein, is transferred for a particular time or use, on condition to restore the goods so hired or borrowed as soon as the time is expired or use performed. *See* BAILMENT.

Hissa. (*Ind.*) A lot or portion; a share of revenue of rent.

Hissadar. (*Ind.*) A partner; a co-owner; one entitled to a share; a co-sharer.

Hissadar ek jaddi. A co-owner descended from a common ancestor through the male line (*Chhatar* v. *Kalyan*, 23 All. 32).

Hissadar patti. Co-sharers in a particular *khatta* or *patti.*

Hissadaram shikmi. These words do not necessarily imply any idea of subordination, but are rightly considered applicable to persons who are co-sharers in the particular *khatta* or *patti* in which the land in question is situated (*Abdul* v. *Mendal*, 23 All. 260).

Hissahnamah. (*Ind.*) A deed of partition.

History-ticket. The ticket exhibiting such information as is required in respect of each prisoner by the Prisoners Act or the rules thereunder.—*Act IX of* 1894 (*Prisons*), s. 3 (6).

Hiyazat. (*Meh. L.*) Accumulation; in law, joint acquisition by two or more persons of some article that has no owner.

Hloth. Hlothe. An unlawful company.

Hlothbote. A mulct set on him who is in a riot, or who commits homicide in a riot.

Hogenhine. *See* AGENHINE.

Hold. To have as tenant, as to hold a tenement. To declare a legal opinion, as the holding of a court or judge; in strictness, a court "holds," and a single judge "rules."

The expression 'inclined to hold' is not sufficient in law to constitute a finding (*Manshab Ali* v. *Govind Ram*, 9 Cal. W. N. p. *cclv*, notes).

Holder. The holder of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof, and to receive or recover the amount due thereon from the parties thereto. When the note, bill, or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 8.

Holder in due course. Holder in due course means any person who for consideration became the possessor of a promissory note, bill of exchange, or cheque, if payable to bearer, or the payee or indorsee thereof, if payable to, or to the order of, a payee, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.—*Ibid.*, *s.* 9.

Holder. Landholder. Under the Bom. Land Revenue Code (Bom. Act V of 1879), s. 3 (11), 'holder' or 'landholder' signifies the person in whom a right to hold land is vested, whether solely on his own account, or wholly or partly in trust for another person, or for a class of persons, or for the public. It includes a mortgagee vested with a right to possession; and

Holding signifies land over which such right extends.—*Ibid.*, *s.* 3 (12).

Superior holder signifies a holder entitled to receive from other holders rent or land-revenue on account of lands held by them, whether he be accountable or not for the

same, or any part thereof, to the Government.—*Ibid.*, s. 3 (13).

Inferior holder signifies a holder liable to pay the rent or land-revenue to a superior holder, whether on account of such superior holder or Government.—*Ibid.*, s. 3 (14).

Holding. A farm. The tenure or nature of the right given by the superior to the vassal. A parcel or parcels of land held by a raiyat, and forming the subject of a separate tenancy.—*Act VIII of* 1885 (*Bengal Tenancy*), s. 3 (9).

Holding over. This is where a man, having come into possession of land under a lawful title, continues possession after the title has expired; as if a man takes a lease for a year, and after the year is expired continues to hold the premises without any fresh lease from the owner of the estate. This is called holding over a term.

The expression 'holding over' means that the relation of landlord and tenant continued with the assent of both parties, and the overt acts by which the relation might be continued, are either the receipt of rent by the landlord, or his assenting to the continuance of the tenancy by other acts or words (*Ratan Lal* v. *Farshi Bibi*, 34 Cal. 396; 11 Cal. W. N. 826). *See* SUFFERANCE.

Holding pleas. Assuming jurisdiction over matters in dispute.

Holding up hand. A prisoner brought to the bar on a charge of treason or felony should regularly be called upon to hold up his hand. It is not, however, an indispensable ceremony, for as it is calculated merely for the purpose of identifying the person, any acknowledgment will answer the purpose as well.—*Mozley.*

Holograph A deed or writing, written entirely by the grantor himself; which on account of the difficulty with which the forgery of such a document can be accomplished, is held by the Scotch law valid without witnesses. So a holograph will is a will written in the testator's own hand.

Holy orders. These are the orders of bishops (including archbishops), priests and deacons.

Homage (*homagium*). The most honorable service of reverence that a free tenant might do to his lord. A ceremony performed by a vassal or tenant upon investure, in which, openly and humbly kneeling, being ungirt, uncovered, and holding up his hands both together between those of his lord, who sat before him, he said thus—"I become your *man* from this day forward, of life and limb, and earthly honour, and to you will be faithful and loyal, and bear you faith, for the tenements that I claim to hold of you (saving the faith that I owe to our sovereign lord the king): so help me God." The lord then kissed him. Homage could only be done to the lord himself, but fealty might to his steward or bailiff. *See* FEALTY. *Homage* also signifies the tenants of a manor present at the lord's court, and a jury consisting of such tenants is called a *homage jury*. When sovereign princes did homage to each other, for land held under their respective sovereignties, a distinction was always made between *simple* homage, which was only an acknowledgment of tenure, and *liege* homage, which included fealty and the services consequent on it.—*Mozley.*

Homage ancestral. Where a tenant holds lands of his lord by homage; and the same tenant and his ancestors have holden the same land of the same lord and of his ancestors immemorially, and have done to them homage.

Homager. One that does or is bound to do homage to another.

Home office. The department of State through which the sovereign administers most of the internal affairs of the kingdom, especially the police and communications with the judicial functionaries.—*Wharton.*

Homesoken. Haimsecken. Hamsecken. This is defined variously as follows:—(1) The privilege or freedom which every man has in his house. (2) The invasion of such freedom by housebreaking or burglary; (3) The immunity from amerciament for entering into houses violently and without license; (4) A power granted by the king to some person for the punishment of the offence of housebreaking. In Scotch law it is defined to be the crime of beating or assaulting a person in his own house.

Homicidal monomania. An irresistible mania for committing homicide. The presumption is that a person charged with murder or other crime is responsible for his action and the burden of proving the mania lies upon the accused.

Homicide. The killing of a human being. It is divided by *Cowel* into *voluntarily* and *causal*, according as the killing is deliberate or not. It is usually, however, divided into three kinds.—*justifiable*, *excusable* and *felonious*

Justifiable homicide is of divers kinds—(1) The putting a man to death pursuant to a legal sentence; (2) The killing, by an officer of justice, of a person who assaults or resists him and cannot otherwise be taken; (3) The killing of persons for the dispersion of riots or rebellious assemblies, or the prevention of atrocious crimes, such as murder and rape.

Excusable homicide is of two sorts—(1) *Per infortunium*, by misadventure, as where a man doing a lawful act, without any intention of hurt, by accident kills another; (2) *Se defendendo*, in self defence, as where a man kills another upon a sudden encounter in his own defence, or in defence of his wife, child, parent or servant, and not from any vindictive feeling.

Felonious homicide is of two kinds—(1) Killing one's self; (2) Killing another; which

latter class is again divided into (*a*) murder and (*b*) manslaughter. Manslaughter is either *voluntary*, where a man doing an unlawful act, not amounting to felony, by accident kills another; or *involuntary*, where, upon a sudden quarrel, two persons fight, and one of them kills the other; or where a man greatly provokes another by some personal violence, &c., and the other immediately kills him. *See* MANSLAUGHTER, MURDER.

Homines. Feudatory tenants who claimed a privilege of having their causes and persons tried only in the court of their lords.

Homiplagium. The maiming of a man.

Homologation. (Sc. *L.*) The express or implied ratification of an act that formerly was null or voidable, or in some way defective. The ratification of a deed by a person upon whom it would not otherwise be binding.

Hond-habend. Manifest theft; also the right which a lord had of determining the offence in his court. *See* HAND-HABEND.

Honor. The word is, besides the general signification, used especially for the more noble sort of *seigniories*, on which other inferior lordships or manors depend, by performance of some customs or services to those who are lords of them; a seigniory of several manors held under one baron or lord paramount; also those dignities or privileges, degrees of nobility, knighthood, and other titles, which flow from the Crown, the fountain of honour, though it seems that originally none wore *honours* but such as belonged to the king. It also means the land or district included therein. *See* HONOUR.

Honor Courts. Those held in the honor or seigniory.

Honoray canons. Those without emoluments.

Honorary feuds. Titles of nobility, which were not of a divisible nature, but could be inherited only by the eldest son, in exclusion of all the rest.

Honorary services. Those incident to grand serjeanty, and commonly annexed to some honour; services without emolument.

Honorary trustees. Trustees to preserve contingent remainders, so called because they are bound, in honour only, to decide on the most proper and prudential course.

Honour. To *honour* a bill of exchange or cheque (when said of a drawee), means to pay it; a bill is *honoured* by the acceptor when he accepts it. *See* ACCEPTANCE OF A BILL OF EXCHANGE.

Hontfongenethef. Honfangenethef. A thief taken with *hond-habend*, *i. e.*, having the thing stolen in his hand.

Hookum. (*Ind.*) An order or command.

Hookum-namah. A written order; a decree of court; standing rules for the details of land revenue assessment issued by Collectors.

Hoozoor. (*Ind.*) Presence; the chief office of the district; head station.

Hoozoori. Relating to the presence, or chief station or authority.

Hordera. A treasure.

Horderium. A hoard; a treasury; a repository.

Hornagium. Horngeld. Hornegeld. A forest tax paid for horned beasts. Also an exemption from the tax.

Horning, letters of. Warrants for charging persons in Scotland to pay or perform certain debts or duties; so called because they were originally proclaimed by horn or trumpet.

Horn with horn. Horn under horn. The promiscuous feeding of bulls and cows, or all horned beasts, that are allowed to run together upon the same common; the commoning of cattle horn with horn was properly when the inhabitants of several parishes let their common herds run upon the same open spacious common, that lay within the bounds of several parishes.

Horstilers. Innkeepers. The word *host lers* was also used in the same sense, though it now means he who looks to the guest's horses in the stable of an inn.

Hors-weard. A service consisting in watching the horses of the lord.

Hospitallers (*hospitalarii*). The knights of a religious order, so called because they built an hospital at Jerusalem, wherein pilgrims were received.

Hospitals. Eleemosynary corporations. Stat. 39 Eliz. c. 5 enables any person or corporation to found hospitals for the poor, and also to incorporate them, prior to the statute, hospitals could only be founded by royal license or letters patent. They are either *aggregate*, in which the master or warden and his brethren have the estate of inheritance, or *close*, in which the master, &c., only has the estate in him, and the brethren or sisters, having college and common seal in them, must consent, or the master alone has the estate, not having college or common seal.

Hospitium. Otherwise called *hostagium*; procuration or visitation-money.

Hosteler. Hostler (*hostellarius*). An innkeeper. *See* HORSTILERS.

Hostellagium. A right to have lodging and entertainment, reserved by lords in the houses of their tenants.

Hostels. The Inns of Court.

Hostile witness. A witness who so conducts himself under examination in chief that the party who has called him is allowed to cross-examine him and to treat him as though he had been called by the opposite party. See Act I of 1872 (Evi.), ss. 154-5.

The mere fact that at a sessions trial a witness tells a different story from that told by him before the Magistrate does not neces-

sarily make him hostile. The proper inference to be drawn from contradictions going to the whole texture of the story is, not that the witness is hostile to this side or to that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence (*Kalachand* v. *Queen-Empress*, 13 Cal. 53).

Hotchpot. This literally signifies a pudding mixed with divers ingredients; but, by a metaphor, it signifies a commixture or putting together of lands of several tenures, for the equal division of them. A blending or mixing of lands and chattels, answering in some respects the *collatio bonorum* of the civil law. A clause usually inserted in settlements or wills where property is given to members of a class, *e. g.*, children, in order to prevent those who have already received a share of the fund by way of advancement or portion, from taking any part of the undistributed fund, unless they *bring into hotchpot*, *i. e.*, take into account, what they have already received. The effect of this is that they take no further share until every member of the class has had the same.

Housage. A fee paid for housing goods by a carrier, or at a wharf, &c.

Housebote. Housebold. Estovers, or an allowance of necessary timber out of the lord's wood for the repairing or support of a house. This belongs, of common right, to a lessee for years or for life. *See* BOTE.

House-breaking. A person is said to commit house-breaking who commits house-trespass, if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—(1) If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass. (2) If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building (3) If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened. (4) If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass. (5) If he effects his enterance or departure by using criminal force or committing an assault, or by threatening any person with assault. (6) If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by any abettor of the house-trespass. Any outhouse or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.—*Act XLV of* 1860 (*Penal Code*), *s.* 445. *See* HOUSE-TRESPASS.

House-breaking by night. Whoever commits house breaking after sunset and before sunrise is said to commit house-breaking by night.—*Ibid.*, *s.* 446.

Housebreaking differs from burglary in that burglary is committed by night.

House duty. A tax on houses.

House-holder (*paterfamilias*). An occupier of a house, a master of a family.

House of Commons. The lower house of parliament, consisting of the representatives of the nation at large, *i. e.*, knights of shires, or representatives of counties; citizens, or the representatives of cities; and burgesses, or the representatives of boroughs; exclusive of the peerage.

House of correction. A species of prison originally designed for the penal confinement, after conviction, of paupers refusing to work, and other persons falling under the legal description of vagrants, *e. g.*, idle and disorderly persons, parents of bastard children, beggars, servants running away, trespassers, rogues, &c.

House of Keys. *See* KEYS.

House of Lords. The upper house of the legislature consisting of the lords spiritual and temporal. The lords spiritual consist of the archbishops of Canterbury and York, of the bishops of London, Durham and Winchester, and of twenty one other bishops. The lords temporal consist of dukes, marquesses, earls, viscounts, and barons.

House-tax. A tax on houses.

House-trespass. Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit house-trespass. The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.—*Act XLV of* 1860 (*Penal Code*), *s.* 442. *See* CRIMINAL TRESPASS.

Lurking house-trespass. Whoever commits house trespass, having taken precaution to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit lurking house-trespass.—*Ibid.*, *s.* 443.

Lurking house trespass by night. Whoever commits lurking house-trespass after sunset and before sunrise is said to commit lurking house-trespass by night.—*Ibid.*, *s.* 444.

Hudegeld. *See* HIDGILD.

Hue and cry (*hutesium et clamor*). The old common law process of pursuing, with horn and voice, all felons and such as have dangerously wounded another. It is said that *hue* is the complaint of the party robbed or of any in the company of one robbed or murdered, and that *cry* is the pursuit of the felon upon the highway upon that complaint.—*Mozley*,

Hukm. *See* HOOKUM.

Hundi. (*Ind.*) A bill of exchange.

Hundred. A sub-division of a county or shire, so called because at first it contained ten tithings composed each of ten families; or else because the king found therein a hundred able men for his wars. The hundred was originally governed by a high constable or bailiff, and formerly there was regularly held in it the hundred court for the trial of causes, though now fallen into disuse.—*Mozley*.

Hundred Court. A larger Court Baron, being held for all inhabitants of a particular hundred instead of a manor. The free suitors were here also the judges, and the steward the registrar, as in the case of the Court Baron. It was not a court of record; it resembled a Court Baron in all points except that in point of territory it was of a greater jurisdiction.

Hundred-lagh. Hundred-law. A hundred court.

Hundred-penny. The *hundredfeh*, or tax collected by the sheriff or lord of a hundred, for the expenses of his office.

Hundred-setena. Dwellers or inhabitants of a hundred.

Hundredes earldor. Hundredes man. The presiding officer in the hundred court.

Hundredors. Men of a hundred; persons serving on juries or fit to be impannelled thereon for trials, dwelling within the hundred where the land in question lies.

Hurbees. (*Meh. L.*) Infidels, fighting against the faith.—*MacN. Meh. Law.*

Hurt. Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.—*Act XLV of* 1860 (*Penal Code*), s. 319.

Grievous hurt. The following kinds of hurt only are designated as 'grievous':—(1) Emasculation. (2) Permanent privation of the sight of either eye. (3) Permanent privation of the hearing of either ear. (4) Privation of any member or joint. (5) Destruction or permanent impairing of the powers of any member or joint. (6) Permanent disfiguration of the head or face. (7) Fracture or dislocation of a bone or tooth. (8) Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.—*Ibid. s.* 320.

Voluntarily causing hurt. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said 'voluntarily to cause hurt.'—*Ibid. s.* 321.

Voluntarily causing grievous hurt. Who ever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grevous hurt, and if the hurt which he causes is grievous hurt, is said 'voluntarily to cause grievous hurt.' A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.—*Ibid. s.* 322.

Civil liability for bodily injury. To the constitution of a right of action for a bodily injury, whether direct or consequential, it is material to observe that the existence of an evil intention in the mind of the wrong-doer is not essential. Though a man doth a lawful thing, yet if any damage done thereby befall another, he shall answer it, *if he could have avoided it*. And again, trespass may sometimes lie for the consequences of a lawful act, thus if a man assult me and I lift up my staff to defend myself, and in lifting up (undesignedly) hit another, an action lies by that person; and yet I did a lawful thing in endeavouring to defend myself. The case of *Weaver* v. *Ward* (Hobart, 134), moreover, clearly shows that trespass will lie for a mere mischance—for an act done by the defendent —the accident not having been inevitable nor occasioned by the plaintiff's negligence. Perhaps, however, the most convincing proof which can be given that our law will not excuse a person charged *ex delicto* by reason of the absence from his mind of any wrongful or malicious motive is this, that even a lunatic, and much more a drunken person, will be civilly answerable for his torts, although wholly incapable of design—a doctrine flowing from the general principle already intimated, that, whenever one person receives an injury or bodily hurt directly from the voluntarily act of another, that is a trespass, although there were no design to injure. So, to an action brought for bodily injuiry, caused by negligence or want of skill, the mere absence of a design to injure will not furnish ground of defence.—*Broom's Com. Law.*—*Collet on Torts.*

Hurum. The word, in the Mehomedan Law, signifies, according to some authorities, a married woman, yet according to the popular acceptation, it is usually meant to denote slave girls and the like, who are taken under the protection of a man, and kept secluded, whether married or not.—*MacN. Meh. Law.* A concubine. The woman's apartment.

Husband of a ship. *See* SHIP'S HUSBAND.

Husgable. House rent or tax.

Hush-money. A bribe to hinder information ; pay to secure silence.

Hustings. A *house* of *things* or causes, from *hus*, house, and *thing*, cause. A council, court, tribunal ; apparently so called from being held within a building at a time when other courts were held in the open air. It was a local court. *See* COURT OF HUSTINGS.

Huzl. (*Meh. L.*) *See* BAY TALJIAH.

Hyde of land. *See* HIDE OF LAND.

Hypothec. (*Sc. L.*) A security established by law in favour of a creditor over the property of his debtor ; the landslord's right which, independently of any stipulation, he has over the crop and stocking of his tenant. It gives a security to the landlord over the crop of each year for the rent of that year, and over the cattle and stocking on the farm for the current year's rent.

Hypothecation. The act of pledging a thing as security for a debt or demand, without parting with the possession which remains in the debtor, differing thus from a *pledge*, which is handed over to the creditor. Hypothecation, in Shipping Law, denotes the act of pledging the ship or cargo or both by the master of a vessel, to enable him (in a given emergency) to prosecute his voyage with success. *Bottomry* and *respondentia* are the two principal forms of hypothecation. The word is also improperly used for a law agent's right over the title deeds of his employer, which is called a *lien*, or right of retention. *See* PLEDGE.

Although no provision has been made in the Trans. of Pro. Act or in the Contract Act with regard to chattel mortgages or hypothecation of moveable property, it does not follow that such transactions are invalid. Hypothecation of moveable property is valid and confers a good title though not accompanied by possession (*Shrish Chandra* v. *Mungri*, 9 Cal. W. N. 14).

I

Ibraa. (*Meh. L.*) Discharge. Remission. *Ibraanamah.* Deed of discharge or acquittance ; a written acquittance or relinquishment of claim.

Iddat. (*Meh. L.*) The time of legal probation which a divorced woman or widow must wait under the Mehomedan Law before she marries again, in order to determine whether she is pregnant.

A marriage performed by a woman after she has been divorced by her first husband must be considered null and void, if performed during the period of *iddat* or term of probation, because her contracting such a second matrimonial engagement is illegal.—*MacN. Meh. Law.*—*Ilahia* v. *Imamdin* (Punj. Rec., No. 29 of 1909 ; Punj. L. R., No. 47 of 1909 ; Punj. W. R., No. 34 of 1909). *See* IDDIT.

Held, that under the Mehomedan Law, the period of *iddat* is four months and ten days, and that this period of Iddat cannot be curtailed, simply because the widow happens to be delivered of a child before that period (*Ilahia* v. *Imamdin*, *ubi supra*).

An irrevocable divorce, under Meh. Law. does not completely destroy the relationship of husband and wife, until after the expiry of the period of *iddat*, and, therefore, the wife in that position, is entitled, during *iddat* to an order for maintenance under s. 488, Crim. Pro Code. Also, any such order already existing in favour of the wife can be enforced by the Magistrate during the period of her *iddat* (*Syed Saib* v. *Meeram Bee*, 7 M. L. T. 33 ; 10 Crim. L. J. 502).

Iddit. (*Meh. L.*) According to law, the *iddat* or term of probation of a woman arrived at the age of puberty, and divorced from her husband, extends until three successive menstruations have occurred. It is laid down in the *Viqaya*,—"The time of *iddat* or term of probation allowed to a free woman is that occupied in three successive menstruations." "The *iddat* of a woman who, on account of extreme youth or age, is not subject to the menstrual discharge, is three months." "The *iddat* of a pregnant continues until she be delivered of a child either dead or living. It is incumbent on the husband to defray the expenses of his divorced wife on account of food, raiment and habitation until the time of *iddat* or term of probation be expired (*Syed Saib* v. *Meeram Bee*, 7 M. L. T. 33; 13 Crim. L. J. 502). Such mony is called her *Iddit.*"—*MacN. Meh. Law.* *See* IDDAT, TALAK.

Indentification. Proof in a legal proceeding that a person, document or other thing is that which it is alleged to be.—*Encycl L. E.*

Identification, doctrine of. *See* CONTRIBUTORY NEGLIGENCE.

Indentity of person. A phrase applied especially to those cases in which the issue before the jury is whether a man be the same person with one previously convicted or attainted. *See* COLLATERAL ISSUE.

Idiot. A natural fool, or one who, from his birth, is *non compos mentis* ; to be distinguished from a lunatic, who is one that has had understanding, but by disease, grief, or other cause, has lost the use of his reason. —*Moxley.*

Idle and disorderly person. A person able to work and not maintaining his family, whereby such family becomes chargeable to any parish ; an unlicensed pedlar ; a prostitute behaving improperly in any place of public resort ; a person placing himself to beg in any public place, or encouraging any child to do so.

Idol. (*Ind.*) A god. An idol is a juristic person who can hold property. Therefore, when a suit is brought in respect of property held by an idol, it is the idol who is the person bringing the suit or against whom the suit is brought, the idol being the person

beneficially interested in the suit. But there must be on the record a person who represents the idol, such as the manager of the temple in which the idol is installed; every pleading must be signed by a sentient being, and this can be done by the manager, as in case of a minor (*Jodhi Rai* v. *Basdeo Prasad*, 8 All. L. J. 817, F.B.; 33 All. 736). *See* SHEBAIT.

Ignore. The word properly means to be ignorant of. It is used specially with reference to the throwing out of a bill of indictment by a grand jury. *See* BILL OF INDICTMENT.

Ihlal. (*Meh. L.*) Rendering anything lawful; any act or formula by which a transaction is made legal.

Ijab. (*Meh. L.*) A verbal offer; the first proposal made by one of the contracting parties in negotiating any arrangement, as a marriage contract, sale, or the like.

Ijab-i-kubul. *See* HIBA.

Ikbal. (*Ind.*) Acceptance (of a bond &c.).

Ikbal daawa. Confession of judgment; an acknowledgment of want of right in the subject matter of a suit.

Ikhtiar. (*Meh. L.*) An option of divorce granted by a husband to his wife.

Ikhtiarnamah. A voluntary deed.

Ikrah. (*Ind.*) Compulsion; especially constraint exercised by one person over another to do an illegal act, or to act contrary to his inclination.

Ikrar. (*Ind.*) An agreement, assent or ratification.

Ikrarnamah. A deed of assent and acknowledgment.

Illatum. (*Ind.*) The custom of affiliation of a son-in-law. The custom obtains among the Motah Kapu or Reddi caste in the districts of Bellary and Kurnool. He who has at the time no son, although he may have more than one daughter, may exercise the right of taking an illatum son-in-law. For the purposes of succession the illatum son-in-law stands in the place of a son, and in competition with natural born sons, takes an equal share (*Hanumantamma* v. *Rami Reddi*, 4 Mad. 272).

Illegal. The word illegal is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be legally bound to do,' whatever it is illegal in him to omit.—*Act XLV of* 1860 (*Penal Code*), *s.* 43.

Illegal conditions. All those that are impossible, or contrary to law, immoral, or repugnant to the nature of the transaction.

Illegal considerations. *See* CONSIDERATION.

Illegal contracts. Agreements to do any act forbidden by the law, or to omit to do any act enjoined by the law. Illegal contracts have been divided into—(1) Contracts which violate the Common Law; sub-divided into (1) Contracts void on account of fraud, which may be either (*a*) misrepresentation, or (*b*) concealment; (2) Contracts void on account of immorality; (3) Contracts in violation of public policy, which may be—(*a*) in restraint of trade; (*b*) in restraint of marriage; (*c*) marriage-brokerage contracts; (*d*) contracts for wager; (*e*) contracts to offend against law; (*f*) trading with an enemy without license; (II) contracts which violate any statutory provisions. *See* VOID AGREEMENT.

Illegitimacy. The status of a child born of parents not legally married at the time of birth. *See* BASTARD.

Illeviable. A debt or duty that cannot or ought not to be levied. A *nihil* set upon a debt is a mark of *illeviable*.

Illicit. Unlawful; without proper license or authority.

Illocable. Incapable of being placed out or hired

Illusory appointment. This was where a person, having power to appoint any real or personal property among a limited class of persons, appointed to any one of them a merely nominal share (as one shilling) of the property subject to the power of appointment. Thus, if a father had power to appoint £1,000 among two children, and he appointed a shilling to one, and the rest to the other, the appointment was held illusory and void. But this doctrine has been abolished by 11 Geo. IV, 1 Will. IV, c. 46, and 37 and 38 Vic. c. 37, under which last statute it is provided that under a power to appoint among certain persons, appointments may be made excluding one or more of the objects of the power.—*Mozley.* *See* POWER OF APPOINTMENT.

Imamia. (*Meh. L.*) A follower of the Imams; the code of Mehomedan Law applicable to the Shiahs.

Imbargo. *See* EMBARGO.

Imbasing of money. Mixing the species with an *alloy* below the standard of sterling, which the king by his prerogative may do, and yet keep it up to the same value as before; *inhancing* of it, is when it is raised to a higher rate, by proclamation.—*Tomlins.*

Imbezzle. To steal, pilfer or purloin; as where a person entrusted with goods wastes and diminishes them. To waste, scatter, or consume, for one's own purposes. *See* EMBEZZLE.

Imbracery. *See* EMBRACERY.

Immediately. The word, used in statutes, means within reasonable time. *See* FORTHWITH.

Where a statute or a written contract provides that a certain thing shall be done immediately, you must, in construing that word, pay regard to the object of the statute or to the contract as the case may be, and the position of the parties and the purpose for which the legislature or the parties intend that it shall be done immediately (*In re Land Acquisition Act*, 7 Bom. L.R., 697; 30 Bom, 275).

It is impossible to lay down any hard and fast rule as to what is the meaning of the word 'immediately' in all cases. The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time,' and imply prompt vigorous action without any delay, and whether there has been such action is a question of fact having regard to the circumstances of the particular case (*per* Cockburn, C. J., *The Queen* v. *Justices of Berkshire*, 4 Q. B. D. p. 471).

The word 'immediately' although in strictness it excludes all meantimes, yet to make good the deeds and intents of parties it shall be construed such convenient time as is reasonably requisite for doing the thing (*Pybus* v. *Mitford*, 2 Lev. 77) —*Stroud.*

It means within a reasonable time (*per* Collins, C. J. and Wilkinson, J., *Queen-Empress* v. *Jammu*, 12 Mad. p. 451; *Shand & Co.* v. *Atmakuri*, 2 Mad. H. C. R. p. 194).

Immemorial usage. A practice which has existed time out of mind; custom; prescription.

Immoral contracts. If immorality is the consideration for a contract, *e. g.*, a bond to ensure future co-habitation, it vitiates the contract, in like manner as illegality in the consideration would vitiate it. But where a contract founded upon an inmoral consideration is *executed*, neither Law nor Equity will interfere to set it aside if both parties have been equally in fault. In the same manner an immoral condition in a legacy would be read as not inserted in the will.

Immoveable. Not to be forced from its place, the characteristic of things real, or land.

Immoveable property. Immoveable property includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth.—*Act X of* 1897 (*General Clauses*), *s* 3 (25).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (24).

For the purpose of registration, immoveable property includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass.—*Act XVI of* 1908 (*Registration*), *s.* 2 (6).

For the purpose of the Transfer of Property Act, immoveable property does not include standing timber, growing crops, or grass.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 3.

Attached to the earth means (*a*) rooted in the earth, as in the case of trees and shrubs; (*b*) imbedded in the earth, as in the case of walls or buildings; or (*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.—*Ibid.*

Immunity. Exemption; freedom from punishment.

Impalare. To put in a pound.

Impanel. Impannel. The writing and entering of the names of a jury in a parchment schedule by the sheriff.

Imparl. To confer with; to have license to settle a litigation amicably; to obtain delay for adjustment.

Imparlance (*licentia loquendi*). Time to plead; a license formerly given to a defendant for a respite until some further day to put in his answer, to see if he could end the matter amicably without further suit, by talking with the plaintiff —*Mozley.*

Imparsonee A parson or clergyman inducted and in possession of a benefice.

Impatronization. The act of putting into full possession of a benefice.

Impeachment. A prosecution by the House of Commons before the House of Lords of a commoner for treason, or other high crimes and misdemeanours, or of a peer for any crime. The articles of impeachment are a kind of indictment found by the House of Commons, and afterwards tried by the House of Lords. It has always been settled law that a peer could be impeached for any crime. This form of prosecution has rarely been called into action in modern times.

Impeachment of waste (*impetitio vasti*). A restraint from committing waste upon lands and tenements. The phrase is intended to denote the ordinary legal liability incurred by a tenant for life or other limited interest, in committing waste on the property.

Without impeachment of waste (*absque impetitione vasti*) is a reservation frequently made to a tenant for life, that no man shall proceed against him for waste committed, but the reservation does not extend to allow manifest injury to the inheritance.

Impediatus. Expeditated and disabled from doing mischief in forests (said of a dog). *See* EXPEDITATION.

Impediments in law Persons under impediments are those within age, under coverture, *non compos mentis*, in prison, beyond seas, &c., who by a saving in several laws, have time to claim and prosecute their rights, after the impediments removed.—*Tomlins.*

Imperfect obligations. Moral duties such as charity, gratitude, &c., which cannot be enforced by law.

Imperfect trust. An executory trust.

Impertinence. Irrelevancy in pleading or evidence, by the allegation of matters not pertinent to the question at issue. *See* SCANDAL.

Impetration (*impetratio*). Acquiring anything by request or prayer, as a benefice or church office.

Impier. Umpire.

Impierment. Imparing or prejudicing; as "to the impierment and diminution of their good names."

Impignoration. The act of pawing or putting to pledge.

Implead. To sue, arrest, or prosecute by course of law.

Implements. Things necessary in any trade or mystery, without which the work cannot be performed; also the furniture of a house, as all household goods, implements, &c. Implements of household are tables, presses, cupboards, bedsteads, wainscot, and the like. In this sense we find the word often in gifts and conveyances of moveables.—*Tomlins.*

Implication. A necessary or possible inference of something not directly declared, between parties in deeds, agreements, &c., arising from what is admitted or expressed. When the law gives anything to a man, it gives impliedly whatsoever is necessary for enjoying the same.

Implied. This term could only be properly used to signify "established by indirect or circumstantial evidence," or, which comes to the same thing, "presumed under certain circumstances to exist, in the absence of evidence to the contrary," especially with reference to inward intentions or motives as inferred from overt acts.—*Moxley.*

Implied contracts. *See* CONTRACT.

Implied covenants. The term 'implied covenant' is often used in a two-fold sense; first, as denoting a covenant which is to be gathered from the four corners of the instrument, or from words or phrases not generally used in law to express a covenant; secondly, it is also used to denote a covenant in law, that is a covenant attached by the law—apart from any express intention of the parties—by reason of the use of some particular words, for example 'demise,' or by reason of a particular relation, for example that of a landlord and tenant (*per* Lord Russell, *Baynes & Co.* v. *Lloy & Sons*, 1895, 1 Q.B.823, 824, C.A.)

Implied malice. *See* MALICE.

Implied promise. *See* PROPOSAL.

Implied request. A request is said to be implied by law, sometimes when it has been in fact made, though not in express words; sometimes when it has never been made at all, but by a fiction of law, is supposed or imagined to have been made.

Implied trusts arise generally from an equitable construction put upon the facts, conduct, or situation of parties; they have been distributed into two classes—(1) those depending upon the presumed intent of the parties, as where property is delivered by one to another to be handed over to a third person, the receiver holds it upon an implied trust in favour of such third person; (2) those not depending upon such intention, but arising by operation of law, in cases of fraud, or notice of an adverse equity.—*Wharton.* Those of the second class may rather be called *constructive* trusts, being raised by the *construction* of a Court of Equity without reference to the presumable intention of the party.

Importation (*importatio*). The bringing goods and merchandize into this country from other nations.

Imports. Goods or produce brought into a country from abroad.

Importunity. Importunity, in order to invalidate a will, in its correct legal acceptation, must be in such a degree as to take away from the testator free agency; it must be such importunity as he is too weak to resist, such as will render the act no longer the act of the deceased; not the free act of a capable testator (*Kindleside* v. *Harrison*, 2 Phill. 551).—*Stroud.* *See* UNDUE INFLUENCE.

Imposition. A tax; contribution.

Impossibility. This may be either physical (*e. g.*, from natural causes) or legal (*e. g.*, from illegality, immorality, or the like. If a man contract to do a thing which is absolutely impossible, such contract will not bind him; but where the contract is to do a thing which is possible in itself, but which becomes impossible, he will be liable for the breach.

Impost. Any tax or tribute imposed by authority, particularly a tax or duty laid by Government on goods imported.

Impotence. Impotency. Physical inability of a man or woman to perform the act of sexual intercourse. A marriage is void if at the time of the celebration, either of the parties to it is incurably impotent, and may be declared void by a decree in a suit of nullity of marriage. But under the Hindu Law, marriage being a religious ceremony, impotence does not invalidate a marriage.

Impound. *Impounding a document* means placing or retaining it in the custody of the law, which is done when a forged or otherwise suspicious document is produced at a trial, so that it might be produced in case criminal proceedings should be subsequently taken. Unstamped or improperly stamped documents are also impounded.

Impounding goods, cattle, &c. Placing them after they have been distrained in a pound or other safe place of custody.

Imprescriptable rights. Rights which cannot be gained or lost by prescription. Such as a person may use or not at pleasure since they cannot be lost to him by the claims of another founded on prescription. *See* EASEMENT.

Impressed stamps. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument, and cannot be used for or applied to any other instrument. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already

been written; provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby. Every instrument written in contravention of these rules shall be deemed to be unstamped.—*Act II of* 1899 (*Stamps*), *ss.* 13-5.

Impressing. Impresting. Impressment. Compelling persons to serve in the navy. The arresting and retaining mariners for the king's service. Paying earnest to.

Imprest money. Money paid on enlisting soldiers.

Imprimature. A license to print or publish.

Imprimery. A print or impression; the art of printing; also a printing house.

Imprisii Adherents or accomplices.

Imprisonment (*imprisonamentum*). The restraint of a man's liberty under the custody of another; this extends not only to a gaol, but to a house, stocks, or where a man is held in the street, &c; for in all these cases the party so restrained is said to be a prisoner, so long as he has not his liberty freely to go about his business as at other times.—*Tomlins.* *See* FALSE IMPRISONMENT, WRONGFUL CONFINEMENT,

Impristi. Those who side with or take the part of another, either in his defence or otherwise.

Improbation. (*Sc L.*) The act by which falsehood and perjury (or forgery) is proved. The setting aside of deeds on the ground of falsehood or forgery. In some cases forgery is alleged merely to insure the production of a deed and an action for this purpose is called an action of *reduction improbation.* *See* REDUCTION.

Improper feuds. Derivative feuds; as for instance, those that were originally bartered and sold to the feudatory, for a price, or were held upon base or less honourable services, or upon a rent in lieu of military service, or were themselves alienable without mutual license, or descended indifferently to males or females.—*Wharton.*

Impropriate rector. A lay rector as opposed to a spiritual rector, just as *impropriate* tithes, are tithes in hands of a lay owner, as opposed to appropriate tithes, which are tithes in the hands of a spiritual owner. —*Brown.*

Impropriation. The act of employing the revenues of a church living to a layman's use.—*Wharton.* The annexing of an ecclesiastical benefice to the use of a lay person (called an *impropriator*), whether individual or corporate, in the same way as *appropriation* is the annexing of any such benefice to the proper and perpetual use of some spiritual corporation, whether sole or aggregate, to enjoy for ever.—*Brown.*

Inaam. (*Ind.*) Present; gift; gratuity. Inaams are grants of land free of rent, or assignments of the Government share of the produce of a portion of land for the support of religious establishments and priests and for charitable purposes; also to revenue officers and the public servants of a village; a grant of land-rent from a superior to an inferior.

The name *inaam* seems, like the word *jagir*, to be a general term including almost all assignments of revenue.

Inaamdar. Holder of any thing as a favour. A person in the possession of rent-free or favourably rented lands; or in the enjoyment, under the assignment thereof, of the Government dues of a particular portion of land, granted from charity, &c.

Inaam Izafat. A stipendiary grant. Lands or the produce thereof, granted free from tax in remuneration of services rendered.

Inaam Sanad. A patent or written authority for holding *Inaam* lands.

In action. *See* CHOSE.

Inalienable. Not transferable.

Inauguration. The act of inducting into office with solemnity, as the coronation of the sovereign, or the consecration of a prelate.

Inbound common. An unenclosed common, marked out, however, by boundaries.

Incendiarism. The crime of house-burning. *See* ARSON.

Incendiary. One who maliciously burns a house or other building. *See* ARSON.

Incest. Incestuous adultery. Carnal knowledge of persons within the Levitical degrees of kindred; co-habitation of person within the prohibited degrees of kindred, being the third degree in consanguinity and the fourth degree in affinity. A marriage between such persons is called an *incestuous* marriage; such marriage is void from the very act itself, and the issue are deemed bastards. A divorce can be sued for in the ecclesiastical court at the instance of any one. Incest was formerly a capital offence. *See* ADULTERY.

Incestuous marriage *See* INCEST.

Inchartare. To give or grant, or assure anything by a written instrument.

In chief. *See* CHIEF, EXAMINATION.

Inchoate. Begun but not completed; in the course of completion; incomplete.

Inch of candle. A mode of sale by auction at one time in use among merchants; the goods to be sold were divided into lots, and at the sale a small piece of candle, about an inch long, was kept burning, and the last bidder, when the candle went out, was entitled to the lot for which he bid.

Incident (*incidens*). A thing necessarily depending upon, appertaining to, or following another that is more worthy or principal.

A court baron is inseparably incident to a manor, and a court of piepowder to a fair; these are so inherent to their principals, that by the grant of one, the other is granted. Rent is incident to a reversion; timber trees are incident to the freehold, and also deeds and charters, and a way to lands; fealty is incident to tenures; distress to rent and amercements; tenant for life or years has incident to his estate, estovers of wood. Incidents are needful to the well-being of that to which they are incident, and the law is tender of them.—*Tomlins.*

Incised wounds. Wounds inflicted with a sharp point or edge.

Incite. To stimulate or induce a person to commit a crime. *See* ABET.

Incivizm. Unfriendliness to the state or government of which one is a citizen.

Inclosure. The extinction of commonable rights in fields and waste lands. The act of freeing land from rights of common, by vesting it in some person as absolute owner. Land inclosed.

Include. The word 'includes' in interpretation clauses is intended to be *enumerative*, not exhaustive. It has an *extending* force and does not limit the meaning of the term to the substance of the definition. When it is intended to *exhaust* the signification of the word interpreted, the word 'mean' is used (*Empress* v. *Raman Jiyya*, 2 Mad. 7; *Nasiban* v. *Preosunker*, 8 Cal. 534; *Balvantrao* v. *Purshotam*, 9 Bom. H. C., A. C., 105; see also 11 All. W. N. 10).

Incontinency. Unlawful indulgence of the sexual passion. *See* ADULTERY.

Incorporate. To establish as a corporation by grant from the Crown or Act of Parliament. To declare that another document shall be taken as part of the document in which the declaration is made as much as if it were set out at length therein.

Incorporated Law Society. A society of attorneys and solicitors, founded in 1825, and incorporated in 1831 by Royal Charter, whose function it is to carry out the acts of parliament and orders of court with reference to the examinations of articled clerks; to keep an alphabetical roll of attorneys and solicitors; to issue certificates to persons duly admitted and enrolled; also to exercise a general control over the conduct of solicitors in practice, and to bring the cases of misconduct before the judges.

Incorporation. The formation of a legal or political body, with the quality of perpetual existence and succession, except so far as limited by the act of incorporation.—*Wharton.*

Incorporeal chattels. These are personal rights and interests which are not of a tangible nature, such as personal annuties, stocks and shares, patents and copyrights.

Incorporeal hereditament. Any possession or subject of property which is capable of being transmitted to heirs, and is not the object of the bodily senses. It is in general a right annexed to, or issuing out of, or exercisable within, a corporeal hereditament; as a right of common of pasture or a right of way over land. *See* HEREDITAMENT.

Incorporeal property. Property which is not the object of bodily senses, or which cannot be touched; these are simply rights in moveable or immoveable property. See the above two titles. *See* CORPOREAL PROPERTY.

Increase. According to Mehomedan Law, *increase* is where there are a certain number of legal sharers, each of whom is entitled to a specific portion, and it is found on a distribution of the shares into which it is necessary to make the estate, that there is not a sufficient number to satisfy the just demands of all the claimants. For example, a woman leaves a husband, a daughter, and both parents. Here the property should be made into twelve parts of which after the husband has taken his forth or three, and the parents have taken their two-sixth or four, there remain only five shares for the daughter, instead of six, or the moiety to which by law she is entitled. In this case the number twelve into which it was necessary to make the estate, must be increased to thirteen, with a view of enabling the daughter to realize six shares of the property.—*MacN. Meh. Law.*

Whenever the sum of the fractions representing the shares to which persons are entitled exceeds unity (*i. e.*, the whole estate), each of the shares must suffer a proportionate reduction, or, in other words, the number of the shares must be *increased.*—*Elberling.*

Affidavit of increase. *See* AFFIDAVIT.

Costs of increase. *See* COSTS.

Incroachment. An unlawful gaining upon the right or possession of another man; as where a man lets his hedge or wall to fall into the ground of his neighbour, that lies next to him; and a rent is said to be incroached when the lord by distress or otherwise compels his tenant to pay more than he owes; and so for services, &c.—*Tomlins.*

Incumbent. A clergyman in possession of an ecclesiastical office. The name given to every beneficed parochial clergyman, on the supposition that he resides on his benefice or cure, because he does or ought to bend his whole study to discharge his cure. *See* RESIDENCE.

Incumber. To charge with an incumbrance.

Incumbrance. A claim, lien, or liability attached to property; a charge or mortgage upon real or personal estate.

Incumbrancer. A person entitled to enforce a charge or mortgage upon real or personal estate.

Indecimable. Not titheable; exempt from tithes.

Indefeasible. Not to be made void; such as cannot be defeated or made void.

Indefinite payment. This is where a debtor owes several debts to the same creditor and makes a payment without specifying to which of the debts the payment is to be applied. *See* APPROPRIATION OF PAYMENTS.

Indemnity. A pension formerly paid to a bishop for discharging or indemnifying churches from the payment of procurations. A writing to secure one from all danger and damage that may ensue from an act or omission; compensation for wrong done, or trouble, expense or loss incurred. *See* CONTRACT OF INDEMNITY.

Act of Indemnity. An Act of Parliament formerly passed every year to relieve from forfeiture persons who had accepted office without taking certain oath then required by law; also any act for pardon or oblivion of past offences against law.

Indenization. The act of making free, or of naturalizing.

Indenture (*indentura*). A deed made by more parties than one, so called because there ought regularly to be as many copies of it as there are parties; duplicates of every deed *inter partes* were formerly written on one skin, and the skin was cut in half irregularly, or with jagged edge, or *indented* like the teeth of a saw or in a waiving line, to tally or correspond one with the other; so that when the duplicates were produced in court they were seen to belong to one another by fitting into one another. Now by 8 & 9 Vic. c. 106, s. 5, a deed purporting to be an indenture is to have the effect of an indenture though not actually indented. *See* CONVEYANCE, DEED.

Indentures of a fine. These were indentures made and engrossed at the chirographer's office and delivered to the congnizor and cognizee of a fine, reciting the whole proceeding at length. *See* FINE.

Independent covenant. *See* COVENANT.

Indicative evidence. This is not evidence properly so called, but is mere suggestion of evidence proper, which may possibly be procured if the suggestion is followed up.—*Brown.*

Indicted (*indictatus*). Charged in an indictment with a criminal offence. When any one is accused by bill preferred to jurors, at the king's suit, for some offence, either criminal or penal, he is said to be indicted thereof.

Indictee. A person indicted

Indictment. An accusation of one or more persons, of a crime of a public nature, preferred in the name of the sovereign to a grand jury, competent by law to find it, and found by them on their oaths; this accusation, when first preferred to the grand jury, being called a *bill*, and being properly termed an *indictment* only when found by them. The office of the indictment is to inform the prisoner of the charge which he is called upon to answer.—*Broom's Com. Law.* *See* BILL OF INDICTMENT.

Arraignment. When the bill has been duly presented to and found by the grand jury, and the accused party is in custody, the next step in the proceedings is to *arraign* the prisoner, *i. e.*, to call upon him when placed at the bar of the Court to answer the matter charged against him in the indictment. On this arraignment the prisoner is required to plead 'guilty' or 'not guilty.'—*Ibid.*

The arraignment of a prisoner consists of calling upon him by name, and reading to him the indictment, and demanding of him whether he be guilty, or not guilty, and entering his plea.—*Wharton.*

Indictment, in the Scotch law, is the form of process by which a criminal is brought to trial at the instance of the Lord Advocate. Where a private party is a principal prosecutor, he brings his charge in what is termed the form of *criminal letters.*

Indictor. He who indicts another for an offence.

Indirect evidence. Proof of collateral circumstances from which a fact in controversy, not directly attested by witness or documents, may be inferred. It is also called *circumstantial* and *presumptive* evidence.

Indorsee. The person to whom a bill, promissory note, bill of lading, &c., is assigned by indorsement, giving him a right to sue thereon. *See* INDORSEMENT.

Indorsement (*indorsamentum*). A writing on the back of a document. Thus we speak of an indorsement on a deed, on a bill of exchange, on a writ, &c.

Indorsement of a bill, &c. When the maker or holder of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the *back* or *face* thereof, or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to *endorse* the same and is called the *endorser.*—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 15.

Indorsement in blank and in full. If the endorser signs his name only, the endorsement is said to be *in blank*, and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be *in full*, and the person so specified is called the *endorsee* of the instrument.—*Ibid.*, *s.* 16.

Indorsement *in full* is also called a *special* indorsement.

Now the great difference between these two modes of endorsements in this—that, if the payee merely write his name on the back of a bill payable to order *i. e.*, if he endorse it in blank, it thereupon becomes payable to any *bona fide* holder; whereas if the payee endorse the bill specially, *i. e.*, make it payable to "C. D. or order," it will require C. D.'s

endorsement, either in blank or special, before it becomes again assignable, so as to convey a right of action in respect of it to the next holder.—*Broom's Com. Law.*

The endorsement of a bill implies an undertaking from the endorser to the person in whose favour it is made, and to every other person to whom the bill may afterwards be transferred, similar to that which is implied by *drawing* a bill, so that every endorser is said to be in the nature of a new drawer.—*Ibid.*

Qualified indorsement on a bill of exchange or promissory note is an indorsement which restrains, limits, or enlarges the liability of the indorser, in a manner different from that which the law generally imports as his true liability, deducible from the nature of the endorcement. A particular species of this indorsement is one whereby the indorser repudiates liability; which may be made by annexing in French the words *sans recours*, or in English, *without recourse to me*, or other equivalent expression; by virtue of these words the indorser is not responsible for any payment on the bill, and this is the proper mode of indorsing a bill where an agent indorses on behalf of his principal.—*Mozley.*

As to where an endorsement is necessary and where not, *see* NEGOTIATION.

Indorsement of address. Indorsement upon the writ of the representative capacity of the plaintiff or defendant, if either sues or is sued in that capacity; or of the name and address of the solicitor of the plaintiff, or (if the plaintiff sues in person) of the plaintiff himself.

Indorsement of claim. The indorsement upon the writ of summons with which an action is commenced; the indorsement shows the nature of the claim made.

Indorsement of service. The indorsement on the writ of summons of the date of service.

Indorser. He who indorses, *i.e.*, being the payee or holder, writes his name on the back of a bill of exchange, &c. *See* INDORSEMENT.

Indowment *See* ENDOWMENT.

Inducement. An allegation of a motive; an incitement to a thing. Inducement, in pleading, is the matter brought forward by way of explanatory introduction to the main allegations of the pleading; sometimes the term is used to include only such averments in a pleading as are not material.

Induction (*inductio*). The giving a person possession of his church. After the bishop has granted institution, he issues out his mandate to the archdeacon to induct the clerk, who thereupon does it personally, or usually commissions some neighbouring clergyman for that purpose, which is compared to livery and seisin, as it is a putting the minister in actual possession of the church and of the glebe lands, which are the temporalities of it. It is induction which makes the parson complete incumbent, and fixes the freehold in him; and a church is full by induction.—*Tomlins.*

Induction is done by giving the clergyman corporeal possession of the church, as by holding the ring of the door, tolling a bell, or the like, and is a form required by law, so that all the parishioners may have due notice and sufficient certainty of their new minister, to whom their tithes are to be paid. This is the investiture of the temporal part of the benefice, as *institution* is of the spiritual. —*Mozley.*

A clerk thus presented is in full possession of the temporalities, and is *persona impersonata* or parson imparsonee; a clerk is not a complete incumbent until induction.

Indulto. A dispensation granted by the Pope to do or obtain something contrary to the Common Law.

Indument. *See* ENDOWMENT.

Inevitable accident. An "inevitable accident" will not comprise anything arising from the acts of the contracting parties. The phrase does not apply to anything known when the deed or contract is executed (*Jervis v. Tomkinson*, 26 L. J. Ex. 41; 1 H& N. 195); nor does it apply to anything which either party might have avoided —*Stroud.*

Inewardus. A guard; a watchman; one set to keep watch and ward.

Infamy. Public disgrace; total loss of character. This does not now incapacitate a witness from giving evidence. It now affects merely the credibility, not the competency, of the witness.

Infangenthef. A privilege of lords of certain manors to judge any thief taken within their fee.

Infant. A person under age, a minor, whose acts are in many cases either void or voidable. As to the liability of an infant, *see* MINOR.

Infanticide. The killing of a child immediately after its birth. The felonious destruction of the fœtus *in utero* is more properly called fœticide, or criminal abortion. See Act XLV of 1860 (Penal Code), ss. 312-6.

Infeoffment. Infeffment. Infeftment. (*Sc. L.*) The act or instrument of *feoffment* or delivery of feudal possession, or investiture, synonymous with *sasine*, the instrument of possession. *See* FEOFFMENT, INVESTITURE, SASINE.

Inferior Courts. The Courts which are subject to and controlled by the Superior Courts at Westminster. All Courts of a less dignity than the High Court of Justice are called by this general description.

Inferior holder. *See* HOLDER.

Infeudation. The placing in possession of freehold estate.

Infeudation (*infeodation*) *of tithes.* The granting of tithes to mere laymen.

Infiht. Insocna. Violence committed on

a person by one inhabiting the same dwelling.

Informal. Deficient in legal form.

Informality. Want of legal form.

Informant. The Attorney or Solicitor-General.

Information. A proceeding on behalf of the Crown against a subject otherwise than by indictment. Informations are of various kinds.

(1) *Information in Chancery.* This differs from a bill only by the fact that it is instituted in the name of the Attorney-General on behalf of the Crown, or of those who partake of its prerogative, or whose rights are under its particular protection; whereas a bill is filed on behalf of a subject merely. An information, however, is often prosecuted in the name of the Attorney-General by some private person interested in the maintenance of the public right which it is intended to enforce. Such private person is then called the *relator*, and is responsible for the conduct of the suit and for the costs.

(2) *Information in the Exchequer.* This is on behalf of the Crown to recover money due to the Crown, or to recover damages for an intrusion upon Crown property

(3) *Information in the King's Bench.* This is in nature of a *quo warranto*, for the purpose of trying the right to a franchise.

(4) *Information on a penal statute* This gives the informer a share in the penalty.

(5) *Criminal information in the King's Bench.* This is a proceeding in the Court of King's Bench by which the Attorney-General or the King's attorney and coroner gives the court to understand and be informed of a misdemeanour. It differs from an indictment principally in this respect, that the latter is found and presented by the grand jury, whereas an information is only the allegation of the officer who exhibits it. *See* INDICTMENT. The Attorney-General, and in his absence the Solicitor-General, has a right, *ex-officio*, to file a criminal information in respect of *any* misdemeanour; but he rarely asserts this right, except when cases brought under his notice appear of so grave a character that they affect good government, as being imminently dangerous to the public welfare or directly derogatory to the dignity of the Crown. A criminal information may be filed by a private prosecutor in the name of the Crown, but in this case the information cannot be filed but by the express direction of the Court itself.

(6) A charge laid before a justice or justices of the peace, with a view to a summary conviction.

Of these six classes, the first two are civil in their nature, and differ from ordinary suits and actions by the fact of their being instituted on behalf of the Crown. The third class is in its nature a criminal proceeding, but it has assumed the character of a civil proceeding for the purpose of trying a right. The fourth class is partly a civil, partly a criminal proceeding; in its form it partakes more of the civil character, but its object is a penal one, and not the redress of any private wrong. The last two classes of information are purely criminal in their nature. In Scotland, an information is a written pleading ordered by the Lord Ordinary when he takes a cause to report to the Inner House It serves to explain to the Judges the nature of the case which the Lord Ordinary is to report.—*Moxley.*

Informer (*informator*). Any one who informs or prosecutes in any of the courts of law those that offend against any law or penal statute; especially one who informs for the purpose of sharing the money to be paid by way of penalty on conviction. An approver. *See* COMMON INFORMER, INFORMATION.

The action of a spy and informer in suggesting and initiating a criminal offence is itself an offence, the act not being excused or justified by any exception in the Indian Penal Code, or by the doctrine which distinguishes the spy from the accomplice. But the act of a detective in supplying marked money for the detection of a crime cannot be treated as that of an accomplice (*Queen-Empress* v. *Javecharam*, 19 Bom. 363).

Infringement. A breach or violation of law, or of another's right, as of copyright or patent right.

Ingress, egress and regress. Words used in leases of lands, to signify a free entry into, going forth of, and returning from some part of, the lands let; as to get in a crop of corn, &c., after the term expired. They are also used in the grant of a right of way.—*Tomlins.*

In gross. *See* GROSS.

Ingrossing. *See* ENGROSSING.

Ingrossing a fine. The making of the indentures by the chirographer, for delivery of them to the party to whom the fine is levied. *See* FINE, INDENTURE.

Inherent covenants. *See* COVENANT.

Inheritance (*hereditas*) Title to lands and tenements by descent. An *estate of inheritance* is an estate in lands and tenements to a man and his heirs; the word inheritance is not only intended where a man has lands or tenements by descent or heritage, but also every fee simple or fee tail, which a person has by purchase, may be said to be an inheritance, because his heirs may inherit it after him. One may have an *inheritance by creation*, as in the case of the king's grant of peerage, by letters patent, &c. *Corpereal inheritances* relate to houses, lands, &c., which may be touched or handled: *incorporeal inheritances* are rights issuing out of, annexed to, or exercised with, corporeal inheritances, as advowsons, tithes, annuities, offices, commons, franchises, privileges, services, &c. There is also *several inheritance*, which is where two or more hold lands severally; if

two men have lands given to them and the heirs of their two bodies, these have a joint estate during their lives, but their heirs have several inheritances. Goods and chattels cannot be turned into an inheritance.—*Tomlins.*

Cannons of inheritance are the rules directing the descent of real property throughout the lineal and collateral consanguinity of the owner dying intestate, who is technically called the *purchaser.*—*Wharton.*

Inheritor. The word may be used in the sense merely of "taker" (*Boys* v. *Bradley*, 22 L. J. Ch. 621; 10 Hare, 389; 4 D. M. & G. 58).—*Stroud.*

Inhibition (*inhibitio*). Prohibition. A writ to *inhibit* or forbid a judge from further proceeding in a cause depending before him. *Inhibition* is a writ issuing out of a higher Court Christian to a lower and inferior, upon an appeal; and *prohibition* out of the King's Court to a Court Christian, or to an inferior temporal court.—*Mozley.* Inhibition, in Scotch Law, is a process by which a creditor restrains his debtor from contracting any debt or granting any deed to the prejudice of the complaining creditor; also a writ prohibiting and discharging all persons from giving credit to a man's wife.

Initiate tenant by curtesy. A husband becomes *initiate tenant by curtesy* in his wife's estate of inheritance upon the birth of issue capable of inheriting the same. The husband's estate by curtesy is not said to be *consummate* till the death of his wife.—*Mozley.* *See* CONSUMMATION, CURTESY.

Injunction (*injunctio*). A writ issuing out of Chancery in the nature of a prohibition, by which the party enjoined or prohibited is commanded not to do, or cease from doing, some act; so that injunctions are in general applicable only where it is sought to preserve matters *in statu quo*, although occasionally what are called *mandatory injunctions* are issued by which a person is commanded to *cease* to allow things to remain *in statu quo*, although he can obey this command only by being active in bringing about an alteration; in general, the subject of a mandatory injunction is the undoing that which has been done, as the pulling down a wall which has been built.—*Mozley.*

An injunction is either *interlocutory*, *i. e.*, *provisional* or *temporary*, until the coming in of the defendant's answer, or until the hearing of the cause; or *perpetual*, *i. e.*, forming part of a decree made at a hearing upon the merits, whereby the defendant is perpetually inhibited from the assertion of a right or perpetually restrained from the commission of an act contrary to equity and good conscience.—*Wharton.*

Temporary (or *interlocutory*) *injunctions* are such as are to continue until a specified time or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure (see Act V of 1908, Sch. I, O. XXXIX).—*Act I of* 1877 (*Specific Relief*), *s.* 53.

A *perpetual injunction* can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiffs.—*Ibid.*

Mandatory injunction. When, to prevent the breach of an obligation, it is necessary to compel the *performance* of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts. A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to *pull down* so much of them as obstructs B's light.—*Ibid.*, *s.* 55.

The primary object of a temporary injunction is to keep matters in *statu quo* till the suit can be heard and determined.

Injunctions are either prohibitory or mandatory. The former puts a stop to something in progress, by forbidding future action; the latter conveys an order to undo that which has been done (*Behari Lal* v *Sheo Lal*, 3 N. L. R. 114). The object of a mandatory injunction is to restore things to their original condition and not to create a new state of things (*Sheonath* v. *Ali Hussain*, 1 All. L. J. 118).

Injunctions are either *common* or *special*; a common injunction is one issued upon default in not answering a bill, to restrain a defendant from proceeding at law touching the matter of the bill, till he shall have purged his contempt; the common injunction may also be granted where the defendant obtains further time to answer: injunctions upon other occasions, or involving other directions, are called special injunctions.—*Mozley.*

An injunction does not run with the land. Hence if the property regarding which the injunction was granted is sold under a decree, the vendee cannot be made amenable to the injunction. Nor can the judgment-debtor be made liable, as after the auction-sale he has nothing further to do with the land (*Dahyabhai* v. *Bapalal*, 3 Bom L. R. 564).

Injury (*injuria*). A violation of another's right, or a violation of legal duty to the prejudice of another.

The word injury denotes any harm whatever illegally caused to any person in body, mind, reputation, or property.—*Act XLV of* 1860 (*Penal Code*), *s.* 44.

Injury is an act contrary to law (*Svami Nayudu* v. *Subramania*, 2 Mad. H. C. R. 158).

Infractions of law are, for the purposes of justice, divided into two great classes, *viz.*,

public and private injuries. The former, commonly called crimes, consists of such offences as, aiming at the root of society and order, are considered to be injurious to the community at large, and as no redress can be given to the community except by the prevention of such acts for the future, they are visited with some deterrent and exemplary punishment. Private or civil injuries, on the other hand, are such violations and deprivations of the legal rights of another as are accompanied by either actual or presumptive damage. These being merely injuries to private individuals, admit of redress. The law therefore affords a remedy by forcing the wrong doer to make a reparation.

But as injuries are divided into criminal and civil, so the latter are sub-divided into two classes of injuries, *ex contractu*, and *ex delicto*; the former being such as arise out of the violation of private contracts; the latter, commonly called *torts*, such as spring from infractions of the great social obligation, by which each member of the state is bound to do hurt to no man.—*Underhill on Torts.*

See DAMAGE, PERSONAL ACTIONS, TORT.

Injury without damage. See TORT.

Inlagare. To admit or restore to the benefit of the law; to in-law, or render lawworthy.

Inlagary. Inlagation (*inlagatio*). A restitution, of one outlawed, to the protection of the law and benefit of a subject.

Inland. Demesne land, *i. e.*, that which was reserved for the use of the lord, and not let out to tenants; as opposed to *outland* or *utland*, that which was let to tenants.

Inland bill, &c. Bills of exchange are called *inland* bills when the drawer and drawee are both resident within the kingdom where drawn. If a bill is either drawn abroad or made payable abroad, it is a *foreign* bill, and not an *inland* one.—*Brown.* A promissory note, bill of exchange, or cheque, drawn or made in British India, and made payable in, or drawn upon any person resident in, British India, shall be deemed to be an inland instrument.—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 11.

Foreign bill, &c. Any such instrument not so drawn, made, or made payable, shall be deemed to be a foreign instrument.—*Ibid.*, *s.* 12. A bill drawn or payable abroad is a foreign bill.—*Broom's Com. Law.*

In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable. —*Act XXVI of* 1881, *s.* 134.

Inland revenue. That portion of the public revenue which is derived from the taxation of home commodities, and duties on property and income, houses, stamps, probates, legacies, &c., as distinguished from the portion derived by customs duties from imported commodities, such as foreign wine and spirits, tea, &c.—*Wharton.*

Inland trade. A trade wholly carried on at home in one country, as distinguished from *commerce*. The word *trade* is also generally used for *inland trade*.

Inlantal. Inlantale. Demesne or inland; as opposed to *delantal*, land tenanted.

Inleaced. Inleased. Entangled or ensnared.

Inlegiare. Where a delinquent, having been outlawed, has satisfied the law, and is again *rectus in curia*, *i. e.*, reinstated in legal protection, he is said *se inlegiare*.

Inmates. Persons who are admitted to dwell with and in the house of another and not able to maintain themselves.—*Tomlins.*

Inn. An inn is defined to be a house, the owner of which holds out that he will receive travellers and sojourners who are willing to pay a price adequate to the sort of accomodation provided, and who come in a condition in which they are fit to be received. An innkeeper may be indicted for refusing to serve a customer or for refusing to receive a sick traveller.—*Mozley.*—*Per* Kennedy, J., *Orchard* v. *Bush* (1898, 2 Q. B. p. 288). A mere coffee-house, or boarding or lodging house is not an inn.—*Brown.* See ALE AND BEER HOUSES.

An inn or hostel may be defined to be a house in which travellers, passengers, wayfaring men, and other such like casual guests are accommodated with victuals and lodging and whatever they reasonably desire for themselves and their horses, at a reasonable price, while on their way (*V. R.* v. *Luellin*, 12 Mod. 445; *Thomson* v. *Lacy*, 3 B & Ald. 283). —*Stroud.*

Innkeepers. Proprietors of common inns for the accommodation of travellers in general. All persons are deemed innkeepers who keep houses where a traveller is furnished for profit with everything which he has occasion for whilst on his way. They are bound to take in all travellers and wayfaring persons, and to entertain them, if they can accommodate them, at a reasonable charge, provided they behave themselves properly, &c., and they have a lien upon the goods of their guests for board and lodging, &c., but may not detain their persons or seize their clothing in actual wear. By Common Law, innkeepers are bound to take not merely ordinary care, but uncommon care of the goods, money and luggage of their guests, and they are responsible for the acts of their servants and domestics, as well as for the acts of other guests. But this liability is limited by the Innkeepers Act, 1863 (26 & 27 Vic. c. 41) which provides that no innkeeper should be liable to make good to any guests any loss or injury to goods or property brought to his inn, not being a horse or other live animal, to a greater

amount than the sum of £30, except (1) where such goods have been stolen, lost or injured through the default or neglect of the innkeeper or his servants, or (2) where such goods have been deposited for safe custody with the innkeeper.—*Wharton.*

There is no law but the Common Law of England to regulate the relation of innkeeper and guest in Bombay in a case between a European and Parsi (*Whateley* v. *Palanji*, 3 Bom. H. C., O. C., 137).

Inner house. The name given to the chambers in which the First and Second Division of the Court of Session in Scotland hold their sittings. It is applied to the Courts themselves and used in contradiction to the Outer House, or hall in which the Lords Ordinary sit to hear motions and causes. The Inner House corresponds very nearly to the sittigs *in banc* of the judges at Westminster. —*Mozley.* *See* BANC, SESSION.

Inner temple. One of the Inns of Court. *See* INNS OF COURT.

Innings. Lands recovered from the sea. When they are rendered profitable they are termed *gainage* lands.

Innocence, presumption of. The law always presumes that a man's character is good until the contrary is shown, or that he is innocent of an imputed offence until his guilt is proved.

Innocent conveyances. Conveyances which cannot operate by wrong; thus a lease and release, a bargain and sale, and a covenant to stand seized, are *innocent* conveyances, so called because, since they convey the actual possession by construction of law only, they do not confer a larger estate in property than the person conveying possesses, and therefore if a greater interest be conveyed by these deeds than a person has, they are only void *pro tanto*, for the excess. But a feoffment was a *tortious* conveyance and therefore under such circumstances, would have been void altogether and produced a forfeiture. But by 8 & 9 Vic. c. 106, s. 4, a feoffment made after 1st October, 1845, shall not have any tortious operation. It is, therefore, an innocent conveyance now. *See* TORTIOUS OPERATION. Generally, all conveyances at the present day are innocent, because no one can convey to another a better or greater right than he himself has.

Innominate contracts. Those contracts which were unclassified or had no particular names under the Civil Law.

Innonia. An inclosure.

Innovation. An exchange of one obligation for another, so as to make the second come in place of the first.

Innoxiare. To purge one of a fault and make him innocent.

Inns of Chancery. So called because anciently inhabited by such clerks as chiefly studied the framing of writs, which regularly belonged to the cursitors, who were officers of the Court of Chancery. There were nine of them—Clement's, Clifford's and Lyon's Inn, Furnival's, Thavie's and Symond's Inn, New Inn, and Barnard's and Staples' Inn. There is also Serjeants' Inn, which consists of Serjeants only. Inns of Chancery were formerly preparatory colleges for students, and many entered them before they were admitted into the Inns of Court; but they have now sunk into insignificance, and an admission to them is no longer of any avail to a student in his progress to the bar. *See* INNS OF COURT.

Inns of Court (*hospitiæ curiæ*). These are Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn. They enjoy the exclusive privilege of conferring the rank or degree of Barrister at-Law, the possession of which constitutes an indispensable qualification for practising as an advocate or counsel in the superior courts. No means of obtaining that rank exists but that of becoming enrolled as a student in one or other of these Inns, and afterwards applying to its benchers for a call to the bar. The Inns of Court are governed by officers called *benchers* to whom application is made by students desirous to be called to the bar. The benchers have also authority to deprive a bencher or a barrister of his status, which proceedings are called respectively *disbenching* and *disbarring*. An appeal from the decision of the benchers lies to the judges in their capacity of visitors.—*Mozley.* *See* BENCHERS.

Inofficious testament (*inofficiosum testamentum*). (*Rom. L.*) An *undutcous* will, *i. e.*, not in accordance with the testator's natural affection and moral duties; a will made without due regard to the claims of the nearest relations, *e.g.*, where a father gave nothing to his son, or a brother to his sister, and such like.

Inpeny and outpeny. Money paid by the custom of some mannors, on the alienation of tenants, &c,

Inprisii. Adherents or accomplices.

Inquest (*inquisitio*). An inquisition or inquiry. An inquisition of jurers, to whom the trial of a question, civil or criminal, is committed.

Inquest of office or *Inquisition* is an inquiry made by the king's officer, his sheriff, coroner, or escheator, either *virtute officii* or by writ sent to them for that purpose, or by commissioners specially appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels.

Coroner's inquest is an inquiry into the manner of the death of any one who has been slain, or has died suddenly, or in prison; it must be held before a jury.

Inquisition as to lunacy is an inquiry directed by the judge in lunacy, as to whether a person is of unsound mind and incapable of managing his affairs.

Inquiry. *Court of inquiry.* A court occa-

sionally directed by the Crown to inquire into the conduct of officers, with a view to further proceeding by Court martial or otherwise; also a court for hearing the complaints of private soldiers. *See* COURT OF ENQUIRY.

Writ of inquiry. A judicial process addressed to the sheriff of a county, commanding him, by the oath of twelve men of his county, to inquire into the damages which the plaintiff in a cause has sustained, and to return the inquisition into court.

Inquisition. *See* INQUEST.

Inquisitor. Any officer, as sheriff, coroner, or the like, who has power to inquire into certain matters.

Inrolment. *See* ENROLMENT.

Insanity. *See* LUNATIC.

Inscriptions. Written instruments by which any thing was granted.

Insensible. Meaningless; unintelligible.

Insinuation (*insinuatio*) A creeping into a man's mind or favour covertly. Insinuation of a will is, among the civilians, the first production of it, or leaving it in the hands of the registrar in order to its probate.

Insolvency. Inability to pay debts; the state of one who has not property sufficient for the full payment of his debts. Prior to 1861, there was a distinction between bankruptcy and insolvency, an insolvent, as distinguished from a bankrupt, was an insolvent who was *not a trader*, for, originally, only a *trader* could be made bankrupt, in the sense of obtaining an absolute discharge from his debts, while the future estate of an insolvent remained liable for his debts even after his discharge. Under the Bankruptcy Act, 1869 (32 & 33 Vic. c. 71) the distinction between bankruptcy and insolvency has not been restored, but for certain purposes mentioned in the Act, a trader stands in a different footing from a non-trader.

Act of insolvency. Under Act III of 1907 (Provincial Insolvency), s. 4, a debtor commits an act of insolvency in each of the following cases, *viz*:—(*a*) if, in British India or elsewhere, he makes a transfer of his property to a third person for the benefit of his creditors generally, (*b*) if, in British India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors; (*c*) if, in British India or elsewhere, he makes any transfer of his property or any part thereof, or of any interest therein, which would under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent; (*d*) if, with intent to defeat or delay his creditors (i) he departs or remains out of British India, (ii) he departs from his dwelling-house or usual place of business or otherwise absents himself, (iii) he secludes himself so as to deprive his creditors of the means of communicating with him; (*e*) if any of his property has been sold in execution of the decree of any court for the payment of money; (*f*) if he petitions to be adjudged an insolvent under the provisions of this Act; (*g*) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts; (*h*) if he is imprisoned in execution of the decree of any court for the payment of money. For the purposes of this section the act of an agent may be the act of the principal.

Act III of 1909 (Presidency-Towns Insolvency), s. 9, mentions the same acts of insolvency as the above, with the exception of para. (*e*), which runs thus:—"If any of his property has been sold or attached for a period of not less than twenty one days in execution of the decree of any Court for the payment of money."

Available act of insolvency. This means any act of insolvency available for an insolvency petition at the date of the presentation of the petition on which the order of adjudication is made.—*Act III of* 1907 (*Provincial Insolvency*), s. 2 (*f*) (*a*).

Insolvent. *See* INSOLVENCY.

Insolvent circumstances. Insolvent circumstances have always been held to mean not merely being behind the world if an account were taken, but insolvency to the extent of being unable to pay just debts in the ordinary course of trade and business (*per* Willes, J., *R. v. Saddlers & Co.*, 32 L. J. Q. B. 345; 10 H. L. Cas. 404).

Inspectator. A prosecutor or adversary at law

Inspection. Examination.

Deed of inspection. *See* COMMITTEE OF INSPECTION, INSPECTORSHIP DEED.

Inspection of documents. An expression sometimes used with reference to the right of a person to inspect and take copies of documents of a public nature in which he is interested. But it is more frequently used in connection with the right of a party in an action or suit to inspect and take copies of document material to his case, which may be in the possession of the opposite party. For this purrose the party desiring to inspect documents in his adversary's possession takes out a summons requiring his opponent to state what documents he has in his possession. See Act V of 1908 (Civ. Pro.), Sch. I, O. XI. *See* DISCOVERY.

Trial by inspection. A mode of trial formerly in use for the greater expedition of a cause in which the point at issue was one capable of being easily settled by the use of the bodily senses, and the judges took upon themselves to decide upon the testimony of their own senses; as when it was a question of non-age, or of idiocy of a party, it might be obvious upon inspection of the party, whether he were of age or idiot, or not. Now obsolete.

Inspector. An overseer.

Inspectorship deed. A deed by which inspectors are appointed to watch a debtor's affairs on behalf of the creditors; the creditors undertaking not to sue the debtor, and the debtor agreeing to pay the creditors a composition of so much in the pound.—*Mozley.* An instrument entered into between an insolvent debtor and his creditors, appointing one or more person or persons to inspect and oversee the winding up of such insolvent's affairs on behalf of the creditors.—*Wharton.* *See* COMMITTEE OF INSPECTION, COMPOSITION.

Instalment. The ceremony by which possession is given of an ecclesiastical benefice. A portion of a debt; when a debt is divided into two or more parts, payable at different times, each part is called an instalment, and the debt is said to be payable by instalments.

Instance Court of Admiralty. *See* ADMIRALTY.

Instigation. *See* ABETMENT.

Institor. (*Rom. L.*) A person to whom the immediate management of any manufactory, ship, or undertaking was committed. A mercantile *consignee* or *factor* is in this sense an institor.—*Tomlins.*

Institute. In Scotch Law, a person to whom an estate is first given by destination or limitation, *i. e.*, to whom a present estate is given otherwise than by way of substitution; thus, where a person "depones" his lands to A, whom failing to B, &c., A is the *institute*, and B and all who follow him are *heirs* or *substitutes*. It also means a commentary or treatise; as the Institutes of Justinian; the Institutes of Lord Coke, in four volumes, published in 1628.

Institution (*institutio*). The ceremony by which a clergyman presented to a living is invested with the spiritual part of his benefice; it is a conveyance or commitment of the cure of souls by the bishop to the incumbent, whereby the benefice becomes filled. The Act of presentation gives the clerk a right *ad rem*; institution gives him a right *in re*; he becomes parson as to the spirituality, may celebrate divine service, enter on the parsonage house and glebe, and take the profits of the benefice; though he cannot grant, or let, or claim a freehold in them, or bring an action for them till *induction*. The word institution also means the laws, rites, and ceremonies enjoined by authority, as permanent rules of conduct or of government; a society for promoting any public object, as a charitable or benevolent institution; in the Civil Law, it means the appointment of a debtor as heir, *i. e.*, to carry on the legal existence, the *persona*, of the testator. *See* INDUCTION.

Instruct. To convey information as a client to a solicitor, or as a solicitor to a counsel; to authorize one to appear as advocate.

Instrument (*instrumentum*). A record, deed, will, charter, agreement or other document in writing.

The words 'document' and 'instrument' are used interchangeably in the Registration Act III of 1877 [now XVI of 1908] (*per* Telang, J., *Joharmal* v. *Tejram Jagrup*, 17 Bom. 235). *See* DOCUMENT.

Instrument of gaming. *See* GAMING.

Insucken multures. Multures payable by those who are bound by their tenure to have their corn ground at a particular mill. *See* MULTURES.

Insufficiency. This is where a defendant's answer in Chancery does not fairly answer the interrogatories of the plaintiff. Where this is the case, the plaintiff may *except* to it for insufficiency.

Insuper. This is used by auditors in their accounts in the Exchequer; as when so much is charged upon a person as due upon his account, they say so much remains *insuper* to such an accountant.

Insurance. Assurance. This is a contract by which one party, in consideration of a *premium*, engages to indemnify another against a contingent loss. The party who pays the premium, and is to have the advantage of the security, is called the *insured* or *assured*; the party giving the security is termed the *underwriter* or *insurer*; and the instrument is called a *policy of insurance*. Insurances are mainly of three kinds:—(1) Marine insurances which are insurances of ship, goods, and freight, against the perils of the sea, and other dangers therein mentioned; (2) Fire insurrances which are insurances of a house or other property against loss by fire; (3) Life insurances, which are engagements to pay the representatives of the assured, within a limited period from the date of his death, a specified sum of money, or to pay any such sum to the assured or his representatives, within a limited period of the death of some other person, specified in the policy of assurance; in the former case the assured is said to insure his own life; in the latter case he is said to insure the life of the person specified in the policy of assurance who must be a person in whose life the assured has an interest.—*Mozley.* There is this difference between life insurance policies and all other kinds, that the latter are contracts of indemnity merely and the moneys secured thereby cease to be payable if no damage arises; but the former, if duly kept up until the death of the party assured, are payable at all events. However, for the validity of a life assurance policy it is necessary that the person who takes it out should have some interest in the life assured at the time of his so taking it out; but the subsequent cessation of such interest does not vitiate the policy. As regards marine insurance, there are implied in the contact of insurance (being a voyage policy) the following warranties (1) that the ship is seaworthy at the commencement of the risk, *i. e.*, of the voyage and (2) that the ship shall not deviate, In a time

policy, neither of these warranties can be implied.—*Brown.*

Inasmuch as insurance contracts are based upon the utmost good faith, every circumstance which would influence or is likely to influence the judgment of a prudent insurer in fixing the premium or would determine whether he will take the risk or not, must be disclosed. Therefore, in a fire insurance, there is a duty to disclose to the insurer all facts which appear upon there being a possibility of a fire greater than usual, and which consequently may indicate a motive of the assured in effecting the insurance (*Imperial Pressing Co* v. *British Crown Assurance Corporation, Ld.*, 21 Ind. Cas. 836).

Intakers. A kind of thieves in the northern part of England; so called because they did take in and receive such booties of cattle, and other things, as their confederates, the *outpartners*, brought in to them from the borders of Scotland.—*Tomlins.*

Intendment. The understanding, intention and true meaning of any document; thus intendment of law (*intellectus legis*) is the intention and true meaning of law. Lord Coke says, the judges ought to judge according to the common intendment of law.

Intercommoning. This is where the commons of two manors lie together, and the inhabitants of both have, time out of mind, depastured their cattle promiscuously in each.

Interdict. Interdiction (*interdictio; interdictum*) An ecclesiastical censure prohibiting the administration of divine services or ceremonies, either to particular persons or in particular places, or both. Now disused.

Interdiction of fire and water (*interdictio ignis et aquæ*). Banishment by an order that no man should supply the person banished with fire or water, the two necessaries of life.

Interdict, in the Scotch Law, is an order for stopping unlawful proceedings, which may be resorted to against all encroachment on property or possession; and interdiction is a restraint provided by those who, from their mental weakness, are liable to imposition; a *voluntary* interdiction is executed in the form of a bond whereby the *grantor* obliges himself to do no deed which may affect his estate, without the consent of certain persons therein named, technically called his *interdictors*; a *judicial* interdiction is that imposed by the court generally at the instance of a near kinsman. *See* INHIBITION.

In the Roman Law, *interdict* was equivalent to injunction in equity.

Interest (*interesse*). A right or title to, or estate in, any real or personal property. The word is commonly taken for a chattel real, as a lease for years, &c., and more particularly for a future term; a mortgage is an interest in land. Interest also means the money paid or allowed for the loan or use of some other sum lent at a fixed rate; the income of a fund invested.

The word 'interest' is not necessarily confined to rights of ownership, but is sufficiently large to include any minor interest such as that of a tenant or a person having a charge (*Paya Matathil* v. *Kavamel*, 19 Mad. p. 153).

Interest upon interest. Compound interest.

Interest suit. An action in the Probate Court in which the question in dispute is as to which party is entitled to a grant of letters of administration of the estate of a deceased person.

Interested witnesses. Those who are somehow or other connected with the parties or the subject-matter of a suit, or are concerned in the result of the suit, and who have some motive in giving their evidence.

Interlineation. Writing between the lines in a deed, will or other document; the insertion of any matter in a written instrument after it is engrossed or executed. A deed may be avoided by interlineation, erasure or other alteration in any material part, unless a memorandum be made thereof at the time of execution or attestation. Erasures or interlineations in a deed are presumed to be made before or at the time of execution, but if material and in suspicious place, they require explanation. Material erasures or interlineations after execution vitiate the deed. In wills, the erasures and interlineations are subject to the reverse rule, being presumed to be made after execution, and being unless attested wholly disregarded. *See* ALTERATION.

Interlocutor. A judgment or judicial order pronounced in the course of a suit, which finally does not determine the cause. In Scotch Law, the judgment of the Court of Session or Lord Ordinary, which exhausts the point at issue, and which, if not appealed against, will have the effect of finally deciding the cause.—*Mozley.*

Interlocutory. Intermediate, with especial reference to a suit or action.

Interlocutory decree or *order.* A decree or order which does not conclude a cause, but is made or given during the progress of an action, *e g.*, an order for inspection or production of documents.

Interlocutory injunction. An injunction granted for the purpose of keeping matters *in statu quo* until a decision is given on the merits of the case. *See* INJUNCTION.

Interlocutory judgment. A judgment in an action at law, given upon some defence, proceeding, or fault, which is only intermediate, and does not finally determine or complete the action. The phrase is most frequently applied to those judgments whereby the *right* of the plaintiff to recover in the action is established, but the *quantum* of damages sustained by him is not ascertained.

Interlopers. Those who intercept the trade of others; applied chiefly to those who

infringed the charters of the East India Company.

International law (*jus intergentes*). The positive morality which obtains between nations or sovereigns. It is divided into two branches. (1) Public international law, which comprises the rights and duties of sovereign states towards each other. (2) Private international law which comprises the rights and duties of the *citizes* of different states towards each other, and is mainly conversant with questions as to the particular law governing doubtful cases; this is otherwise called *conflict of laws.—Mozley.* The general maxims of international jurisprudence are that every nation possesses an exclusive sovereignty and jurisdiction in its own territory; that no state or nation can, by its laws, directly affect or bind property out of its own territory, or persons not resident therein, natural born subjects or others; that whatever force the laws of one country have in another depends solely upon the municipal laws of the latter.—*Wharton.* See LAW OF NATIONS.

Interpellation. A citation or summons.

Interpleader (*interplacitare*). The process whereby a person, who is or expects to be sued by two or more parties, claiming adversely to each other, for a debt or goods in which he has no interest, obtains relief by procuring such parties to try their rights between or among themselves only; so called because the rival claimants are by this process called on to *interplead* together.

Interpleader suit. Where two or more persons claim, adversely to one another, the same debt, sum of money or other property, moveable or immoveable, from another person, who claims no interest therein other than for charges and costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself: Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.—*Act V of* 1908 (*Civ. Pro.*), *s.* 88. Nothing in this order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.—*Ibid., Sch. I, O XXXV, R.* 5. See ADVERSE CLAIM.

Interpolate. To insert words in a complete document.

Interpolation. The act of interpolating; the words interpolated.

Interpretation. By the interpretation of a document is meant the act of ascertaining what intentions the writer intended to convey to the reader by it, or to use other words, what intentions are expressed in it.—*Encycl. L. E.*

Interpretation clause. A section or clause frequently inserted in Acts of Parliament, declaring the sense in which certain words used in other sections therein are to be understood.

Interrogatories. Written questions addressed on behalf of one party to a cause, before the trial thereof, to the other party, of points material to suit or action, who is bound to answer them in writing upon oath. See Act V of 1908 (Civ. Pro.), Sch. I, O. XI.

Interruption. (*Sc. L.*) The step requisite by law to stop the running of the period of limitation; this is when during the course of prescription, the true proprietor claims his right. See EASEMENT.

Intervener. A person who intervenes in a suit, either on his own behalf or on behalf of the public; this is allowed specially in suits for divorce and nullity of marriage. In these suits it is usual for the king's Proctor to intervene where collusion is suspected.—*Mozley.*

Intervention. A third person not originally a party to a suit, but claiming an interest in the matter, may interpose at any stage of the suit in defence of his own interest, whenever affected, either as to person or property; this is called intervention and was peculiar to the Ecclesiastical and Admiralty Courts.—*Wharton.* See Act V of 1908 (Civ. Pro.), Sch. I, O. I, R. 10 (2).

Intervention, in international law, is the interference of one State in the affairs, whether domestic or foreign, of another State, or as between other states without their consent, for the purpose either of maintaining or altering the condition of things within it.—*Encycl. L. E.*

Intestacy. The state of an intestate.

Intestate (*intestati*). One who has left no will. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.—*Act X of* 1865 (*Succession*), *s.* 25. Some earlier writers apply the term to one who dies leaving a will, but not appointing an executor; the term *testament* being formerly applied only to a will which appointed an executor. A man was also said to be an intestate who made a will and nominated executors, but the executors refused to act.

Intimidation. See CRIMINAL INTIMIDATION.

Intiqal. (*Ind.*) The word, as used in Hindustan has the broadest meaning in connection with 'alienation,' 'conveyance,' 'assignment' and 'transfer' of rights in immoveable property (*per* Mahmood, J., *Sheoratan* v. *Muhfil*, 7 All. 258).

Intol and Uttol. Toll or custom paid for things imported or exported, or brought in and sold out,

Intoxicating drugs. This includes ganja, bhang, charas and every preparation and admixture of the same, and every intoxicating drink or substance prepared from hemp, grain or other materials (*Bom Act V of* 1878, *Abkari*, *s.* 3 [9], *as amended by Act V of* 1901, *s.* 3). It is not confined to its derivative meaning, merely poisonous; the word must be taken to be used in its popular sense which would include the effects produced by cocaine (*Emperor* v. *Jamsetji*, 27 Bom. 551).

Intoxication. A person who has contracted, even by deed, whilst so wilfully intoxicated as to be deprived of his reason—as not to know the consequences of his act—may successfully dispute his liability in respect of such transaction. But it seems clear, that a tradesman who supplies a drunken man with necessaries may recover the price of them, if the party keeps them when he becomes sober; although account for goods bargained and sold would fail by reason of the defendant's intoxication at the time of contracting It will further be remembered, that actual fraud might plainly be evidenced by the conduct of a person taking an obligation from one intoxicated and *then known* by the contractee to be so.—*Broom's Com. Law.*

Nothing is an offence which is done by a person, who, at the time of doing it, is by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.—*Act XLV of* 1860 (*Penal Code*), *s.* 85. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge, or against his will.—*Ibid.*, *s.* 86. *See* HURT, LUNATIC.

Intromission. (*Sc. L.*) The assuming possession of property belonging to another, either on legal grounds, or without any authority; the latter is termed *vitious* intromission.

Intrusion (*intrusio*). A species of injury to freehold, which happens when a tenancy for life or other "particular estate of freehold" has come to an end, and a stranger enters, to the prejudice of the person entitled in remainder or reversion; thus if property be conveyed to A for life, and after his death to B, C's entry after A's death, before B has entered, is called an *intrusion*, and C is an *intruder*. Trespass committed on the lands of the Crown, as by entering thereon without title; holding over after a lease is at an end, for this the remedy is an *information of intrusion*.

Inure. To take effect. *See* ENURE.

Invading a judge. Assaulting a judge.

Invention. Invention means any manner of new manufacture, and includes an improvement and an alleged invention.—*Act II of* 1911 (*Patents and Designs*), *s.* 2 (8).

Title by Invention. The mode of acquiring an ownership in patent-rights and copyrights.

Inventory. A list or schedule, containing a true description of goods and chattels, or furniture, &c., made upon a sale, or by an executor of his testator's effects, or by an administrator of those of the intestate.—*Wharton.* Under the Roman Law an heir exhibiting a true inventory of the deceased's goods coming to his hands was chargeable no further than to the value of the inventory; this was called *benefit of inventory*; otherwise the heir was saddled with all the liabilities of the deceased.—*Mozley.*

Invest. To give possession. To lay out money.

Investiture. The giving possession. The word is used with reference to the ceremenial admission by the lord of a tenant into his fee, which was *feudal* investiture. The word is also often applied to a ceremonial introduction to some office or dignity. *See* INDUCTION, INSTITUTION.

Invoice. A list of goods that have been sold by one person to another, stating the particulars and prices; the invoice is sent by the seller to the buyer, either along with the goods, or separately by post.

I O U. I owe you. A written acknowledgment of a debt. It ordinarily runs thus, "To Mr. A,B. I O U twenty pounds. C. D. January 1st, 1863." If in this form, it requires no stamp, being neither receipt, agreement, nor promissory note. It merely operates as evidence of a debt due by virtue of some antecedent contract; it is not negotiable. *See* ACCOUNT STATED.

Irregularity (*irregularitas*). An impediment which hinders a man from taking holy orders. A departure from rule, or neglect of legal formalities; applied to such departure, neglect or informality as does not affect the validity of the act done; as distinguished from *illegality*.

Irremoveability, status of. The right acquired by a pauper, after one year's residence in any parish, not to be removed therefrom.

Irrepleviable, Irreplevisable. That which cannot be replevied or delivered, or set at large on sureties. *See* REPLEVIN.

Irritancy. (*Sc. L.*) The becoming void; forfeiture. The forfeiture of a right in consequence of some neglect or contravention. Irritancy which takes place by force of the law alone is called a *legal irritancy*; that which takes place by force of a clause in a deed under which the right in question is held is called a *conventional irritancy*. *See* CLAUSE IRRITANT.

Irritant clause. (*Sc. L.*) A clause in a deed by which certain acts specified therein,

and done by the person holding under it, are declared null and void. A *resolutive* clause dissolves and puts an end to the right of a proprietor on his committing the act so declared void. *See* CLAUSE IRRITANT, IRRITANCY.

Ish and entry (*cum libero exitu et introitu*). (*Sc. L.*) Exit and entry. A grant of land which gives the grantee a right to all ways and passages, in so far as they may be necessary for going to a kirk and market, through the adjacent grounds of the grantor.

Ish of a tack. (*Sc. L.*) The termination of a lease.

Iskamat. (*Ind.*) Estate ; property ; the estate and effects belonging to a man.

Ism farzi. (*Ind*) A purchase *ism farzi*, is a purchase in the name of a person other than the real purchaser. *See* FARZI.

Issuable plea. A plea which raises a defence on the merits of the case, and on which a plaintiff may take issue and go to trial.

Issue (*exitus*). The word is used in several senses. (1) The children begotten between a man and his wife ; (2) Descendants generally ; (3) The profits growing from amerciaments and fines ; (4) The profits of lands and tenements ; (5) The point of matter issuing out of the allegations and pleas of the plaintiff and defendant in a cause, whereupon the parties join and put their cause upon trial ; (6) Event, consequence, evacuation, sending forth ; (7) The putting out of bank notes and other paper money for public circulation.

The word 'issue' has a popular meaning, being often used in the sense of 'children,' and a legal or technical meaning, being used in the sense of 'descendants.' It is a term of flexible meaning (*per* Jessel, M. R., *Morgan* v. *Thomas*, 9 Q. B. D. 643, 645).

Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.—*Act V of* 1908 (*Civ. Pro*), *Sch. I, O. XIV, R.*1. Then the parties are said to be *at issue*.

Though Counsel are responsible for the issues raised, the responsibility is not solely theirs, it being indeed a part of the duty of the Judge, who settles the issues to ascertain as clearly as he can, on inquiry of the parties or their counsel, the real points in dispute between them (*Peer Mahomed* v. *Mahomed*, 6 Bom. L. R. 1013). The Courts should define with precision at the outset the points on which a decision must run ; vague and general issues for the most part mean that the case is approached without a clear idea of its essentials (*Dagdu* v. *Bhana*, 6 Bom. L.R.126).

The purpose of the *general* issue is certainly not that pleas should be allowed under it which are not clearly included in the other issues, but only to determine the kind of relief to which a plaintiff is entitled as the result of the findings on the issues preceding it (*Peer Mahomed*, v. *Mahomed*, *supra*).

Issue roll. The name of the roll on which the *issue* was formerly entered as soon as it was joined.

Issues on sheriffs. Fines and amerciaments inflicted on sheriffs for neglects and defaults, levied out of the issues and profits of their lands.

Isteela. (*Meh. L.*) The entire subduement of any subject of property by force of arms. The original right of property, therefore, which one may possess over another (*i. e.*, slavery) is to be acquired solely by *Isteela*, and cannot be obtained, in the first instance, by purchase, donation, or heritance.—*MacN. Meh. Law.*

Mankind is originally free and is not a fit subject of slavery, except in the case of *Isteela*, which obtains when a Mahomedan ruler subdues the dominion of infidels, and makes captives of its inhabitants, both male and female.—*Ibid.*

Slavery has been abolished in British India by Act V of 1843. *See* SLAVERY.

Istihar. Istiharnamah. (*Ind*) A notification ; a proclamation.

Istimrar. (*Ind.*) Continuance or perpetuity ; especially a farm or lease granted in perpetuity by Government or a Zamindar.

Istimrardar. The holder of a grant in perpetuity ; the holder of a perpetual lease.

Istimrari. Perpetual ; continuous. The words *instimrari mukurari* in a patta granting land do not, of themselves, denote that the estate granted is an estate of inheritance (*Sheo Pershad* v. *Kally Dass*, 5 Cal. 543 ; *Bilasmoni* v. *Raja Sheopersad*, 8 Cal. 664, P. C. ; L. R. 9 I. A. 33 ; 11 C. L. R. 215; *Tulshi Pershad* v. *Ramnarain*, 12 Cal. 117, P. C. ; L. R. 12 I. A. 205 ; *Gaya* v. *Ramjiwan*, 8 All. 570 ; *Maharani Beni Prasad* v. *Dudh Nath*, L. R. 26 I. A. p. 224 ; *Narsing Dayal* v. *Ramnarain*, 30 Cal. 883). *Contra*, *Mt. Lakhu* v. *Roy Hari* (3 B. L. R., A. C., 226); *Karunakar* v. *Nildahro* (5 B. L. R., A. C., 652).

In *Narsing Dayal* v. *Ramnarain* (*supra*), it was observed—"The words *mukurari istimrari* in a lease do not imply any heritable character in the grant, as the term *moouroosi* does. They imply permanency, from which, in a secondary sense such heritable character might be inferred, it being always doubtful whether they mean permanent during the lifetime of the grantee or permanent as regards hereditary character. The words do not *per se* convey an estate of inheritance, but such an estate can be created without the addition of any other words ; circumstances under which the lease was granted and the subsequent conduct of the parties being capable of showing the intention with sufficient certainty to enable the court to hold that the grant was perpetual. The rule is perfectly general and is not subject to the qualification that it is by local custom that the meaning of the term is restricted."

Itinerant (*itinerans*). Travelling or taking a journey; and those were anciently called justices *itinerant*, or justices *in eyre* (*in itinere*), who were sent into divers counties with commission to hear causes. *See* EYRE.

Izafa. Izafat. (*Ind.*) Increase, especially in the revenue received from a country.

Izaftdar. A lessee of a village, who has undertaken to keep an account of its forest revenues, and pay a certain proportion to the Government, keeping the remainder for himself(*Reg.* v.*Ramajirav*,12 Bom. H. C.,A.Cr.,1).

J

Jactitation. A false pretension or boasting, which is challenged by another. The word is used principally with reference to the old suit of *jactitation of marriage* (*jactitationis matrimonii causa*) where one of two parties falsely boasted or gave out that he or she was married to the other, whereby a common reputation of their matrimony might ensue; for which injury the only remedy the court could afford was to enjoin perpetual silence on that head.—*Mozley.* A suit for jactitation of marriage will lie in a civil court in British India (*Mir Azmat Ali* v. *Mahnud-ul-nissa*, 20 All. 96).

Jagir. (*Ind.*) An assignment of the Government revenue on a tract of land to families, individuals, or public officers, generally as a reward for military services. This was the most general class of grants of revenue during the Mehomedan Period. It could not be made to extend beyond the life of the grantee. The chief jagir was for the support of troops, and was called *foujdari*. They were granted to maintain the frontier armies and garrisons. They still exist although the duties are not required. The jagir was originally not hereditary but it was frequently renewed in favour of the son of the previous holder. Under British rule, however, it has become hereditary, and the family share it in the same way as other property. *See* KHALSA.

Jagirdar. One who holds a jagir. Jagirdar is a person to whom the land-revenue of any land has been assigned, in whole or in part, by the Government, or by an officer of the Government,—*Act XVI of* 1887 (*Punjab Tenancy*), *s.* 4 (15).

Jaidad tenure. (*Ind.*) A grant of land, together with the public revenues thereof, on the condition of keeping up a body of troops to be employed when called on in the service of the sovereign (*Forester* v. *Secretary of State*, 12 B. L. R., P. C., 120).

Jalit-khat. (*Ind.*) A bond or note which has been cashed; also one the amount of which is given up as never likely to be realized.

Jama. (*Ind.*) The whole or total; it generally means the total demand of assessment on a village or district. Land-revenue or rent payable to Government.

Jamabundy. A written schedule of the whole of an assessment. The annual settlement made under the Ryotwar system.

Jamai land. Rent-paying land.

Jamai tenant. Jamai tenants are those who only pay the jama or Government assessment. In large *bhaiachara* colonies, tenants were freely taken in at the founding, and were acknowledged as entitled to equal favour with the co-sharers on their paying only at the revenue rates.

Jama khurch. A statement of the collections and disbursements of a village drawn up in the form of an account current; the *jumma* or collections being on one side, and the *khurch* or disbursements on the other. Any general account of receipts and expenses.

Jama-mufassal. The gross revenue to be collected in all the villages of a zemindari.

Jamadar. (*Ind.*) The chief or leader of any number of persons; a native subaltern officer, second to the *subedar;* an officer of police, customs, excise, second to the *darogah.*

Janma-puttra. (*Ind.*) A horoscope; a paper prepared at the birth of a child fore-telling his fate according to the aspects of planets.

Jawabnuvees. (*Ind.*) A native cutcherry officer, whose duty it is to read out reports, petitions, &c., and to draft replies to them.

Jedburgh justice. Lynch law. *See* LIDFORD LAW.

Jenmi. (*Ind.*) A mortgagor in Malabar. *See* KANAM.

Jeshtha-ansh. (*Ind.*) *See* JYESHTHA-ANSH.

Jetsam. Jettison. Jeston. Goods or other things which, having been cast overboard in a storm or after shipwreck, are thrown upon the shore. *See* FLOTSAM. *Jettison*, the act of throwing goods over board for the purpose of lighting a ship in danger of wreck.

Jobber. One who buys or sells cattle for others; one who buys or sells for speedy profit by re-sale or re-purchase.

Stock Jobbers. Those who buy and sell stock on the exchange for other persons, and gamble in the funds themselves. *See* STOCK JOBBER.

Jocelet. A little farm or manor; in some parts of Kent *yoklet*, as requiring but a small yoke of oxen to till it.

John Doe. The name which was usually given to the fictitious lessee of the plaintiff in the action of ejectment. *See* DOE, EJECTMENT.

Joinder. Joining or uniting together.

Joinder in demurrer. The acceptance by a party in an action, of the challenge laid down in his adversary's demurrer or last pleading; it is a formula delivered by a party to a demurring opponent, whereby such party appeals to the judgment of the court as to the sufficiency in law of his last pleading, which is challenged by the demurrer. *See* DEMURRER.

Joinder in pleading. Accepting the issue and mode of trial tendered, either by demurrer, error, or issue in fact, by the opposite party.

Joinder of causes of action. The coupling or joining of two or more things or matters in the same suit or proceeding.

Joinder of issue. This is where the plaintiff or plaintiffs and the defendant or defendants unite upon a statement of their respective ground of action and defence, and agree to stand or fall by that statement; it is a denial on one side of some matter of fact alleged on the other; this joinder of issue is appropriate only where the pleadings raise an issue or issues of fact, or partly of law and partly of fact, and it is not appropriate where the issue is of pure law.

Joinder of parties. The coupling of two or more persons together as defendants; the joining or uniting of two persons together in one action against another, such action being called a joint action.

Joint. Combined; shared amongst many; in the same possession.

Joint Committee. A committee composed jointly of members of both Houses, or of members of boards of different railway companies.

Joint contractors. Persons jointly liable on a contract.

Joint fiat. A fiat which was issued against two or more trading partners.

Joint heir A co-heir.

Joint indictments. When several offenders are joined in the same indictment, such an indictment is called a joint indictment; as when principals in the first and second degree, and accessories before and after the fact, are all joined in the same indictment.

Joint liability. In every case of joint liability, each of the co-debtors is liable for the whole, and a release to one will discharge them all; all must be sued during their joint lives; the co-obligers on a bond are usually jointly liable, but they may be liable jointly and severally. But under Act IX of 1872 (Contract), ss. 43 and 44, any one of several joint promissors may be compelled to perform the whole of the promise, and a release of one does not discharge the others.

Joint ownership. The co-creditors in a bond are usually joint owners; and if so, either or any of them may release the debtor, and in that way damnify his co-creditors, unless they should have mutually covenanted not to grant any such release; joint ownership is, however, more usual in the case of lands than of personal estate; in the latter case it is called *joint tenancy.*

Joint stock bank. A joint stock company for the purpose of banking; the ordinary name given to banking companies other than the bank of England.

Joint stock company. A qualified corporation constituted neither by charter, act of parliament, nor letters patent, but by the act of the members themselves, the interest of every member whereof is freely transferable without the consent of the rest; an association of a large number of persons united together for the common purpose of carrying on a trade, or some useful enterprise capable of yielding profit. The common property of the members, applicable to the purposes of the company, is called its joint-stock, and hence the name. The capital is generally divided into equal shares. Various Acts of Parliament have been passed from time to time for the government of joint stock companies.

Joint tenancy. *See* TENANCY.

Joint tenants. Those who hold lands or tenements by joint tenancy.

Joint and separate estates. In the case of partners the assets of the partnership are called the joint estate, and the private estates of the individual partners are called their separate estates. Where either partnership or any individual partner is bankrupt, the rule of administration is this—the joint or partnership debts are to be paid first out of the joint estate, and the separate or private debts are to be paid first out of the separate estate; and *then* (according as the circumstances of the case require) the leavings of the joint estate or of the separate estate go to further satisfy the part satisfied creditors, joint going to separate, and separate to joint. But a creditor holding a joint and several security has his option to rank in the first instance, either as a separate creditor or as a joint one, and to prove accordingly.—*Brown.* *See* DOUBLE PROOF.

Joint and several liability. When two or more persons declare themselves jointly and severally bound, this means that they render themselves liable to a joint action against all, as well as to a separate action against each, in case the conditions of the bond are not complied with. And the party to whom they are so jointly and severally bound is called a joint and several creditor.—*Moxley.* Covenants are usually joint and several and the liability under them is therefore both joint and several; nevertheless a release of one of the co-covenantors will discharge the others; but in the case of a covenant not to sue one of them, it is competent to reserve all rights against the others. The liability of partners is joint and several, and therefore the estate of a deceased partner will be liable, at the option of the creditor, and even in the first instance, to be sued for the amount of all debts contracted before his decease.—*Brown.* *See* JOINT LIABILITY.

Jointress. Jointuress. A woman entitled to jointure.

Jointure. A name sometimes given to an estate in joint tenancy. But in common speech the term *jointure* is usually confined to that estate which is settled upon a husband

and wife before marriage, as a full satisfaction and bar of the woman's dower. It should be, strictly speaking, a joint estate limited to both husband and wife; but in common acceptance, it extends also to a sole estate limited to the wife only.—*Mozley.* To a legal jointure five things are requisite—(1) The provision for the wife must take effect in possession or profit immediately after the husband's death; (2) It must be for her own life at least; but the widow will be bound by the acceptance of a precarious interest if she were adult at the time she agreed to the jointure; (3) It must be made to herself and to no other in trust for her, (4) It must be made in satisfaction of the whole, and not of part of her dower; (5) It must be either expressed or averred to be in satisfaction of dower. It may be made either before or after marriage; if made after marriage she may waive it, and claim her dower. —*Wharton.*

Jokelet. A little farm such as requires a small yoke of oxen to till it. *See* JOCELET.

Journal. A day book or diary of transactions used by merchants, mariners, tradesmen, &c., in their business.

Journals of Parliament. The daily records of the proceedings of the Houses.

Journeyman. A workman hired by the day, or other given time.

Journeys' accounts. An old term in law. Where a suit had become abated without the plaintiff's default, then if he purchased a new writ by *journeys' accounts*, *i. e.*, within as little time as he possibly could after the abatement of the first writ, then the second writ should be as a continuance of the first.

Judge. A term used especially of the judges of the superior Courts of law and equity in England and Scotland, and of the Court of Session in Scotland, and of the Supreme Court in any colony or dependency. But the presiding officers of local and inferior courts are frequently so called. In its widest sense it signifies any one invested with authority to decide questions in dispute between parties and to award the proper punishment to offenders.—*Mozley.*

Judge Advocate or *Judge Advocate-General.* All general military court-martial are attended by either the Judge Advocate-General or an officer appointed by letters patent under the Great Seal. The duties of an officiating Judge-Advocate at a court-martial are to provide accommodation for the court, to administer the oaths to the members of the court and to the witnesses, to summon the witnesses, to make a minute of the proceedings, and to advise the court on points of law, of custom, and of form, and so far to assist the prisoner as to elicit a full statement of the facts material to the defence.—*Wharton.*

Judge Ordinary. The judge of the Court of Probate, sitting as the judge of the Court of Divorce (under the Divorce Act, 20 & 21 Vic. c. 85), is so called, as being the *ordinary* judge of the Divorce Court.—*Mozley.*

Judge's chambers. *See* CHAMBER.

Judge's notes. *See* NOTES.

Judge's order. An order made on summons by a judge at chambers.

Judger. In Cheshire, to be judger of a town, is to serve on the jury there; a juryman.

Judgment. Judicial determination; decision of a court; the sentence, or order of the court in a civil or criminal proceeding. The statement given by the judge of the grounds of a decree or order (Act V of 1908, Civ. Pro., s. 2 [9]). Under the former practice of the superior courts the term *judgment* was usually applied only to the Common Law courts, the term *decree* being in general use in the court of Chancery. The expression *judgment*, however, is now used generally, except in the matrimonial causes, the term *judgment* including *decree.*

Action on judgment. Upon any judgment, the successful party may, in lieu of issuing execution on the judgment, bring an action on the judgment; and this latter is invariably the course upon a strictly foreign judgment. A foreign judgment may be enforced in this country by action on the judgment, and the judgment itself will be *prima facie* conclusive of the plaintiff's right, unless it is clearly erroneous on the face of it; and an Admiralty decision on a question of prize is absolutely conclusive. A foreign judgment against the plaintiff in plaintiff's own action may be pleaded as an absolute bar to his second action brought against the same defendant in the domestic forum.—*Brown.* See Act V of 1908 (Civ. Pro.), s. 13.

A suit will lie on a judgment of a court in a Native State (*Mayaram* v. *Ravji*, 24 Bom. 86). The Courts in India treat a call-order made by the Court of Chancery in England upon a contributory of a company registered in England, and being wound up under the authority of the Court of Chancery, as a foreign judgment (*London B. and M. Bank, Ld.* v. *Hormasji*, 8 Bom. H. C., O. C., 200).

Contingent judgment. A judgment passed by a court, subject to the opinion of a superior court on points referred to it.

Judgment-creditor. A creditor who claims to be such by virtue of a judgment; that is, a party entitled to enforce execution under a judgment.

Judgment-debt. A debt due under a judgment.

Jugment-debtor. Any person against whom a decree has been passed or an order capable of execution has been made.—*Act V of 1908 (Civ. Pro.), s. 2 (10).* A person liable to have his property taken in execution under a judgment.

Judgment-debtor summons. The Bankruptcy Act, 1861, provided for the issue of this kind of summons by a judgment creditor in default

of payment of whose debt the debtor might be adjudged bankrupt.

Plea of judgment. This plea, which is otherwise called the plea of *res judicata*, is an absolute defence by way of estoppel to any second action between the same parties for the same cause. See Act V of 1908 (Civ. Pro.), s. 11.

Judgment recovered. A plea by a defendant that the plaintiff has already recovered that which he seeks to obtain by his action; this was formerly a species of sham plea put in for the purpose of delaying a plaintiff's action.

Judgment roll. A parchment roll having the proceedings in a cause transcribed thereon which is deposited, and filed as of record, in the office of the Court.

Judgment summons. A summons citing the defendant to appear personally in a court, and be examined on oath touching the means he has or has had since the date of the judgment to pay the sum in question, and also to show cause why he should not be committed to prison for his default.

See REVIVOR OF JUDGMENT.

Judicial act. An act by a judicial officer which is not merely ministerial. A judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath.—*Act V of* 1898 (*Crim. Pro.*), *s.* 4 (*m*).

Judicial Committee of the Privy Council. A tribunal of Privy Councillors, being also judges, or retired judges, for the disposal of appeals to the Sovereign in Council. To this Committee are referred all appeals to the Crown from Admiralty and Ecclesiastical Courts, from Courts in His Majesty's Colonies and dependencies, and petitions for the prolongation of patents. *See* PRIVY COUNCIL.

Judicial decisions, opinions or determinations. These are the sentiments of the judges delivered in the cause in court before them, and which form the decree or judgment of the court. An extra-judicial opinion, given in or out of court, is no more than the *prolatum* or saying of him who gives it, nor can it be taken for his opinion.

Judicial discretion. Such matters in the course of a trial as are to be decided summarily by the judge, and cannot be questioned afterwards, are said to be within his jurisdiction or discretion.

Where the law leaves a matter within the discretion of a court, and the court, after proper inquiry and due consideration, has exercised the discretion in a sound and reasonable manner, the High Court will not interfere with the conclusion arrived at, even though it would itself have arrived at a different conclusion (*Ranchodji* v. *Lallu*, 6 Bom. 304). The High Court can only interfere if the lower Court has exercised its discretion capriciously or without proper legal material to support its decision (*Parvati* v. *Ganpati*, 23 Bom. 513). The discretion of a court in granting specific performance is not arbitrary but sound and reasonable, guided by judicial principles, and capable of correction by a court of appeal.—*Act I of* 1877 (*Specific Relief*), *s.* 22.

A judicial discretion is to be exercised according to something like a settled rule and in such a way as to prevent the defendant doing wrongful act and thinking that he could pay damages for it (*per* Jessel, M. R., *Smith* v. *Smith*, L. R., 20 Eq. p. 505). It is a sound and reasonable discretion to be reasonably exercised (*Aynsley* v. *Glover*, L. R. 18 Eq. p. 555); it must have regard to all the circumstances of the particular case (*Greenwood* v. *Hornsey*, L. R. 33 Ch. D. 471; *Martin* v. *Price*, 1894, 1 Ch. p. 290).

See DISCRETION.

Judicial documents. Proceedings relating to litigation. They are divided into (1) Judgments, decrees and verdicts; (2) depositions, examinations and inquisitions taken in the course of a legal process; (3) writs, warrants, pleadings, &c., which are incident to any judicial proceedings.—*Wharton.*

Judicial oath. The oath to be taken, as soon as may be after acceptance of office, by the Judges of the Supreme Court, and by justices of the peace.

Judicial separation. A separation of man and wife by the Divorce Court, which has the effect, so long as it lasts, of making the wife a single woman for all legal purposes, except that she cannot marry again; and similarly with the husband. It thus corresponds somewhat to a divorce a *mensa at thoro* under the old law, but is more complete in its effect. *See* DIVORCE.

Judicial writs. Writs issuing from the court in which proceedings are commenced under its seal (and not under the Great Seal) and tested (or witnessed) in the name of the chief judge of the court (and not in the name of the sovereign). They are opposed to *original* writs out of Chancery, with which actions formerly commenced.

Jugulator. A cut-throat or murderer.

Julkar. (*Ind.*) A water right. A right of fishing. It also includes the right to drift and stranded timber as well as fishing or other interest of a similar kind in the produce of a river (*Amriteswari Debi* v. *The Secretary of State*, 24 Cal. 504; 24 I. A. p. 44). The right to the julkar of a river, that is, a right to the produce of the water such as fish, &c., does not necessarily carry with it a right of ferry (*Gopee Thakooranee* v. *Sheo Sewuck Misser*, 5 N.-W. P. 95).

The mere use of the word "julkar" would not give a right of fishery in a public tidal navigable river. The word may be perfectly satisfied by applying to the right to fish within enclosed water, such as *kheel* in a zemindari (*Prosunno Coomar* v. *Ram Coomar*, 4 Cal. p. 55).

Jungama. (*Ind.*) Moveable property; all that is not comprehended within the term *sthavara*, *i. e.*, immoveable property.

Junior barrister. A barrister under the rank of King's Counsel. Also the junior of two counsel employed on the same side in any judicial proceeding.

Juptee. (*Ind.*) Attachment; seizure; distraint; sequestration; confiscation.

Jurat. A short statement at the foot of an affidavit, *when*, *where*, and *before whom* it was sworn. An officer in the island of Jersey. *See* JURATS.

Juration. The act of swearing; the administration of an oath.

Jurator. A juror.

Juratory caution. (*Sc. L.*) Such bail or security as a party swears is the best he can offer, and where he is not in circumstances to offer any better.

Jurats (*jurati*). Twelve officers in the island of Jersey, members of the royal court, and also members of the states or legislative assembly of the island. Also officers in the nature of aldermen, in certain towns of Kent and Sussex.

Juridical. Acting in the distribution of justice.

Juridical days (*dies juridici*). Days in court on which the laws are administered; court days.

Jurisdiction (*jurisdictio*). Legal authority; extent of power. An authority or power which a man has to do justice in cases of complaint brought before him. Jurisdiction may be limited either *locally* (local jurisdiction), as within particular territorial boundaries, or *personally*, as where a court has a quorum, or as to *amount* (pecuniary jurisdiction), or as to the character of the *questions* to be determined. A court shall not be presumed to have a jurisdiction where it does not appear to have one. *See* HERITABLE JURISDICTIONS.

The word jurisdiction in its ordinary meaning simply means the legal power or authority of hearing and determining disputes for the purposes of administering justice, and in its broad legal sense it may be taken to mean the power of administering justice according to the means which the law has provided, and subject to the limitations imposed by that law upon the judicial authority. Such jurisdiction may either be territorial or pecuniary with reference to the value of the subject matter in litigation, or the domicile and nationality of the parties, or the class or rank to which the tribunal belongs (*per* Mahmood, J., *Har Pershad* v. *Jafur Ali*, 7 All. p. 350).

Jurisinceptor. A student of the Civil Law.

Jurisprudence. The science of law, especially of Roman Law.

Jurist. A civil lawyer; a civilian.

Juror (*jurator*). One of those persons who are sworn on a jury.

Jurors' book. A list of persons qualified to serve on juries.

Jury. A certain number of men sworn to inquire of, and try, a matter of fact, and declare the truth, upon such evidence as shall be delivered to them in a cause; and they are sworn judges upon evidence in matters of fact. Juries are of two kinds,—*grand juries*, to inquire whether there is a *prima facie* ground for a criminal accusation (*see* GRAND JURY; INDICTMENT); and *petty juries*, for determining disputed matters of fact in civil and criminal cases (*see* PETTY JURY). The jury in a case triable by jury constitute a part, and an important part, of the tribunal (*Legal Remembrancer* v. *Bhairab*, 25 Cal. 727). *See* SPECIAL JURY

Jury book. *See* JURORS' BOOK.

Jury box. The place in which jurors sit for the trial of matters submitted to them.

Juryman. A member of a jury.

Jury of Matrons. Jury-woman. A jury of twelve matrons appointed to inquire whether a woman, who pleads pregnancy in bar of execution, is quick with child; if so, the execution is stayed until the birth of the child, after which as a general rule the Crown commutes the punishment.

Jury process. The writ for summoning a jury.

Justice (*justitia*). A constant righteous inclination to give every one his due; the act of doing what is right and just.

Justice, equity and good conscience. In cases coming before judges, for which no specific rule may exist, they are to act according to *justice, equity and good conscience*. The term is generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances (*per* Lord Hobhouse, *Maghela* v. *Sheikh Masludin*, L. R. 14 I. A. 89, 96, *per* Burkitt, J., *Himalaya Bank* v. *F. W. Quarry*, 17 All. p. 261). "Justice, equity and good conscience" are captivating terms, but before a judge applies what may appear to him at first sight to be in accordance with justice, equity and good conscience, he must be careful to see that his views are based on sound general principles, and are not in conflict with the intentions of the Legislature or with sound principles recognized by authority (*per* Sir John Edge, C. J., *Seth Chitor Mal* v. *Shib Lal*, 14 All. p. 299).

Justicements. All things belonging or appertaining to justice.

Justices (*justiciarii*). Officers deputed by the King to administer justice, and do right by way of judgment. The judges of the Supreme Court are called justices, but the word is generally applied to petty magistrates who sit to administer summary justice in minor matters, and who are commonly called *justices of the peace*.

Justices ayres. The circuits throughout Scotland for the distribution of justice.

Justices in eyre. Justices who formerly made a circuit every seven years round the

kingdom to try causes; superseded by the modern justices of assize.

Justices of Assize were originally judges appointed to try the real actions called *assizes* SEE *Assise*.

Justices of oyer and terminer. Justices of assize are so called in respect to their commission to *hear* and *determine* all treasons, felonies and misdemeanours.

Justices of the forest. Also called justices in eyre of the forest, appointed to hold the court of *Justice-seat* for the purpose of hearing and determining trespasses within the forest, and trying causes arising therein.

Justices of the pavilion. Certain judges of a pie-powder court. *See* COURT OF PIEDPOUDRE.

Justices of the peace. Subordinate magistrates appointed to keep the peace within a given jurisdiction where they dwell, and to inquire of felonies and misdemeanours, with a statutory jurisdiction to decide summarily in many cases, and in some cases to adjudicate upon claims of a civil nature.

Justice-seat. The principal court of the forest. *See* FOREST COURTS.

Justiceship. The rank or office of a justice.

Justiciable. Proper to be examined in courts of justice.

Justiciar. Justicier. A judge, justice, or, as he was sometimes termed, justiciary; a lord chief justice.

Chief justiciar or *justiciary.* An officer of high importance in early history. He presided in the King's Court and the Exchequer, and his authority extended over all other Courts. He was *ex officio* regent of the kingdom in the king's absence. Writs ran in his name and were tested by him. The last who filled the office and bore the title *Capitalis Justiciarius Angliæ* was Phillip Basset, temp. Hen. III.—*Wharton.*

Justiciary, High Court of. The chief criminal court of Scotland, consisting of five Lords of Session, added to the Justice-General and Justice Clerk, over whom the Justice-General, and, in his absence, the Justice Clerk is president. The court has a jurisdiction over all crimes, and over the whole of Scotland.—*Moxley.* *See* SESSION.

Justicies. A special writ empowering the sheriff for the sake of despatch, to do the same justice in his county court, as might otherwise be had at Westminster; the writ directed the sheriff, in some special cases, to hold plea of debt in his county court for a larger sum, whereas, otherwise, his ordinary power was limited to sums under 40 s.

Justifiable homicide. *See* HOMICIDE.

Justification (*justificatio*). A maintaining or showing good reason in court why one did such a thing which he is called to answer, particularly in an action of libel; a defence or plea of justification is a defence showing the words complained of in the libel to be true in substance and in fact or, in an action of assault, showing the violence to have been necessary.

Justificators. A kind of compurgators, who by oath justified the innocence of others. *See* COMPURGATORS. Also jurymen, because they justify that party for whom they deliver their verdict.

Justifying bail. Proving the sufficiency of bail or sureties in point of property, &c.

Justifying security. Administrators are in certain cases required by the Court of Probate to give justifying security, *i. e.*, the sureties to the administration-bond must, in an affidavit, swear that they are, after the payment of their debts, worth a sum specified. —*Wharton.*

Justinianist. A civilian; one who studies the Civil Law.

Juvenile offender. A young offender. Under the Whipping Act, a juvenile offender means a person under the age of sixteen years (*Reg.* v *Muhammad*, 8 Bom. H. C., Cr. Ca., 9; *Empress* v. *Din Ali*, 4 All. W. N. 213; 6 All. 482). *See* REFORMATORY SCHOOLS,

Jyeshtha-ansh. (*Hin. L.*) The right of primogeniture, or the right of the eldest son to a larger portion of the patrimonial property than his brothers; a right formerly recognised but now obsolete, the partition being equal. *See* MOTAP.

K

Kabala. (*Ind.*) An agreement; a contract.

Kabin. (*Ind.*) Ratification of marriage in the presence of a Kazi, a dower; a marriage portion.

Kabinnamah. A deed of marriage settlement or dowry-deed.

Kabool. Kabul. (*Ind*) Consenting; acceptation; acknowledgment.

Kabooleat. Kabuliyat. An engagement or agreement in writting. A written agreement especially one signifying assent, as the counterpart of a revenue lease, or the document in which a payer of revenue, whether to the government, the zemindar, or the farmer, expresses his consent to pay the amount assessed upon his land. *See* PATTA.

Kacchi adat. (*Ind.*) A sort of agency in the Bombay Presidency. Under the *kacchi adat* system, when an agent receives an order, he sends for a broker and settles the rate with him. The rate so settled becomes, from that moment, binding upon both the agent and the broker; and the broker remains personally bound till he brings a party willing to take up the contract. The broker, in such a case, adopts one of two ways. He either brings a party willing to take up and introduces him to the agent, and the party and the agent then exchange *kabalas* with each other; or, where a broker has a contract of his own ready, he agrees to transfer it to the agent, and then brings together the agent

and the other party to his (broker's) contract, and these two then exchange *kabalas* with each other. If, when the parties are brought together, the market rate is the same as the rate settled by the agent with the broker, the broker gets nothing beyond his commission. If the rate is less, the difference is to be borne by the broker and paid to the person with whom the original rate was settled. If it is more, that person has to bear the difference and pay it to the broker. This payment of difference which is either against, or in favour of, the broker according as the rate in the market is less or higher than the original rate, is called the broker's *gala*. It is not usual for a *kaccha adatia* to disclose the name of his principal to the person with whom he enters into contract (*Fakirchand* v. *Doolup*, 7 Bom. L. R. 213). *See* PAKKI ADAT.

Kafalut. (*Ind.*) Bail.

Kaiage. Kaiagium. A wharfage-due.

Kaifiyat. (*Ind.*) Statement; description.

Kain. (*Sc. L.*) Poultry, &c., payable by a tenant to his landlord.

Kanam. (*Ind.*) An advance or deposit of money made to a proprietor of lands or gardens on receiving them from him at a stipulated rent upon lease for a given term of years. The deposit bears interest, which the tenant sets off against the rent; the principal is returned when the lease expires. This is somewhat different from a loan upon a mortgage where the lender holds the land as a security; here the landlord holds the deposit as a security for his rent. The person who recives the advance or deposit is called *jenmi*. The person making the advance is called the *kanamdar*. A kanam, in the mortgage aspect of it, is a usufructuary mortgage, and a suit for recovering the amount of the kanam, and for sale of the mortgaged property in default of payment, is unsustainable (*Sridevi* v. *Virarayan*, 22 Mad. 350). *See* OTTI.

Kanina. (*Hin. L.*) The son of a damsel born in her father's house, before she was married. If she married, the son belonged to her husband and inherited to him. If she did not marry, he belonged to, and was the heir of, her father, under whose dominion she remained.

Kantref. An old Welsh word signifying one hundred towns; the division of a county; a hundred.

Kanya-dana. (*Hin. L.*) The presentation of the bride to the bridegroom by her parent or guardian; the giving of a girl in marriage; a gift to a girl upon her marriage; a dower.

Karabati karibi. (*Ind.*) A near male collateral.

Karao. (*Ind.*) A sort of marriage among the Jat caste. It is held as valid among the Jats, and the offspring of such union entitled to inherit (*Queen* v. *Bahadur Singh*, 4 N.-W. P. 128).

Kararnamah. Kararpatra. (*Ind.*) A deed of agreement; a written contract or engagement.

Karkoon. (*Ind.*) A clerk, a writer, a registrar; an inferior revenue officer in charge of a division under the Mamlatdar or District Collector.

Karnam. Kulkarni. (*Ind.*) A village accountant holding office under Government.

Karnavan. (*Ind.*) The head of a family in Malabar; the senior male of whatsoever branch. *See* TARWAD.

Karta. (*Ind.*) The manager of a joint Hindu family. An executor or administrator.

Dharmakarta. The manager of a religious or charitable trust or institution.

Karz. (*Ind.*) Debt.

Kattubadi. (*Ind.*) Rent for land. Kattubadi is rent, and does not constitute a charge on the land (*Gajapati* v. *Suryanarayana*, 22 Mad. 11.

Kaza raza. (*Ind.*) Accident; misfortune; death.

Kazi. (*Ind.*) A judge, civil, criminal and ecclesiastical, among the Mehomedans. Under the British authorities their judicial functions ceased, and their duties were confined to the preparation and attestation of deeds, and the superintendence and legalisation of marriage and other ceremonies among the Mehomedans.

According to Mehomedan law, the appointment of kazi has always been vested in the chief executive officer of the State, and the right to make such appointment has never rested with the Mehomedan community at large (*Muhammad* v. *Sayad Ahmed*, 1 Bom. H. C., Ap., 18).

Kazi ul-kozat. The chief Kazi.

Keelage (*killagium*). A privilege to demand money for the bottom of ships resting in a port or harbour.

Keeper of the forest (*custos forestæ*). The chief warder of the forest, who had the principal government over all officers within the forest and formerly warned them to appear at the court of justice-seat, on a summons from the lord chief justice in eyre.—*Mozley.*

Keeper of the Great Seal (*custos magni sigilli*). The Lord Chancellor; the officer to whom the Great Seal is delivered.

Keeper of the Privy Seal (*custos privati sigilli*). The officer through whose hands all charters, pardons, &c., pass, before they come to the Great Seal.

Keeper of the Touch. That officer in the King's mint at this day called the Master of the Assay.

Keeping house. As an act of bankruptcy, this is when a man absents himself from his place of business and retires to his private residence to defeat or to evade the importunity of creditors. To usual evidence of *keeping house* is denial to a creditor who has called for money.

Keeping term. Keeping term by a student of law consists in eating a sufficient number of dinners in hall to make the term count for the purpose of being called to the bar.

Keeping the peace. Avoiding a breach of the peace; or pursuading or compelling others to refrain from breaking the peace. Security for keeping the peace consists in being bound with one or more securities in a recognizance or obligation to the Crown, whereby the party acknowledges himself to be indebted to the Crown in a given sum, with condition to be void if he shall keep the peace either generally towards the sovereign and all his liege people, or particularly to the person who craves the security.—*Mozley.* See Act V of 1898 (Crim. Pro.), Chap, VIII.

Key. A wharf to land or ship goods or wares at.

Keyage (*kaiagium*). The money or toll paid for lading or unlading wares at a key or wharf.

Keys. These are, in the Isle of Man, the twenty-four chief commoners, who form the local legislature.

Khalal. (*Ind.*) Disturbance. Breach. Accident. The word khalal is not confined to an unforseen event or accident, but includes the consequences of fraudulent conduct of a party (*Ahmad-ullah* v. *Salar Baksh*, 27 All. 488; 25 All. W. N. 61; 2 All. L. J, 241) Vernacular sale-deeds and mortgage-deeds usually contain a covenant that if any *khalal* occurred in the possession or enjoyment of the purchaser or mortgagee, the seller or mortgagor would be responsible for the same.

Khalit. *See* SHAFIA KHALIT.

Khalsa. (*Ind.*) Pure; unmixed. An office of Government in which the business of the revenue department was transacted under the Mehomedan Government and during the early period of British rule. Khalsa lands are lands the revenue of which is paid into the exchequer.

In Mehomedan times, all revenue paying lands were divided into two classes, the *khalsa* lands paying revenue into the Khalsa Shereefa or royal treasury itself, and the *Jagir* lands, the revenue of which was assigned, and was either remitted to the holder of the land or paid under the orders of the authorities to military commanders and others for their support. *See* JAGIR.

Khana-shumari. (*Ind.*) An annual enumeration of houses, with a specification of the caste and profession of each house-holder, for the purpose of adjusting the dues of government.

Khanazad. Under the Mahomedan Law, if a female slave should bear offspring, by any other than her legal lord and master, whether the father be a freeman or slave, and whether the slave of the said master or of any other person, in any of these cases, such offspring is subject to slavery; and these are called *khanazad, i. e.*, born in the family.—*MacN. Meh. Law.*

But if the children be the avowed and acknowledged offspring of the rightful owner, they are then free, and the mother of them, (being the parent of a child by her master) becomes at his decease free also.

The son of a Mehomedan by a slave girl, if acknowledged by his father, is entitled to inherit.—*Ibid.*

Khandan. (*Ind.*) Family. Unless it appears otherwise from the context, there is no reason for extending the meaning of the word *khandan*, which ordinarily refers to the group of descendants who constitute the family of the progenitor, so as to include illegamate offspring (*Bhaiya Sher Bahadur* v. *Bhaiya Ganga Baksh*, 18 Cal. W. N. 401, P. C.).

Kharij-namah. (*Ind.*) A deed of separation or division; also, simply a deed of transfer.

Khasgi. (*Ind.*) Private or personal.

Khataa. (*Ind.*) *See* UMD.

Khatib. (*Ind.*) A preacher. A reader of prayers in a mosque.

Khatt kubala. (*Ind.*) A writing preparatory to a deed. An agreement. In Bengal it means a mortgage-deed or deed of conditional sale stipulating that if the purchase price or money advanced be not repaid within a given term, the sale shall become absolute; the same as *Bay-bil-wafa.*

Khawas. (*Ind.*) Nobles; grandees; attendants; personal servants; usually the favourite or confidential attendant on a person of rank.

Khewat. (*Ind.*) One of settlement records; a list of co-sharers and proprietors in the village with their interests and shares of revenue payable.

Khorposh. (*Ind.*) A maintenance grant. In the absence of strict proof to the contrary, a *khorposh* or maintenance grant confers on the grantee, a life estate in the property, and the reversion remains in the grantor. The grantee is called a *khorposhdar*, and has simply the rights of a life tenant (*Prince Mahomed Buktyar* v. *Rani Dhojamani*, 2 C. L. J. 20).

Khot. Khote. (*Ind.*) Originally, a revenue farmer, whether as a farmar land owner or local land officer with an ancient hereditary little or otherwise; now proprietor. Under the Bom. Act I of 1880 (Khoti Settlement), s. 3, *khot* includes (1) a mortgagee lawfully in possession of a *khotki*, (2) all co-sharers in a *khotki*; and *khotki* means the aggregate of the rights and interests vested in a *khot* as such.

Khotbah. (*Ind.*) An oration delivered every Friday after the afternoon service in the principal mosques, in praise of God and his descendants, and prayers for the ruling power.

Khudkasht. (*Ind.*) In ancient times, the original settlers in a village with their

lescendants and those cultivators who had been admitted to share the same privileges ormed the class of *khudkasht* (own cultivating) ryots, and they had an hereditary right o cultivate the lands of the village in which hey resided. *Khudkasht* or resident ryots rom father to son were always considered o have a right to remain in the land so long nd they paid their rent.

Khula. (*Meh. L.*) A putting or turning out; a contract for the dissolution of marriage; the repudiation of a wife at her own desire, when she forfeits her dower; also, disinheriting a son, turning him out of doors. See TALAK.

A suit by a Mehomedan wife to compel her husband to give her a *khula* divorce is not maintainable (*Mariam* v. *Nur Muhammad*, 2 All. W. N. 83).

Khulanamah. A deed of divorce.

Khurch. Kharach. (*Ind.*) Expense; disbursement, casual expenditure for public purposes in the business of revenue arrangement. See JAMA KHURCH.

Kharach-i-pandan. See PANDAN.

Khushki. (*Ind.*) Dryness; dry land; land not artificially irrigated; by land, in opposition to by water; a travelling

Kidder. An engrosser of corn, dead victual, or other merchandize, to enhance their price. See ENGROSSING.

Kidnapping. Kidnapping is of two kinds; kidnapping from British India, and kidnapping from lawful guardianship.—*Act XLV of* 1860 (Penal Code), *s.* 359.

Kidnapping from British India. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.—*Ibid.*, *s.* 360.

Kidnapping from lawful guardianship. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. The words 'lawful guardian' in this section include any person lawfully entrusted with the care or custody of such minor or other person. This section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegitimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.—*Ibid.*, *s.* 361.

Kin. Legal relationship; relationship by blood. See KINDRED.

Kin-bote. Cempensation for the murder of a kinsman.

Kindly tenant. See RENTAL RIGHT.

Kindred. Relations by blood. Neither husband nor wife is of "kin" to the other; but persons related by the half blood are of "kin" equally with those of the whole blood —*Stroud.* See CONSANGUINITY.

King consort. The husband of the reigning queen.

King-craft. The art of governing.

King-geld. A royal aid or escuage,

King's Advocate. See ADVOCATE.

King's Bench. See COURT OF KING'S BENCH.

King's Books. Books containing the valuation of ecclesiastical benefices and preferments, according to which valuation the first fruits and tenths are collected and paid, and the clergy rated.

King's Coroner and Attorney. An officer of the Court of King's Bench, usually called the Master of the Crown Office, whose duty it is to file information at the suit of private subject by direction of the Court. See CROWN OFFICE, INFORMATION.

King's Counsel. Barristers and serjeants appointed, by letters patent, on account of their superior learning and talent, to be His Majesty's Counsel. Their selection and removal rests in practice with the Lord Chancellor. They wear silk gowns and take precedence in Court to other barristers. They are generally made benchers of their Inn. They may not, except by license from the Crown, take a brief against the Crown in any civil or criminal case; but such license will be given on payment of the usual fee. A king's counsel, on taking that rank, renounces the preparation of written pleadings, and other chamber practice.

King's enemies. See ENEMY.

King's evidence. Evidence for the Crown. When we say that an accused person turns King's evidence, we mean that he confesses his guilt, and proffers himself as a witness against his accomplices, unless his statements be corroborated in some material part by unimpeachable evidence, the jury are usually advised by the judge to acquit the prisoner notwithstanding. See ACCOMPLICE.

King's Peace. The piece of the people of the country generally; *e. g.*, criminal offences are said to be committed contrary to the King's peace, *i. e.*, to the peace of the people of the country generally.

King's Proctor. The proctor or solicitor representing the Crown in the Courts of Probate and Divorce. In petitions for dissolution of marriage, or for declarations for nullity of marriage, the King's Proctor may intervene in the suit for the purpose of proving collusion between the parties. See INTERVENTION.

King's Remembrancer. See REMEMBRANCERS.

King's silver. See FINE.

King's widow. A widow of the king's tenant-in-chief, who was obliged to take oath in Chancery that she would not marry without the king's leave.

Kirayanamah. (*Ind.*) A rent note or agreement.

Kirk. A church.

Kirk-mote. A meeting of parishioners on church affairs.

Kirk-session. A parochial church court in Scotland, consisting of the ministers and elders of each parish.

Kist. (*Ind.*) Stated payment; instalment of rent or revenue.

Kistbundy. The written rules according to which the dates of the *kists* become due, and their proportion to the whole demand is fixed. An instalment bond. An agreement by which money due under a decree is made payable by instalments (*Ramchurn* v. *Koondun*, 14 B. L. R. 423, note).

Kleptomania. Insanity in the form of an irresistible propensity to steal.

Knave. An old Saxon word for a boy or man servant.

Knaveship. The quantity of grain which, by the custom of a mill, was given to the servant of the mill by whom the work of grinding was performed, by the tenants who were bound to grind their grain at such mill. *See* MULTURE.

Knight. A commoner of rank, originally one that bore arms, who, for his martial powers, was raised above the ordinary rank of gentleman. A title of honour next to baronets, entitling the person on whom it is conferred to be styled *Sir*, and his wife *Lady*.

Knighthood. The character or dignity of a knight.

Knight marshal. An officer in the royal household who has jurisdiction and cognizance of offences committed within the king's household and verge and of all contracts made therein, a member of the household being one of the parties.

Knight service (*servitium militare*). The most universal and most honourable species of tenure under the feudal system. It was entirely military. To make a tenure by knight service, a determinate quantity of land was necessary, which was called a *knight's fee*. And he who held this proportion of land by knight service was bound to attend his lord to the wars for forty days in every year, if called upon; there were other burdens attached to this tenure, under the name of aids, reliefs, primer seisins, &c.—*Mozley*. Now abolished.

Knight's fee (*feudum militare*). A quantity of land sufficient to maintain a knight with convenient revenue; supposed to be twelve plough-lands, the value of which was estimated from 15 to 20 pounds *per annum*. Also the rent that a knight paid to the lord of whom he held. *See* KNIGHT SERVICE.

Knights of the post. Hireling witnesses.

Knights of the shire. Members of Parliament representing counties or shires in contradistinction to citizens or burgesses, who represent boroughs or corporations.

Koran. Alkoran. The Mehomedan book of faith. It contains both ecclesiastical and secular laws.

Kotwal. (*Ind.*) A chief officer of police or superintendent of markets in a large town or city.

Kowl. (*Ind.*) A promise; an agreement on the part of a superior, especially a document granted by a superior to an inferior holder of land, specifying the terms of the tenure; a putta.

Kritaka. (*Hin. L.*) A son bought. He was a minor and the right in him was given over by those who had dominion over him.

Kritrima. (*Hin. L.*) A son made. He was of full age, and therefore able to dispose of himself.

Kshatriya. (*Hin. L.*) The second of the four classes of Hindus, *i. e.*, the warriors.

Kshetraja. (*Hin. L.*) The son begotten on the wife.

Kubala. (*Ind.*) A contract or deed. A written agreement. *See* KHATT KUBALA.

Kudivaram. (*Ind.*) The word may be used in two senses—(1) the right of occupancy; (2) the share of the produce which the cultivator, whoever he may be, actually gets (*Chinnan* v. *Kondam Naidu*, 26 M. L. J. R. 169).

Kulkarni. (*Ind.*) *See* KARNAM.

Kurwah. (*Ind.*) A conductor of pilgrims.

Kutkina. (*Ind.*) A sub-lease by a farmer or under-farmer who again may have no direct connection with the soil Below this, are *durjaras* or *durkutkinas* in a line of sub-infeudation.

Kyth. Kin or kindred.

L

Laan. The word, in the language of the Mahomedan Law, signifies testimony confirmed by oath, on the part of the husband and wife (where the testimony is strengthened by an imprication of the curse of God on the part of the husband, and of the wrath of God on the part of the wife), in the case of the former accusing the latter of adultery.—*Hidaya.*—*MacN. Meh. Law.* *See* TALAK.

Label. A narrow slip of paper or parchment, affixed to a deed, writing or writ, hanging at or out of the same, in order to hold the appending seal; an appending seal is called a label.

Labourer. A labourer is a man who digs and does other work of that kind with his hands. A carpenter, or a bailiff, or a parish clerk is not called a labourer (*per* Brett, L. J., *Morgan* v. *L. G. Omnibus Co.*, 53 L. J. Q. B. 353; 13 Q. B. D. 832).—*Stroud.*

Laches. Slackness or negligence. Neglect

in a person to assert his rights, or long and unreasonable acquiescence of adverse rights. *See* ACQUIESCENCE.

Laches or *lasches* is an old French word for slackness or negligence or not doing.—*Co. Litt.* 380 *b.*—*Stroud.*

Laches signify knowledge or at least such abstinence from legitimate enquiry as to amount to constructive notice of the risk incurred (*Janki Singh* v. *Debi Nandan*, 7 Ind. Cas. 772).

The equitable doctrine of laches and acquiescence does not apply to suits for which a period of limitation is provided by the Limitation Act (*Ram Rau* v. *Raja Rau*, 2 Mad. H. C. R. 114). Mere laches or indirect acquiescense, short of the period prescribed by the statute of limitations, is no bar to the enforcement of a right absolutely vested in the plaintiff at the time of suit. *Semble*, the doctrine of acquiescence or lashes will apply only to cases, if such there are, in which they can be regarded as a positive extinguishment of right. When they go merely to the remedy, the Courts have no power arbitrarily to substitute an extinguishing prescription different to that determined by the legislature (*Peddamuthilaty* v. *N. Timma Reddy*, 2 Mad. H. C. R. 270). But a party cannot call upon a court of equity to assist him unless he shows himself ready, desirous, prompt and eager (*Mohendra Nath* v. *Sambu Bibi*, 7 Cal. W. N. 229).

Lacta. A defect in the weight of money.

Lada. Purgation; exculpation. This was either by (1) the accused's own oath supported by the oaths of his compurgators, or (2) by ordeal, or (3) by corsned bread. Also a service which consisted in supplying the lord with beasts of burden; a lath or inferior court of justice; a course of water; a broad way.

Ladawa. Ladavi. (*Ind.*) A deed of relinquishment. A release or acquittance. Without claim.

Laden in bulk. Freighted with a cargo which is neither in casks, boxes, bales, nor cases, but lies loose in the hold, being defended from wet or moisture by a number of mats and a quantity of dunnage.—*Wharton.*

Lading. *See* BILL OF LADING.

Lady. The title borne by the wives of knights, and of all degrees above them, except the wives of bishops. *See* DAME.

Lady Court. The court of the lady of a manor.

Lady's friend. An officer of the House of Commons, whose duty it was to take care that a husband, who sued for a divorce, made a suitable provision for his divorced wife, if the House of Lords had not provided for it.—*Wharton.*

Lafordswic. A betraying of one's lord or master.

Lagan. Lagon. Goods cast out of a ship in danger of shipwreck, and fastened to a buoy or cork, so that they may be the more easily recovered. So long as they continue upon the sea, they belong to the lord admiral; but if they are cast away upon the land, they are then a wreck, and belong to the lord entitled to the same. The word also denotes the right which the chief lord of the fee had to take goods cast on shore by the violence of the sea. *See* FLOTSAM.

Lage-day. Lagh-dayum. Lagh-day. A day of open Court; the day of the county-court; a law-day.

Lage-man. A good and lawful man (*probus et legalis homo*) for the purpose of serving on juries, &c.; a juror. Also one who had jurisdiction over the persons or estates of his fellow citizens, such as the thanes and barons of former times.

Lagh. Law

Lagh-day. *See* LAGE-DAY.

Laghslite. A breaking or transgressing of the law, also the punishment inflicted for so doing.

Lairwite. Lecherwite. A fine for adultery or fornication, anciently paid to the lords of some manors.

Laity. The people, as distinguished from the clergy.

Lakheraj (*Ind.*) Rent-free land; applied to land exempted, for some particular reason, from paying any part of the produce to the State.

Lambardar (*Ind.*) One of several co-sharers of an estate or holding, who represents the other co sharers, and through whom they pay revenue to Government, each co-sharer paying his proportion of revenue or other village dues to him. *See* PUTTEEDARI TENURE.

Lambeth degrees. Degrees conferred by the Archbishop of Canterbury.

Lammas lands. Land over which there is a right of pasturage by persons other than the owner from about Lammas, or reaping time, until sowing time, *i e*, during the interval between the removal of the crops grown thereon in each year and the time for preparing the land for the next sowing.

Lancaster County Palatine. Lancaster was created into a county palatine in the fiftieth year of Edward III and granted by him to his son John for life, that he should have *jura regalia* and a kinglike power therein, to pardon treasons, outlawries, &c., and make justices of the peace and justices of assize within the county, and all processes and indictments to be in his name. It is now vested in the Crown. *See* COUNTY PALATINE.

Lancetl. Vassals who were obliged to work for their lord one day in the week, either with fork, spade, or flail, at the lord's option; a sort of servile tenants under the ancient feudal system.

Land (*terra*). The word signifies generally not only arable ground, meadow, pasture, woods, moors, waters, &c., but also messuages and houses; for in conveying the land, the buildings pass with it. In a more restrained sense it is arable ground; and the land of every man is said in law to be inclosed from that of others, though it be in the open field; so that for any trespass therein he shall have the writ *quare clausum fregit*. Water, by a solecism, is held to be a species of land; so that in order to recover possession of a pool or rivulet of water, the action must be brought for the land, *e. g.*, ten acres of *land covered with water*, and not for the water only. And besides an infinite extent *upwards*, it extends *downwards* to the globe's centure, according to the maxim *cujus est solum ejus est usque ad cœlum et ad inferos*.

Land in its natural condition. Land is in its natural condition when it is not excavated and not subjected to artificial pressure.—*Act V of* 1882 (*Easements*), *s.* 7, *illus.* (*e*), *Explanation.*

Land-boc. A charter or deed whereby land or tenements are given.

Land-cheap. An ancient customary fine paid either in cattle or money at every alienation of land lying in some particular manor, or in the liberty of some borough.

Landefricus. A landlord; a lord of the soil.

Landegandman. An inferior tenant of a manor.

Land Estates Court. A Court in Ireland created in 1858 in succession to the Encumbered Estates Court, for the purpose of deciding questions relating to the title to land.

Landgable. A tax or rent issuing out of land; it was a penny for every house.

Landholder. *See* HOLDER.

Landirecta. Rights which charged the land, whoever possessed it.

Landlord. He of whom lands or tenements are holden; the *tenant* being the person holding the lands. Landlord is thus a relative term; as the landlord may be, and in strict law must be, himself a tenant of the Crown or other superior lord.—*Mozley.*

Landman. A terre-tenant, or occupier of land.

Landmark. An object fixing the boundary or an estate or property.

Landreeve. A person whose business it is to overlook certain parts of a farm or estate.

Land-steward. A person who overlooks or has the management of a farm or estate.

Land-tax. A tax upon land, the original of which may be traced (says Blackstone) to our military tenures. The personal attendance required of tenants of knights' fees growing troublesome, the tenants found means of compounding for it, first by sending others in their stead, and in process of time by making a pecuniary satisfaction to the Crown in lieu of it. This pecuniary satisfaction at last came to be levied by assessments, under the name of *escuage* or *scutage*.—*Mozley.*

Langeman. A lord of a manor.

Lapidation. The act of stoning a person to death.

Lapse (*lapsus*). Error; failing in duty. A species of forfeiture, whereby the right of presentation to a benefice accrues to the ordinary, by neglect of the patron to present, to the metropolitan by neglect of the ordinary, and to the Crown by neglect of the metropolitan; it is in the nature of a spiritual escheat; under such circumstances the benefice is said to lapse. The failure of a testamentary disposition in favour of any person, by reason of the death of the intended beneficiary in the life time of the testator; the devise or legacy is thus said to lapse.

Larceny (*latrocinium*). The unlawful taking and carrying of things personal, with intent to deprive the right owner of the same. The taking must be *animo furandi* (*i. e.*, with the intention of stealing); and there must also be an "asportation," that is, a carrying away, but for this purpose the smallest removal is sufficient. Larceny was formerly divided into *petit*, where the value of the property was not more than twelve pence; and *grand*, where it exceeded that amount. But the distinction is now abolished. Larceny may be *simple*, that is, not combined with any circumstances of aggravation; or, if so combined it is called *compound* larceny Under the latter, are included (1) larceny in a *dwelling house*, in *ships*, *wharfs*, &c.; (2) larceny from the *person*, which is either by *privately* stealing, as by picking a person's pocket, or by *open* and *violent* assault, usually called *robbery*; (3) larceny by *clerks* and *servants*.

Distinction between larceny and embezzlement. Larceny by a servant is where a servant appropriates his master's property. Embezzlement is where a servant, having received property in the name of or on account of his master, appropriates the same before it reaches his master when it has not come into the actual or legal possession of the master.

Distinction between larceny and false pretences. Where a man being desirous to possess himself fraudulently of another's goods, obtains possession of the goods by some trick or artifice, the owner not intending to part with the entire right of property, but with the temporary possession only, this is held to constitute larceny. In *larceny* the owner of the thing stolen has no intention to part with his *property* therein to the person taking it, although he may intend to part with the *possession*; whereas in *false pretences* the owner does intend to part with his property in the money or chattel, but it is obtained from him by fraud.

See EMBEZZLEMENT, ROBBERY, THEFT.

Larding money (*lardarium*). In the ma

nor of Bradford in the county of Wilts, the tenants pay to their lord a small yearly rent by this name, which is said to be for liberty to feed their hogs with the masts of the lord's woods, the fact of a hog being called lard; or it may be a commutation for some customary service of carrying salt or meat to the lord's larder.—*Tomlins.*

Larsons. Thieves.

Lastage (*lastagium*). A custom exacted in some fairs and markets to carry things bought whither one will. The ballast of a ship. Stowage room for goods in a vessel. A custom paid for wares sold by the last (a sort of weight or measure of fish, corn, wool, leather, pitch, &c.).—*Mozley.*

Last Court. A Court held by the twenty-four jurats in the marshes of Kent and summoned by the bailiffs, wherein orders are made to lay and levy taxes, impose penalties, &c., for the preservation of the said marshes.

Last heir (*ultimus hæres*). He to whom lands come by escheat for want of lawful heirs; that is, in some cases, the lord of whom the lands were held, but in others, the sovereign.

Last resort. A court from which there is no appeal is called the Court of last resort

Latent. Hidden; concealed; secret.

Latent ambiguity. See AMBIGUITY.

Lath. Lathe. Leth. A part of a county. In some counties there is an intermediate division between the shire and the hundred; as *lathes* in Kent, and *rapes* in Sussex; each of them containing three or four hundreds.

Lathreeve. Ledgreeve. An officer who under the Saxons, had authority over the *lath.*

Latimer. An interpreter. It is suggested that it should be *latiner,* because he who understood latin, which in the time of the Romans was the prevailing language, might be a good interpreter.

Latin. There are three sorts of Latin (1) Good Latin, allowed by grammarians and lawyers; (2) False or incongruous Latin, which in times past would abate original writs, though not make void any judicial writ, declaration, or plea, &c., and (3) Words of art, known only to the sages of the law, and not to grammarians, called Lawyer's Latin.—*Tomlins.*

Latrocination. The act of robbing, a depredation.

Latrociny. Larceny.

Laudare. To advise or persuade; to arbitrate.

Laudator. An arbitrator.

Laudum. An arbitrament or award.

Laughe. Frank-pledge.

Laund. Lawnd. An open field without wood.

Law. The rule and bond of men's actions; a rule for the well governing of civil society, to give every man that which doth belong to him, a rule of action to which men are obliged to make their moral conduct conformable. *Law* is sometimes used as opposed to *Equity,* meaning the principles followed in Common Law Courts in contradiction to those which were administered only in Courts of Equity.

Law agent. Any person entitled to practise as an agent for another in a Court of law in Scotland.

Law and Equity. The distinction between Law and Equity is one which has existed in many systems of jurisprudence, notably in the Roman and the English systems; and the distinction invariably comes to be abolished (more or less) in course of time, the principles of Equity coming to prevail over without destroying the principles of Law, until by positive legislation there is effected a complete fusion between the two sets of principles. Justinian effected this fusion for Roman Law, and Queen Victoria by her two Lord Chancellors (Selborne and Cairns) has effected it for English Law,—*Brown.*

Law and Fact. In litigation, it is customary to find the conjunction of law and fact; but occasionally there is no dispute about the facts, the question being entirely one of law, and again there is frequently no dispute about the law, but a dispute purely about the facts. Matters of law are for the judge, and matters of fact are for the jury, mixed matters of law and fact are for the jury, but properly dealt with they would be distinguished. —*Brown.*

Law arbitrary. A law not founded in the nature of things, but imposed by the mere will of the legislature; as opposed to law *immutable.*

Law burrows, letters of. (*Sc. L.*) This corresponds to the English "security to keep the peace." *Contravention of law burrows* is any act whereby the undertaking to keep the peace is violated. *See* KEEPING THE PEACE.

Law-day (*lage-dayum*). A day for holding a court-leet or sheriff's tourn, a court-leet or view of frank-pledge. Law-day or lage-day was properly a day of open court, especially with reference to the courts of a county or hundred.

Due course of law. The phrase 'in due course of law' in s. 9 of the Specific Relief Act, 1877, means the regular, normal process and effect of the law operating on a matter which has been laid before it for adjudication, in other words, it refers to the process and operation of the law involved by the ordinary method of a civil suit (*Rudrappa* v. *Narsing Rao,* 7 Bom. L. R. 12; 29 Bom. 213).

Law list. An authorized list of barristers, solicitors and other legal practitioners, giving their addresses, and the dates of their entering the profession.

Law lords. Peers who have held high ju-

licial office, or have been distinguished in the legal profession.

Law martial. The military law. *See* MARTIAL LAW.

Law merchant (*lex mercatoria*). The part of the law of England, which governs mercantile transactions. It is founded upon the general custom of merchants of all nations, which, though different from the general rules of the Common Law, has been gradually engrafted into it and made to form part of it.—*Wharton.*

Law of arms (*lex armorum*). The ordinances, regulations, proclamations of war, leagues, and treaties, &c.

Law of Marque. A law of reprisal, by which persons, who have received wrong, and cannot get ordinary justice within the precincts of the wrong-doers, take their ships and goods.—*See* LETTERS OF MARQUE AND REPRISAL.

Law of Nations (*jus gentium*). The Law of Nations consists of a system of rules or principles, deduced from the law of nature, intended for the regulation of the mutual intercourse of nations. The law is founded on the principle that different nations ought to do each other in time of peace as much good, and in time of war, as little harm, as may be possible without injuring their own proper interests; and it comprehends the principles of national independence, the intercourse of nations in peace, the privileges of ambassadors, consuls and inferior ministers; the commerce of the subjects of each state with those of the others in times of war and of peace, or neutrality; the grounds of just war, and the mode of conducting it; the mutual duties of belligerent and neutral powers; the limits of lawful hostility; the rights of conquest; the faith to be observed in warfare; the force and effect of armistices, of safe conducts and passports, the nature and obligation of alliances; the means of negotiation, and the authority and interpretation of treaties.—*Brown.*

Law of Nature. This is described by Blackstone as the will of God, ruling the conduct of man. Certain rules of conduct supposed to be so just that they are binding upon all mankind.

Law of the staple. The law merchant. *See* STAPLE.

Laws of Oleron (*Ulıarenses Leges*). A code of maritime laws compiled in the twelfth century by Richard I at the Isle of Oleron, on which the maritime law is largely found; whence their name. They are constantly quoted in proceedings before the Admiralty Courts.

Law Reports. Reports of judgments of Courts on points of law, published for the purpose of being used as precedents. *See* REPORTS. *Law Reports* are authorized monthly reports of decided cases commencing from 1866 inclusive; they are published under the direction of a body called the Incorporated Council of Law Reporting.

Law Society. *See* INCORPORATED LAW SOCIETY.

Law spiritual (*lex spiritualis*). The ecclesiastical law.

Law suit. An action or litigation.

Law terms. *See* TERMS.

Lawyer. A person learned in the law, as a counsel or solicitor.

Lawful consideration. *See* CONTRACT.

Lawful it shall be. None of the judgments (referring to *In the matter of Thakur Bhagwandas*, 4 Bom. 489 and *Julius* v. *The Bishop of Oxford.* App. Cas. 214) lay down an absolute rule that where the words 'it shall be lawful' confer on a court authority to do a judicial act in a certain case, they make it imperative on the court to exercise that authority when the case arises and the exercise of that authority is duly applied for. What they lay down is that the words themselves are always permissive and enabling, and never imperative; but that the context, the subject matter of the statute, the nature of the authority or the thing authorized and all the surrounding circumstances may show that the Legislature intended to couple with the authority a duty to exercise it when invoked. Whether the legislature intended to create an imperative duty or to allow a discretion in the matter, depends upon the nature, the object and the construction of the statute itself, and not upon the enabling words 'it shall be lawful' which create the authority (*per* Strachey, J., *Re Aranvayal Sabhapathy*, 21 Bom. 300, 301). *See* MAY.

Lawful day. A day on which a Court may sit.

Lawful excuse. Such excuse as would in law justify the conduct.

Lawful heirs. A limitation to "lawful heirs" will not, standing alone, create an entail, but gives the fee.—*Stroud.* *See* TAIL.

Lawfully begotten. A limitation in a will to "heirs lawfully begotten" creates an entail (*Nanfan* v. *Legh*, 7 Taunt. 85).—*Ibid.* *See* TAIL.

Lawing of dogs. The cutting several claws of the forefeet of dogs in the forest, to prevent their running at deer.

Lawless Court (*quia dicta sine lege*). A court held on King's Hill, at Rochford in Essex, on Wednesday morning next after Michaelmas-day yearly, at cock-crowing; at which Court they whishper and have no candle, nor any pen and ink, but a coal; and he that owes suit or service there, and appears not, forfeits double his rent. It is called Lawless, because held at an unlawful hour, or *qua dicta sine lege.*

Lawless man. An outlaw.

Lay. Not clerical, or not professional. Regarding or belonging to the people, as dis-

tinguished from the clergy or a particular profession.

Lay corporations. Corporations not composed wholly of spiritual persons, nor subject to the jurisdiction of the ecclesiastical courts, they are either *civil*, erected for temporal purposes, or *eleemosynary*, constituted for the perpetual distribution of the free alms or bounty of the founder of them, to such purposes as he has directed.

Lay days. The days ordinarily allowed to the charterer of a vessel for loading and unloading the cargo; also called *running* or *consecutive* days.

Days which are given to the charterer in a charterparty either to load or unload without paying for the use of the ship, are lay days. The lay days are described as days for loading and unloading, and they are sometimes called lays days and sometimes *working* days.—*Stroud.*

Lay fee. Lands held in fee of a lay lord, involving services of a temporal character, as distinguished from *frankalmoign*, which is a tenure of a spiritual character belonging to the church.

Lay impropriators. Lay persons to whose use ecclesiastical benefices have been annexed. *See* IMPROPRIATION, APPROPRIATION.

Lay investiture of bishops. Putting a bishop into possession of the temporalities belonging to his bishopric *See* INVESTITURE.

Lay man. One of the people, and not one of the clergy; one who is not of the legal profession; one who is not of a particular profession.

Lay people. Jurymen.

Lazarets. Places where quarantine is to be performed by persons coming from infected countries.

Lazzi. The Saxons divided people of the land into three ranks—*Edilingi*, nobility; *frilingi*, born freemen, or of parents not subject to any servitude, or the gentry; *lazzi*, persons born to labour, who could not depart from their service without the leave of the lord, but who were fixed to the land where born, and were in the nature of slaves; hence the word *lazzi* or lazy signifies those of a servile condition.—*Tomlins.*

Leader. The leading counsel in a case; as opposed to a *junior*.

Leading a use. An expression used of a deed whereby a person covenanted to levy a fine, or suffer a recovery of lands, to certain uses upon which it was intended to settle the lands. The deed was then said to *lead* to the uses of the fine; and the fine, when levied, would, by the virtue of the Statute of Uses, enure (*i. e.*, take effect) to the uses so specified. Or if a fine or recovery were had without any previous settlement, and a deed were afterwards made between the parties *declaring* the uses to which the same would be applied, this would be equally good; the only difference between a deed *leading* the use, and a deed *declaring* the use, was that the former was made previous to the fine or recovery, and the latter subsequently thereto.—*Mozley. See* FINE, RECOVERY.

Leading case. A case so frequently followed as to become invested with peculiar authority; a case which has had the most influence in settling the law.

Leading question. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.—*Act I of* 1872 (*Evi.*), *s.* 141. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, except with the permission of the Court. The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved. Leading questions may be asked in cross-examination.—*Ibid.*, *ss.* 142-3.

League. A treaty or alliance between states or parties. It may be offensive, or defensive, or both. It is *offensive* when the contracting parties unite in attacking a common enemy; *defensive* when the parties agree to act in concert in defending each other against an enemy.—*Wharton.* A measure equal to three English miles.

Leakage. An allowance to merchants importing wine out of the customs for the waste and damage it is supposed to receive by being kept.

Lease. A demise or letting of lands or tenements, right of common, rent, or any hereditament, unto another for a term of years or life, or at will, usually for a rent reserved. The interest created by the lease must be *less* than the lessor hath in the premises, or else it is not a *lease*, but an *assignment.*—*Mozley.*

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, expressed or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically, or on specified occasions, to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the *lessor*, the transferee is called the *lessee*, the price is called the *premium*, and the money, share, service, or other thing to be so rendered is called the *rent.*—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 105.

Lease how made. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.—*Ibid.*, *s.* 107, *as amended by Act VI of* 1904.

For the purposes of registration a lease in-

cludes a counterpart, kabulayat, an undertaking to cultivate or occupy, and an *agreement* to lease.—*Act XVI of* 1908 (*Registration*), *s.* 2 (7).

For the purposes of the Stamp Act, *lease* means a lease of *immoveable* property, and includes also (*a*) a patta; (*b*) a kabuliyat or other undertaking in writing not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immoveable property; (*c*) any instrument by which tolls of any description are let; (*d*) any writing on an application for a lease intended to signify that the application is granted.—*Act II of* 1899 (*Stamp*), *s.* 2 (16).

Lease and release. A mode of conveyance of this name at common law before the Statute of Uses, which took place where one being desirous to convey in fee simple, first made a lease to the proposed alienee, which demise, if perfected by entry, conferred on him a complete estate of freehold. The lessee then, being tenant of the particular estate, on which the reversion was expectant, became capable of receiving a *release* of the reversion, which was accordingly executed to him. The conveyance of the same name under the Statute of Uses is much better known. It was of a compound description consisting of two parts, first, bargain and sale, secondly, a common law conveyance of release. The bargain and sale would not have been sufficient under the Statute of Enrolments (27 Hen. VIII, c. 16) to transfer the *freehold*, unless the same were by deed indented, and enrolled within six months after its date. So the conveying party executed a bargain and sale for some *leasehold* interest, generally for a year, which passed the legal estate for a year to the bargainee (the Statute of Enrolments not extending to leaseholds), and the estate so transferred was complete without entry. The transferee, therefore, was capable of receiving a release of the freehold and reversion; which release was accordingly granted to him on the next day. By 4 & 5 Vic. c. 21, the release was made effectual without the previous lease, and by 8 & 9 Vic. c. 106, s. 2, it was provided that corporeal hereditaments should, as regards the conveyance of the immediate freehold thereof, be deemed to *lie in grant* as well as *in livery*, and so became transferable by deed of grant, which is now the ordinary method of transferring such estates.—*Moxley.*

Leasehold. Land held under a lease. Any interest in land less than freehold might be so called; but in practice the word is generally applied to an estate for a fixed term of years. It is a chattel real and ranks as personal, except for some special purposes, as succession duty, &c.

Leasing. Lesing. (*Sc. L.*) Gleaning. Lying; slandering.

Leasing-making. (*Sc. L.*) Slanderous and untrue speeches to the disdain, reproach, and contempt of the sovereign, his council, and proceedings, or to the dishonor, hurt, or prejudice of the sovereign or his ancestors. *See* SEDITION,

Leave and license. A defence to an action in trespass setting up the consent of the plaintiff to the trespass complained of.

Leave to agree. *See* FINE.

Lecherwite. *See* LAIRWITE.

Leet, Court. *See* COURT-LEET.

Leets. Leits. Meetings which were appointed for the nomination or election of ecclesiastical officers in Scotland.

Legable (*legabilis*). Capable of being bequeathed; that which is not entailed as hereditary, but may be bequeathed by will.

Legacy (*legatum*). A bequest or gift of goods and chattels by testament. It is either *general*, called also *pecuniary*, being a gift of money or other fungible substance in quantity; *specific*, being a gift of ear-marked money, or of other ear-marked fungible substance, in mass, or of any non-fungible substance by description; or *demonstrative*, being a gift of money or other fungible substance in quantity, expressed to be made payable out of a specified sum of money or other specified fungible substance; but such legacies become, upon any destruction of the specified source of payment, merely general legacies.—*Brown.*

A legacy tranfers an inchoate property to the legatee, and is not perfect without the assent of the executor.

Specific legacy. Where a testator bequeaths to any person a specific part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.—*Act X* of 1865 (*Succession*), *s.* 129.—*Act XXI of* 1870 (*Hindu Wills*), *s.* 2.—*Act V of* 1881 (*Prob. and Admin.*), *s.* 3.

Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds, or securities in which it is invested, are described in the will.—*Act X of* 1865, *s.* 130.—*Act XXI of* 1870, *s.* 2

Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.—*Act X of* 1865, *s.* 133.—*Act XXI of* 1870, *s.* 2,

Abatement of legacies. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.—*Act X of* 1865, *s.* 136.—*Act XXI of* 1870, *s.* 2.

Demonstrative legacy. Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.—*Act X of*

1865, *s.* 137,—*Act XXI of* 1870, *s.* 2.—*Act V of* 1881, *s.* 3.

Specific and demonstrative legacies distinguished. The distinction between a specific legacy and a demonstrative legacy consists in this, that where specified property is given to the legatee, the legacy is specific; where the legacy is directed to be paid out of a specified property, it is demonstrative.—*Ibid.*

Ademption of legacies. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.—*Act X of* 1865, *s.* 139.—*Act XXI of* 1870, *s.* 2.

Non-ademption of demonstrative legacies. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall, in such case, be paid out of the general assets of the testator.—*Act X of* 1865, *s.* 141.—*Act XXI of* 1870, *s.* 2.

Where a stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.—*Act X of* 1865, *s.* 145.—*Act XXI of* 1870, *s.* 2.

Where the stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, or is sold and an equal quantity of the same stock is afterwards purchased, and belongs to the testator at his death, the legacy is not adeemed.—*Act X of* 1865, *ss.* 152-3.—*Act XXI of* 1870, *s.* 2.

Abatement of general legacies. If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions.—*Act X of* 1865, *s.* 287.—*Act V of* 1881, *s.* 107.

Non-abatement of specific legacy when assets sufficient to pay debts. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.—*Act X of* 1865, *s.* 288.—*Act V of* 1881, *s.* 108.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses. Where there is a demonstrative legacy and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and, if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.—*Act X of* 1865, *s.* 289.—*Act V of* 1881, *s.* 109.

Rateable abatement of specific legacies. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.—*Act X of* 1865, *s.* 290.—*Act V of* 1881, *s.* 110.

Legacies treated as general for purpose of abatement. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity where no sum has been appropriated to produce it, shall be treated as general legacies.—*Act X of* 1865, *s.* 291.—*Act V of* 1881, *s.* 111. *See* ABATEMENT.

Under the Mehomedan Law, legacies cannot be made to a larger amount than one-third of the testator's estate, without the consent of the heirs. A legacy cannot be left to one of the heirs without the consent of the rest. An acknowledgment of debt in favour of an heir on a deathbed resembles a legacy, inasmuch as it does not avail for more than a third of the estate. Where a testator bequeaths more than he legally can, to several legatees, and the heirs refuse to confirm his disposition, a proportionate abatement must be made in all the legacies.—*MacN. Meh. Law.* A wife can bequeath her own property without the consent of her husband. If the testator has no heirs, he can will away his whole estate.—*Elberling.*

Legacy duty. A tax paid to the Government on legacies, *i. e.*, personal property devolving under any will, or upon any intestacy.

Legal. Lawful; according to law. Opposed to equitable. In Scotch law, the term of seven years, allowed for redeeming landed property which has been "adjudicated" to a creditor of the proprietor in satisfaction of his debt. *See* ADJUDICATION, LEGAL REVERSION.

Legal assets. Assets of a deceased person available in a court of law to satisfy the claims of creditors. *See* ASSETS.

Legal debts. Those that were recoverable in a court of common law, as debt on a bill of exchange, a bond or a simple contract.

Legal estate. An estate in land, fully recognised as such in a court of common law, as opposed to an *equitable* estate.

Legal memory. The time of "legal memory" (as distinguished from *living* memory) runs back to the commencement of the reign of Richard I.

Legal mortgage. A mortgage created by conveyance or assignment of the legal estate in the mortgaged property to the mortgagee; as opposed to an *equitable mortgage*, in which the legal estate does not pass.

A legal mortgage means a *first* mortgage. This is unquestionably so as regards land, because it is only the first mortgage which can grant the legal estate in the land.—*Stroud.*

Legal representatives. A legal representa-

tive is one who represents another in law; an executor or administor. The primary meaning of "Representatives" "Legal Representatives," "Personal Representatives," or "Legal Personal Representatives," is "Executors or Administrators" in their official capacity (*Stockdale* v. *Nicholson*, 36 L. J. Ch. 793; L. R. 4 Eq. 359), but that meaning may be controlled by the context.—*Stroud.* See the remarks of Edge, C. J., and Banerji, J., in *Badri Narain* v. *Jai Kishen*, 16 All. p. 487). It does not necessarily mean 'legal heirs' (*Charanjit* v. *Mt. Mitho*, Punj. Rec, No. 29 of 1888); nor is it identical with 'heir' (*Bai Vijkor* v. *Fakirbhai*, 2 Bom. H. C., A. C., 317). It does not include any person who does not in law represent the estate of the deceased (*Chatha Kelan* v. *Govind*, 17 Mad. 186, 187).

Legal representative means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.—*Act V of* 1908 (*Civ. Pro.*), *s.* 2 (11).

Legal reversion In Scotch Law, the period (seven years) within which a proprietor is at liberty to redeem land adjudged from him for debt. *See* ADJUDICATION, EXPIRY OF THE LEGAL.

Legal sharers. These are, under the Mehomedan Law, certain relations of the deceased, to whom the law has allotted certain *specific shares* to be satisfied in the first instance, after payment of the charges upon inheritance. The shares are however, liable to be withheld, increased or diminished, according to the number and classes of persons entitled to them and to the residue.—*Elberling.*

Sharers are twelve in number, of which four are males and eight females, *viz.*—

Males. (1) Father, (2) True Grandfather, (3) Half brother by the same mother only, (4) Husband,

Females. (1) Daughter, (2) Son's daughter, how low soever, *i. e.*, daughter of a son, or of a grandson, to the remotest degree, (3) Full sister, (4) Half sister by the same father only, (5) Half sister by the same mother only, (6) Mother, (7) True Grandmother, (8) Wife. —*Ibid.*

Out of these, the father, mother, daughter, husband and wife are *always* entitled to some share or other, whatever may be the number or degree of the other heirs.—*Mac N. Meh. Law.*

The others are liable to exclusion, during the life time of one who is more nearly related to the deceased than themselves, except in the case of half brothers and sisters by the same mother only, who are not excluded by her.—*Elberling.*

Legal tender. A tender in payment of a debt which will be held valid and sufficient; a tender of payment of money, if made in coins legally issued by the Mint, and not called in, and not become materially diminished in weight, shall be a legal tender in the case of gold coins for a paymect of any amount; in the case of silver coins for a payment of an amount not exceeding 40 *s.*, but for no greater amount; and in the case of bronze coins for the payment of an amount not exceeding 1 *s.*, but for no greater amount. Bank of England notes are a legal tender for debts above £ 5. *See* TENDER.

Legal waste. See WASTE.

Legality. Lawfulness,

Legalize. To authorize; to make lawful.

Legatary (*legatarius*). He or she to whom any thing is bequeathed. *See* LEGATEE.

Legate (*legatus*). A deputy; an ambassador; the Pope's nuncio.

Legatee. The person to whom a legacy is given by a last will. If the gift is of the residue of an estate after payment of debts and legacies, he is then styled the *residuary* legatee.

Legation. An embassy or mission.

Legator. One who makes a will and leaves legacies.

Legitim. The share out of the free moveable estate of a father to which, by the Law of Scotland, the children are entitled.

Legitimacy. Lawful birth. What constitutes legitimacy is, however, rather a question of *status* than of construction. And it would seem to be now "settled that any person legitimate *according to the law of the domicile of his father at his birth*, is legitimate everywhere within the range of international law for the purpose of succeeding to *personal* property" (*per* Kay, J., *Re Andros*, 52 L. J. Ch. 794; 24 Ch. D. 637). So also persons who have the legal *status* of children by virtue of a foreign law applicable to their case are children for the purpose of assessment to legacy duty. But a foreign status will not aid a person claming to inherit *land* in England (*Birtwhistle* v. *Vardill*, 4 L. J., O. S., K. B., 190, 5 B. & C. 438).—*Stroud.*

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.—*Act I of* 1872 (*Evi.*), *s.* 112.

Under the Hindu law, it is not necessary, in order to render a child legitimate, that the procreation as well as the birth should take place after marriage (*Oolgappa* v. *Arbuthnot*, 14 B. L. R. 115, P. C.).

Legitimate heir. A limitation to A "and his legitimate heir or heirs" passes a fee simple, as the words of the limitation are not

to be construed as "heirs of the body lawfully begotten" (*Re Co-operative Wholesale Society*, W. N. [1886] 45).—*Stroud. See* LAWFUL HEIRS, TAIL.

Legitimation. Legitimating. The act of making legal or of giving the right of lawful birth to children born bastards; as the legitimation of a bastard by the subsequent marriage of his parents (*per subsequens matrimonium*), under the Scotch Law.

Legruita. A fine for criminal conversation with a woman.

Leipa. One who escapes or departs from service; a departure from service.

Leirwit (*mulcta adulteriorum*). *See* LAIRWITE.

Lekha Mukhi. (*Ind.*) A well-known term in the Punjab, signifying a mortgage under the terms of which the owner (mortgagor) remains in possession of the property mortgaged, and the produce is handed over to the creditor who puts it in account to the gradual liquidation of the mortgage-money (*Sultan* v. *Jewalla Das*, Punj. Rec., No. 131 of 1888, p. 353).

Leschewes. Trees fallen by chance or windfalls.

Lesion. (*Sc. L.*) The degree of injury or duress substained by a minor, or person of week capacity, to entitle him to *reduce* or avoid a deed which he has been thereby induced to sign.

Lessa. A legacy. From this word also lease is derived.

Lessee. The person to whom a lease is made or given.

Lessor. The person who lets anything to another by lease.

Lessor of the plaintiff. The claimant in an action of ejectment was so called as being the lessor of the fictitious plaintiff Doe, Goodright or Goodtitle. *See* EJECTMENT.

Lestagefry. Lestage free, or exempt from the duty of paying ballast money.

Lestagium. The ballast of a ship or ballast money; a duty laid on the cargo of a ship. *See* LASTAGE.

Let. Hindrance, obstruction. It is also an operative word in a lease, synonymous with demise.

Lethal weapon. Deadly weapon.

Letter missive. A letter sent by the Lord Chancellor to a peer, who is made a defendant to a bill in Chancery, to request his appearance. A letter from sovereign to a dean and chapter, containing the name of the person whom he would have them elect as bishop.

Letter of absolution (*litera absolutoriæ*). A mode formerly resorted to by an abbot for the release of his brethren, in order to qualify them for entering into some other order of religion.

Letter of allotment. *See* ALLOTMENT.

Letter-of-attorney. Power of-attorney. Procuration (*litera attornati*). A writing authorizing another person, who in such case is called the attorney of the party appointing him, to do any lawful act in the stead of another; as to give seisin of lands, receive rents, or sue a third person, &c. It is either *general* or *special*. The nature of the instrument is to give the attorney the full power and authority of the maker, to accomplish the act intended to be performed; sometimes it is revocable, sometimes not. If it is an authority coupled with an interest, *e. g.*, if the attorney is authorized to collect debts, and pay thereout a debt due to himself, it is irrevocable. But revocable letters-of-attorney are usually a bare authority merely, and may be dissolved either by acts of the parties or operation of law.—*Tomlins.*—*Wharton. See* POWER-OF-ATTORNEY.

Letter of credit. A letter written by one merchant or correspondent to another, requesting him to advance money or entrust goods to the bearer, or to a particular person by name, and for which the writer's credit is pledged. It is an instrument in common use among bankers for the transmission of money. It is not negotiable, but is only an authority from the banker who signs it to the banker or other person to whom it is addressed, to honour the drafts of the person named in it, and who produces the letter; and consequently he alone is entitled to draw the drafts or to receive payment.—*Mozley.*

Letter of exchange. A bill of exchange.

Letters of horning. *See* HORNING, LETTERS OF.

Letter of license. An instrument in writing whereby the creditors of a man who had failed in his trade gave him longer time for the payment of his debts, and undertook in the meantime to protect him from arrests in going about his affairs.

Letters-claus (or **clause**) (*literæ clausæ*). Close letters, so called in contradistinction to letters patent, because the former are commonly sealed up with the royal signet or privy seal; whereas letters patent are left open and sealed with the broad seal. *See* LETTERS PATENT.

Letters of administration. Letters granted formerly by the Ecclesiastical Court, but now by the Probate Court, authorizing the person to him they are granted to administer the estate of a deceased person, who has not appointed an executor, or whose appointed executors are unable or unwilling to act as such.—*Mozley. See* ADMINISTRATION.

Letters of administration entitle the administrator to all the rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.—*Act X of* 1865 (*Succession*), *s.* 191. —*Act V of* 1881 (*Pro. and Admin.*), *s.* 14.

Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage

of the intestate's estate.—*Act X of* 1865, *s.* 192.—*Act V of* 1881, *s.* 15.

Revocation. The grant of probate or letters of administration may be revoked or annulled for just cause. Just cause is—(1) that the proceedings to obtain the grant were defective in substance; (2) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; (3) that the grant was obtained by means of an untrue allegation of a fact essential in a point of law to justify the grant, though such allegation was made in ignorance or inadvertently; (4) that the grant has become useless and inoperative through circumstanses; (5) that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of law, or has exhibited under such provisions an inventory or account which is untrue in a material respect. —*Act X of* 1865, *s.* 234, *as amended by Act VI of* 1889, *s.* 2.

Letters of Marque and Reprisal. These words, *marque* and *reprisal*, are used as synonymous, although *reprisal* signifies *a taking in return*, and *marque* the passing over the *marches* or frontiers in order to do so. Letters of marque and reprisal are granted by the law of nations whenever the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs. In this case, these letters may be obtained in order to seize the bodies or goods of the subjects of the offending state, until satisfaction be made wherever they happen to be found. But this mode of granting letters of marque has been long disused, and the term itself is now applied to commissions granted in time of war to merchants and others to fit out *privateers* or armed ships, authorizing them to take the ships of the enemy, and directing that the prizes captured by them shall be divided between the owners, the captains and the crew. —*Mozley.* *See* REPRISAL.

Letters of request. Letters whereby a bishop, within whose jurisdiction an ecclesiastical cause has arisen, and who is desirous to waive such jurisdiction, requests the Dean of Arches to take cognizance of the matter.

Letters of safe conduct. No subject of a nation at war with us can by the law of nations, come into the realm, nor can travel himself upon the high seas, or send his goods and merchandise from one place to another without danger of being seized by our subjects, unless he has letters of safe conduct, granted under the Great Seal and enrolled in Chancery. But passports or licenses from our ambassadors abroad are now more usually obtained, and are allowed to be of equal validity.—*Wharton.* *See* SAFE CONDUCT.

Letters patent. Letters overt (*literæ patentes*). Writings of the Sovereign, sealed with the Great Seal of England, whereby a person or public company is enabled or authorized to do acts or enjoy privileges which he or it could not do or enjoy without such authority. They are so called because they are open (*patentes*) with the seal affixed and ready to be shown for conformation of the authority given by them; they are usually directed or addressed by the king to all his subjects at large; and herein they differ from certain other letters of the king, sealed also with the Great Seal, but directed to particular persons and for particular purposes, which therefore not being proper for public inspection are closed or sealed up on the outside, and are therefore called *letters close*, and are recorded in the close rolls in the same manner as the others are in the patent rolls. *See* LETTERS-CLAUS.

Levancy and couchancy. Levancy and couchancy, for the purpose of estimating the number of cattle which a commoner has the right to depasture on an unstinted common, means the *capability* of the commonable tenement to maintain, during the winter, by its summer produce, the cattle claimed to be depastured (*Scholes* v. *Hargreaves*, 5 T. R. 46; *Mellor* v. *Spateman*, 1 Wms. Saund. 343).—*Stroud.* *See* STINT.

Levant and couchant (*levantes et cubantes*) Residing and lying down. If lands were not sufficiently fenced up to keep out cattle, they would occasionally stray thereon; but the landlord could not distrain them as *damage feasant* till they had been *levant* snd *couchant* on the land, that is, had been long enough there to have lain down and risen up to feed, which in general is held to be a day and a night at least.

Leviable. That may be levied.

Levirate. An ancient custom, by which if a husband died without issue leaving a widow, the brother or the nearest male relation of the deceased, was bound to marry the widow, to give the first born son the name of the deceased and to deliver into his possession the estate of the deceased.—*Wharton.*

Levitical degrees. The degrees of kindred within which persons are prohibited to marry. They are set forth in the eighteenth chapter of the Leviticus. *See* INCEST.

Levy. To collect or exact. The act of raising money or men; as to levy money &c. Sometimes it signifies to erect or cast up; as to levy a ditch, &c. To levy a fine of land is the usual term for completing the conveyance. *See* FINE. To levy war against the king is treason.

Lewdness. Licentiousness. If open, it is indictable.

Leze-majesty. An offence against sovereign power; treason; rebellion.

Libel (*libellus famosus*). A little book. Hence it signifies the original declaration of an action in the civil law. Articles drawn out in a formal allegation in the Ecclesiastical court, setting forth the complainant's ground

of complaint. The charge on which, in Scotland, a civil or criminal prosecution takes place. A defamatory writing.

A libel may be defined to be a false and malicious defamation expressed in print, writing or by signs, tending to injure the reputation of another, and exposing him to public hatred, contempt or ridicule. It is not, however, the mere writing of libellous matter which is actionable, but there must be a *publication* of the libel in order to entitle the party aggrieved by it to a civil remedy. The libellous matter must moreover be *falsely* and *maliciously* published; its truth may be specially pleaded in answer to the action. Where the natural tendency and import of the language used in any publication is to defame and injure another, the law will then presume that the publisher acted maliciously. Defamation pure and simple affords presumptive evidence of malice.—*Broom's Com. Law.*

Libel is a false, defamatory and malicious writing, picture, or the like, tending to injure the reputation of another. Slander is a false, defamatory and malicious *verbal* statement tending to injure the reputation of another. A libel is of itself an infringement of a right, and no actual damage need be proved in order to sustain an action. Slander, on the other hand, is not of itself an infringement of a right, unless damage ensues, either actually or presumptively. In libel the matter must be *false* and *defamatory* and must be *maliciously published.* In slander there is one ingredient more, *viz.*, *damage.*—*Underhill on Torts.*

Where the statement is expressed in words only it is oral slander but may not always be actionable unless followed by actual damage, —*Collett on Torts.*—*Bhooni* v. *Natobar* (28 Cal. 452). *Contra*, *Parvathi* v. *Mannar* (8 Mad. 175); *Kashiram* v. *Bhadu* (7 Bom. H. C., A. C., 17).

Damages are not recoverable for mental distress *alone* caused to the plaintiff by slanderous words conveying insult (*Bhooni* v. *Natobar*, 28 Cal. 452; *Mahomed Ismail* v. *Mahomed Tahir*, 6 N.-W. P. 38).

Still some words are actionable without proof of damage, if maliciously spoken, and false and defamatory. Thus falsely to impute to any one that he has been guilty of any criminal offence, or that he is afflicted with any loathsome or contageous disease, as leprosy, &c., which would cause him to be shunned, or to speak falsely of a tradesman that he uses false weights, or to impute misconduct or gross ignorance or incapacity to professional men in the discharge of their professional duty, *e. g.*, to say of a medical man he has misconducted himself with his female patients, or that he is a quack or not legally qualified, or to say of a barrister or vakeel that he has cheated or deceived his clients, or of a clergyman that he leads an immoral life. Such imputations, if the party is still in the exercise and practice of his trade or profession at the time, are actionable without proof of damage. All other slander, unless followed by actual damage, the legal and natural consequence of it, is not actionable.—*Collett on Torts.*

The matter must be false. To be actionable the words, whether written or spoken, must be false. Truth is an answer to the action, not because it negatives the charge of malice (for a person may, wrongfully and maliciously, utter slanderous matter though true, and thereby subject himself to an *indictment*), but because it shows that he is not entitled to recover damages in respect of an injury to character which he either does not, or ought not to possess. It is enough if the statement, though not perfectly accurate, is substantially true.—*Ibid.*

The matter must be defamatory. The matter must be shown to be defamatory. If the matter is susceptible of a harmless meaning, or is equivocal, the plaintiff should give evidence of surrounding circumstances from which a libellous sense must be inferred. Otherwise, language must be understood in its ordinary popular sense. Words merely conveying suspicion will not sustain an action for slander.—*Ibid.*

A statement disparaging in intention and so understood by the person to whom it was published, is none the less actionable because if taken literally it would not be defamatory. —*Underhill on Torts.*

Publication. Both written and spoken defamation must have been published in order to constitute an actionable wrong. Though, in common parlance, that word may be confined in its meaning to making the contents known to the *public*, yet its meaning is not so limited in law. The making of it known to an *individual only* is indisputably in law a publishing. The making known *knowingly* or *negligently* of a libel or slander to any person other than the object of such libel or slander is publication in its legal sense.—*Underhill on Torts.* If a man writes a libel and puts it into his desk, this is no publication of it. But the moment he delivers a libel from his hands and ceases to have control over it, the uttering or publishing of the libel is complete. There need not be an actual manifestation of its contents but a delivery is sufficient. But if the libellous matter is contained in a private letter to the plaintiff, and delivered to him only, it is no publication (*Empress* v. *Taki Husain*, 7 All. 205; *Kamal Chandra* v. *Nabin Chandra*, 1 B. L. R., S. N., 11; *Mahomed Ismail* v. *Mahomed Tahir*, 6 N.-W. P. 38); but it is otherwise, if defendant knew that it was the habit of the plaintiff's clerk to open his letters in his absence, and in point of fact the clerk does open the letter. To send such a letter to a man's wife is a publication; so to send it by post or otherwise to a third party, or by telegram to the person himself. So if a copy of the libel is delivered to the agent of the plaintiff sent to buy it. The sale

of each copy of a printed libel is a separate publication.—*Collett on Torts.*

Malice Privileged Communications. The publication must be malicious and not privileged. Generally malice in law will be sufficient, but sometimes malice in fact, or *express* malice, must be shown. If a matter is false and defamatory, the law infers malice, unless the circumstances attending the publication rebut the inference; then the occasion is said to repel the presumption, and the statement *privileged.* But this qualified defence may be rebutted in turn, by proof of malice in fact, or express malice. Otherwise a malicious intention is not essential to a libel, for malice in law means a wrongful act done intentionally without just cause or excuse.—*Collett on Torts.* Where a communication is made *bona fide* upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, either public or private, legal, moral or social, such communication, if made to a person having a corresponding interest or duty, rebuts the inference of malice and is *privileged.*—*Underhill on Torts. See* MALICE. For instances of privileged communications, *see* DEFAMATION.

A person who is an unconscious instrument in circulating libellous matter, not knowing or having reason to believe that the document he circulates contains any such matter, is free from liability if he proves his ignorance. Such is the case of a newsvendor, as distinguished from the publishers, printers and owners of newspapers.—*Pollock on Torts.*

Libellant. The suitor plaintiff who files a libel in an ecclesiastical case.

Libellee. The suitor defendant against whom libel has been filed.

Liberate. Deliver ye. An old writ issuing out of the Chancery to the treasurer, chamberlains, and barons of the Exchequer, for the payment of any annual pension, or other sums granted under the Great Seal; or sometimes to the sheriff, for the delivery of land and goods taken upon forfeits of recognizance. It might also be directed to a gaoler for the delivery of a prisoner that had put in bail for his appearance.—*Mozley.*

Liberticide. A destroyer of liberty.

Liberty. A liberty or franchise is a royal privilege, or a branch of the Crown's prerogative subsisting in the hands of a subject; as liberty to hold pleas in a Court of one's own, *i. e.*, to have a court of one's own and to hold it before a mayor, bailiff, &c. Also districts in regard to which such privileges have been granted by the Crown to individuals, conferring on them or their bailiffs the exclusive jurisdiction of executing legal process therein. Such districts are, in consequence, exempt from the sheriff's jurisdiction, but the practical importance of this distinction is diminished by the fact that it is now usual to insert a *non omittas* clause in the writs directed to sheriff ("that you omit not by reason of any liberty within your bailiwick," &c.), specially authorizing him to enter into such privileged places.—*Mozley.* A privilege held by grant or prescription, whereby a man enjoys some favour beyond ordinary subjects. *Liberty of the rules*, a privilege to go out of the Fleet and Marshalsea prisons within certain limits and there reside.

Liblac. Liblacum. Witchcraft; bewitching any person; also a barbarous sacrifice.

License. Licence (*licentia*). A power or authority to do some act which without such authority could not lawfully be done; it is a personal liberty to the party to whom it is given which cannot be transferred over; but it may be made to a man or his assigns, &c.

Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.—*Act V of* 1882 (*Easements*), *s.* 52.

Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.—*Ibid.*, *s.* 56.

When the grantor of the license transfers the property affected thereby, the transferee is not, as such, bound by the license.—*Ibid.*, *s.* 59.

A license may be revoked by the grantor unless—(*a*) it is coupled with a transfer of property, and such transfer is in force; (*b*) the licensee, acting upon the license, has executed a work of permanent character, and incurred expenses in the execution.—*Ibid.*, *s.* 60.

The revocation of a license may be express or implied.—*Ibid.*, *s.* 61.

Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.—*Ibid.*, *s.* 64.

Accessory licenses. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses. A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.—*Ibid.*, *s.* 55.

A license and a grant are to be distinguished. A mere license passes no interest, nor alters or transfers preperty in anything, but only makes an action lawful which without it had been unlawful. Thus leave by A to B to come on A's land is a mere license, and however given, is always revocable. A grant conveys some interest, though it may include

a license. Leave from A to B to do something on A's land, as to come and make a watercourse through it, or to have a right of way over it, is a grant.—*Collett on Torts.*

A mere license differs in its effects from a license coupled with the creation of an interest. The former is revocable, but the latter is subject to the same incidents, and is as binding and irrevocable as any other contract, gift or grant (*Krishna* v. *Rayappa*, 4 Mad. H. C. R. 98).

The distinction between a license and a lease lies in the fact that, in the case of a license, there is no transfer of interest in land, whereas, in the case of a lease, there is transfer of such interest (*Mahipal* v. *Lalji*, 17 Cal. W. N. 166).

License to arise (*licentia surgendi*). A liberty anciently given by the Court to a tenant (*i. e.*, a defendant in a *real action*) to arise out of his bed, after he had caused himself to be essoined *de malo lecti*, *i. e* , had excused himself from appearing on the ground of being in ill health and confined to his bed, for in such case he could not go out of his chamber till he had been viewed by knights appointed to see whether he had caused himself to be essoined deceitfully, in other words, whether he was shamming.

Licensee. A person to whom a license has been granted.

Licentiate. One who has license to practise any art or faculty.

Licitation. The act of exposing to sale to the highest bidder.

Licking of thumbs. A form by which bargains were complete.

Lidford law. A proverbial phrase meaning as much as to hang a man first and judge him afterwards. A sort of Lynch law, whereby a person was first punished and then tried.

Lie. An action is said *to lie*, if it is legally maintainable. Waifs, wrecks, estrays, and the like, which the persons entitled thereto may seize without the aid of a court, are said to *lie in franchise*. To *lie in grant*, when said of a property, means to be capable of passing by deed of grant, as opposed to the passing of property by physical delivery. To *lie in livery*, is to be capable of passing by physical delivery. *See* CORPOREAL AND INCORPOREAL PROPERTY, FEOFFMENT, GRANT.

Liege (*ligius*). It is used for liege-lord (*dominus ligius*) and sometimes for liege-man (*homo ligius*).

Liege homage. Homage which, when performed by one sovereign prince to another, included fealty and services, as opposed to *simple homage*, which was a mere acknowledgment of tenure.

Liege-lord is he that acknowledges no superior; and *liege-man* is he who owes allegiance to his liege-lord. The king's subjects are called his *liege people*, because they owe and are bound to pay allegiance to him. But in ancient times, private persons, as lords of manors, &c., had their lieges.

Lien. An obligation, tie, or claim annexed to, or attaching upon, any property, without satisfying which such property cannot be demanded by its owner. A right in one man to retain that which is in his possession belonging to another, until certain demands of the person in possession are satisfied (*Hammonds* v. *Barclay*, 2 East, p. 235). It is neither a *jus in re*, nor a *jus ad rem*, *i. e.*, it is not a right of property in the thing itself, or right of action to the thing itself. It is either *particular*, as a right to retain a thing for some charge or claim growing out of, or connected with, the identical thing; or *general*, as a right to retain a thing not only for such charges or claims, but also for a general balance of accounts between the parties in respect to other dealings of the like nature,—*Wharton*. As applied to personalty, a lien is understood to be the right of a bailee to retain the possession of a chattel entrusted to him until his claim upon it be satisfied. As applied to realty, a *vendor's lien* for unpaid purchase money is his right to enforce his claim upon the land sold, a right which is recognised in a Court of Equity subject to the doctrines of that Court for the protection of *bona fide* purchasers for valuable consideration without notice.—*Mozley.*—*Yellappa v. Mantappa* (3 Bom. H. C., A. C., 102).

See AGENT'S LIEN, BAILEE'S PARTICULAR LIEN, BANKERS' GENERAL LIEN, SELLER'S LIEN, VENDOR'S LIEN.

In the Scottish law, the doctrine of lien is known by the name of *retention*, and that of set off by the name of *compensation*.

Lien for dower. Under Mehomedan law, the heir who dispossesses the widow of the deceased who was in possession in lieu of her dower, takes the estate subject to her lien for the amount of her dower (*Syad Umed Ali* v. *Mt. Saffiham*, 3 B. L. R., A. C., 175).

Maritime lien. A lien attaching to ship and freight for damage occasioned by ship, and which lien affords the ground of an action *in rem* in the Court of admiralty; this lien does not attach to the cargo; the lien attaches from the date of the damage accruing, and has precedence accordingly over all subsequent liens and rights arising *ex contractu*, excepting, *semble*, subsequent bottomry bonds.

Salvage lien. Persons to whom a right of salvage has accrued, are entitled to retain the property saved until a reasonable sum has been paid or tendered to them in satisfaction of their claim.—*Gilmore* v. *Rose* (6 N.-W. P. 311). *See* SALVAGE.

Lien of a covenant. The commencement of a covenant stating the names of the covenantors and covenantees, and the character of the covenant, whether joint or several.

Lieu. Place; room. The word is only used

with *in*, as *in lieu of*, *i. e.*, instead of, or in place of, another thing.

Lieutenant (*locum tenens*). A deputy. He that occupies the king's or any other person's place, or represents his person; as the Lord Lieutenant of Ireland. A military officer next in command to the captain.

Life annuity. An annual payment during the continuance of any given life or lives.

Life assurance. *See* INSURANCE.

Life-estate. An estate for (1) one's own life, or (2) the life of another (*pur autre vie*). *See* ESTATE. A life estate is an estate of freehold, not of inheritance.

Life-land. Life-hold. Land held on a lease for lives.

Life-peerage. The dignity of baron for life only, which does not enable the grantee to sit and vote in the House of Lords.

Life-rent. A rent which a man receives for term of life or for sustentation of life. In Scotch law it signifies a right which entitles a person to use and enjoy property during life, without destroying or wasting its substance. The proprietor is called the *fiar*; the subject of the property, which is either a sum of money or heritage, is called the *fee*; and the person in possession the *life renter*. *See* FIAR.

Life-renter. A tenant for life. *See* LIFE-RENT.

Ligan. *See* LAGAN.

Ligeance. Ligeancy. The same as allegiance.

Light. The right which a man has to have the access of the sun's rays to his windows, free from any obstruction on the part of his neighbours. It is a species of easement. This is sometimes spoken of as "the right to light and air," sometimes as "ancient lights," because the possessor must have enjoyed them for a certain time before claiming the right in question. An uninterrupted enjoyment of light for twenty years constitutes an absolute and indefeasible right to it, unless the enjoyment has taken place under some deed or consent. *See* EASEMENT.

There is no right *ex jure naturæ* (by the law of nature) to the free passage of light and air to a house or building, but such a right may be acquired, either by grant, express or implied, from the contiguous proprietors, or by reservation on the sale of the servient tenement, or by prescription. Where such a right has been gained, no person will be allowed to interrupt such passage, unless he can show that for whatever purpose the plaintiff might wish to employ the light, there would be no *material* interference with it by the alleged obstruction. An enlargement of an ancient light (although it will not enlarge the right, *Cooper* v. *Hubbock*, 31 L. J. Ch. 123) will not diminish or extinguish it, And, therefore, where the owner of a building having ancient lights, enlarges or adds to the number of windows, he does not preclude himself from obtaining an injunction to restrain an obstruction of the ancient lights (*Ansley* v. *Glover*, L. R. 18 Eq. 544 and 10 Ch. 283).—*Underhill on Torts.*

Acquisition of right to light and air. In order to acquire a right to light, it is not necessary that the enjoyment during the prescribed period should have been an actual personal enjoyment of the light, or even that the house through the windows of which the light passes should have been occupied, or completed so as to be fit for occupation. In *Caurtauld* v. *Legh* (L. R. 4 Exch. 126) a house was structurally completed, the roof furnished, the floors laid, and the windows put in, but the internal fittings, painting, papering and decoration had not been executed so as to make it fit for habitation. *Held*, that occupation of the building was not necessary, and that when a house was in the condition above described, the owner of it could properly be said to actually enjoy the use and access of light to its windows, and therefore enjoyment in that sense for the statutory period gave a prescriptive title to the light. So in *Pranjivandas* v. *Mayaram* (1 Bom. H. C., O. C., 148) it was held that the prescriptive period begins to run from the time when a dwelling house in respect of which the right is claimed, has assumed the appearance and outward aspect of a dwelling house, though it was not completed or used as a dwelling house, for the full period. The light must have been received through the same aperture or apertures, or an aperture or apertures in substantially the same position or respective positions. It will not do in order to establish a right, to show that though at some time light did not come in through a particular access, at other times it did, and that sometimes it came in through one and sometimes through another opening in the building. The entrance of the light through the windows needs not be continuous; in the case of windows with moveable shutters, it is sufficient user and access of the light, if the owner opens the shutters occasionally, at any time he pleases, for the admission of light and if there is no such obstruction to, and interruption of, the access over the servient land as would defeat the claim. The term *ancient lights* is applied to windows in respect to which a prescriptive right to light has been acquired by twenty years or more of enjoyment. A prescriptive right to light, or to air, or to both, for a building, can only be acquired for passage of light or air through *windows* or other *openings* in the building specially intended for the reception of light or air.—*Michell on Easements.*

The right in respect of a windmill, to the free and uninterrupted passage of currents of wind and air over a neighbour's lands to the mill, cannot be acquired by prescription (*Webb* v. *Bird*, 10 C. B. N. S. 268).

Ligius. A person bound to another by a solemn tie or engagement; now used to express the relation of a subject to his sovereign.

Lignagium. The right of cutting fuel in

the woods; also a tribute or payment due for the same.

Lignamina. Timber fit for cutting.

Ligula. A copy or transcript of a court-roll or deed.

Limitation (*limitatio*). Restriction or circumpection. A certain time allowed by a statute for litigation.

Statute of Limitation. A statute which limits a time for bringing actions after a ground for action has arisen.

Limitation of Estates. A modification or settlement of an estate determining how long it shall continue, or a qualification of a preceding estate; the marking out in a deed or other instrument in writing, of the estate or interest which a person is intended to hold in any property comprised therein. Thus, when it is said, with reference to a conveyance to A and his heirs, that the word *heir* in a deed is a word of *limitation*, and not of *purchase*, it means that the word *heirs* marks out the nature of the estate taken by A, which is an estate in fee simple, and that the *heirs* of A take nothing *directly* (*i. e.*, take nothing by *purchase*) under such a *limitation*. A *limitation* is also spoken of as a *condition in law*, as opposed to a *condition in deed*. Thus, when an estate in land is so expressly confined and limited by the words of its creation that it cannot endure beyond a particular contingency, this is a *condition* or *limitation in law*, as when land is granted to man *so long as* he is parson of Dale, or *while* he continues unmarried, &c.; on the other hand a *condition in deed* is where an estate is granted expressly upon condition to be void upon a given contingency, or *so that* the grantee continues unmarried, or *provided he goes to York*,, &c. —*Mozley.*

Where a will provided for the adoption of a son by the widow, and in case none of such adopted sons surviving the widow, or dying under age, the executors were directed to make over and divide the whole estate to and between the daughters in equal shares "to whom and their respective sons he bequeathed the same," *Held*, on the adoption having been proved invalid under Hindu law, that this was a valid gift over to the testator's daughters, and that the gift of the whole estate to the adopted son having failed, the daughters became entitled to the estate *absolutely* and in equal shares, the words "and their respective sons" in the above clause being words of *limitation* and not of *purchase* (*Sreematty Raneemaney* v. *Sreematty Premmaney*, 9 Cal. W. N. 1033).

Limited. Having some restriction; not absolute or full.

Limited administration. A special and temporary administration of certain specific effects of a testator or intestate granted under varying circumstances, the rest being committed to others.

Limited company. A company in which the liability of each-share-holder is limited by the number of shares he has taken, so that he cannot be called on to contribute beyond the amount of his shares. *See* COMPANY.

Limited executor. An executor of a deceased person for certain limited purposes, or for a certain limited time, or in a certain place; as distinguished from one whose appointment is absolute, *i. e.*, certain and immediate, without any restriction in regard to the testator's effects, or limitation in point of time.

Limited liability. *See* LIMITED COMPANY.

Limited owner. A tenant for life, in tail, or by curtesy, or other person not having a fee simple in his absolute disposition.

Lincoln's Inn. One of the Inns of Court. *See* INNS OF COURT.

Line. Succession of relations; boundary; the twelfth part of an inch.

Lineage. Race, progeny, family, ascending or descending

Lineal. Direct; in a right line.

Lineal consanguinity. That relationship which subsists between persons descended in a right line, as grandfather, father, son, grandson; as opposed to *collateral consanguinity*. *See* CONSANGUINITY.

Lineal descent. Direct genealogical descent; the descent of an estate from ancetor to heir in a right line.

Lineal warranty. *See* WARRANTY.

Liquidated. Fixed. Ascertained.

Liquidated damages. Fixed or ascertained damages which an injured party has sustained or is taken to have sustained; the amount agreed upon by a party to a contract to be paid as compensation for the breach of it, and intended to be recovered, whether the actual damages sustained by the breach be more or less; as opposed to a *penalty*, which is only the maximum amount agreed to be paid, and is intended to be reducible in proportion to the actual damage sustained. For distinction between these, *see* PENALTY.

Liquidation. A method by which an insolvent could by leave of his creditors, distribute his available assets amongst them, and escape being made a bankrupt.

Liquidator. An officer of the Court appointed to conduct the winding up of a company, to bring and defend actions and suits in its name, and to do all necessary acts on behalf of the company.

Literal contract. A written agreement subscribed by the contracting parties.

Literal proof. Written evidence.

Literary larceny. *See* COPYRIGHT.

Literary property. The property that the author, or his assignee, has in the copy of any literary work. *See* COPYRIGHT.

Literate. One who qualifies himself for holy orders by presenting himself as a person accomplished in classical learning, &c.

Litigant. One engaged in a law-suit.

Litigation. Judicial contest; law-suit.

Litigious church. A church is said to be *litigious*, where two rival presentations are offered to the bishop upon the same avoidance of the living.

Littleton. A Judge of the Common Pleas in the reign of Edward IV, who wrote a treatise on tenures, upon which Chief Justice Coke has written an extensive comment.

Livelode. Maintenance; support.

Livery (*libertura*). The word is used in various senses. A cloth or stuff, that a gentleman gives in cloakes, coats, hats or gowns to his servants or followers. A delivery of possession to tenants who held of the king *in capite*, or by knight service. A writ which lay for the heir of age to obtain the possession or seisin of land at the king's hands. The members of a company of the City of London chosen out of the free men. The privilege of a particular company or society.

Livery man. A member of a company in the City of London, chosen out of the free men to assist the master and wardens in the government of the company.

Livery of seisin (*liberatio seisinæ*). A delivery of feudal possession, part of the ceremony called a *feoffment*. *See* FEOFFMENT.

Livery office. An office appointed for the delivery of lands.

A horse is said to *stand at livery* where the livery stable keeper delivers him to the owner for use as required.

Living in adultery. This implies a course of action more or less continuous (*per* Benson, J., *Gantapalli Appalamma* v. *Gantapalli Tellayya*, 20 Mad. p. 476). A woman who was found to have given birth to an illegitimate child two years prior to the order under s. 488 of the Crim. Pro. Code, but found to have led a chaste life ever since, was held not to "be living in adultery" within the meaning of that section (*Kallu* v. *Kaunsilla*, 24 All. W. N. 23; 1 All. L. J. 18; 26 All. 326; *Empress* v. *Daulat*, 1 All. W. N. 113; *Petition of Kashi Sheodiala*, 1 All. W. N. 62).

Living memory. Where a right (*i. e.*, by prescription) is said to have been enjoyed within all the time of living memory, the phrase means that there is absolutely no evidence of its not having been enjoyed at any assignable period either prior or subsequent to the reign of Richard I; but *legal* memory is bounded by the reign of Richard I. *See* LEGAL MEMORY.

Living pledge. *See* DEAD PLEDGE.

Lloyd's. An association in the city of London the members of which underwrite each other's policies.

Lloyd's bonds. Instruments under the seal of a company admitting the indebtedness of the company in a specified amount to the obligee, with a covenant to pay him such amount with interest on a future day.

Load-line. A line painted on the sides of a ship to show how far up the sides the water will rise when the ship is loaded.

Load-manage. To pay to a pilot for conducting a ship from one place to another.

Loan. A contract by which the use of anything is given under condition of its being returned to the owner. Anything so given or lent to another. A sum of money confided to another. *See* BAILMENT.

Loan capital. Public and joint stock companies may create a loan capital, *i. e.*, may borrow money on mortgage or bond or debenture stock; such loan capital takes precedence usually of all other general debts of the company.

Loan notes. *See* LLOYD'S BONDS.

Loan Societies. Institutions established for the purpose of advancing money on loan to the industrious classes, and receiving back payment for the same by instalments with interest.

Local (*localis*). Tied or annexed to a particular place; referring to some particular locality.

Local actions. Actions founded on such a cause as refers necessarily to some particular locality; real actions are local and to be brought in the county where the lands lie; as actions for trespass on land, in which the venue must have been laid in the county where the action arose; but a personal action as of trespass or battery, &c., is transitory, not local, *i. e.*, their cause of action might be supposed to take place anywhere, and it is not material that the action should be tried or laid in the same county where the fact was done; but when they were brought for anything in relation to realty, they were then local.

Local allegiance. Such allegiance as is due from an alien or stranger born, so long as he coutinues within the sovereign's dominions and protection; it ceases the instant such stranger transfers himself from the kingdom to another. *See* ALLEGIANCE.

Local and Personal Acts. *See* ACT OF PARLIAMENT.

Local Authority. A municipal committee, district board, body of port commissioners, or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund. —*Act X of* 1897 (*General Clauses*), *s.* 3 (28). A municipal corporation, municipality, local board, body of port trustees or commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund. —*Bom. Act I of* 1904 (*General Clauses*), *s.* 3(26).

Local Board. A body of persons established by an order of the Local Government Board, upon the resolution of the owners and ratepayers of a district, for the purpose of administering to the public health.

Local Courts. Courts whose jurisdiction is confined to certain districts, as the county courts, &c.

Local law is a law applicable only to a particular part of British India.—*Act XLV of 1860 (Penal Code), s.* 42.

Local taxes. Those assessments which are limited to certain districts, as poor rates, parochial taxes, county rates, &c.

Locality. (*Sc. L.*) The adjustment of the increase of a minister's stipened among the several heritors liable to pay it. *See* DECREET OF LOCALITY. Lands "secured to a widow by her contract in life-rent," *i. e.*, secured to her by her marriage settlement for the period of her life.

Location. (*locatio conductio*). Hiring; a contract by which a hire is agreed to be given for the use of anything, or for the labour of any person; a bailment for reward or compensation. *See* BAILMENT.

Lacator. He who lets a thing, or services, for hire.

Lockman. An officer in the Isle of Man appointed to execute the order of the governor, like our under sheriff.

Lock-up houses. Places for the temporary confinement of prisoners.

Lococession. The act of giving place.

Lode-manage. The hire of a pilot for conducting a ship from one place to another. *See* LOAD-MANAGE.

Log. Log-book. A journal kept by the chief mate or first officer of a ship, in which the situation of the ship from time to time, the winds, weather, courses and distances, the misconduct or desertion of any of the crew, and everything of importance, are carefully noted down. That part of the log-book relating to the transactions while the ship is in harbour is termed the *harbour log*; and that part relating to what happens while the ship is at sea, is termed the *sea-log*.

Logomachy. A contest of words.

Lord (*dominus*). A word or title of honour, diversely used, being attributed not only to those who are noble by birth or creation, otherwise called lords of parliament, and peers of the realm, but to such so called by the curtesy of England, as all the sons of a duke, and the eldest son of an earl, and to persons honourable by office, as the Lord Chief Justice, &c., and sometimes to a private person, that has the fee of a manor and consequently the homage of the tenants within his manor; for by his tenants he is called Lord. In this last signification it is most used in law books, where it is divided into lord paramount and lord mesne, and very lord, &c.—*Tomlins.*

Very lord. He who is immediate lord to his tenant; and *very tenant* is he who holds immediately of that lord; so that, where there is lord paramount, lord mesne, and tenant, the lord paramount is not very lord to the tenant.

Lord-Advocate. See ADVOCATE.

Lord and vassal. In the time of the feudal tenures, the grantor of land was called the proprietor or lord, being the person who retained the dominion or ultimate property of the feud or fee; and the grantee, who had only the use or possession, according to the term of the grant, was styled the *feudatory* or *vassal*, which was only another name for the tenat or holder of the lands, though we now use the word *vassal* opprobriously as synonymous to slave or bondman.

Lord Chamberlain. See CHAMBERLAIN.

Lord Chancellor. See CHANCELLOR.

Lord Chief Justice. See CHIEF JUSTICE.

Lord High Admiral. See ADMIRALTY.

Lord High Steward. See HIGH STEWARD.

Lord in gross. He who is lord, not by reason of any manor, as the king in respect of his Crown.

Lord Justice Clerk. The second judicial officer in rank in the Court of Session in Scotland, being the chief judge of the second Division of the Inner House, and president of the Justiciary Court in the absence of the Lord Justice General. *See* SESSION.

Lord Justice General. The chief judge of the first Division of the Inner House of the Court of Session in Scotland, and chief of the Court of Session and Court of Justiciary. *See* SESSION.

Lord Keeper. The keeper of the Seal, who is a lord by his office, and is of the Privy Council.

Lord Lieutenant. The chief governor or viceroy of the Crown in Ireland; the principal officer of a county, originally appointed for the purpose of mustering the inhabitants for the defence of the country.

Lord Mayor. A title given to the principal magistrates of London, York, and Dublin.

Lord of manor. The grantee or owner of a manor. *See* COPYHOLD.

Lord Ordinary. The judge of the Court of Session in Scotland, who officiates for the time being as the judge of first instance. *See* SESSION.

Lord Paramount. See PARAMOUNT.

Lord Privy Seal. One of the members of the Cabinet, through whose hands all charters, &c., pass before they come to the Great Seal.

Lord's day (*dies Dominicus*). Sunday.

Lords of Erection. On the reformation in Scotland, the king, as proprietor of benefices formerly held by abbots and priors, gave them out in temporal lordships to favourites, who were termed Lords of Erection.

Lords of Justiciary. The judges of the Court of Justiciary in Scotland, being the principal criminal Court of that country.

Lords of Parliament. Those who have seats in the House of Lords.

Lords of regality. Persons to whom rights of regality, *i. e.*, rights of civil and criminal jurisdiction, were given by the Crown.

Lords of Session. The judges of the Court of Session in Scotland. *See* SESSION.

Lords spiritual. The archbishops and bishops who have seats in the House of Lords, being the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, and twenty-one other bishops.

Lords temporal. The peers of the realm, *i. e.*, the members of the House of Lords other than the bishops. *See* HOUSE OF LORDS.

Lordship. Dominion; manor; seigniory; domain. Also a title of honour used to a nobleman not being a duke. The customary titulary appellation of the judges and some other persons in authority and office.

Lost grant, title by. *See* GRANT, PRESUMPTION.

Lot. A contribution; duty; toll; assessment; or imposition. The duty payable to the Crown of the thirteenth part of the leaden ore raised in the Derbyshire mines within jurisdiction of the Barmote Courts. The other mineral duty is called *cope*.

Lot and scot. *See* SCOT AND LOT.

Lotherwite. Leyerwit. A liberty or privilege to make amends to one for lying with his bond-woman without his license. *See* LAIRWITE.

Lottery. A game of chance; a distribution of prizes by lot, or chance. Lotteries have been frequently resorted to both by States and by individuals for the purpose of raising money, but they are proscribed by the morality and industry of England, and they are declared a nuisance.—*Brown.* Keeping a lottery office, unauthorised by Government, is made punishable under Act XLV of 1860 (Penal Code), s. 294 A.

Lourgulary. Casting any corrupt thing into water, or poisoning it.

Love day. The day on which any dispute was amicably settled between neighbours; or a day on which one neighbour helps another without hire.

Lowbote. A recompense for the death of a man killed in tumult, or, as we say, by the mob.

Low-water mark. That part of the seashore to which the waters rocede when the tide is lowest.

Lucid interval. A temporary cessation of the insanity, or a perfect restoration to reason; a period of sanity intervening between two attacks of insanity. An act done during a lucid interval is as valid, and entails the same responsibilities, as the act of a sane person.

Lucrative succession. (*Sc. L.*) That succession to his ancestor which the heir receives by law without paying any value, and which renders him liable to the debts of his ancestor.

Luktah. (*Meh. L.*) Property which a person finds on the ground, and takes away for the purpose of preserving it in trust. A stray. Treasure-trove.

Lunacy. The common legal designation of insanity, or the state of being *non compos mentis*. *See* LUNATIC.

Lunatic. A lunatic, or *non compos mentis*, is one who hath had understanding, but by disease, grief, or other accident, hath lost the use of his reason, so as to be incapable of managing himself or his affairs.—*Broom's Com. Law.*

Lunatic means an idiot or person of unsound mind.—*Act IV of* 1912 (*Lunacy*), *s.*2(5). *See* UNSOUND MIND.

Criminal lunatic means any person for whose confinement in, or removal to, an asylum, jail or other place of safe custody, an order has been made in accordance with the provisions of s. 466 or s. 471 of the Code of Criminal Procedure, 1908, or s. 30 of the Prisoners Act, 1900.—*Ibid.*, *s.* 2 (4).

A lunatic, within the meaning of s. 23 of Act XXXV of 1858 (Lunacy), must be incapable of managing his own affairs, and must also be of unsound mind. Mere weakness of intellect is not unsoundness of mind within the meaning of that section. Where, therefore, a person is found to be only of a weak intellect, the Civil Court cannot proceed under this Act, although the person may, from such weakness of intellect, be incapable of managing his own affairs (*Mazaharuddin* v. *Serajuddin*, 4 Cal. L. J. 115).

A lunatic is liable for the price of *necessaries*, *i. e.*, of goods or things suited to his state and degree, actually ordered, and enjoyed by and *bona fide* supplied to him. When a person apparently of sound mind and not known to be otherwise, enters into a contract for the purchase of property which is fair and *bona fide*, and which is executed and completed, and the property, the subject-matter of the contract, has been paid for and fully enjoyed, and cannot be restored so as to put the parties in *statu quo*, such contract cannot afterwards be set aside, either by the alleged lunatic or those who represent him. Imbecility of mind, however, is not sufficient to render void a contract, unless an essential privation of the reasoning faculties or an incapacity of understanding and acting with discretion in the ordinary affairs of life thence results. And such incapacity has been said to afford the true test of that degree of unsoundness of mind which will avoid a deed at law. The law cannot undertake to measure the validity of contracts by the greater or less strength of the understanding, and if the party be *compos mentis*, the mere weakness of his mental powers does not incapacitate him. Weakness of understanding may, however, be a material circumstance in establishing an inference

of unfair practice or imposition, and it will naturally awaken the attention of a Court of justice to every unfavourable appearance in the case.—*Broom's Com. Law.*

Civil liability. The contract of a lunatic or drunken man who by reason of lunacy or drunkenness is not capable of understanding its terms or forming a rational judgment of its effect on his interests is not void but only voidable at his option; and this only if his state is known to the other party. When a contract has been entered into in good faith with a person who appears and is believed to be of sound mind, but who is in fact of unsound mind, and the contract has been performed so that the parties cannot be replaced in their original position, it cannot be set aside by the person of unsound mind or his representatives. When that state of mind (lunacy or drunkenness, even if such as to prevent a man from knowing what he is about) was unknown to the other contracting party, and no advantage was taken of the lunatic (or drunken man), the defence cannot prevail, especially where the contract is not merely executory but executed in the whole or in part, and the parties cannot be restored altogether to their original positions.—*Pollock on Contracts.* *See* CONTRACT.

Criminal liability. Nothing is an offence which is done by a person, who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.—*Act XLV of* 1860 (*Penal Code*), s. 84. *See* INTOXICATION.

Torts by a lunatic. *See* HURT.

Lunatic asylum. A house established for the reception of the insane, either for the public benefit (at the public expense, or by endowment of charitable donors), or by private individuals for their own profit.

Lurgulary. *See* LOURGULARY.

Lurking house-trespass. *See* HOUSE-TRESPASS.

Lyef-yeld. Lef-silver. A small fine or pecuniary composition, paid by a customary tenant to a lord, for leave to plough or sow.

Lying by. Neglecting to assert rights, or allowing other persons to deal with land or other property as if one had no interest in it; as when a mortgagee allows his mortgagor to retain the title-deeds and raise money upon a fresh mortgage of the land without notice to the new mortgagee of the prior mortgage.—*Moxley.* *See* LIE.

Lynch law. The execution of summary justice by a mob without reference to the process of ordinary municipal law. Lynch law differs from *martial law* in that martial law is executed by military authority, and lynch law by persons having no authority whatever. Lynch law differs, on the other hand, from *mob law*, in that lynch law disregards the *forms* and the *process* of ordinary law, while maintaining its *substance*, at least in intention; whereas mob law disregards both *form* and *substance*.—*Moxley.* *See* LIDFORD LAW.

Lyon king at (of) Arms. An officer who takes his title from the armorial bearing of the Scotch King, the lion rampant. His ancient duty was to carry messages to foreign States.

Lyon's Inn. One of the Inns of Chancery. *See* INNS OF CHANCERY.

M

M. This was the letter with which persons convicted of manslaughter were formerly marked on the brawn of the left thumb.

Macegriefs. (*machecarii*). Those who bought stolen goods, particularly food, knowing the same to have been stolen.

Mace proof. Secure against arrest.

Macer. A mace-bearer. An officer attending upon the Court of Session in Scotland.

Mactator. A murderer.

Mægbote. A compensation for homicide paid by the perpetrator to the kinsman or family of the slain.

Mafkud. (*Meh. L.*) Missing; lost. A person of whom it is not known whether he be living or dead.

Magistracy. The body of officers who administer the laws; the office of a magistrate.

Magistrate. A man publicly vested with authority; a governor; an executor of the laws. A justice of the peace.

Mahajun. (*Ind.*) A banker; a money lender; a great trader or shop keeper.

Mahal. Mehal. (*Ind.*) A district; department; a district producing revenue to government. Any local area held under a separate engagement for the payment of land revenue and for which a separate record-of-rights has been framed.—*Act XII of* 1881 ((*N.-W. P. Rent*), *s.* 3 (1).—*Thakurani Sheoraj Kunwar* v. *Thakur Harihar* (14 Cal. W. N. 817, P. C.; 12 Cal. L. J. 40; 12 Bom. L. R. 508; 8 M. L. T. 89; 13 O. C. 165).

Mahalkari. A land-revenue officer (in Bombay) in charge of a mahal, subordinate to the *mamlatdar* of the taluqa.

Mahant. (*Ind.*) The head of a religious institution. *See* MATH.

Maiden. An instrument (like the guillotine) formerly used in Scotland for beheading criminals.

Maiden assize. An assize in which no person is condemned to die; at the present day, it is understood to be one at which there are no prisoners to be tried.

Maiden rents. A noble paid by the tenants of some manors on their marriage: it seems more probably to have been a fine for a license to marry a daughter.

Maile. A kind of ancient money; a small rent; any proportion of money or other rent.

Mails and duties. (*Sc. L.*) The rents of an estate, whether in money or victuals; hence an action for the rents of an estate is termed an action for mails and duties.

Maiming. Depriving of any member or part of the body necessary for defence in fight. *See* MAYHEM.

The word refers to those injuries which cause the privation of the use of a limb or member of the body (*per* Rattigan, J., *Fatteh Din* v. *Empress*, Punj. Rec., No. 33 of 1881, Cr.). It has a technical meaning, and imports a permanent injury; wounding is not necessarily maiming (*per* Plowden, J., *Bahawal* v. *Queen-Empress*, Punj. Rec., No. 7 of 1891, Cr.).

Mainour. Manour. Meinour. Anything that a thief takes or steals. To be taken with the *mainour* is to be taken with the thing stolen about him, *in manu* (in his hand), *i. e.*, *in flagrante delicto*.

Mainoure. A trespass committed by a man's handywork in a forest; as by putting an engine to catch deer. Also to occupy and *manure* land.

Mainpernable. That which may be held to bail, or delivered to mainpernors.

Mainpernors (*manucaptors*). Those persons to whom a person is delivered out of custody or prison, and they become security for his appearance; sureties; a kind of bail. Mainpernors differ from bail, in that a man's bail may imprison him, or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are barely sureties for his appearance at the day. Again, bails are only sureties that the party be answerable for the special matter for which they stipulate; mainpernors are bound to produce him to answer all charges whatsoever.—*Mozley*.

Mainprize (*manucaptio*). Delivery into the custody of a friend or surety (called a *mainpernor*), upon security for appearance. A writ directed to the sheriff commanding him to take sureties for a prisoner and set him at large.

The writ of mainprize could only be issued where the party applying for it was bailable, and had offered securities, but bail had been refused. It could not be issued to a prisoner confined under a law (Reg. III of 1818) which authorizes his detention absolutely and unconditionally, and gives him no right to demand to be released on bail. There is nothing in the charter of the High Court to give that court power to issue such a writ (*In Re Ameer Khan*, 6 B. L. R., O C., 456).

Main rent. Vassalage.

Mainsworn. Forsworn.

Maintainors. Persons guilty of *maintaining* a law suit; persons who second or support a cause in which they are not interested, by assisting either party with money or in any other manner.

Maintenance (*manutenentia*). An officious intermeddling in a suit which in no wise concerns one, by assisting either party with money, or in any other manner. Also it is used for the buying or obtaining of pretended rights to lands. Maintenance is either *ruralis*, in the country; as where one assists another in his pretensions to lands, by taking or holding the possession of them for him, or where one stirs up quarrels and suits in the country; or it is *curialis*, in a court of justice, where one officiously intermeddles in a suit depending in any court, which no way belongs to him, and he had nothing to do with, by assisting the plaintiff or defendant with money or otherwise, in the prosecution or defence of any such suit. *See* CHAMPERTY.

The law of maintenance is confined to cases where a man improperly and for the purpose of stirring up litigation and strife encourages others either to bring actions or to make defences which they have no right to make (*Petchakutti* v. *Kamala*, 1 Mad. H. C. R. 157, 158).

All litigants are entitled to the protection of the Court from extortionate claims made upon them by those whose professional aid they seek. *Brokers* and *meddlers* in litigation, who avail themselves of the weakness and ignorance of suitors to obtain from them under a pretence of services to be rendered, engagements for the payment of money, will find that protection will be afforded by the Court against them also (*Roop Narain* v. *Kashee Ram*, 2 N.-W. P. 67).

Providing children, or other persons in a position of dependence, with food, clothing, and other necessaries.

Major. An officer in the army. A person of full age, as distinguished from a minor, *See* MINOR.

Majority. Full age; the greater number; the office and rank of major.

Makandari. (*Ind.*) The ownership of a place. The office of Superintendent of a Mosque.

Make (*facere*). To perform or execute.

To *make good*. To make good damage done to property, means to restore the property to the condition in which it was immediately before the damage; and not that pecuniary compensation be given (*Wells* v. *Ody*, 5 L. J. Ex. 199; 1 M. & W. 452; *Crofts* v. *Haldane*, 36 L. J. Q. B. 85; 8 B. & S. 194; L. R. 2 Q. B. 194).—*Stroud*.

To *make law* (*legem facere*) is to perform that law which one has formerly bound himself to, that is, to clear oneself of an action by an oath and the oath of one's neighbours.

To *make oath* is to take an oath.

To *make a promissory note* is to sign it.

To *make services* and *customs* is to perform them. *See* SERVICE.

Making of the issue. This is done, after issue has been joined in an action, by the

plaintiff's solicitor drawing up transcript on paper of the pleadings, and delivering it to the defendant's solicitor, that he may ascertain it to be a correct copy of the pleadings which have actually taken place; the transcript is called the *issue*.

Mal. A prefix meaning bad, wrong, fraudulent; as mal-administration, mal-practice, malversation, &c.

Male. 'Heir male' or 'heir female' of the body means not only that the claimant be of the prescribed sex, but that such person trace his or her descent *entirely* through the male or female line. Thus a daughter's son is not an heir male, because he does not descend *wholly by heirs male*. It is otherwise, however, in the case of gifts to the heir male or female by words of *purchase*.—*Stroud*. So in *Bernal* v. *Bernal* (7 L. J. Ch. 115; 3 My. & C. 559), a devise to 'male descendants' was confined to males claiming through males.

Malediction (*maledictio*). A curse which was anciently annexed to donations of lands made to churches and religious houses against those who should violate their rights.

Malefaction. A crime; an offence.

Maleson. Malison. A curse.

Malesworn. Malsworn. Forsworn.

Malfeasance. A commission of some evil or unlawful act; the commission of some act which is in itself unlawful, as opposed to *nonfeasance*, which is the omission of an act which a man is bound by law to do; and to *misfeasance*, which is the improper performance of some lawful act; also opposed to *bienfaisance*, which is the regular and proper conduct of a matter. *See* NONFEASANCE.

Malguzar. (*Ind.*) By the term *malguzar* is generally understood a party paying revenue to Government. A person who has accepted or is to be deemed to have accepted the assessment of a mahal, including his representatives and assigns. All zemindars admitted to settlement engagements are considered to be malguzars. See Act XVIII of 1881 (Land-Revenue, C. P.), s. 4 (9).

Malice (*malitia*). A formed design of doing mischief to another, technically called malice prepense or aforethought (*malitia præcogitata*). It is either express or implied, and is thus distinguished by Blackstone—"*Express* malice is when one, with a sedate deliberate mind and formed design, doth kill another, which formed design is evidently external circumstances discovering that inward intention, as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. This takes place in the case of deliberate duelling." *Implied* malice is "where a man wilfully poisons another. In such a deliberate act the law presumes malice, though no particular enmity can be proved. And if a man kills another suddenly, without any or without a considerable provocation, the law implies malice." Thus express and implied malice differ in the nature of the evidence adduced to support the existence of malice. The nature of implied malice is illustrated by the maxim *culpa lata dolo æquiparatur*, gross negligence is equivalent to malice; every one must be taken to intend that which is the natural consequence of his actions; if any one acts in exactly the same way as he would do if he bore express malice to another, he cannot be allowed to say that he does not.

Malice in common acceptation means ill-will against a person, but in its legal sense it means a wrongful act done intentionally without just cause or excuse (*Nevill* v. *Fine Arts and General Ins. Co.*, 1895, 2 Q. B. p. 161).

Malice, 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. Malice is of two kinds—malice in law, and malice in fact.

Malice *in law* is where a wrongful act is done intentionally, without just cause or excuse. If, for instance, I gave 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. And if I traduce a man, whether I know him or not, and whether I intend to do him injury or not, the law considers it as done of malice, because it is wrongful and intentional; it equally works an injury, whether I *meant* to produce an injury or not; and if I had no legal excuse for the slander, why should there not be a remedy against me for the injury which it produces? Such being legal *malice*, it follows that some acts are in law always malicious, without any proof being given of personal ill-will or ill-feeling.

Malice *in fact* is said to be of two kinds, *viz.*, *personal* malice against the individual, which may be proved by direct evidence, as of expressions used, of declarations made, or of conduct generally—evincing enmity towards a particular individual, or *general*, that is, that sort of general disregard of the right consideration due to all mankind which, indeed, may not be previously directed against any one, but is nevertheless productive of injury to the complainant; which may be shown by proof of some act from which a jury would be held justified in *inferring* a malicious motive, and the act relied upon as evidence of malice may possibly be one not aimed at the particular individual who has suffered by it. It is then scarcely distinguishable from malice *in law*. A man's *motives* will not make wrongful an act which in itself is not wrongful. An act which does not amount to legal injury, cannot be actionable because it is done with a bad intent.—*Broom's Com. Law.* —*Collett on Torts.*

Malicious arrest. Malicious arrest consists in an abuse of legal process, maliciously and without reasonable and probable cause, resulting in depriving another of his liberty. —*Collett on Torts.*

Malicious arrest consists in wilfully putting the law in motion to effect the arrest, under civil process, of another without cause. Any person maliciously causing the arrest of another is liable to an action. If by false statement or suppression a man obtains the arrest of another, he is liable to an action. So a false affidavit whereby a judge's order is obtained for the arrest of an absconding debtor, renders the deponent liable to the person arrested.—*Underhill on Torts.*

See FALSE IMPRISONMENT.

Malicious prosecution. The essential ground of the action for a malicious prosecution is, that a legal prosecution was instituted or carried on *maliciously* and *without reasonable or probable cause*, whence damage has ensued to the plaintiff (*Moonee Ummah* v. *Municipal Commissioners*, 8 Mad. H. C. R. 151; *Vengama* v. *Raghava*, 2 Mad. H. C. R. 291; *Svami Nayudu* v. *Subramania*, 2 Mad. H. C. R 158). This allegation of want of probable cause must be substantially and expressly proved, and cannot be implied. From the want of probable cause, malice may be, and most commonly is, implied (*Vengama* v. *Raghava*, 2 Mad. H. C. R. 291); the knowledge of the defendant is also implied. From the most express malice, the want of probable cause cannot be implied. A man from a malicious motive may take up a prosecution for *real* guilt, or he may, from circumstances which he really believes, proceed upon apparent guilt; and in neither case is he liable to this kind of action. It is true that in order to support such an action there must be a concurrence of malice in the defendant and want of probable cause. Malice alone is not sufficient, because a person actuated by the plainest malice may nevertheless have a justifiable reason for prosecution. On the other hand, the substantiating the accusation is *not* essential to exonerate the accuser from liability to an action, for he may have good reason to make the charge, and yet be compelled to abandon the prosecution by the death or absence of witnesses, or the difficulty of producing adequate legal proof. The law, therefore only renders him responsible where *malice is combined with want of probable cause*. To show want of probable cause there ought to be enough to satisfy a reasonable man that the accuser had no ground for proceeding, but his desire to injure the accused. —*Broom's Com. Law.*

Reasonable and probable cause has been defined as an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accused, to the conclusion that the person charged was probably guilty of the crime imputed.—*Collett on Torts.*—*Gajpatti* v. *Narsing* (6 Mad. H. C. R. 85).

Malicious civil proceedings. Generally speaking, it is not an actionable wrong to institute *civil* proceedings without reasonable and probable cause, even if malice be proved. For in contemplation of law the defendant who is unreasonably sued is sufficiently indemnified by a judgment in his favour which gives him his costs against the plaintiff. And special damage beyond the expense to which he has been put cannot well be so connected with the suit as a natural and probable consequence that the unrighteous plaintiff, on the ordinary principles of liability for indirect consequences, will be answerable for them. The bringing of an ordinary action, however maliciously, and however great the want of reasonable and probable cause, will not support a subsequent action for malicious prosecution. But there are proceedings which though civil are not ordinary actions, and fall within the reason of the law which allows an action to lie for the malicious prosecution of a criminal charge. For example, the commencement of proceedings in bankruptcy against a trader, or the analogous process of a petition to wind up a company, is in itself a blow struck at the credit of the person or company whose affairs are thus brought in question. Therefore such a proceeding, if instituted without reasonable and probable cause and with malice, is an actionable wrong. —*Pollock on Torts.*

Malik. (*Ind.*) Master. Proprietor. Owner.

The expression "shall be *maliks*" inserted in a will, ordinarily implies an absolute gift, and there is no authority for introducing into the will the idea that a female ought not to obtain anything beyond an estate for her lifetime (*Lala Ramjewan Lal* v. *Dal Koer*, 24 Cal. 406; *Thakur Prasad* v. *Jamna*, 31 All. 308; 6 All. L. J. 420). In a Hindu will, an heritable and alienable estate is to be understood by the use of the words "shall become *maliks*," *unless the context indicates a different intention* (*Lalit Mohun* v. *Chukkun Lal*, 24 Cal. 834; *Chatter Lal Sing* v. *Shewakram*, 5 B. L. R., A. C., 123, *Rajnarain* v. *Ashutosh*, 27 Cal. 44; *Rajnarain* v. *S. M. Katyayani*, 27 Cal. 649; *Padam Lal* v. *Tek Singh*, 29 All. 217; 4 All. L. J. 68; 27 All. W, N. 19; *Goverdhandas* v. *Vantbai*, 1 S. L. R. 211; *Shib Lakshan* v. *Srimati Tarangini*, 8 Cal. L. J. 20, *Tikaram Singh* v. *Mt. Chet Kunwar*, 12 O. C. 157).

Where the purpose of the grant was the maintenance of the grantee, held, that the grant was *prima facie* intended to be only for his life, and this construction was not extended by the use of the words "proprietor" and "for ever" in the documents (*Rameshar* v. *Arjun*, 23 All. 194).

There is no real difference in the meaning of the words *waras* (heir) and *malik* (owner) (*Chunnilal* v. *Bai Muli*, 24 Bom. 420).

Malikana. What belongs to a *malik* in the way of fees, &c. Pertaining or relating to the *malik* or proprietor, as his right or due. The allowance paid to a zemindar whose estate is attached.

An annual recurring charge on immoveable property (*Hurmuzi Begam* v. *Hirday Narain*, 8 Cal. 921). The proprietary share of the produce of land; that which comes to the proprietor in respect of his ownership and as a mode of enjoying his ownership (*Mahomed Karamat-ullah* v. *Abdul Majeed*, N.-W. P. H. C. R. 1869, p. 205).

Malikana is not rent, nor has it the elements of rent. It is a right to receive a portion of the profits of an estate for which Government has made a settlement with another person when the real proprietor has neglected to pay his revenue or has declined to come in and make a settlement or to accede to the rate at which the lands are assessed (*per* Sir Barnes Peacock, C. J., *Boalee Singh* v. *Neemoo*, 12 W. R. 498; *per* Okinealy and Ghose, JJ., *Surendro Prasad* v. *Kedar Nath*, 19 Cal. p. 12).

It was applied formerly to an allowance made to the headman by the other villagers, or, when authorized to collect and pay the revenue of the village, by the State (*Churaman* v. *Balli*, 9 All. p. 586).

Malik-makbuza. Any persons owing one or more plots of land separately assessed with revenue in a mahal, and who is not a malguzar, inferior proprietor, or member of the proprietary body of the mahal.—*Act XVIII of* 1881 (*Land Revenue, C. P.*), *s* 4 (10), *as substituted by Act XVI of* 1889, *s.* 9.

Malkiyat. Property. Proprietary right.

Malingering. Soldiers who feign sickness in order to escape duty.

Malveilles. Ill will; crimes and misdemeanours, malicious practices.

Malversation. Misbehaviour in an office, employment, or commission, as breach of trust, extortion, &c

Malzamin. (*Ind.*) Bondsman for the discharge of a debt, or payment of rent.

Malzamini. Written security for the due payment of a debt or revenue.

Mamlatdar. (*Ind.*) The native land-revenue officer in charge of a taluqa or division of a district (in Bombay).

Mamool. (*Ind.*) Established custom or usage.

Manacle. A chain for the hands; shackle.

Man-bote. A pecuniary compensation for killing a man, particularly due to the lord for killing his man or vassal. *See* BOTE.

Mancipate. To enslave, to bind, to tie.

Manciple. An officer in the Temple, now called the steward. A clerk of the kitchen, or caterer, especially in colleges.

Mandant. The principal in the contact of mandate.

Mandatary. Mandatory (*mandatarius*). He to whom a mandate, charge or commandment is given. He that obtains a benefice by *mandamus*. *See* MANDATE.

Mandate. (*mandatum*). A judicial command; a command of the king; a charge; commission. A contract by which one man employs another gratuitously to act for him in the management of his affairs; a bailment of goods, without reward, to be carried from place to place, or to have some act performed about them; the person giving the employment is called the *mandant* or *mandator*, the person receiving it, the *mandatary*. The distinction between a mandate and a deposit is that in the latter the principal object of the parties is the custody of the thing, and the service and labour are merely accessorial; in the former the labour and service are the principal objects of the parties, and the thing is merely accessorial. For example, if loose diamonds or rubies are given to a goldsmith to be made into ornaments and then to be returned to the owner, this would be no 'deposit' in the legal sense, because the thing deposited is not itself to be returned; but it would be a *mandatum* given to the goldsmith to be worked into ornaments (*Narayanasamy* v. *Ayasamy*, 24 M. L. J. R. 184). *See* BAILMENT.

Mandator. Director. *See* MANDATE.

Mandatory. Preceptive; directory. *See* MANDATE.

Mandatory injunction. An injunction ordering some positive act, whether or not it be expressed in a negative form, *e. g.*, the pulling down of a house, erected after plaintiff had given notice of his right of way and after he had commenced his action for an injunction, damages would be no equivalent in such a case.—*Brown*. *See* INJUNCTION.

Mandeedaree tenure. (*Ind.*) Mandeedaree tenure is the tenure of a tenant with rights of occupancy who is entitled to hold at rates varying with the revenue, and he possesses privileges superior to those of an ordinary ryot. His rates of rent are not liable to enhancement (*Ranee Bunkut* v. *Gouree Singh*, 2 N.-W. P. 369).

Manentes. Tenants.

Mangni. (*Ind.*) Asking in marriage; betrothing.

Manifesto. Manifest. A public declaration made by a prince. A document signed by the master of a ship setting forth, *inter alia*, the description and destination of the goods shipped by him.

Manner. Mainour. To be taken with the manner, is where a thief, having stolen anything, is taken with the same about him as it were in his hands. *See* MAINOUR.

Manner and form (*modo et forma*). Fromal words introduced at the conclusion of a traverse; their object was to put the party whose pleading was traversed, not only to the proof that the matter of fact denied was in its general effect true as alleged, but also that the manner and form in which the fact or facts were set forth were also true.

Manning (*manopera*). A day's work of a man; in ancient deeds there was sometimes reserved so much rent, or so many mannings.

Mannire. To cite any one to appear in Court and stand in judgment there; it is different from *bannire*; for though both of them signify a citation, this is by the adverse party, and that is by the judges.—*Tomlins.*

Mannopus (*manopera*). Goods taken in the hands of an apprehended thief.

Manor (*manerium*). An estate in fee simple in a tract of land, granted by the sovereign to a lord or great personage, who kept to himself such parts of it as were necessary for his own use, which were called *terræ dominicales* or *demesne lands*, and distributed the rest (called *tenementales*) to freehold tenants. Of the demesne lands, again, part was retained in the actual occupation of the lord, and other portions were held in villenage; and there was also a portion which was called the lord's waste, and served for public roads and for common of pasture to the lord and his tenants. Manors were also called baronies, as they still are lordships, and each baron or lord was empowered to hold a domestic court called the *court baron* for redressing misdemeanours and nuisances within the manor, and for settling disputes of property among the tenants. In most manors at the present day we find that species of tenants called *copy holders*, whose lands, though substantially their own property, are nominally part of the lord's demesnes. But a manor, in its proper and perfect state, also comprises land occupied by *freehold tenants* holding of the manor in perpetuity. Thus a manor, regarded as a hereditament, is compounded of various things, as of a mansion-house, arable land, posture, meadow, wood, rent, advowson, court baron, and such like; a manor, to be such, must have continued from time immemorial, for at the present day, and ever since the statue *Quia Emptores* (18 Edw. I, c. 1), a manor cannot be created. The civil and criminal jurisdiction of the *courts baron* is now practically obsolete, though they are held for the admittances of tenants and surrenders, &c. *See* COPYHOLD.

Man-queller. A murderer.

Manrent. A kind of bond between lord and vassal, by which protection was stipulated on the one hand, and fidelity with personal service on the other.—*Wharton.*

Manse. A house or habitation, either with or without land.

Manser. A bastard.

Mansion. Mansion-house. The lord's house in a manor; otherwise called the *capital messuage* or manor place.

Manslaughter. The unlawful killing of another without premeditation, or without malice express or implied. It may be either *involuntary*, as where a man doing an *unlawful* act not amounting to felony by accident kills another, or where by culpable neglect of duty, or through recklessness (including under that terms negligence, heedlessness and rashness) he occasions another's death; or *voluntary*, as when upon a sudden quarrel, two persons fight, and one of them kills the other, or where a man greatly provokes another by some personal violence, and the other immediately kills him.

Mantheoff. A horse-stealer.

Manticulate. To pick pockets.

Manucaptor. One who stands bail for another. *See* MAINPERNOR.

Manufacture. *See* PATENT RIGHTS.

Manumission (*manumissio*). The freeing of a villein or slave out of his bondage.

Man-worth. Manwryth. The price or value of a man's life or head; for, of old, every man was rated at a certain price, according to his degree or quality, which price was paid to the lord in satisfaction for killing him.

Marchers. Lords Marchers. Those noblemen who lived on the *marches* of Wales and Scotland, and who in times past, had their private laws and regal powers, as if they had been petty kings.

Marches. Boundaries or frontiers. The boundaries and limits between England and Wales, or between England and Scotland, or generally, the borders of the dominions of the Crown. The boundaries of private properties in Scotland. The *Court of the Marches* of Wales was a tribunal in Wales where pleas of debt or damages not exceeding £50 were tried and determined; now abolished.

Marchet. Marchetta. A fine for marriag A composition or acknowledgment by the sockman or villein for the lord's permission, to give his daughter in marriage to one not subject to the lord's jurisdiction; or the fine for giving her away without such permission. It is also denominated *gwahr-merched*, *i. e.*, maid's fee. *See* MAIDEN RENTS.

Marginal note. An abstract of a reported case, a summary of the facts, or brief statement of the principle decided, which is prefixed to the report of the case, sometimes in the margin, is spoken of by this name. The marginal notes which appear in the statute-books have not the authority of the legislature, and cannot alter the interpretation of the text.—*Wharton.*

Marine insurance. An insurance undertaken by a private person or by a firm for indemnifying the owner of a ship or cago from losses at sea. *See* INSURANCE.

Marital. Pertaining to a husband; incident to a husband. *Marital rights*, rights of a husband; the properties of the wife which the husband takes or is entitled to take simply as husband are said to belong to him by his marital right (*jure mariti*), to distinguish them from those other properties of the wife which he only takes by right of administering to the wife.

Maritime Courts. Courts having jurisdiction in maritime causes, which are the Court of Admiralty, and the Judicial Committee of the Privy Council on appeal there-

from. The maritime courts in our colonies and dependencies are called Vice-Admiralty Courts. *See* ADMIRALTY.

Maritime interest. The interest payable on hypothecations and bottomary and respondentia bonds is so called; and on account of the extraordinary risk attaching to such loans the rate of interest is usually very high, and there was never any restriction upon its amount.

Maritime law. The law relating to harbours, ships and seamen.

Maritime lien. *See* LIEN.

Market. An emporium of commerce, or place of buying and selling; also purchase and sale. The liberty by grant or prescription, whereby a town, a person, or body corporate is enabled to set up and open shops &c., at a certain place in the town, for buying and selling and for better provision of such victuals as the subject wants; it is less than a fair and usually kept once or twice a week. The establishment of public marts, or places of buying and selling, such as markets and fairs, with the tolls thereunto belonging, is enumerated by Blackstone as one of the king's prerogatives. These can only be set up by virtue of the king's grant, or by long and immemorial usage and prescription which presupposes such a grant.—*Tomlins.*

Market geld. A toll of the market.

Market overt. Open market; an expression applied to the open sale of goods, as opposed to a clandestine or irregular sale. Market overt, in the country, is held only on the special days provided for particular towns; but in the city of London every day, except Sunday, is market day. Also in the country the market-place is the only market overt; but in London every shop in which goods are exposed publicly for sale is market overt for such things as the owner professes to trade in. The effect of a sale in market overt is that it will in general give the purchaser a secure title to the goods which he has bought, though the vendor has no property therein. To this rule, however, there are some exceptions; as, if the goods be Crown property; or if the goods be stolen, and the owner have prosecuted the thief to conviction.—*Moxley.* *See* Act I of 1872 (Contract), s. 108.

Market towns. Towns entitled to hold markets.

Market value. In a contract for the sale of goods, market value means the price in the market to an ordinary customer, irrespective of the particular contract (*Orchard* v. *Simpson*, 2 C. B. N. S. 299).—*Stroud.*

Court of the Clerk of the Market. A tribunal incident to every fair and market in the kingdom, to punish misdemeanours therein; as a court of *piedpoudre* is to determine all disputes relating to private or civil property. The object of this is principally the recognisance of weights and measures, to try whether they be according to the true standard.—*Wharton.* *See* COURT OF PIEDPOUDRE.

Marketable. Such things as may be sold; those for which a buyer may be found.

Marketable security. A security of such a description as to be capable of being sold in any stock market.

Marketable title. A title to land agreed to be purchased which is not merely good, but so clear that a court of equity would compel a reluctant purchaser to take it, on a suit against him by the vendor to enforce the specific performance of his contract to purchase the land. It is now, however, quite settled, that so far as a purchaser's objection is one of pure law, the court, if it think the objection untenable, will not refrain from compelling him to complete his purchase by reason of any supposed doubtfulness in the state of the law on the subject.—*Moxley.* *See* GOOD TITLE.

Marks, merchandise. *See* MERCHANDISE MARKS.

Marksman. A person who cannot write, and, therefore, instead of singing his name, makes his mark only in executing instruments. In practice it is desirable that the mark should be attested by a witness.

Maroomakatayam. (*Ind.*) A system of descent prevailing in the province of Malabar, whereby the inheritance runs in the female and not in the male line; a man's property, according to this law, goes to his sisters, sister's sons, sister's daughters, and so forth.

Marque. A mark or sign. Passing the frontiers, or *marches*, in order to make reprisals. Hence it is used as synonymous with *reprisals* *See* LETTERS OF MARQUE AND REPRISAL

Marquis. Marquess. A title of honour next before an earl, and next after a duke.

Marquisate. The seigniory of a marquis.

Marriage (*maritagium*). A civil and religious contract whereby a man is joined and united to a woman for the purpose of civilized society. Marriage, besides its ordinary meaning, signifies the right, formerly enjoyed by the lord of whom lands were held in knight-service, of disposing of his infant wards in matrimony, at their peril of forfeiting to him, in case of their refusing a suitable match, a sum of money equal to the value of the marriage, *i. e.*, what the suitor was willing to pay to the lord as the price of marrying his ward; and double the market value was to be forfeited, if the ward presumed to marry without the lord's consent. *See* AVAIL OF MARRIAGE. *Maritagium* is likewise applied to land given in marriage, and is that portion which the husband receives with his wife. There is a further term called *duty of marriage*, signifying an obligation to marry, imposed on women who formerly had lands charged with personal services, in order to render them by their husbands.

Marriage articles. A contract made in contemplation of marriage is in general spoken of as marriage articles, if it contemplate a further instrument to carry out the intention of the parties; the final instrument being called the *marriage settlement.*

Marriage brokage. A consideration paid for contriving a marriage; a remuneration paid to a man for negotiating a marriage; marriage brokerage contracts are void, as tending to introduce marriages not based on mutual affection, and therefore contrary to public policy.

An agreement to remunerate or reward a third person in consideration of negotiating a marriage, is contrary to public policy, and cannot be enforced (*Bakshi Das* v. *Nadu Das*, 1 Cal. L. J. 261).

Marriage consideration. Contracts based upon this consideration are required to be in writing by the Statute of Frauds; the consideration, if past and already executed, is meritorious only; but if executory, it is a valuable consideration, equivalent to money or money's worth. *See* CONSIDERATION.

Marriage portion. *See* DOWRY.

Marriage settlement. A settlement of property between an intended husband and wife, made before marriage, and in consideration of it, whereby a jointure is secured to the wife, and portions to children, in the event of the husband's death. A post-nuptial settlement, in pursuance of an antenupital agreement, is a marriage settlement.

A *promise of marriage* need not to be in writing.

Marshal. An officer who has the care or command of horses.

Lord Marshal. An officer who decided matters of honour and of arms according to the law military and the law of nations.

Marshal of the king's house. An officer whose special authority was to hear and determine all pleas of the Crown, and to punish faults committed within the verge, and to hear and judge of suits between those of the king's household. His court was called the Court of the Marshalsea. Now abolished.

Marshal of a Judge of Assize. An officer who attends a judge on circuit in the capacity of secretary, whose duty it is to swear in the grand jury, and to attend upon the judge and, on the civil side, to receive records and enter causes.

Marshal of the Queen's Bench. An officer who had the custody of the Queen's Bench Prison.

In the United States, marshal is an executive officer in each State of the Union, charged to execute the process of the United States' Courts. The marshal of a State thus corresponds to the Sheriff of a county in England.

Marshalling. The act of arranging or of putting into proper order.

Marshalling of assets. A doctrine which depends on the principle that a person having two funds out of which to satisfy his demands, shall not, by his election, prejudice a person who can only come upon one of the funds. If, therefore, one who has a claim upon two funds, resorts to the only fund upon which another has a claim, the latter stands in his place for so much against the fund, to which otherwise he could not have access; the object being that every claimant shall be satisfied as far as, by any arrangement consistent with the nature of the several claims, the property they seek to affect can be applied in satisfaction of such claims. This is in accordance with the great ethical maxim *sic utere tuo ut alienum non lædas*, so exercise your own right as not unnecessarily to prejudice that of your neighbonr.—*Wharton.*

If the owner of two properties mortgages them both to one person, and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee, so far as such property will extend, but not so as to prejudice the rights of the first mortgagee, or of any other person having acquired for valuable consideration an interest in either property.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 81.

The doctrine of marshalling does not apply as between a mortgagee and attacning creditors of the mortgagor who hold mere money-decrees (*Kristodass* v. *Ramkant*, 6 Cal. 142, 7 C. L. R. 396).

Marshalsea, Court of. *See* COURT OF MARSHALSEA, MARSHAL OF THE KING'S HOUSE.

Martial Courts. *See* COURT MARTIAL.

Martial law. The law imposed by the military power. The law of war depending upon the pleasure of the king or his lieutenant; for though the king, in time of peace, never makes any laws but by common consent in parliament, yet, in war he uses absolute power, insomuch that his word is law; it is no law at all, but the will of the commander-in-chief; it is, in fact, absolutely discretionary military authority not subject to the control of municipal tribunals. Thus martial law is "no law" in the sense of being the suspension of civil jurisdiction, and therefore of civil liability, and subject only to military restraint and control.—*Mozley.*

Marz-ool-maut. Under the Mehamedan law, the term *marz-ool-maut* is applicable not only to diseases which actually cause death, but to diseases from which it is probable that death will ensue, so as to engender in the person afflicted with the disease an apprehension of death. Under the same law a person labouring under such a disease cannot make a valid gift of the whole of his property until a year has elapsed, from the time he was first attacked by it. When a gift is made by a

person labouring under such a disease, it is good to the extent of one third of the subject of the gift, if the donee has been put into possession by the donor (*Mussumat Labbi* v. *Mt. Bibbun*, 6 N.-W. P. 159).

In order to establish *marz-ul-maut* (death illness) there must be present at least three conditions:—(1) Approximate danger of death, so that, there is as it is phrased, a preponderance (*ghaliba*) of khauf or apprehension, that is, that at the given time death must be more probable than life; (2) there must be some degree of subjective apprehension of death in the mind of the sick person; (3) there must be some external indicia, chief among which would be the inability to attend to ordinary avocations (*Sarabai* v. *Rabiabai*, 8 Bom. L. R. 35; 30 Bom. 537; *Muhammad Mashud* v. *Muhammad Anwar*, 6 All. L. J. 503; *Sheikh Mohammad* v. *Khadeja Bibi*, 12 All. L. J. 132).

Masjid. (*Ind.*) A mosque; a place of worship for Mehomedans.

Master. A director, a governor; a teacher, one who has servants; the head of a college, the chief functionaries of courts of law.

Masters in Chancery. Officers of the Court of Chancery, whose principal duties were to inquire into matters referred to them by the Chancery judges, to take account and compute damages; also to take oaths, affidavits, and, acknowledgments of deeds and recognizances. Now abolished.

Masters in Lunacy. Judicial officers appointed by the Lord Chancellor to conduct inquiries into the state of mind of persons alleged to be lunatics; such inquiries usually take place before a jury.

Master of the Crown Office. The coroner and attorney of the sovereign whose duty it is to file criminal informations in the Court of Queen's Bench under the direction of the Court upon the complaint or relation of a private person.

Master of the Faculties. An officer under the Archbishop of Canterbury, appointed to grant licenses, dispensations, &c.

Master of the Horse. The third great officer of the royal household, being next to the Lord Steward and Lord Chamberlain. He has the privilege of making use of any horses, footmen, pages, belonging to the royal stables.

Master of the Mint. An officer who receives bullion for coinage from the goldsmiths and pays them for it, and superintends everything belonging to the Mint; he is usually called the warden of the mint.

Master of the Rolls (*magister rotulorum*). One of the judges of the Court of Chancery, and keeper of the rolls of all patents and grants that pass the Great Seal, and of all records of the Court of Chancery. He was formerly but one of the Masters in Chancery and his earliest judicial attendances seem to have been merely as assessor to the Chancellor, with other Masters. His character as an independent judge was fully established in the reign of George II.

Master of a ship (*magister navis*). The person entrusted with the care and navigation of a ship, and having the charge and command of the ship.

'Master,' when used in relation to any vessel, means, subject to the provisions of any other enactment for the time being in force, any person (except a pilot or harbour-master) having for the time being the charge or control of the vessel.—*Act XV of* 1908 (*Indian Ports*), *s.* 3 (2).—*Act XVII of* 1908 (*Emigration*), *s.* 2 (*viii*).—*Act X of* 1897 (*General Clauses*), *s.* 3 (32).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (29).

Master of the Temple. The chief ecclesiastical functionary of the Temple church.

Masters of the Courts of Common Law. These were the most important officers of the respective courts, whose duties were to record the proceedings of the court to which they belonged, to superintend the issue of writs and the formal proceedings in an action, to tax costs, to compute damages, to receive and account for the fees charged on legal proceedings and moneys paid into court.

Master's report. The report made by a Master in Chancery pursuant to directions to take accounts and inquiries in any given suit.

See TAXING MASTERS.

Master and servant. This is the relation which arises out of the contract of hiring, a relation whereby a person calls in the assistance of others, where is own skill and labour are not sufficient to carry out his own business or purpose. Every person suffering himself to be hired as a skilled artisan warrants that he possesses the requisite ability and sufficiency, and upon proof of his incompetency his employer may discharge him. A servant is not personally liable on contracts made by him for his master; but he is liable for torts committed by him, although at the command of his master. Similarly he is civilly liable for assisting his master in a fraud. Conversely, the master is liable for the tort of his servant committed in his service. A master lies under certain duties to his servant; he is bound to provide an apprentice with medical attendance and medicine during sickness, *secus*, in the case of a menial or general servant. He is bound to provide for the reasonable safety of his servant while engaged in his employment, as by fencing machinery and otherwise. A master may maintain an action for debauching his servant, and may even justify an assault in protecting his servant. So also trespass will lie by a master for enticing his servant away.—*Brown.* It is not legally compulsory on a master or mistress to give a discharged servant any character, and no action is sustainable for the refusal; but if a character be given, it must accord with the truth.

Liability of a master for the acts of his servant. The general rule is that the principal is liable civilly (and in some cases, criminally), for the frauds, torts, negligences, malfeasances, and omissions of his agent, when done in the course of his employment, though not sanctioned, but even forbidden by the principal. The rule applies *respondeat superior*, let the superior answer for it, for he holds out his agent as competent, and so warrants his fidelity, skill, and good conduct in all matters within the scope of his agency. —*Collett on Torts.*

A master is liable for the act of his servant, whether it be done negligently, wantonly or even wilfully; provided that what is done, is done by the servant in the course and within the general scope of his employment.—*Underhill on Torts.*

A master is responsible for the wrongful act of his servant even if it be wilful, or reckless or malicious, provided that the act is done by the servant within the scope of his employment and in furtherence of his master's business or for the master's benefit.—*Addison on Torts.*

The master is responsible for every such wrong of the servant or agent as is committed in the course of the service *and for the master's benefit*, though no express command or privity of the master be proved. The expression "course of business or service" does not connote mere continuity of employment or service, but continuity of purpose—the uninterrupted progress of work to subserve the interest of the master. The word "course" has no reference to time, but to running on of work devoted to the master. Any deviation to other interests is an interruption of such course, although it take place in point of time in the middle of such work; it then ceases, though it be but momentarily, to be the work for the master. The crucial test is not whether the act is done during a time while the servant is performing a duty for his master, but whether it was done *in* the performance and for the purpose of performing that duty and for the master's interests and not the servant's purposes instead (*Jehangir* v. *Secretary* of State, 6 Bom. L. R. 131).

Liability for acts of a contractor. The employer is responsible for the acts of his servant, whether the work is done by a domestic servant, or day-labourer, or by a person who works by the job or piece, and contracts to do the work for a specific sum; provided always, that the workman is an ordinary labourer personally engaged in the execution of the work, acting under the control of the employer, and not a contractor exercising an independent employment and selecting his own servants and workmen for the performance of the work.—*Collett on Torts.* A contractor or sub-contractor or other person exercising an independent employment, is not a servant within the meaning of the above rule. A person employing a contractor will, however, be liable for the contractor's wrongful acts if either (*a*) the employer retains his control over the contractor, and personally interferes and makes himself a party to the act which occasions the damage; or (*b*) where the thing contracted to be done is itself illegal, or (*c*) where a legal duty is incumbent upon the employer, and the contractor either omits or imperfectly performs such duty, or (*d*) where the thing contracted to be done is lawful in itself, but his likely in the natural course of events to cause injury to a neighbouring property unless means are adopted by which such consequences may be prevented and the contractor omits such means (*Hughes* v. *Percival*, L. R, 8 App. Cas. 443).—*Underhill on Torts.*

Matadar family. (*Ind.*) Means a family to which the office of village patel, or some share in the discharge of the duties or in the exercise of the powers ordinarily appertaining to that office, belongs hereditarily.—*Bom. Act VI of* 1887 (*Matadars*), *s.* 2 (1).

Mata means the aggregate of the rights, privileges and responsibilities vesting in a matadar family as such.—*Ibid.*, *s.* 2 (2).

Matadar means a member of a matadar family whose name is entered in the register kept under the Act.—*Ibid.*, *s.* 2 (4).

Mate's receipt. When goods are delivered on board a ship, it is usual for the master or person in charge at the time to give a receipt to the person so delivering. This is known as the Mate's receipt.

The duty of a shipping company, whose vessels ply in misland waters, arising from a document which charges the company with the receipt of certain goods from a shipper, under a bargain to convey them by its ship to a certain place for a stipulated freight on certain conditions, is to deliver the goods to the shipper or to his nominee at the place of delivery; and although such a document is called Mate's receipt to which certain terms which are more suitable to bills of lading are appended, it is a simple ordinary receipt for goods, and it is not a negotiable instrument within the meaning of s. 137 of the Trans. of Pro. Act, nor is it a document of title, and the goods do not pass upon the transfer of it (*Natcheappa Chetty* v. *The Irrawaddy Flotila Co.*, *Ld.*, 1914, Mad. W. N. 163, P. C.). *See* BILL OF LADING.

Math. (*Ind.*) A religious house or institution. Math, like an idol, is in Hindu Law a juridical persona capable of acquiring, holding and vindicating legal rights, though of necessity it can only act in relation to those rights through the medium of some human agency. When the property is vested in the Math, then litigation in respect of it has ordinarily to be conducted by, and in the name of, the manager, not because the legal property is in the manager, but because it is the established practice that the suit should be brought in that form. A person in whose name a suit is thus brought has in relation to that suit a distinct capacity; he is therein a stranger to

himself in his personal and private capacity in a court of law. In connection with the property of a Math there are two distinct classes of suits; those in which the manrger seeks to enforce his private and personal rights, and those in which he seeks to vindicate the rights of the *Math*. The rights of the *Math* cannot ordinarily be prejudiced by the result of a suit of the former class (*Babajirao* v. *Luxmandas*, 5 Bom. L. R. 932). *See* IDOL.

Matricide. The murder of a mother.

Matricula. A register; as in the ancient church there was *matricula clericorum*, a catalogue of the officiating clergy; and *matricula pauperum*, a list of the poor to be relieved; hence to be entered in the register of the universities, is to be matriculated.

Matrimonial causes. Suits for the redress of the injuries respecting the rights of marriage. They were formerly a branch of the ecclesiastical jurisdiction of the Court of Divorce and Matrimonial Causes (now a branch of the High Court of Justice).

Matrimony. Marriage; the nuptial state.

Matron. A married woman; the mother of a family.

Jury of Matrons. A jury empannelled to try if a woman condemned to death be with child. *See* JURY.

Matter. *Matter in deed* is a truth to be proved by some deed or "specialty," *i. e.*, writing undea seal.

Matter in pais. Strictly speaking a thing done in the country, that is, a matter to be proved by witnesses, and tried by a jury of the country; this is otherwise called *nude matter*, the expression, however, is also used so as to include *matter in deed*.

Matter of record. Matter which may be proved by some record, as having been done in some court of record.—*Mozley*.

Mattridatta. (*Hin. L.*) A kind of woman's property given her by her mother.

Maturity. The maturity of a promissory note or bill of exchange is the date at which it falls due. Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business-day.—*Act XXVI of* 1881 (*Nego. Instr.*), *ss.* 22 *and* 25.

Maulvi. (*Ind.*) A learned and religious man. The law officer appointed in the courts for the interpretation of the Mohomedan Law.

Mauza. (*Ind.*) A place. A village.

Maxim. An axiom; a general principle; a leading truth.

May. In interpreting statutes, the words "must" and "shall" may in some cases be substituted for the word "may," but only for the purpose of giving effect to the intention of the Legislature (*Nadir Chand* v. *Wood*, 35 Cal. 194; 12 Cal. W. N. 450; *Hookamchand* v. *Nowroji*, 10 Bom. L. R. 345; 33 Bom. 462). In the absence of proof of such intention, the word "may" should be taken as used in its natural, *i. e.*, in a *permissive* and not in an obligatory or imperative sense (*Delhi and London Bank, Limited* v. *Orchard*, 3 Cal. 47; *Damodar Das* v. *Gokul Chand*, 7 All. p. 83; *Haji Musa* v. *Permanand*, 15 Bom. p. 218). The words "may," "it shall be lawful," "shall think proper," &c., are potential, and never in themselves significant of any obligation (*per* Lord Selbourne, *Julius* v. *Bishop of Oxford*, 49 L. J. Q. B. 585). *See* SHALL, LAWFUL IT SHALL BE.

'May' in s. 27 of the Specific Relief Act does not mean "must" (*Abdul Majid* v. *Boida Nath*, 6 Cal. W. N. 314).

May presume. *See* PRESUME.

Mayhem. The deprivation of a member proper for defence in fight; as an arm, leg, finger, eye, or a fore-tooth; yet not a jaw-tooth, or an ear, or a nose, because they have been supposed to be of no use in fighting. A bodily injury is not a mayhem merely because it is a disfigurement. *See* MAIMING.

Mayor. The chief magistrate of a city.

Mayoralty. The office of a mayor.

Mazra. (*Ind.*) A hamlet or cluster of houses A smaller division of a *mauza* or village.

Mead. Meadow. Ground somewhat watery, not ploughed, but covered with grass and flowers.

Meal-rents. Certain rents formerly paid by some tenants in *meal*, to make meat for the lord's hounds.

Mean. *See* INCLUDE.

Mean. Mesne (*medius*). A middle between two extremes, whether applied to persons, things or time. *See* MESNE.

Means, affidavit of. *See* AFFIDAVIT.

Mease. A messuage or dwelling-house.

Meason-due. An hospital, monastery, or religious house.

Measure. That by which anything is measured; the rule by which anything is adjusted or proportioned. *See* WEIGHTS AND MEASURES.

Measure of damage. The rule or test by which the *amount* of damage in any given case is to be determined.

Medfee. A reward; bribe; that which is given to boot; a compensation given in exchange, where the things exchanged are not of equal value.

Mediators of questions. These were six persons authorized by statute in the reign of Edward III, who, upon any question arising among merchants relating to unmerchantable wool, or undue packing, &c., might, be-

fore the mayor and officers of the staple, upon their oath, certify and settle the same, to whose order and determination therein the parties concerned were to give entire credence, and submit.—*Tomlins*.

Medical jurisprudence. *See* FORENSIC MEDICINE.

Medico-legal. Relating to the law concerning medical questions.

Medlefe. Medleta. Medletum. A sudden scolding at and beating one another.

Med-sceat. A bribe; hush money,

Megbote. A recompense for the murder of a relation.

Meid-feoh. Meid-feot. The recompense due and given to him who made discovery of any breach of penal laws committed by another person, called the promoter's or informer's fee.

Meliorative waste. *See* WASTE.

Memorandum. A clause in a policy of marine insurance, exempting the insurer from liability for damage to certain specified articles of a peculiarly perishable nature.

Memorandum in error. Memorandum in writing, signed by a party desirous to bring "error in fact" for the purpose of reversing a judgment.

Memorandum of Alteration. In a patent, a disclaimer or renunciation by a patentee of part of the invention originally claimed by his patent.

Memorandum of Association. A document to be subscribed by persons associated for a lawful purpose, by subscribing which, and otherwise complying with the requisitions of the Companies' Acts in respect of registration, they may form themselves into an incorporated company, with or without limited liability. *See* ASSOCIATION.

Memorial of a deed. A document containing the short particulars of a deed, &c., for purposes of registration. A petition.

Memory. In law, the memory of man is supposed to extend back to the time of Richard I (July 6, 1189); and until 2 & 3 Wm. IV, c. 71 (Prescription Act) any custom might have been destroyed by proving that it had not existed uninterruptedly from that period; yet proof of a regular usage for twenty years, not explained or contradicted was sufficient for a jury to find the existence of an immemorial custom.—*Brown*. *See* LEGAL MEMORY, LIVING MEMORY.

Menials. Household servants, that is, such as live within the walls of their master's house, from *mœnia*, the walls of a house.

Men of straw. Men who used in former days to ply about the courts of law for the purpose of giving suborned evidence and who, from their manner of making known their occupation (*i. e.*, by a straw in one of their shoes) were recognised by the name of *straw shoes*. A worthless person; one without means.—*Rawson*. A man of straw is a man of no substance. To write or speak of a man in trade that he is a 'man of straw' is to impute insolvency (*Eaton* v. *Johns*, 11 L. J. Ex. 150; 1 Dowl. N. S. 602).

Mental reservation. A silent exception to the general words of a promise or agreement not expressed, on account of a general understanding on the subject; but the word has been applied to an exception existing in the mind of one party only and has been regarded to signify a dishonest excuse for evading or infringing a promise.—*Wharton*.

Mepris. (*Fr.*) Neglect; contempt.

Mercable. To be sold or bought.

Mercantile law. That law which treats of matters of trade between merchant and merchant, whether trading alone or in partnership, or as members of a company. It is largely occupied with bills of exchange and other negotiable instruments; contracts of insurance and of guarantees; and with questions of lien, stoppage *in transitu*, and the like.—*Brown*.

Mercat. Market; trade. *Mercative*, belonging to trade. *Mercature*, the practice of buying and selling.—*Wharton*.

Mercenary. One that hires. *Mercenarius*, a hireling or servant.

Merchandise marks. The marks placed upon goods and articles of commerce to denote their maker, and incidentally the quality of the goods, are called marks on merchandise, and by the Common Law would be protected upon the like grounds that trade-marks are protected, *viz.*, the prevention of frauds upon the public, and indirectly upon the manufacturer of the goods.—*Brown*.

Merchant shipping. The law of merchant shipping is concerned with the ownership of vessel, including the registration of transfers of and charges upon such ownership, the liabilities of the owner of the vessel, and his duty to secure the seaworthiness of the vessel; the reciprocal rights and duties of masters and seamen, matters of pilotage, salvage, wreck, the safety of passengers and of cargo, and such like.—*Brown*.

Merchet. A fine or composition paid by inferior tenants to the lord for liberty to dispose of their daughters in marriage. *See* MARCHET.

Merciament. An amerciament, penalty or fine.

Mercy. The arbitrament or discretion of the king, lord, or judge in punishing any offence; as, *to be in grievous mercy* of the king, is to be in hazard of a great penalty. When the judgment in an action was for the plaintiff, the defendant was said *to be in mercy* (*misericordia*), that is, amerced or fined for his delay of justice; and when the judgment was for the defendant, the plaintiff was said *to be in mercy* for his false claim; the phrase has been long obsolete.

Prerogative of mercy. The sovereign may

pardon a criminal after conviction, and without assigning any cause for so doing; but the improper exercise of the prerogative would reflect upon the ministry. The prepogative does not extend to exempt the accused from undergoing his prosecution.

Mere motion. Spontaneously and voluntarily, without the suggestion of another; the free and voluntary act of a party without the suggestion or influence of another. The phrase is used in letters patent whereby the king grants of his special grace, certain knowledge, and *mere motion* (*ex mero motu*), his license to the patentee to use and enjoy exclusively the new invention, the grant being assumed to be of the free and unfettered will of the sovereign. The phrase is also applied to the occasional interference of the court, who, under certain circumstances, will *of their own motion* (*ex mero motu*) object to an irregularity in the proceedings of the parties, though no objection be taken to the informality by the plaintiff or defendant himself.—*Brown.*

Mere right (*jus merum*). The right to property which a person may have in anything, without having either possession or even the right of possession, is so called; and the estate of the owner in such cases is said to be totally divested and put to a right.

Merger (*confusio*). The sinking or drowning of a less estate in a greater, by reason that they both coincide and meet in one and the same person. Thus, if there be a tenant for years, and the reversion in fee simple descends to or is purchased by him, the term of years is *merged* in the inheritance, in which case it is annihilated and shall never exist any more. In order to effect a merger, the following circumstances must concur:—(1) There must of necessity be two estates at least in the same property, or in the same part of the same property, which must vest in the same person (2) The several estates must be immediately expectant upon each other, (3) The estate in remainder or reversion must be larger than the preceding estate, for there cannot be a merger as between equal estates of freehold; (4) The several estates must be held in the same legal right. The importance which this doctrine of merger assumes may be illustrated by the merger of an estate for 1000 years in an estate for life. An estate for 1000 years is obviously a more valuable thing to its owner than an estate for life. Yet in law the former being a leasehold interest only, is less than an estate for life, which is an estate of freehold; and if the owner of an estate for 1000 years acquire also a life interest, his estate for years will *merge* in his estate for life.

Meritorious cause of action. A person is sometimes said to be the meritorious cause of action, where the cause of action, or the consideration on which the action was founded, originated with, or was occasioned by, such person. Thus, in an action by husband and wife, for the breach of an express promise to the wife in consideration of her personal labour and skill in curing a wound, she would be termed the meritorious cause of action.

Meritorious consideration. One founded upon some moral obligation. *See* CONSIDERATION, MARRIAGE CONSIDERATION.

Merits. The real or substantial grounds of the action are frequently so termed, in contradiction to some technical or collateral matter which has been raised in the course of the suit, Defences of the Statute of Frauds, or of Limitation and of Bankruptcy and Infancy, are defences on the merits.

Affidavit of merits. An affidavit to the effect that upon the substantial facts of the case justice is with the party so making such affidavit, such an affidavit is required in support of certain applications to the court, *e. g.*, in order to obtain leave to defend an action, &c. See Act V of 1908 (Civ. Pro.), Sch. I, O. XXXVII, RR. 2-3

Mescroyants. Misbelievers or unbelievers. Hence the modern word *miscreant.*

Mesnality. A manor held under a superior lord.

Mesnalty. The right of a mesne lord.

Mesne. Middle; intermediate.

Mesne assignment. An assignment intermediate between two others.

Mesne incumbrance. An intermediate incumbrance.

Mesne lord. A lord who has tenants holding under him, and yet himself holds of a superior lord.

Mesne process. All those writs which intervene in the progress of a suit or action between its beginning and end, as contradistinguished from primary and final process. Thus the capias or mesne process was issued after a writ of summons, which was the primary process, and before a *capias ad satisfaciendum*, which was the final process, or process of execution.

Mesne profits. Profits derived from lands whilst the possession of it has been improperly withheld, that is, the yearly value of the premises, the profits of land taken by a tenant in wrongful possession from the time that the wrongful possession commenced to the time of an action of ejectment brought against him.

Mesne profits of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession.—*Act V of* 1908 (*Civ. Pro.*), *s.* 2 (12).

Writ of mesne. An ancient and abolished writ which lay when the lord paramount distrained on the tenant paravail (or undertenant) for rent or services due from the mesne

lord; the undertenant had a writ of mesne against the mesne lord.

Messengers. Carriers of messages, employed under the direction of Secretaries of State, and always ready to be sent with despatches, foreign and domestic. Also officers of a court of justice, called in Scotland, messengers-at-arms.

Messuage (*messuagium*). A house, comprising the out buildings, the orchard, and curtilage or court yard, and according to the better opinion, the garden also. In Scotland, it signifies the principal place or dwelling house within a barony, which is called a manor-house in England; in some places it is called the site of a manor.

Metecorn. A measure or portion of corn given out by the lord to customary tenants, as a reward and encouragement for their duties and labour.—*Tomlins.*

Metegavel. A tribute or rent paid in victuals, in old times.

Metropolis. The principal city, being the seat of government, in any kingdom. The cities of London and Westminster, and the parishes adjacent thereto; the county of London.

Metropolitan. An archbishop. When turned into an adjective, the word is generally used in civil sense, as indicating a reference to London and its neighbourhood; the corresponding ecclesiastical adjective being *metropolitical.*—*Mozley.*

Metteshep. Mettenschep. This was an acknowledgment paid in certain measure of corn, or a fine or penalty imposed on tenants for default in not doing their customary services of cutting the lord's corn.

Meubles meublant. (*Fr.*) Household furniture.

Micel-gemote. Michel-gomete. Michel synoth. The Great Council of the English nation in the Saxon times: the great meeting or ancient parliament of the kingdom; more frequently called *wittena-gemote.*

Michery. Theft; cheating.

Middle man. A person intermediate between two others; as where a person takes land in large tracts from the proprietors, and then leases it out in small portions at an enhanced rent. The phrase is thus used as analogous to the "mesne lord" of feudal times.

Mid-superior. (*Sc. L.*) Mesne lord.

Mileage. Travelling expenses, which are allowed to witnesses, sheriffs and bailiffs, according to certain scales of fees.

Militaire. To be knighted.

Military. Relating to the army.

Military causes. Such causes as relate to contracts touching deeds of arms and of war, as well out of the realm as within it, which cannot be determined or discussed by the Common Law; together with other usages and customs to the same appertaining.

Military Courts. The Court of Chivalry and Court Martial.

Military feuds. The genuine or original feuds which were in the hands of military men, who performed military duty for their tenures.

Military laws. *See* MARTIAL LAW.

Military offences. Those offences which are cognizable by the courts military as insubornation, sleeping on guard, desertion, &c.

Military tenures. Tenures in chivalry or knight-service.

Military testament. A nuncupative will, that is, one made by word of mouth by which a soldier in actual military service may dispose of his goods, pay, and other personal chattels, without the forms, solemnities and expenses, which the law requires in other cases. *See* WILL.

Mill-gearing. This includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, chain, wire, driving strap or band by which the motion of the first moving power is communicated to any machine appertaining to any manufacturing process.—*Act XII of* 1911 (*Factories*), *s.*2(5).

Milled money. Coined money.

Mina. A corn measure of different quantity, according to the things measured by it.

Minage. A toll or duty paid for selling corn by this measure.

Minare. To dig mines.

Minator. Minerator. A miner.

Mineral. Anything that grows in mines, and contains metals. But *metal* is a word of less extensive meaning than *mineral.* All metals are minerals; but all minerals are not metals.—*Stroud.*

The word "minerals" imports prima facie and apart from any context all substances other than the vegetable matter forming the ordinary surface of the ground. In the widest sense clay is unquestionably a mineral. The popular use of the word is often narrower, and when people talk of minerals, they frequently use the word in reference to metals or metalliferous ores (*per* Lord Herschell, *Lord Provost and Magistrate of Glasgow* v. *Farie*, 13 App. Cas. p. 683).

A reservation of minerals does not necessarily include every substance which can be got from underneath the surface of the earth for the purpose of profit. The words mines and minerals in any particular grant must be given the meaning which, judged from the whole of the deed, the parties may be taken to have intended (*Gandoo* v. *Nilmonce*, 1 Cal. L. J. 526).

Mineral Courts (*curiæ minerales*). Courts for regulating the concerns of lead mines, as *Stannary Courts* are of tins.

Miniments. Muniments. Evidences or writings whereby a man is enabled to defend the title of his own estate. It includes all manner of evidence.

Minister. An agent; one who acts not by an inherent authority, but under another. One to whom a sovereign entrusts the administration of government. The word *ministry* is used as a collective noun for the heads of departments in the State. A pastor of a church, chapel, or meeting house, &c.

Ministerial. Attendant; acting under superior authority; the word is used in opposition to *judicial*.

Ministrant. The party cross-examining a witness under the old system of the ecclesiastical courts.

Ministry. Office; service, those members of the government who are in the cabinet *See* MINISTER.

Minor. A person under age, who is not yet arrived at the power of managing his own affairs. Every minor of whose person or property, or both, a guardian (other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure) has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age, shall, notwithstanding any thing contained in the Indian Succession Act (X of 1865), or in any other enactment, be deemed to have attained his majority when he shall have completed his age of *twenty-one* years, and not before. Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of *eighteen* years, and not before. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained his majority at the beginning of the twenty-first or the eighteenth anniversary, as the case may be, of that day. But nothing herein contained shall affect (*a*) the capacity of any person to act in matters of Marriage, Dower, Divorce and Adoption, (*b*) the religion or religious rites and usages of any class of His Majesty's subjects in India; or (c) the capacity of any person who, before this Act comes into force, has attained majority under the law applicable to him.—*Act IX of* 1875 (*Majority*), *ss.* 2, 3 *and* 4, *as amended by Act VIII of* 1890, *s.* 52.

Under Mehomedan Law, all persons, whether male or female, are considered minors until after the expiration of the sixteenth year, unless symptoms of puberty appear at an earlier period. The term *Subee* is applied to persons in a state of infancy, and the term *Moorahiq* to those who have nearly attained puberty.—*MacN. Meh. Law.* Puberty is majority in Mehomedan Law.—*Baillie's Law of Sale.* But the Indian Majority Act (IX of 1875) may be considered to overrule all such personal laws on the subject.

Contracts with an infant. An infant by reason of his tender years and presumed immaturity of judgment, is specially protected by law; for although an infant may sue for breach of a contract entered into with him, yet where it is sought to recover damages against him by action *ex contractu*, the fact of his infancy at the date of the contract will, in most cases, be pleadable in answer to such action. It must not, however, thence be inferred that an infant labours under a total incapacity to contract—in other words, that his contract is void *in toto*—it is in general *voidable* only. An infant may bind himself to pay for his necessary meat, drink, apparel, necessary physic, and such other necessaries, and likewise for his good teaching or instruction, whereby he may profit himself afterwards; but if he bind himself in an obligation or other writing *with a penalty* for the payment of any of these, that obligation shall not bind him. The several classes of things which *may* be necessaries to an infant vary according to his state and condition of life. The things furnished must be essential to the existence and reasonable advantage and comfort of the infant. Thus articles of *mere* luxury are excluded, although luxurious articles of utility are in some cases allowed. The test is: were the articles bought for *mere ornament*? If so, they cannot be necessaries for any one. Were they bought for *real use*? If so, they *may* be necessaries, provided they are suitable to the infant's age, state and degree.—*Broom's Com. Law.*

Liability of an infant for torts. One not liable on a contract as a minor, may yet be liable if the wrong is in its nature a tort. A minor, though clearly liable for torts not connected in any sense with contracts, as for assault, libel, fraud, cannot be made liable by suing him as for a tort where the substantial ground of action is his promises; but as the substance and not the form is to be regarded, the mere existence of some contract, as a bailment, will not prevent his being made liable for a wrong *outside* such contract, of which the contract may have been the occasion but not the cause, and which may be proved without showing the contract; as where there has been an embezzlement or conversion of goods, though possession was acquired through some invalid contract; and hence he could not be sued in tort if he hired a horse and rode immoderately, for he could not be sued on the contract; but if he went beyond his contract, doing what is a wrong to another's property regardless of such contract, as by riding the horse elsewhere than agreed on, he would be guilty of a tort.—*Collett on Torts.* An infant cannot be sued in tort for a false and fraudulent representation that he was of full age, and so inducing another to contract with him; and, generally, infancy is a good defence to an action for deceit.—*Pollock on Torts.*

An infant could not be made liable for what was in truth a breach of contract by framing the action *ex delicto* (in tort). One cannot

convert a contract into a tort to enable him to sue an infant.—*Pollock on Torts.*

Criminal liability of an infant. Nothing is an offence which is done by a child under seven years of age.—*Act XLV of* 1860 (*Penal Code*), *s.* 82. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.—*Ibid.*, *s.* 83.

See NEXT FRIEND.

Minor under Court of Wards. A minor "under the jurisdiction of the Courts of Wards" means a person of whose estate the Court of Wards has *actually* assumed the management, not a person of whose estate the Court of Wards might, with the sanction of Government, take charge (*Periyasami* v. *Seshadri*, 3 Mad. 11).

Minor offence. An offence of smaller consequence. The words 'minor offence' have not been defined by law. They are to be taken not in any technical sense, but in their ordinary sense (*per* Banerji, J., *Queen-Empress* v. *Sitanath Mandal*, 22 Cal. 1006-7).

Minority. The status of a minor. Also the smaller number.

Mint (*monetarium*). The place where the king's money is coined.

Mintage. That which is coined or stamped.

Mint-mark A privy mark made by the masters and workers of the mint, in the money they make, of gold and silver, so that they may know which moneys were of their own making.

Mint master. One who manages the coinage,

Minute tithes (*minutæ decimæ*). Small tithes, such as usually belong to the vicar, as of wool, lambs, pigs, butter, cheese, herbs, seeds, eggs, honey, wax, &c. *See* SMALL TITHES.

Miras. (*Ind.*) Inheritance; inherited property or right. Lands held by absolute hereditary proprietorship; either as a joint coparcenery tenure in the lands of a village, or as one of several parcels or lots, or as a whole estate. It also means certain hereditary privileges enjoyed by the holders of *miras* lands. Also the fees and perquisites received by the officers and servants of the community, who are not possessed of any share of the *miras* lands; the hereditary succession to various offices, privileges, and emoluments, as to the post of musician to a temple, or the like.

Mirasidar. The holder of hereditary lands or offices in a village. As to their rights to dues from cultivators holding lands within the area of the miras, see *Sakkaji* v. *Lutchmana* (2 Mad. 149) The mirasidar is the real proprietor of mirasi land, but raiyats may be entitled to the perpetual occupancy of mirasi land, subject to the payment of the mirasidar's share; but such tenure generally depends upon long established usage and must be proved by satisfactory evidence (*Alagaiya* v. *Tiruchittambala*, 1 Mad. H. C. R 264).

Mis. This syllable prefixed to another word signifies some fault or defect. See the following titles.

Misadventure (*infortunium*). An unfortunate mischance arising out of a lawful act. The word is generally used with reference to accidental homicide. Homicide partly by negligence and partly by chance. *See* HOMICIDE.

Misallege. To cite falsely as a proof or argument.

Misappropriation. *See* CRIMINAL MISAPPROPRIATION.

Miscarriage. *Miscarriage of justice*, a failure of justice. *Miscarriage of women*, abortion, which *see*.

Miscellaneous proceedings. By miscellaneous proceedings we should understand ordinarily those applications commenced by petition and not by plaint, of a less formal character than suits, and generally, if not universally, calling on the court to exercise special powers conferred on it by the Legislature, such as applications for certificates to collect debts, applications for probate or letters of administration, applications for appointment of guardians, &c; and possibly also the term may also be applied with propriety to those proceedings which the Court is empowered to institute of its own motion, such as proceedings for the institutions of prosecutions in certain cases. Proceedings in execution of decress would not in our opinion ordinarily fall within the term, they should be regarded rather as stages in the suit or proceeding in which the decree or order under execution was passed (*In the matter of the Petition of Harshankar Prasad*, 1 All. p. 179, F. B.).

Mischief. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief. It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property whether it belongs to that person or not. Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.—*Act XLV of* 1860 (*Penal Code*), *s.* 425. The word is often used as signifying the evil or danger which a statute is meant to cure or avoid,

Miscognizant. Ignorant of; unacquainted with; not knowing.

Miscontinuance. Discontinuance; ces-

sation; intermission. Continuance by undue process.

Miscreant. One who is perverted to heresy or a false religion. *See* MESCROYANTS.

Misdemeanour. Misdemeanor. Misdemesnor. An offence not amounting to felony; a species of crime comprehending all breaches of public law less than felony, as libels, conspiracies, assaults, &c., which are not so atrocious as murder, burglary, arson, &c., which are felonies. *See* CRIME.

Misdirection. Any error in law made by a judge in charging a jury; the wrong direction of a judge to a jury on a matter of law.

Misfeasance. A misdeed or trespass. The improper performance of some act in itself lawful. It is commonly used as signifying a *positive* act of tort in contradistinction to *nonfeasance*. *See* MALFEASANCE, NONFEASANCE.

Misfeasor. A trespasser.

Misfortune. Chance, misadventure. A thing caused by misfortune is where it arises through something unforeseen which cannot ordinarily be guarded against (*Re Burgess*, 57 L. T. 200; 35 W. R. 702),

Misjoinder. The wrongful joining of parties in a cause, or of different causes of action.

Miskenning. A wrongful summons to a court of justice; a wrongful citation.

Miskering. *See* ABISHERING.

Misnomer. A wrong name; using one name for another; a misnaming. Calling a person by a wrong name in a declaration or other pleading. Where a person is described so that he may be certainly distinguished and known from other persons, the omission, or, in some cases, the mistake of the name, shall not avoid the grant.

The omission of the titles "Honourable," "Maharajah" and "Sultan" does not constitute such a misnaming of the plaintiff as to justify the dismissal of the plaint (*Sri Raja Sita Rama* v. *Sri Raja Vijaya Rama*, 3 Mad. H. C, R. 31).

Mispleading. The omission, in pleading, of anything essential to the action or defence; as if a plaintiff does not merely set forth his title in a defective manner, but sets forth a title wholly defective in itself. The word was specially applied to such an error in pleading as could not be *cured by verdict*.—*Mozley*. *See* CURE BY VERDICT.

Misprision. Contempt; neglect; oversight. All such high offences as are under the degree of capital, but nearly bordering thereon, are misprisions; and it is said that misprision is contained in every treason and felony whatsoever. Misprisions are generally divided into two sorts—(1) *Negative*, *i.e.*, the concealment of something which ought to be revealed; such is *misprision of treason*, the bare knowledge and concealment of treason without any degree of assent thereto; for any assent makes the party a principal traitor, as indeed the concealment, which was construed aiding and abetting, did at the common law; besides the last mentioned offence, the mere concealment of a felony is criminal, and is called *misprision of felony*, but if there be an assent, this makes the person assenting either a principal or accessory. *Theft bote* and *concealing treasure trove* are each of them a species of negative misprision. (2) *Positive* consists in the commission of something which ought not to be done. Misprisions which are merely positive, are generally denominated contempts or high misdemeanours, such as mal-administration of such high officers as are in public trust and employment; also, embezzlement of the public money; also, such contempts of the executive magistrate as demonstrate themselves by some arrogant and undutiful behaviour towards the king. To endeavour to dissuade a witness from giving evidence, to disclose an examination before the Privy Council, or to advice a prisoner to stand mute (all of which are impediments to justice), are high misprisions and contempts of the king's courts.—*Tomlins*. The word has also been applied to coining foreign coin.

Misprision of clerks. The neglect or mistakes of clerks in writing or keeping records.

Misrecital. A wrongful recital. A misrecital of a deed or conveyance, if it be in the beginning of the deed or conveyance and goes not to the end, shall not hurt; but if it go to the end of a sentence, so that the deed is limited by it, it is vicious.

Misrepresentation (*suggestio falsi*). Misrepresentation in a matter of substance essentially material to the subject, whether by acts or by words, by manœuvres or by positive assertions whereby a person is misled and injured and a fraud perpetrated. It is immaterial whether the misrepresentor knew the matter to be false, or asserted it without knowing if it were true or false; for the affirmance of that which is not known to be true is as unjustifiable as the assertion of that which is known to be false, since it is equally a means of deception. But equity would not relieve, if the misrepresentation were of a trifling or immaterial thing, or if the other party did not trust to it, or was not misled by it, or if it were vague and inconclusive in its own nature, or if it were upon a matter of opinion or fact equally open to the inquiries of both parties, and in regard to which neither could be presumed to have confided in the other, for *vigilantibus, non dormientibus, æquitas subvenit*. Equity cannot indemnify a person from the consequences of indolence and folly, or of careless indifference and neglect of easily accessible means of information. *See* CONTRACT, DECEIT, WARRANTY.

Mistake. Misconception; error. Mistake is where a man intending to do a lawful act, does, by reason of ignorance of fact, something which is unlawful. A mistake, remediable in equity, is defined to be an act which

would not have been done, or an omission which would not have occurred, but from ignorance, forgetfulness, inadvertence, mental incompetence, surprise, misplaced confidence, or imposition.—*Mozley.* *See* CONTRACT.

Mistake is either of law or of fact; when of *law* it is not in general any ground for relief in equity, the maxim *ignorantia juris neminem excusat* being applicable to that class of mistake. But the maxim is excluded where the mistake of law is so egregious as to suggest imbecility, or when it is accompanied with imposition. When the mistake is a mistake of *fact*, and the fact is a material one to the contract, and it was not through any negligence of the mistaking party that it was overlooked or misappreciated, then the mistake is almost invariably a ground of relief in equity.—*Brown.*

Mistery. Mystery. An art, trade, calling or occupation.

Mistrial. A false or erroneous trial, as where it is in a wrong county; consent of parties cannot help such a trial.

Misuser. Such use of an office or grant as is contrary to the express or implied condition upon which it may have been made; as if a judge takes a bribe, or a park-keeper kills deer without authority. Abuse of any liberty or benefit which works a forfeiture of it.

Mitigation. Abatement of anything penal, harsh or painful. *Address in mitigation*, a speech made by the defendant or his counsel to the judge *after* verdict or plea of guilty, and which may be followed by a speech *in aggrevation* from the prosecuting counsel.—*Wharton.*

Mixed. United or blended promiscuously.

Mixed actions. *See* ACTIONS MIXED.

Mixed contract. (*Civ. L.*) One in which one of the parties confers a benefit on the other, and requires of the latter something of less value than what he has given; as a legacy charged with something of less value than the legacy itself.

Mixed government. A form of government combining monarchy, aristocracy, and democracy, like that of the British Empire.

Mixed jury. A jury composed half of foreigners, for the trial of aliens; the privilege is now abolished. *See* HALF TONGUE.

Mixed larceny. Otherwise called compound larceny, or complicated larceny; that which is combined with circumstances of aggravation or violence to the person, or taking from a house. *See* LARCENY.

Mixed laws. Those which concern both persons and property.

Mixed policy. A policy of marine insurance in which not only the time is specified for which the risk is limited, but the voyage itself is described by its local termini; as opposed to those for a particular voyage without any limits as to time, and also to purely time policies in which there is no designation of local termini at all. *See* TIME POLICY.

Mixed presumptions. Presumptions of mixed law and fact, *i. e.*, presumptions of fact recognised by law—*e. g.*, presumptions which juries are commonly recommended to draw as inferences from the facts that are proved. *See* PRESUMPTIONS.

Mixed property. A compound of realty and personalty Property which, though falling under the definition of things real, is attended with some of the legal qualities of things personal, as emblements, fixtures, and shares in public undertakings connected with land; also property which, though falling under the definition of things personal, is attended with some of the legal qualities of things real, such as animals *ferœ naturæ*, charters and deeds, court rolls and other evidences of the land, together with the chests in which they are contained, ancient family pictures, ornaments, tomb-stones, coats of armour with pennons and other ensigns, and especially heirlooms.

Mixed questions. Those which arise from the conflict of foreign and domestic laws.

Mixed questions of law and fact. Cases in which a jury are to find the particular facts, and the Court is to decide upon the legal quality of those facts by the aid of the established rules of law, independently of any general conclusion to be drawn by a jury. All technical expressions, such as *asportation*, *conversion*, *acceptance*, &c., are in their application partly matters of law, partly matters of fact.

Mixed tithes. Tithes consisting of natural products, but nurtured and preserved in part by the care of man, as tithes of cheese, milk, wool, pigs, the young of beasts. *See* TITHES.

Mobbing. (*Sc. L.*) The assemblage of a number of people, to the terror of the subject, and disturbance of the public peace.

Mobles. Moveable goods; furniture.

Mochulka. (*Ind.*) A solemn engagement or declaration in writing. A covenant to pay a penalty in default of fulfilling the condition; counterpart of a lease or written obligation.

Moderator. A president or chairman.

Modification. (*Sc. L.*) The ascertainment of a fixed stipend to be paid to the minister of a parish.

Mofussil. (*Ind.*) Provincial; separated; particularised; the subordinate division of a district, in contradiction to *sudder*, which implies the chief seat of government; the country, as opposed to the town.

'Mofussil' in India is the term opposed to Presidency, and Presidency denotes the seat of Government, as Calcutta, Madras, Bombay, so that the distinction is much equivalent to town and country (*Aga Muhammad Jaffar* v. *Muhammad Siddick*, Perry's Oriental cases, p. 398).

Mofussil Dewanny Adawlat. Provincial civil court of justice.

Moiety. The half of anything; one of two equal parts; an undivided half. The shares of two joint tenants are of necessity moieties; they are said to hold in moieties. An inaccurate but common use of the word is that in which it signifies merely *part*, *share*, or *proportion*, whether equal or unequal.

Mokasa. (*Ind.*) A land or village assigned to an individual either rent-free or at a low quit rent, on condition of service or in inam (*Sheikh Sultan* v. *Sheikh Ajm-uddin*, 20 I A. p. 57; *Sri Raja Sobhanadri* v. *Sri Raja Venkatanarasumha*, 26 Mad. 403); or a village held *khas* by the State, the revenue being paid to the Government direct; or a share of the Government in a village, or in the revenue paid by it.

Molestation. The name of an action (now in disuse) competent to the proprietor of a landed estate against those who disturb his possession.

Mollah. (*Ind.*) A Doctor of Laws among the Mehomedans.

Molman. A man subject to do service.

Monarchy. A government in which the supreme power is vested in a single person. Where a monarch is invested with absolute power, the monarchy is termed *despotic*; where the supreme power is virtually in the laws, though the majesty of government and the administration are vested in a single person, it is a *limited* monarchy.

Monetagium. Monya. Moneyage. Also called *focagium*. A tribute formerly paid by tenants to their lord every third year, that he should not change the money which he had coined at a time when it was lawful for great men to coin money current in their territories, but not of silver and gold. Mintage, or the right of coining or minting money.

Money (*moneta*). That metal, be it gold or silver, which receives authority by the prince's impress to be current; for as wax is not a seal without a print, so metal is not money without impression.

The property in stolen cash, and in bills or notes payable to bearer, which circulate as cash is inseparable from possession ordinarily (*Reference from Sessions Judge of Benares*, 1 N.-W. P. 298).

Money bill. In parliamentary language, a bill for granting aids and supplies to the Crown.

Money claims (or *demands*). Claims for the price of goods sold, for money lent, for arrears of rent, &c., and other claims where money is directly payable on a contract express or implied; as opposed to the cases in which money is claimed by way of damages for some independent wrong, whether by breach of contract or otherwise. These money claims correspond very nearly to the *money counts*.

Money counts. Simple contracts, express or implied, resulting in mere debts, are of so frequent occurrence as causes of action, that certain concise forms of counts were devised for suing upon them, as for money lent; for money paid by the plaintiff for the defendant at his request; for money received by the defendant for the use of the plaintiff; for money found to be due from the defendant to the plaintiff, upon an account stated between them. These were otherwise called the *indebitatus* counts, or common money counts, or common counts.

Money in hand. Ready money.

Money land. Money held upon trust to be laid out in the purchase of land. In equity, land devised to be sold and turned into money, is considered as money; and money bequeathed to be invested in land, has, in equity, many of the qualities of real estate, and is descendible and devisable as such according to the rules of inheritance in other cases, and this is upon the ground that equity regards substance and not form, and will further the intention of the parties; equity regards that as done which out to be done.

Moniers. Moneyers. Ministers of the mint, who make and coin the king's money. Also bankers.

Moniment. A memorial; superscription, or record.

Monition. A warning; a summons or citation; generally a warning to the defendant in an ecclesiastical court not to repeat an offence of which he has been convicted.

Monitory letters. Communications of warning and admonition sent from an ecclesiastical judge, upon information of scandal and abuses within the cognizance of his court.

Monocracy. A government by one person.

Monogamy. Marriage of one husband to one wife.

Monomachy. A duel; a single combat.

Monomania. Insanity upon a particular subject.

Monopoly. The exclusive privilege of selling any commodity. A license or privilege allowed by the sovereign for the buying and selling, making and working, or using of anything to be enjoyed exclusively by the grantee; by which other persons are restrained of any freedom or liberty that they had before, or hindered in their lawful trade. Monopoly has three incidents mischievous to the public—(1) The raising of the price; (2) the commodity will not be so good; (3) the impoverishing of poor artificers. All monopolies are against the ancient and fundamental laws of the realm and are declared to be illegal and void by stat. 21 Jac. I, c. 3, passed in 1623, subject to certain exceptions therein specified, including patents in favour of the authors of new inventions.

Under the English common law as well as under s. 23 of the Ind. Contract Act, an agreement having for its object the creation of monopolies is void, as opposed to public policy; and, in the absence of express statutory provision, courts will not infer grants

thereof (*Somu Pillai* v. *The Municipal Council, Mayavaram*, 28 Mad. 520).

Monster. One which has not the shape of mankind, but, in any part, evidently resembles the brute creation. A monster has no inheritable blood, and cannot be heir to any land, though it be brought forth in marriage; but though it have deformity in any part of its body, yet, if it have human shape, it may be an heir.—*Wharton.*

Month. *Lunar Month.* The time which the moon takes to complete its changes; the time in which the moon returns to the same point; being twenty-eight days.

Solar month. That period in which the sun passes through one of the twelve signs of the zodiac.

Calendar month. One of the twelve months of the year by which we reckon time, consisting of an unequal number of days, *i e.*, thirty or thirty-one, except February, which consists of twenty-eight, and in leap year, of twenty-nine days. The word *month* by the common law signifies, in matters temporal, a lunar, in matters ecclesiastical, a calendar month. In statutes and in commercial dealings it means a calendar month.

Calendar month is a legal and technical term. In computing time by calendar months, the time must be reckoned by looking at the calendar and not by counting days (*per* Brett, L. J., *Migotti* v. *Colvill*, 4. C. P. D. 238). Therefore one calendar month's imprisonment is to be calculated from the day of imprisonment to the day numerically corresponding to that day in the following month, less one. Where there is no such corresponding day in the last month of the imprisonment, the prisoner's term will be up on the last day of such last month.—*Stroud.*

Under the General Clauses Act (X of 1897), s. 3 (33), a month shall mean a month reckoned according to the British calendar.

Under the Indian Limitation Act (IX of 1908), s. 25, all instruments, for the computation of time mentioned in them, in order to ascertain the starting point of the *period of limitation*, shall be deemed to be made with reference to the Gregorian Calendar. For example—(*a*) A Hindu makes a pro-note bearing a native date only, payable four months after date. The period of *limitation* applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian Calendar; (*b*) A Hindu makes a bond, bearing a native date only, for the repayment of money within one year. The period of limitation runs from the expiration of one year after the date computed according to the Gregorian Calendar.

But notwithstanding the definitions to the contrary in the General Clauses Act and the Limitation Act, which were held not to apply to *contracts*, the word "month" in a contract drawn up in the English language means a "lunar" month, and not a "calendar" month in India as it does in England (*South British Fire and Marine Ins. Co. of New Zealand* v. *Brajanath Shaha*, 13 Cal. W. N. 425; 36 Cal. 516; following *Simpson* v. *Margetson*, 17 L. J. Q. B. 81, *Turner* v. *Barlow*, 3 F. & F. 946 and *Bruner* v. *Moore*, 1 Ch.305)

Native month. Where a promissory note, executed by a native, bore a native date only, and was made payable in a certain number of months from such date, it was *held* that these months should be calculated according to the native, not the British calendar (*Ganpatrav* v. *Mannu*, 5 Bom. H. C., A. C., 150). Where a bond by which money was lent was agreed to be repaid in one year, bore a native date only, it was *held* that the year was to be calculated according to the native calendar of which the bond bore the date (*Lalji* v. *Ravji*, 6 Bom. H. C., A. C., 136). The period of payment stipulated in a promissory note bearing both English and native dates should, when the parties are Hindus, be reckoned according to the native calendar (*Babaji* v. *Maruti*, 7 Bom. H. C., A. C., 77).

Moodubbir. *See* MOOKATIB SLAVE.

Mookatib slave. According to Mohomedan Law slavery is either entire or qualified, according to circumstances. Qualified slaves are of three descriptions; the *Mookatib*, the *Moodubbir*, and the *Oom-i-wulud.*

A *Mookatib* is he between whom and his master there may have been an agreement for his ransom, on the condition of his paying a certain sum of money, either immediately, or at some future period, or by instalments. If he fulfil the condition, he will become free; otherwise he will revert to his former unqualified state of bondage. In the meantime his master parts with the possession of, but not with the property in, him. He is not however in the interval a fit subject of sale, gift, pledge or hire.

A *Moodubbir* slave is he to whom his master has promised *post-obit* emancipation. Such promise, however, may be made absolutely, or with limitation; in other words, the freedom of the slave may be made to depend generally on the death of his master, whenever that event may happen; or it may be made conditionally, to depend on the occurrence of the event within a specified period.

An *Oom i-wulud* is a slave female who has borne a child or children to her master which he acknowledges as his own. She can no longer be sold.—*MacN. Meh. Law. See* KHANAZAD.

There are three descriptions of entire, slaves, *Mumlook* or acquired, *Mowroos* or inherited, and *Mowhoob* or given.—*Ibid.*

Slavery has been abolished in British India by Act V of 1843.

Mooktar. Mooktyar. (*Ind*). An agent or attorney, a steward; a representative.

The writing a petition for a party who presents it in court is not acting as a mukhtar,

and the writer is not liable to punishment for practising as a mukhtar without a certificate. (*In re Kali Charan Chund*, 9 B. L. R., Ap., 18). The restrictions imposed by s 126 of the Evidence Act in respect of what are known as privileged communications extend also to communications made to mukhtars when acting as pleaders for their clients.—*Abbas Peada* v. *Queen-Empress*, 25 Cal. 736). *Contra*, *Queen* v. *Chandrakant* (1 B. L. R., A. Cr., 8).

Mooktarnamah. A written authority constituting an agent; a power of attorney; it constitutes the credentials under which an envoy represents his prince at a foreign court, a vakeel his client in a civil court, and a mercantile agent his principal or correspondent.

Moonshee. *See* MUNSHI.

Moonsiff. *See* MUNSIFF.

Moor. An officer in the Isle of Man, who summons the Courts. The office is similar to the baliff of a hundred.

Moorahiq. *See* MINOR.

Moot. A court, plea, or convention. To plead a mock cause. An exercise, or arguing of cases, practised by students in the Inns of Court, the better to enable them for the practice and defence of their clients. The place where moot cases were argued was anciently called a *moot-hall*; and those who argued the cases were called *moot men*. Hence a *moot point* signifies a point unsettled, which is open to argument and discussion.

Moot-hall. Moot-house. A council chamber; hall of judgment; town hall.

moot-hills. Hills of meeting, on which the ancient Britains held their great courts.

Mootubayun. (*Meh. L.*) Numbers are said to be *mootubayun*, or prime, where no third number measures them both.—*MacN. Meh. Law.*

Mootudakhil. (*Meh. L.*) Numbers are said to be *mootudakhil*, or concordant, where the one number being multiplied, exactly measures the other.—*Ibid.*

Mootumasil. (*Meh. L.*) Numbers are said to be *mutumasil*, or equal, where they exactly agree.—*Ibid.*

Mootuwafiq. (*Meh. L.*) Numbers are said to be *mootuwafiq*, or composite, where a third number measures them both.—*Ibid.*

Moral consideration. A mere moral consideration will not support a promise, and is nothing in law. *See* CONSIDERATION.

More or less (*sive plus sive minus*). **Thereabouts.** These words appended to measurements in a conveyance of land import a vagueness, within certain small limits, in the measurements of the land referred to. These words in a contract, which rests *in fiere*, will excuse a very small deficiency in the quantity of an estate; for, if there be a considerable deficiency, the purchaser will be entitled to an abatement.

Morganatic marriage or **Left-handed marriage.** The lawful and inseparable conjunction of a man of noble or illustrious birth with a woman of inferior station, upon condition that neither the wife nor her children shall partake of the titles, arms, or dignity of the husband, or succeed to his inheritance, but be contented with a certain allowed rank assigned to them by the morganatic contract. It seems to have been called a left-handed marriage from the man giving the woman his left hand at the nuptial ceremoney. Such connection was very usual in Europe.

Mosgangina. Morgangiva. The gift that the husband presented to the wife on the wedding-day.

Mormonism. A social system prevailing among the Mormons in Utah, a territory of North America, within the dominion of the United States, whereby plurality of wives prevails.

Mortgage (*mortuum vadium, i. e.*, dead pledge). A mortgage is a conveyance, assignment, or demise of real or personal estate as security for the repayment of money borrowed; if the conveyance, assignment or demise be of land or any estate therein, the transaction is called a mortgage, notwithstanding that the creditor enters into possession; but the transfer of the possession of a moveable chattel to secure the repayment of a debt is called not a *mortgage* but a *pledge*.

A mortgage is the transfer of an interest in specific *immoveable* property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. The transferor is called a *mortgagor*, the transferee a *mortgagee*; the principal money and interest of which payment is secured for the time being are called the *mortgage-money*; and the instrument (if any) by which the transfer is effected is called a *mortgage-deed*.—*Act IV of* 1882 (*Trans. of Pro.*), s. 58.

Simple mortgage. Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold, and the proceeds of sale to be applied, so far as they may be necessary, in payment of the mortgage-money, the transaction is called a *simple* mortgage, and the mortgagee a simple mortgagee.—*Ibid.*

Mortgage by conditional sale. Where the mortagor ostensibly sells the mortgaged property on condition that, on default of payment of the mortgage-money on a certain date, the sale shall become absolute, or on condition that, on such payment being made the sale shall become void, or on condition that, on such payment being made, the buyer shall transfer the property to the seller, the transaction is called a mortgage by condi-

tional sale, and the mortgagee a mortgagee by conditional sale.—*Ibid.*

Usufructuary mortgage. Where the mortgagor delivers possession of the mortgaged property to the mortgagee and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest, and partly in payment of the mortgage-money, the transaction is called an *usufructuary* mortgage and the mortgagee an usufructuary mortgagee.—*Ibid.*

English mortgage. Where the mortgagor binds himself to repay the mortgage money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an *English* mortgage.—*Ibid.*

Mortgage how effected. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor, and attested by at least two witnesses. Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property. But nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi, Rangoon, Moulmein, Bassein and Akyab, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.—*Ibid.*, s. 59, *as ammended by Act VI of* 1904. *See* EQUITABLE MORTGAGE.

Mortgage by deposit. It is usual, with the customers of banks especially, for persons to borrow money on the security of real or personal estate without any deed or even memorandum of agreement, and by means of a simple deposit of the title-deeds relating to the property with the lender. Such a mortgage is called an equitable mortgage by deposit of title deeds. *See* EQUITABLE MORTGAGE.

For the purpose of the Stamp Act a mortgage may be of any property, moveable or immoveable. See Act II of 1899 (Stamp), s. 2 (17).

The term *mortgage* is applied indifferently to the mortgage transaction, to the mortgage-deed, and to the rights conferred thereby on the mortgagee.

See EQUITABLE MORTGAGE, Legal MORTGAGE, SAN MORTGAGE, STATUTORY MORTGAGE, WELSH MORTGAGE.

Once a mortgage, always a mortgage. This phrase means that an indenture which is intended to be in the first instance to operate as a deed of mortgage only, and not as a purchase deed, cannot by any clause or agreement therein be made to operate as a purchase, or otherwise than as a mortgage, upon any specified event.—*Brown.* *See* GAHANLAHAN CLAUSE, CLOG ON EQUITY.

The maxim "once a mortgage always a mortgage" means that there can be no additional contract so as to preclude the mortgagor from redeeming. It does not include previous or past agreements *independent* of the mortgage, unless they are unconscionable or clearly obtained by undue influence or the abuse of fiduciary relations (*The Hope Mills, Ld.* v. *Sir Cowasji J. Readymoney*, 13 Bom. L. R. 162).

Mortgage kept alive. A person who has discharged a prior mortgage on property is entitled to keep it alive and claim priority on foot of such mortgage, whether he is a subsequent mortgagee who has discharged the first mortgage, or a stranger who has advanced moneys to pay off the first mortgage. He should be deemed to have kept it alive where it is for his benefit to do so (*Bhiku* v. *Sheyat Ali*, 29 Cal. 25, 4 Cal. W. N. 709). *See* SUBROGATION.

Mortgagee. The creditor to whom lands are conveyed as security for money lent. *See* MORTGAGE.

Mortgagor. The debtor who makes a conveyance of land as security for money lent. *See* MORTGAGE.

Morth. Death or murder.

Morthlaga. A murderer or manslayer.

Morthluge. Homicide or murder.

Mortification. A Scotch term synonymous with the English "mortmain"

Mortmain. Such a state of possession of land as makes it inalienable, whence it is said to be in a *dead hand* (*mortua manu*), in a hand that cannot shift away the property. Lands in mortmain are a dead weight upon commerce. This arises when land becomes the property of a religious or other corporation which has a continuous existence, which is supposed to hold them in a dead or unserviceable hand. To prevent this, *Statutes of Mortmain* were passed, prohibiting on pain of forfeiture grants of land to corporations, without license from the Crown; from the operation of these statutes, many corporations, *e.g.*, the University of Oxford and Cambridge are exempt. The *Mortmain* or *Charitable Uses Act* (9 Geo. II, c. 36) prohibits gifts of land, or money to be laid out on land, for charitable purposes, except by deed executed and enrolled with certain formalities. *See* PERPETUITY.

Mortuary (*mortuarium*; *mortarium*). A burial place; a place for the temporary reception of the dead. A mortuary was originally a gift left by a man at his death to his parish church for the recompense of his personal tithes and offerings not duly paid in his life time; when presented at the church with the corpse, it was called a *corpse-present*. An ecclesiastical heriot.

Mos-troopers *See* BLACK MAIL.

Motap. (*Ind.*) Among the Jhala Garasias of Limri in Kathiawar there exists a custom of *motap*, according to which the eldest member of the eldest branch of a family is entitled to an extra share on partition with the other members of the family (*Prithisingji* v. *Umedsingji*, 6 Bom. L. R. 98)

Mote. A meeting; an assembly; as *burgmote*, *folkmote*, &c.

Mote-bell. The bell which was used by the Saxons to call people together to the court.

Moteer. A customary service or payment at the mote or court of the lord, from which some persons were exempted by charter or privilege.

Motion. An occasional application to a court by the parties or their counsel in order to obtain some rule or order, which becomes necessary in the progress of a cause. A motion is in general preceded by notice to any party intended to be affected thereby. It may also be made *ex parte*.

To *save* a motion is to mention it to the court for the purpose of adjourning it to the next motion day.

Motion for decree. The mode most frequently adopted by a plaintiff in a Chancery suit for obtaining the decree to which he claims to be entitled.

Motion for judgment. A proceeding whereby a party to an action moves for the judgment of the court in his favour.

Motion of course. A motion for an order which is granted by the officer of the court acting ministerially, merely satisfying himself that the circumstances are such as to entitle the applicant to the order which he seeks.

See MERE MOTION.

Motor vehicle. This includes any vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partly.—*Act VIII of* 1914 (*Motor Vehicles*), *s.* 2.

Mowroosee ryot. (*Ind.*) *Khudkasht* ryots were also called *chuperband* (house-tied), *mouroosee* (hereditary), and *thani* (stationary). *See* KHUDKASHT, ISTIMRARI.

Mouza. (*Ind.*) A place; a village; the cultivated lands of a village.

Moveable property. Moveable property means property of every description except immoveable property.—*Act X of* 1897 (*General Clauses*), *s.* 3 (34).

For the purposes of the Indian Penal Code the words *moveable property* are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth.—*Act XLV of* 1860 (*Penal Code*), *s.* 22.

For the purpose of registration *moveable property* includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property.—*Act XVI of* 1908 (*Registration*), *s.* 2 (9).

Moveables. Movables. Things which may be moved from place to place, as goods, furniture, personalty; all those things which may attend a man's person wherever he goes.

Mowhoob. Mowroos. *See* MOOKATIB SLAVE.

Muafidars. (*Ind.*) Assignees of Government revenue.

Mu'ajjal. Mu'wajjal. *See* MUHR.

Muchilkah. *See* MOCHULKA.

Mufassal. *See* MOFUSSIL.

Mufti. (*Ind.*) A Mehomedan law-officer, whose duty it was to expound the law which the *Kazi* was to execute.

Muhr. (*Meh. L.*) Dower. A marriage portion or gift settled on a wife before marriage. A necessary concomitant of marriage, under the Mehomedan Law, is dower, the maximum of which is not fixed, but the minimum is ten dirms (equal to about six shillings and eight pence sterling), and it becomes due on the consummation of the marriage (*mu'ajjal*, exigible or prompt dower), though it is usual to stipulate for delay as to the payment of a part, or on the death of either party or on divorce (*mu'wajjal*, deferred dower). Where no amount of dower has been specified, the woman is entitled to her *muhr misl*, that is, a sum equal to the average rate of dower granted to the females of her father's family. Where it may not have been expressed whether the payment of the dower is to be prompt or deferred, it must be held that the whole is due on demand.

After the death of the husband, the law makes no distinction between a claim of dower and other debts. No preference is given to one description of claim over another and a *pro rata* distribution must be made with respect to all.

After the death of the wife her heirs may claim the dower from her husband at any time.

After the death of the husband, if the heirs do not pay her the amount of the dower, she has, in the first instance, a prior claim on account of her dower on the property left by her husband, whether real or personal. The residue, after her claim of dower has been satisfied, will be divided between her and the other heirs, according to their respective shares of inheritance.

A claim of dower must be satisfied before claims of inheritance.

Unless the contrary be specified, dower must be considered as immediately demandable, and till paid, cohabitation cannot be enforced. *Semble*, before consummation of a marriage half dower is only demandable from the husband.

Dower is presumed to be prompt in the absence of express contract, and may be en-

forced at any time (*Tadiya* v. *Hasanebiyari*, 6 Mad. H. C. R. 9).

Deferred dower is payable on the dissolution of the marriage, whether by divorce or by the death of either of the parties (*Mir Mahar Ali* v. *Amani*, 2 B. L. R., A. C., 306).

The mere fact of a Mussulman and his wife living separately is not sufficient evidence of a divorce to enable the wife to recover dower not exigible (*mu'wajjal*).—*MacN. Meh. Law.*

Muhrnamah. A deed of settlement or dower.

Muhtarafa. (*Ind.*) A trade tax to be collected from artisans and others.

Mukhtar. Mukhtarkar. *See* MOOKTAR.

Mukurari. (*Ind*) Perpetual; fixed. The word *mukurari* does not import anything more than fixed rent (*Permeshwar Partab Sigh* v. *Parmanand*, 15 Cal p. 343); it does not necessarily import perpetuity (*per* Sir Richard Couch, C. J., *Mt. Bilasmony* v. *Raja Shiva Prasad*, 9 I. A. p. 38; *Govt. of Bengal* v. *Nawab Jaffar Husain*, 5 Moore's I. A. 467; *Sheo Prasad* v. *Kally Dass*, 5 Cal. 543).

Mukurari istimrari. *See* ISTIMRARI.

Mukurari lease. This is a sort of lease in perpetuity at a fixed rent (*Gayratulla* v. *Girish Chandra*, 12 Cal. W. N. 175; *Mahanand* v. *Sayedunissa*, 12 Cal. W. N. 154).

Mulct. A fine of money, or a penalty.

Mulgaini lease. (*Ind.*) A permanent lease at a fixed rental.

Mulgainidar. A permanent tenant at a fixed rental.

Multifariousness. Multifariousness in a bill in equity is the improperly joining in one bill distinct and independent matters, and thereby confounding them—as for example, the uniting in one bill of several matters perfectly distinct and unconnected against one defendant, or the demand of several matters of a distinct and independent nature against several defendants in the same bill (*Narsing Das* v. *Mangal Dubey*, 5 All. p. 172).

Multiple poinding. (*Sc. L.*) A double distress. An action of multiple poinding is an action brought by a person threatened by rival claimants, calling upon them to dispute their preferences *inter se*. It corresponds substantially to the proceedings by way of *interpleader* in the English law.

Multiplicity of suits or actions. This is where several different suits or actions are brought upon the same issue. A bill in equity might have been objectionable for an undue dividing or splitting up of a single cause of suit, and thus multiplying subjects of litigation. Equity discourages unreasonable litigation. It would not, therefore, permit a bill to be brought for a part of a matter only where the *whole* was the proper subject for *one* suit.

One of the aims of the present procedure law in England as well as in India is the avoidance of a multiplicity of suits with reference to the same matter (*Jotintra Mohan Tagore* v. *Bejoy Chand Mahatap*, 32 Cal. 483).

Multure. (*molitura*; *multura*). A grist or grinding; the corn ground; the toll or fee paid to the miller for grinding corn. The multure is a quantity of grain payable to the proprietor of the mill by every person who comes to the mill to have his corn ground. The tenants and proprietors of some lands are bound by their tenure to use a particular mill; and these lands, so bound or restricted to the mill, are termed the *thirl* or the *sucken*, and the tenants or proprietors, the *insucken multurers*; while those who use the mill without being bound to use it are called *out-town* or *outsucken multurers*. And the payments of the former are called *insucken multures*, and those of the latter *out sucken multures*.—*Mozley.* *See* DRY MULTURES.

Mumlook. (*Ind.*) A purchased slave or captive. *See* MOOKATIB SLAVE.

Municipal corporation. A body of persons in a town having the powers of acting as one person, of holding or transmitting property, and of regulating the government of the town.

Municipal Courts. The ordinary courts of a particular State, which have no jurisdiction to try acts of State, *i. e.*, acts done by government in a political capacity.

Municipal law. That which pertains solely to the citizens and inhabitants of a State; the law proper or peculiar to any State; as opposed to the political law, or the law of nations, *i. e.*, the international law.

Muniment. Support; defence; record; writing upon which claims and rights are founded and depend; evidences; charters: otherwise corruptly called *minuments*.

Muniments of title. The deeds and other evidences which fortify or protect a man's title to his estate. *See* MINIMENTS.

Munshi. (*Ind.*) A letter writer. A native secretary, A teacher of languages. A *jawabnavis*.

Munsiff. (*Ind.*) A judge-advocate. An arbitrator. A native judge in the Company's courts having a limited jurisdiction, subordinate to the Zilla judge. The head of the village police.

Munsiffnamah. An arbitration bond.

Murage (*muragium*). A toll or tribute levied for the repairing of public walls. A liberty granted to a town by the king for levying such toll or tribute.

Murder. *See* CULPABLE HOMICIDE.

Musha. (*Meh. L.*) Confusion. Uncertainty. Under the doctrine of *musha*, in Mehomedan Law, an undefined gift of divisible property is not valid. The gift of property which is undivided, and mixed with other property, admitting at the same time of division or separation, is null and void, unless it be denned previously to delivery; for delivery of the gift cannot in that case be made without

including something which forms no part of the gift.—*MacN. Meh. Law.*

A *musha* gift of property in its nature divisible and capable of physical partition is invalid under the Mehomedan Law (*Umat Ali* v. *Watan Ali*, 7 All. W. N. 58).

The doctrine of *musha* is applicable only to small plots of lands and houses, and does not apply to shares in an unpartitioned zemindari. The doctrine is wholly unadapted to a progressive state of society and ought to be confined within strict rules (*Jahedunnessa* v. *Najibul*, 8 Ind. Cas. 38).

The law relating to invalidity of gifts of *musha* ought to be confined within the strictest rules (*per* Chandavarkar, J., *Ebrahimbhai* v. *Foolbhai*, 4 Bom. L. R. 180, 198; 26 Bom. 577; following 11 All. 460, P. C.).

The doctrine of *musha* does not apply to shares in companies and freehold property in a great commercial town (*Ibrahim* v. *Saiboo*, 4 All. L. J. 572, P. C.; 11 Cal. W. N 973; 9 Bom. L. R. 872, 17 M. L. J. R. 408; 6 Cal. L. J. 695, 35 Cal. 1).

Held, that what is known in Mehomedan Law as *hiba bil musha* or gift of undivided joint property is a valid gift if the donee obtain possession (*Mohib ullah* v. *Abdul Khalik*, 28 All. W. N. 104; 30 All. 250; 5 All. L. J.566).

Musical work. This means, for the purpose of the Copyright Act, any combination of melody and harmony, or either of them, which has been reduced to writing.— *Act III of* 1914 (*Copyright*), *s.* 5.

Must. *See* MAY.

Mustamin. (*Ind.*) A person residing in a foreign country under a protection procured from the ruling power.

Mutah. (*Ind.*) A small sub-division of a district; a permanently settled estate.

Mutahdar. The proprietor of a *mutah.*

Mute (*mutus*). Speechless; one who refuses to speak. The word was applied formerly to a prisoner who, being arraigned of treason or felony, made no answer at all, or answered foreign to the purpose, or having pleaded not guilty refused to put himself upon his country, *i. e.*, to be tried by jury.

Mute of malice. One who abstains from pleading to an indictment when he is able to do so.

Mutilation. Deprivation of a limb or any essential part. *See* MAYHEM.

Mutiny. This is generally understood to imply collective insubordination, or rising against, or resisting military authority in combination or simultaneously, with or without actual violence. Similarly, a collective insubordination of a crew of a ship, whether a ship of war or a merchant vessel, is spoken of as *mutiny.—Mozley.*

Mutseddy. (*Ind.*) Intent upon. Also a writer; accountant; or secretary.

Mutual accounts. By mutual accounts is meant not where one only of two parties has received money and made payments on account of the other, but where each of two parties has received and paid on account of the other.—*Stroud.*

Mutual dealings. Dealings, to be "mutual," must be transactions on each side creating independent obligations on the other, and not merely creating obligations on one side, and the other side being merely discharges of these obligations (*Ganesh* v. *Gyanu* 22 Bom. 606).

Mutual debts. Money due on both sides between two persons. *See* SET OFF.

Mutuality. Reciprocation; that state of things in which one person being bound to perform some duty, or service, or act for another, that other on his side is bound to do something for the former.

Mutuality of assent (*consensus ad idem*). This is where both parties know clearly what each of them is undertaking to do.

Mutuality of remedy. This is where each party to a contract can enforce the same against the other.

Mutual promises Current considerations which will support each other. This is where one man promises to pay money to another, and he in consideration thereof promises to do a certain act, &c. Mutual promises, to be made obligatory, must be made simultaneously.

Mutual testaments. Wills made by two persons who leave their effects reciprocally to the survivor.

Mutuation. The act of borrowing.

Mutuum. *See* BAILMENT.

Mutuwali. (*Ind.*) The Superintendent or Treasurer of a mosque. An administrator or procurator of any religious or charitable foundation.

Under the Mehomedan Law, when a person makes an offering of his property to certain worthy objects (*wakf*), in order that they may derive benefit from the enjoyment of the profits thereof, it becomes incumbent on the founder of the appropriation, in the first instance, and, secondly, on the ruling power, to appoint some particular individual to take charge of the property appropriated, and to prevent its being improperly alienated or applied to purposes not in the contemplation of the appropriators. The officer so appointed, either by the ruling power or by the appropriator, is termed a *Nazir* and *Mutuwali* or superintendent and trustee. From this it is evident that the *Mutuwali* is an officer or trustee whose duty it is to attend to the due distribution of the proceeds of an endowment. *Towleeut* is the term applied to the office or trust.—*Mac.N. Meh. Law.*

It is not by any means necessary that the trust and superintendence should be continued in the family of the person originally nominated to be *mutuwali.* It is an office of a personal nature and not inheritable, but it

has nevertheless been usual to prefer the late incumbent's family to persons who are entirely strangers.—*Ibid.*

Muzaharat. (*Meh. L.*) A formula of divorce, in which a man declares his wife indifferent to him.

Mystery. An art; trade; calling; or occupation; such as merchant, mercer, tailor, parish clerk, school master, husbandman, labourer, or the like.

N

Naam Nam. The taking another man's moveable goods, either by lawful distress or otherwise; a distress or seizure.

Nadi-bharati. (*Ind.*) Land raised out of the river. It is not an accretion, but belongs to the person to whom the river was released by the Resumption Authorities (*Hari Kishor* v. *Collector of Dacca*, 3 B. L. R., Ap., 116).

Naib. (*Ind.*) A vicegerent. A deputy or representative.

Naib-i-Nazim. Deputy of the Nazim or Governor.

Naib Kazi. The deputy of the Kazi.

Nalish (*Ind.*) Complaint, statement of wrong and prayer of redress, plaint, accusation.

Namah. (*Ind.*) A written document.

Namation (*namatio*). A taking or distraining. In Scotland it is used for impounding.

Name and arms clause. Sometimes an estate is given by will to a person subject to the condition that within a specified period after the death of the testator, the devisee shall take the name and use the arms of a specified person in addition to or in lieu of his own name and arms, and the clause in which such a condition is expressed is usually called the Name and Arms clause.

Nankar. (*Ind.*) Originally the zamindar was bound to account for all he collected from the ryots, these payments were not *his rents* but the revenue assessed by the State and increased from time to time. He was to pay in all to the treasury less a certain percentage and some cash allowances which were carefully specified. The allowance thus granted to him was called *nankar.*

Narr. An abbreviation of *narratio*; a declaration in an action.

Narrator. A pleader or reporter.

Narva. (*Ind.*) An undivided village held in co-parcenary, and managed by a few of the chief sharers; applied also to the assessment of the revenue by agreement with the principal shareholders.

Narvadar. The holder of a narva tenure. A coparcenary shareholder in a village.

Nasab. (*Meh. L.*) Consanguinity.

Under Mehomedan law, the children of fornication or adultery (*wahiduzzina*) have no *nasab* or consanguinity; hence the right of inheritance being founded on *nasab*, one illegitimate brother cannot succeed to the estate of another (*Mt. Shahebzadi Begum* v. *Mirza Himat Bahadur*, 4 B. L. R., A. C., 103).

Naslan bad naslan (*Ind.*) The words *naslan bad naslan* are not essential to convey an hereditary right (*Toolshi Pershad* v. *Rajah Ram Narain*, 12 I. A. 205); a gift with these words attached to it confers an absolute interest (*per* Lord Hobhouse, *Thakur Harihar Baksh* v. *Thakur Uman Pershad*, 14 Cal. p. 307, P. C., 14 I. A. 7).

Natale. The state and condition of a man.

National Church. The Protestant Church of England, of which the sovereign is the head.

National debt. The money owing by Government to some of the public, the interest of which is paid out of the taxes raised by the whole of the public.

Nationality. Nationality, according to the English Law, depends upon the locality of birth, and not upon parentage; but according to the laws of the continental nations, it depends upon the parentage; and the latter principle has been largely introduced by statute into English law. Nationality has nothing to do with domicile.—*Brown.* Nationality is determined by birth on the soil and not by citizenship by descent (*Christien* v. *Delanney*, 26 Cal. 931).

Nations, law of *See* INTERNATIONAL LAW.

Native date. *See* MONTH.

Natra. (*Ind.*) The second marriage of a wife or widow. A custom which authorises a woman to contract a *natra* marriage without a divorce, on payment of a certain sum to the caste to which she belongs, is an immoral custom, and one which should not be judicially recognised (*Uji* v. *Hathi Lalu*, 7 Bom. H. C., A. C., 133). A woman who has re-married in the life time of her first husband, without his consent, cannot be regarded as the lawful wife of her second husband (*Khemkor* v. *Umiashankar*, 10 Bom H. C., A. C., 381).

Natural affection (*naturalis affectio*). That love which one has for his kindred. It is often used in deeds for the motive or consideration for a gift arising from relationship. *See* CONSIDERATION.

Natural allegiance. The perpetual allegiance due from natural born subjects to their sovereign, as distinguished from *local* allegiance which is temporary only, being due from an alien or stranger born for so long a time as he continues within the sovereign's dominions and protection. *See* ALLEGIANCE.

Natural born subjects. Those that are born within the dominions of the Crown, that is, within the allegiance of the sovereign. But the children of the sovereign and the children of ambassadors are considered natural born, wherever born. *See* ALIEN.

Natural child. The child in fact; the child

of one's body. Some children are both the natural and legitimate offspring of a marriage, *i. e.*, those duly born in wedlock. Some are the legitimate, but not the natural offspring of a marriage, *i. e.*, those who are born in wedlock, and never bastardized, although begotten in adultery, and the *natural* children of a stranger. Some are natural children only, *i. e.*, bastards, born out of wedlock, and those born in wedlock who are bastardized, and hence the word is popularly more often used as though it was simply equivalent to bastard.—*Wharton.*

Natural infancy. A period of non-responsible life, which ends with the seventh year of a person's age. See Act XLV of 1860 (Penal Code), s. 82.

Naturalization The giving to a foreigner the *status* of a natural born subject. Investing aliens with the privileges of native subjects.

Natural life. That which terminates by natural death, as opposed to civil death. *See* CIVIL DEATH.

Natural obligations. Moral duties which have a definite object, but are not subject to any legal necessity.

Natural persons. Such as are formed by the Deity; as distinguished from *artificial* persons, as corporations, formed by human laws, for purposes of society and government. *See* ARTIFICIAL PERSON.

Natural stream. A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only, and in a natural and known course.—*Act V of* 1882 (*Easements*), *s.* 7, *illus.* (*j.*), *Explanation.* *See* ARTIFICIAL STREAM.

Naufrage. Shipwreck.

Navagium. A duty incumbent on tenants to carry their lord's goods in a ship.

Naval court. One held abroad in certain cases to decide questions arising with reference to British ships and their masters or crews.

Nazim. (*Ind.*) The chief officer of a province. A Viceroy or Governor.

Nazir. (*Ind.*) A supervisor or inspector. The executive officer of a court who is charged with the serving of process, &c. *See* MUTUWALI.

Nazr. (*Ind.*) An offering. A present made to a superior.

Nazranah. A thing or sum given as a present to a superior or to the government, particularly as an acknowledgment for a grant of lands, public offices, and the like.

Nazr-katai. A present made to the farmer or revenue officer by the cultivators, for permission to cut their corn.

Neat cattle. Oxen and heifers.

Necation. The act of killing.

Necessaries. A relative term, not strictly limited to such things as are absolutely requisite for support and subsistence, but to be construed literally, and varying with the stage and degree, the rank, fortune and age of the person to whom they are supplied; in general, things suitable to his circumstances, degree, and station in life. Necessaries, in the case of an infant, include meat, drink, apparel, physic, and likewise good teaching and instruction, whereby he may profit himself afterwards. For the supply of all such things an infant may bind himself by contract. Similarly, necessaries for a married woman are things suitable for her station in life, and for the supply of these her husband will in general be responsible.

Necessary intromission. (*Sc. L.*) This is when a husband or wife continues in possession of the other's goods, after their decease, for preservation.

Necessity. A constraint upon the will, whereby a man is urged to do that which his judgment disapproves, and is thereby excused from responsibility which might be otherwise incurred. It includes—(1) The obligation of civil subjection; (2) In certain cases, the coercion of a wife by her husband; (3) In certain cases also *duress per minas*, which impels a man to act in a given way from fear of death or personal injury (*see* DURESS); (4) Where a man is constrained to choose the least of two evils.—*Mozley.* See Act XLV of 1860 (Penal Code), ss. 81 and 94.

Neej-jote. (*Ind.*) The land cultivated by a headman or other village officers at a lower rate than the body of the villagers was in former times called his *Khudkusht*, *seer* or *neej-jote.*

Negative pregnant (*negativa pregnans*). A negative implying also an affirmative; as if a man being impleaded to have done a thing on such a day, or in such a place, denies that he did it in manner and form as alleged, which implies, nevertheless, that in some sort he did it—*Tomlins.*

Neglect. To neglect doing is the omission to do some duty which the party is liable to do (*per* Patteson, J., *King* v, *Burrell*, 12 A. & E. 468). *See* NEGLIGENCE.

Negligence. The omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; provided of course, that the party whose conduct is in question is already in a situation that brings him under the duty of taking care.—*Pollock on Torts.* Negligence is the absence of such care, skill and diligence, as it was the duty of the person to bring to the performance of the work which he is said not to have performed (*per* Willes, J., *Grill* v. *General Iron S. C. Co.*, 35 L. J. C. P. 330).

It is a public duty incumbent upon every one, to abstain from negligence; and any breach of this duty, which results in damage to another, is a tort.—*Underhill on Torts.*

To sustain an action for negligence, there must be an obligation on the part of the defendant to use care, and a breach of that obligation to the plaintiff's injury (*Svami Nayudu* v. *Subramania*, 2 Mad. H. C. R. 158; *per* Lord Penzance, *Swan* v. *North British Australasian Co.*, 31 L. J. Ex. p. 437).

There are generally considered to be three degrees of negligence—(1) Ordinary, which is the want of ordinary diligence; (2) slight, the want of great diligence; and (3) gross, the want of slight diligence.

See BAILMENT, CARE AND DILIGENCE, CONTRIBUTORY NEGLIGENCE.

Negligent escape. This is where a prisoner escapes without his keeper's knowledge or consent: as opposed to a *voluntary* escape, which is an escape by consent or connivance of the officer.

Negligently. When "negligently" is a part of the definition of an offence, it implies that the act constituting the offence shall have been done, or caused, by the alleged offender himself; proof that it was done by the alleged offender's servant, without more, will not bring the charge home (*Chisholm* v. *Doulton*, 58 L. J. M. C. 133).—*Stroud.*

Negotiable instrument. Negotiable instrument means a promissory note, bill of exchange, or cheque, expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer there of.—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 13.

The term *negotiable instrument* signifies an instrument which may be transferred by assignment from one person to another, so as to vest a legal title to the property represented or secured by it and a right of action directly founded upon it in the transferee. Every negotiable instrument, accordingly, presents an exception to that general rule of common law which says that *choses in action* shall not be assignable.—*Broom's Com. Law.*

Presumptions as to negotiable instruments. Until the contrary is proved, the following presumptions shall be made:—(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated, or transferred, was accepted, indorsed, negotiated, or transferred for consideration; (*b*) that every negotiable instrument bearing a date was made or drawn on such date; (*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity; (*d*) that every transfer of a negotiable instrument was made before its maturity; (*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon; (*f*) that a lost promissory note, bill of exchange or cheque, was duly stamped; (*g*) that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.—*Act XXVI of* 1881, *s.* 118.

Negotiation. Treaty of business, whether public or private. It differs from an agreement, in that nothing is concluded by it, and no liability as upon a concluded agreement attaches.

Negotiation of bills, &c. When a promissory note, bill of exchange, or cheque, is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 14.

A promissory note, bill of exchange, or cheque payable to bearer is negotiable by delivery thereof.—*Ibid.*, *s.* 47.

A promissory note, bill of exchange, or cheque, payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.—*Ibid.*, *s.* 48.

Effect of indorsement. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person. —*Ibid.*, *s.* 50.

Nephew. Niece. The child of a person's brother or sister, whether such brother or sister be of the whole or only of the half blood (*Grieves* v. *Ramley*, 22 L. J. Ch. 625; 10 Hare, 63; *Wells* v. *Wells*, 43 L. J. Ch. 681; L. R. 18 Eq. 504). Accordingly, the phrase "nephews and nieces," as used in a testamentary gift, does not include a great nephew or great niece (*Shelley* v. *Bryer*, Jac. 207; *Falkner* v. *Butter*, 1 Amb. 514; *Crook* v. *Whitley*, 26 L.J. Ch.350; 7 DeG. M. & G.490). But an extended meaning may be gathered from context.—*Stroud.*

Net. Clear. *Net income*, clear income after deducting all expenses. *Net profits*, clear profits after all deductions. *Net weight*, the weight of a pure commodity alone, without the cask, bag, dross, &c. *Net rent*, a rent clear of all deductions to which it would otherwise be liable, as land tax, sewers rate, &c. *See* CLEAR ANNUITY.

Neutrality. The condition in which a third nation is, when it holds aloof from two other nations who are at war with each other.

Never indebted (*nunquam indebitatus*). A plea in actions of debt on simple contract, which denies the matters of fact from which the liability of the defendant arises, or the existence of any express contract to the effect

alleged in the declaration; thus in actions for goods bargained and sold, the plea operates as a denial of the bargain and sale.

New assignment (*nova assignatio*). A form of pleading which sometimes arose from the generality of the declaration, when the complaint not having been set out with sufficient precision, it became necessary, from the evasiveness of the plea, to re assign the cause of action with fresh particulars. New assignment is now abolished, and every thing formerly alleged by way of new-assignment is to be introduced by way of amendment of the statement of claim.

New Inn. One of the Inns of Chancery. *See* INNS OF CHANCERY.

Newspaper. This means any periodical work containing public news or comments on public news.—Act VII of 1908 (*Newspapers—Incitement to Offences*), *s.* 2 (*1*) (*b*).—*Act I of* 1910 (*Press*), *s.* 2 (*e*).

New style. The modern system of computing time, introduced into Great Britain in 1752; the 3rd September of that year being reckoned as the 14th. *See* OLD STYLE, YEAR.

New trial, motion for. A motion or application for a rule to show cause why a new trial should not be had.

New trial paper. A paper containing a list of causes in which rules nisi have been obtained for a new trial.

New Year's Day. The 1st of January and the day on which is commemorated the circumcision of the Saviour as being the eighth from the 25th of December. The 25th of March was the civil and legal New Year's Day till the alteration of the style in 1752, when it was permanently fixed as the 1st January. *See* NEW STYLE, OLD STYLE.

Next. *Next* is only an abbreviation of *near est* (*per* Knight-Bruce, V.-C., *Booth* v. *Vicius*, 13 L. J. Ch. 147).

Next friend. Every suit by a minor shall be instituted in his name by an adult person, who in such suit, shall be called the next friend of the minor.—*Act V of* 1908 (*Civ. Pro.*), *Sch. I, O. XXXII, R.* 1.

Who may act as next friend or be appointed guardian for the suit. Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit; Provided that the interest of such person is not adverse to that of the minor, and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.—*Ibid.*, *R.* 4(1).

Guardian ad litem. Every application to the Court on behalf of a minor shall be made by his next friend or his guardian for the suit.—*Ibid.*, *R.* 5 (1).

Next of kin. Those who are, lineally or collaterally, related in the nearest degree to a given person. The persons who, by reason of kindered, are, on the death of a person intestate, entitled to his personal estate and effects under the Statute of Distributions. The expressions "nearest of kin," "nearest of blood," "next of kin," "next of kindred," are synonymous.

Under a gift to a person's "next personal representatives" or "next legal representatives," his nearest of kin, in blood, will take (*Booth* v. *Vicars*, 13 L. J. Ch. 147; *Withy* v. *Mangles*, 10 L. J. Ch. 391; 10 Cl. & F. 215; *Stockdale* v. *Nicholson*, 36 L. J. Ch. 7.3; L. R. 4 Eq. 359).—*Stroud.*

Next presentation. The right to present to a living on the next vacancy. The purchase of the next presentation to a vacant benefice is illegal and void, but the right may be sold whilst the benefice is full. It is personal estate if granted apart from advowson, which is real estate. A purchase, however, by a clergyman, either in his own name or in another's, of the next presentation simply, with the view of presenting himself to the living, is illegal and void, though the benefice be not vacant at the time of purchase. *See* ADVOWSON.

Niece. *See* NEPHEW.

Night. Generally, the time of darkness between sunset and sunrise. The better opinion in Backstone's time seemed to be that it extended during the time in which there was not sufficient twilight begun in the morning or left in the evening, to see a man's face withal. Now under the Larceny Act (24 & 25 Vic. c. 96), the night, during which a burglary may be committed, is deemed to commence at 9 p. m. and to end at 6 a. m. In the Act against poaching (9 Geo. IV. c. 69), it begins one hour after sunset and ends one hour before sunrise.

See LURKING HOUSE-TRESPASS BY NIGHT.

Night walkers. Such persons as sleep by day, and walk by night, being oftentimes pilferers, vagrants, or disturbers of the peace.

Nikah. Nikka. (*Meh. L.*) A marriage; a betrothal. In the language of the law this term implies a particular contract for the purpose of legalizing generation. In Bengal, the term is applied to a sort of left handed marriage, such as one contracted with a widow, or only for a limited time. *See* SHADEB.

Nikah muwakkat. A temporary marriage, one for a season, but celebrated with certain forms; it is void in law, but not unfrequent in practice.

Nishada. (*Hin. L.*) The son of a man by a sudra woman.

Nisi Prius Court. The court in which civil actions are tried at the assizes. *See* BANC.

Niyoga. (*Hin. L.*) The begetting of offspring by another on the wife of a man, who was either dead or impotent, or disordered in mind or incurably diseased. The son so begotten belonged to the husband of the woman. The custom is now obsolete.

Nizam. (*Ind.*) An administrator. The superior officer of a province charged with the administration of criminal law. *See* NAZIM.

Nizamat. Arrangement; government; the office of the Nazim or Nizam.

Nizamat Adawlat. The Chief Criminal Court, or court of the *Nizam*; applied, until recently, to the chief criminal court of the British provinces in India.

Nobility. The rank or degree of peerage, comprising dukes, marquesses, earls, vis counts and barons.

Nominal damages. A trifling sum recovered by verdict, in cases where, although the action is maintainable, it is nevertheless the opinion of the jury that the plaintiff has not suffered substantial damage. *See* DAMAGE.

Nominal partner. One whe has not any actual interest in the trade or business, or its profits; but by allowing his name to be used in the partnership firm holds himself out to the world as apparently having an interest. He is liable as a partner to strangers who have no notice of his want of interest in the parnership concern.

Nominate contracts. (*Civ. L.*) Those distinguished by particular names. *See* INNOMINATE CONTRACTS.

Nominating and reducing. Otherwise called *striking*. A mode of obtaining a panel of special jurors, from which to select a jury The names are drawn by lot from the sheriff's list of special jurors to the number of forty-eight, to which, either party may object for incapacity; these forty-eight names being subsequently *reduced* to twenty-four by striking off such names as either party shall wish to be removed; and these twenty four are returned as the panel. This method is now only used by the special order of the court.

Nomination. The act of mentioning by name. A power that a man has, by virtue of a manor or otherwise, to appoint a clerk to a patron of a benefice, to be by him presented to the ordinary.

Nomocanon. A collection of canons and imperial laws relative or conformable thereto.

Nomographer. One who writes on the subject of laws.

Nomography. A treatise or description of laws.

Nomotheta. A law-giver; or law commissioner.

Nomothetical. Legislative.

Non-ability. Inability. An exception taken against the plaintiff in a cause, upon some just ground, why he cannot commence any suit in law, as outlawry, excommunication, &c. *See* DISABILITY.

Non-acceptance. The refusal of acceptance.

Non-access. When a husband could not, in the course of nature, by reason of his absence, have access to his wife, and so could not have been the father of his wife's child, the child is a bastard. Access is presumed during wedlock; but this presumption may be encountered by proof of circumstances showing that sexual intercourse did not take place within such a time that the husband could be the father. The mother of the child whose legitimacy is questioned will not be allowed to prove the non-access of her husband, not even after her husband's death.—*Wharton.* *See* ACCESS.

Non-age. Minority. *See* INFANT. The ninth part of moveable goods formerly payable to the clergy on the death of persons in their parish (*nonagium*).

Non-apparent easement. *See* EASEMENT.

Non-appearance. The omission of timely and proper appearance; a failure of appearance *See* APPEARANCE.

Non claim. The omission or neglect of him that ought to challenge his right within a time limited, by which neglect he is barred of his right.

Non-cognizable offence. This means an affence for, and *non-cognizable case* means a case in, which a police-officer, within or without a presidency-town, may not arrest without warrant.—*Act V of* 1898(*Crim.Pro.*),*s.*4(*n*).

Non-conformist One who refuses to comply with others, one who refuses to join in the established forms of worship

Non contentious jurisdiction. *See* CONTENTIOUS JURISDICTION

Non direction. Omission on the part of a judge to enforce a necessary point of law upon a jury.

Non-feasance An offence of omission of what ought to have been done, as in not coming to church, &c A non feasance will not make a man a trespasser. Non feasance is to be distinguished from misfeasance or malfeasance. Non feasance is the not doing that which it was a legal obligation or duty, or contract, to perform; misfeasance is the performance in an improper manner of an act which it was either the party's duty, or his contract, to perform, or which he had a right to do; and malfeasance, the unjustifiable performance of some act which the party had no right or which he had contracted not to do.—*Tomlins.* *See* MALFEASANCE.

Non-intromittant clause. A clause in the charter of a municipal borough, whereby the borough is exempted from the jurisdiction of the justices of the peace of the county.

Non-issuable plea. A plea which does not raise an issue on the merits of the case, as a plea in abatement.

Non-joinder. Non-joinder of parties is the omission to join a person as a co plaintiff or co-defendant in a cause, who ought to have been so joined; the not joining of any proper or necessary person or persons as a co-defendant or co-plaintiff.

Non-jurors. Persons who refuse to take the oaths to government; especially those who after the abdication of James II refused to take the oaths to William III and his successors in the government.

Non-Regulation Provinces. The Governor and Council of each Presidency was empowered to enact a Code of Regulations for its Government, before 1834, when a General Legislative Council was formed. When, therefore, any territory was added by conquest or treaty to a Presidency, such territory or province came under the existing *Regulations*, and the course of its *official appointments* was governed by an Act of Parliament. But when Provinces were acquired, which were not and could not be annexed to any of the three Presidencies, their official staff could be provided as the Governor-General pleased, and was not governed by any statute. Such Provinces were then called *Non-Regulation Provinces*.

Non-residence. The absence of spiritual persons from their benefices. The neglect by a clergyman to reside on his cure *See* RESIDENCE.

Non sane memory. Unsoundness of mind

Non suit. A renouncing of a suit by the plaintiff, most commonly upon the discovery of some error or defect, when the matter is so far proceeded with, as that the jury is ready at the bar to deliver their verdict. So, if the plaintiff does not appear at all, he is said to be non-suit or non-suited. A non-suit is properly the voluntary act of the plaintiff in deserting his action; and the difference between a non-suit and *non prosequitur* is that in the former the plaintiff, being called upon in court to proceed, advisedly abandons the suit, because he sees it is likely to go against him; in the latter he simply neglects to take the proper steps.—*Moxley*. The method for non-suiting is for the master to call thrice upon the plaintiff to come into court or lose his writ. If he does not answer, he is non-suited.—*Rawson*.

A non-suit occurs when a plaintiff withdraws from the contention at Nisi Prius, either because he is satisfied that he cannot support his case, or upon the judge expressing opinion that the action is not maintainable. It remains, indeed, notwithstanding the opinion so judicially expressed, within the discretion of the plaintiff himself, to submit to be non-suited—a course which it will in general be prudent to adopt, inasmuch as if the verdict, in deference to the judge's direction to the jury, be against him, his right of action would be barred; but should he be only non suited, he may re-assert his claim at some future time.—*Broom's Com. Law*.

Held, that the Courts in India have no power to make a decree of non-suit. They must act either under s. 373 or under Chapter V of the Civ. Pro. Code (see now Act V of 1908, O. XXIII, R. 1., and O. VI and VII). There is no third course open to them (*Banwari Das* v. *Muhammad Mashiat*, 7 All. W. N. 254).

Non-tenure. An exception to the plaintiff's count in a real action, to the effect that the defendant did not hold the land mentioned in the suit.

Non-term. The time of vacation between term and term; formerly called the time or days of the king's peace. *See* TERM.

Non-user. A ceasing to exercise. One of the modes recognised by law for extinguishment of easements. A right which can be acquired by user may be lost by non-user. The neglect of official duty which causes forfeiture of the office.

Notarial. Taken by a notary. Relating to a notary.

Notary. Notary public (*notarius*; *registrarius*; *actuarius*). A person who takes notes, or makes a short draught of contracts, obligations, or other writings and instruments. At this time a notary public is one who takes notes of anything which may concern the public, who attests deeds or writings to make them authentic in another country, but principally in business relating to merchants; they make protests of bills of exchange, ship's papers in cases of loss or damage, &c. He is generally a solicitor. *See* NOTING A BILL, PROTEST.

Note of allowance. This was a note delivered by a master to a party to a cause, who alleged that there was error in law in the record and proceedings, allowing him to bring error.

Note of a fine. An abstract which used to be made by the chirographer of the proceedings of a fine, before it was engrossed, naming the parties, the parcels of land, and the agreement. *See* FINE.

Note of hand. The same as a promissory note.

Notes. Memoranda made by a judge on a trial, as to the evidence adduced, and the points reserved, &c. They are generally called judge's notes. A copy of the judge's notes may be obtained from his clerk.

Not found. An indorsement which may be made by a grand jury on a bill submitted to them where they consider the evidence insufficient; or they may in such case indorse "not a true bill" or "no bill." *See* BILL OF INDICTMENT, GRAND JURY, INDICTMENT.

Not guilty. A plea by way of traverse which occurred in actions *ex delicto*, and amounted to a denial only of the breach of duty or wrongful act alleged to have been committed by the defendant. The plea of not guilty in criminal proceedings, is the proper form wherever a prisoner means either to deny or justify the charge in the indictment; the effect of which plea is that on the one hand it puts the prosecutor to the proof of every material fact alleged in the indictment or information, and on the other, it entitles the defendant to avail himself of any defective circumstances as amply as if he had pleaded them in a specific form.—*Wharton*.

Not guilty by statute. A plea of general issue by a defendant in a civil action, when he intends to give special matter in evidence by virtue of some Act or Acts of Parliament.

Notice. The making something known to a person of which he was or might be ignorant; a formal notification of some act, or some intention, of the party giving the notice. Knowledge, either actual, or imputed by law. Notice is either (1) *Statutory*, *i. e.*, made so by legislative enactment; (2) *actual*, which brings the knowledge of a fact directly home to the party; or (3) *constructive* or *implied*, which is no more than evidence of facts which raise such a strong presumption of notice that equity will not allow the presumption to be rebutted. Constructive notice may be subdivided into—(*a*) where there exists actual notice of matter, to which equity has added constructive notice of facts which an inquiry after such matter would have elicited; and (*b*) where there has been a designed abstinence from inquiry for the very purpose of escaping notice. *See* CONSTRUCTIVE NOTICE. The word notice sometimes expresses a demand or requisition.

A person is said to have notice of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, s. 229. —*Act II of* 1882 (*Trusts*), *s.* 3.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 3.—*Doorga Narain Sen* v. *Baney Madhub* (7 Cal. 199).

Notice to an agent. Any notice given to, or information obtained by, the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to, or obtained by, the principal.—*Act IX of* 1872 (*Contract*), *s.* 229.

Doctrine of notice. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.—*Act II of* 1882 (*Trusts*), *s.* 91. In reference to real property, the doctrine of notice is mainly important as between a prior owner or incumbrancer of an *equitable* interest in the land and a subsequent purchaser of the *legal* estate. The subsequent purchaser will be preferred, if, when he advanced his money, he had no notice of the equitable incumbrance; but not otherwise.

Notice of action. A notice to a person of an action intended to be brought against him. By several statutes, both public and private, it is enacted that no action shall be brought against persons, acting in pursuance of those statutes, until the expiration of a certain time after notice in writing has been given to the defendant that such action will be brought. But no one is bound by law to give notice to another person of that which such other may otherwise inform himself, except in cases where notice is directed by Act of Parliament.

Notice of allotment. *See* ALLOTMENT.

Notice of dishonour. A notice that a bill of exchange has been dishonoured. When a promissory note, bill of exchange, or cheque, is dishonoured by non acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon. But it is not necessary to give notice to the maker of the dishonoured promissory not or the drawee or acceptor of the dishonoured bill of exchange or cheque.—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 93.

Such notice may be oral or written; may, if written, be sent by post; may be in any form; but must inform the party that he will be held liable thereon, and must be given within a reasonable time after dishonour. If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.—*Ibid.*, *s.* 94.

No notice of dishonour is necessary—(*a*) when it is dispensed with by the party entitled thereto; (*b*) in order to charge the drawer, when he has countermanded payment, (c) when the party charged could not suffer damage for want of notice (as in the case of an acceptor of an accomodation bill); (*d*) when the party entitled to notice cannot, after due search, be found; or the party bound to give notice is, for any other reason, unable, without any fault of his own, to give it; (*e*) to charge the drawers, when the acceptor is also a drawer; (*f*) in the case of a promissory note which is not negotiable; (*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.—*Ibid.*, *s.* 98.

Notice of title. This is where an intending mortgagee or purchaser has knowledge, by himself or his agent, of some right or title in the property adverse to that of his mortgagor or vendor. Thus, we speak of a *bona fide* purchaser for valuable consideration *without notice*, meaning that the purchaser of the property has paid the price to those who, he believed, had the right to sell.—*Mozley.*

Notice of trial. The notice given by a plaintiff to a defendant that he intends to bring on the cause for trial.

Notice to admit. This is where one party in an action calls on another to admit a document, saving all just exceptions. If the party so called on should neglect or refuse to admit it, he will bear the cost of proving the same, unless the judge certify that the refusal was reasonable.

Notice to plead. A notice by the plaintiff to the defendant, requiring him to plead.

Notice to produce. A notice by one party in an action to the other to produce, at the

trial, certain documents in his possession. If, after receiving this notice, the party do not produce them, the secondary evidence of their contents may be given.

Notice to quit. A notice often required to be given by landlord to tenant, or by tenant to landlord, before the tenancy can be determined. The relation of landlord and tenant ceases on the expiry of the notice.

Notice to treat for the purchase of land. A notice given by a public body having compulsory powers of purchasing land to the persons interested in any land which it proposes to take for the purposes of its undertaking.

Noting a bill. Where a bill of exchange is not duly paid on presentation, the holder applies to a notary public, who again presents the bill; if not paid, he makes a memorandum of the non-payment, which is called *noting the bill*. Such memorandum by the officer consist of his initials, the month, day and year, and his charges for minuting, and is considered as the preparatory step to a protest.—*Mozley.*

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each. Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason (if any) assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured and the notary's charges.—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 99.

In the case of inland bills, protest being totally useless, it follows that noting is almost equally so; and the expense usually charged stands merely upon the custom. Although in the case of inland bills of exchange neither noting nor protesting is necessary, the case is widely different in the case of a dishonoured foreign bill, which should certainly be taken to a notary, and it is his business to note, demand, and protest it.—*Wharton.* *See* PROTEST OF A BILL. The noting a foreign bill is, like the notice of dishonour of an inland bill, a necessary preliminary to bringing an action upon it against the indorsers and (usually) against the drawer.—*Brown.*

Not possessed. A plea by the defendant in an action of trover to the effect that he was not possessed, at the time of action brought, of the chattels alleged to have been converted by him to his own use. *See* TROVER.

Not proved. A fact is said not to be proved when it is neither proved nor disproved.—*Act I of* 1872 (*Evi.*), *s.* 3.

Not proven. A verdict of a jury in a Scotch criminal trial, to the effect that the guilt of the accused is not made out, though his innocence is not clear. The legal effect of such a verdict is the same as that of a verdict of not guilty.

Notorious. Matters deemed notorious, like matters noticed by the courts, or of which the courts are said to take judicial notice, need not be proved. But the law of England is slow to admit anything without proof, merely because it is deemed notorious.—*Brown.*

Novation (*novatio*). The substitution of a new obligation for an old one. The acceptance of a new debt or obligation in satisfaction of a prior existing one. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed (Act IX of 1872, Contract, s. 62). Thus, it is said that a surety is discharged by the novation of the debt; for he can no longer be bound by the first debt, for which he was surety, since it no longer subsists, having been extinguished by the novation; neither can he be bound by the new debt into which the first has been converted, since this new debt was not the debt to which he acceded. A novation may arise in either of two ways:—(1) As in the case of a *renewal bill*, where the person of the debtor remains the same, and the amount or terms are increased or altered; (2) As in the case of an *amalgamation of* (*insurance*) *companies*, where the person of the debtor is altered, but the other terms of the contract remain the same, the new company which is substituted for the old one taking over all the liabilities (together with the rights) of the latter. It is essential to every *novatio* that the creditor should have assented thereto.—*Brown.*

A contract by novation requires it as an essential element that the rights against the original contractor shall be relinquished and the liability of the new contracting party accepted in their place (*Nadimulla* v. *Channappa*, 5 Bom. L. R. 617).

Novel assignment (*nova assignatio*). In pleading, an assignment of time, place or such like, otherwise than it was before assigned. The same as *new assignment*, which *see.*

Novel disseisin. Recent disseisin; a disseisin committed since the last eyre or circuit of justices. *See* ASSIZE.

Noxal action. An action for damage by irrational animals.

Nude contract (*nudum pactum*). A bare promise, or a thing without any consideration or equivalent. An agreement to do or pay anything on one side without any consideration on the other. *See* CONSIDERATION.

Nude matter. A bare allegation of a thing done, to be proved by witnesses.

Nuisance (*nocumentum*). The word *nuisance* (like *trespass*) is a word capable of a wide sense; the word means annoyance, or anything that works hurt, inconvenience, or damage, and may include any infringement upon the enjoyment of territorial or personal rights. If one digs a trench across a public road it is a *public* nuisance; and if a person falls into it, and is hurt, he may have an action against the wrongdoer. So, if A builds

on his own land so as to darken the ancient lights in his neighbour B's house, it is a *private* nuisance.—*Collett on Torts.*

Public nuisance. A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public, or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage. —*Act XLV of* 1860 (*Penal Code*), *s.* 268.

A distinction between a *public* and a *private* nuisance must be kept in view—the mode of procedure for the abatement of the former being different from that available to an individual in respect to the latter. To constitute a public nuisance, the thing complained of must be such as in its nature or its consequences is a nuisance—an injury or damage to all persons who come within the sphere of its operation, though it may be so in a greater degree to some than it is to others. For example, if during the operation of a manufactory, volumes of noxious smoke or of poisonous effluvia are emitted; to persons who are at all within the reach of these operations, a nuisance, in the popular sense of the term, is committed; although to those who are nearer to the manufactory in question the nuisance and inconvenience caused by it may be greater than it is to those who are more remote from it. So, the stopping of the king's high way is a nuisance to all who may have occasion to travel upon that highway; it may be a much greater nuisance to a person who has to travel along it every day than it is to an individual who has to travel along it only once a year, but it is more or less a nuisance to every one who has occasion to use it—it is a *public* nuisance.

If, however, the thing complained of is such that it is a nuisance to those who are more immediately within the sphere of its operation, but is no nuisance or inconvenience whatever, or is even advantageous or pleasurable to those who are more removed from it, there the matter in question does not properly come within the meaning of the term *public* nuisance. Thus, a peal of bells may be an intolerable nuisance to one who leaves very close to them, whilst to a person who resides at a distance from them the sound thereby produced may be pleasureable.

It does not, then, follow, because a thing complained of is a nuisance to several individuals, that it is thetefore a public nuinance *e. g.*,—if a man by building up a wall darkens the ancient windows of several different dwelling-houses, he is not in thus acting necessarily guilty of a public nuisance.—*Broom's Com. Law.*

To constitute even a private nuisance, the inconvenience must not be merely fanciful, but one materially interfering with the ordinary comfort, physically, of human existence, according to plain, sober, and simple notions of living.—*Collett on Torts.*

Remedies. The remedy for a public nuisance is by indictment, or under the authority of the magistracy or police; the remedy for a private nuisance, or for *special* and *distinct* damage from a public one, is by an action, to which may be added an iniunction to prevent the continuance or repetition of the injury.—*Ibid.*

A private action can be maintained in respect of a public nuisance by a person who suffers thereby some *particular* loss or damage beyond what is suffered by him in common with all other persons affected by the nuisance. Interference of a common right is not of itself a cause of action for the individual citizen. *Particular* damage consequent on interference is. If a man digs a trench across a highway, I cannot sue him simply because the trench prevents me from passing along the highway as I am entitled to do; for that is an inconvenience inflicted equally on all men who use the road. But if, while I am lawfully passing along after dark, I fall into this trench so that I break a limb, or goods which I am carrying are spoiled, I shall have my action; for this is a particular damage to myself resulting from the common nuisance, and distinct from the mere obstruction of the common right of passage which constitutes that nuisance.—*Pollock on Torts.*

Abatement of nuisance. *See* ABATEMENT.

Nullity. This is where a thing is null and void, or of no force; want of force or efficacy, an error in litigation which is incurable, as distinguished from an *irregularity*, which is amendable. Suit for *nullity of marriage* is a matrimonial suit instituted for the purpose of obtaining a decree, declaring that a supposed marriage is null and void.

Nuncio. A messenger, servant, &c.; a spiritual envoy from the Pope.

Nuncupate. To declare publicly and solemnly.

Nuncupative will. An oral or word-of-mouth testament, declared by a testator *in extremis* before a sufficient number of witnesses, and *afterwards* reduced to writing. Nuncupative wills are not now allowed except in the case of soldiers and sailors on actual service. *See* WILL.

Nundination. Traffic at fairs and markets; any buying and selling.

Nuptial. Pertaining to marriage; constituting marriage; used or done in marriage.

Nurse child. A child under tho age of seven years is accounted a nurse child (*Dumbleton* v. *Beckford*, 2 Salk. 470; *Re Cumner* v. *Milton*, *Ibid.*, 528).

Nurture, guardian for. This is, of course, the father or mother, until the infant attains the age of fourteen years. *See* GUARDIAN.

Nusance. *See* NUISANCE.

O

Oath (*juramentum*). An appeal to God to witness the truth of a statement. An affirmation or denial of anything before one or more persons who have authority to administer the same for the discovery and advancement of truth and right, calling God to witness that the testimony is true; therefore it is termed *sacramentum*, a holy band or tie. It is called *corporal oath*, where a witness, when he swears, places his right hand on the Holy Evangelists, or New Testament.

Affirmation. Where a witness, interpreter, or juror is a Hindu or Muhammadan, or has an objection to making an oath, he shall, instead of making an oath, make an affirmation. In every other case, the witness, interpreter, or juror, shall make an oath.—*Act X of* 1873 (*Oaths*), *s.* 6.

Oath includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.—*Act XLV of* 1860 (*Penal Code*), *s.* 51.

Oath shall include affiirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.—*Act X of* 1897 (*General Clauses*), *s.* 3 (36).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (32).

Evidentiary oaths are those which relate to past facts.

Decisory oath. An oath which, in the absence of other evidence to the contrary, is permitted to settle the question in dispute. *See* DECISIVE OATH.

Suppletory oath was administered by the judge, and was allowed to have a similar effect. *See* SUPPLETORY OATH.

Promissory oaths (*juramentum promissionis*) are those which relate to a future intention, and are made either to do or not to do such a thing, as the oath of allegiance, required to be taken by persons on their appointment to certain offices.

See QUALIFIED OATH.

Objects of a power. Where property is settled subject to a power given to any person or persons to appoint the same among a limited class, the members of the class are called the *objects of the power*. Thus if a parent has a power to appoint a fund among his children, the children are called the objects of the power.—*Moxley*. *See* POWER.

Objurgatrices. Scolds, or unquiet women punished with the cucking-stool. *Sing.* Objurgatrix. *See* CASTIGATORY.

Oblata. Offerings; oblations. Gifts or offerings made to the king by any of his subjects. In the Exchequer, it signifies old debts, brought as it were together from preceding years, and put on the present sheriff's charge.

Oblations (*oblationes*). Offerings to God and the Church; fees payable to the clergy for marrying, burying, &c.

Obligant. The Scotch term for obligor.

Obligation (*obligatio*). An act which binds a person to some performance. A bond containing a penalty, with a condition annexed, for payment of money, performance of covenants, or the like; it differs from a bill, which is generally without a penalty or condition, though a bill may be obligatory. Obligations may also be by way of record, as statutes and recognizances, to which there are sometimes added defeasances, like the condition of an obligation; but when the obligation is simple or single, without any defeasance or condition, it is most properly called so.—*Tomlins*.

Obediential obligations. Those which arise out of the office or position of the party.

Obligor. Obligee. An obligor is he who enters into an obligation; an obligee is the person to whom it is entered into. *See* BOND.

Obreption. (*Sc. L.*) The obtaining a gift of escheat by false pretences and lies; the obtaining a gift of the king by a false suggestion.

Obscene. "In interpreting the word 'obscene' as used in ss. 292 and 293 of the Indian Penal Code, the Courts may rightly follow *Reg.* v. *Hicklin* (L. R. 2 Q. B. 360), where Lord Cockburn, C. J., says 'I think the test of obscenity is this, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influence and into whose hands a publication of this sort may fall" (*per* Jardine and Ranade, JJ., *Queen Empress* v. *Parashram*, 20 Bom. 193).

Obsignatory. Ratifying and confirming.

Obstriction. Obligation; bond.

Obstruction. The word is properly descriptive of an injury to any one's incorporeal hereditament, *e. g.*, his right to an easement, or *profit a prendre*; an alternative word being *disturbance*. On the other hand, infringement is the word properly descriptive of an injury to any one's patent right or to his copyright. But *obstruction* is also a very general word in law, being applicable also to every hindrance of a man in the discharge of his duty, whether official, public or private.—*Brown*. *See* EASEMENT.

Obtemper. (*Sc. L.*) To obey a judgment or decree.

Obtest. To protest.

Obventions (*obventiones*). Offerings or tithes. Oblations, obventions, and offerings are generally the same thing, though obvention has been esteemed the most comprehensive.

Occupancy. The taking possession of those things which before did not belong to any body. An island in the sea, precious stones on the sea-shore, and treasure discovered in a ground that has no particular

owner, by the law of nations belong to him who finds them and gets the first occupation of them. The law of occupancy is founded upon the law of nature, *viz.*, *Quod terra manens vacua occupanti conceditur*, whatever land remains vacant must be given to the occupant. So as, upon the first coming of the inhabitants to a new country, he who first enters upon such part of it and manures it, gains the property; so that it is the actual possession and manurance of the land which was the first cause of occupancy, and consequently is to be gained by actual entry. Where a man finds a piece of land which no other possesses or hath title unto, and enters upon the same, this gains a property, and a title by occupancy; but this manner of gaining property of lands has long since been of no use in England; for lands now possessed without any title are in the Crown, and not in him who first enters. However, the mere prior occupancy of land, however recent, gives a good title to the occupier, whereupon he may recover as plaintiff against all the world, except such as can prove an older and better title in themselves.—*Tomlins.* Where a person had an estate granted to himself only (without mentioning his heirs) *pur autre vie*, for the life of another, and died without alienation, during the life of the *cestui que vie* or him by whose life it was holden, he that could first enter on the land was said to hold it by right of common occupancy during the life of the *cestui que vie* and was called a *general occupant*. If the estate in the first instance was limited to the tenant for life and his heirs, his heir could enter as *special occupant*. Common occupancy is now abolished. A property in goods and chattels may be acquired by occupancy; as, the goods of an alien enemy, restrained however, to captors authorized by public authority, and goods brought into the country by an alien enemy after a declaration of war without a safe conduct; anything found which does not come under the description of waifs, estrays, wreck or treasure-trove; the benefit of the elements of light, air, and water, as far as they are previously unoccupied, or as they may be occupied without injury to another; animals *feræ naturæ*, under the restrictions of the Game Laws; property arising by accession and confusion of goods.

Occupancy signifies the sum of the rights vested in an occupant as such.—*Bom. Act V of* 1879 (*Bom. Land Revenue*), *s*, 3 (18).

Occupant. He who is in possession of a thing; he who first gets possession of a thing. *See* OCCUPANCY.

Under the Bom. Land Revenue Code (Bom. Act V of 1879) s. 3 (16)), occupant signifies a holder of unalienated land, or where there are more holders than one, the holder having the highest right in respect of any such land.

Registered occupant signifies a sole occupant or the eldest or principal of several joint occupants whose name is authorizedly entered in the Government records as holding unalienated land whether in person or by his cooccupant, tenant, agent, servant, or other legal representative.—*Ibid.*, *s*. 3 (17).

Occupatile. That which has been left by the right owner, and is now possessed by another.

Occupation (*occupatio*). Possession; act of taking possession; the use, tenure, or possession of land. The putting a man out of his freehold in time of war, corresponding to disseisin in time of peace. An usurpation upon the king, as when one uses liberties which one has not. Also, a trade or mystery.

Action for use and occupation. *See* USE.

Occupative. Possessed; used; employed.

Occupier. The person residing in or upon, or having a right to reside in or upon, any house, land, or place. A tenant, though absent, is, generally speaking, the "occupier" of premises (*R.* v. *Poynder*, 1 B. & C. 178), but a servant or other person who may be there *virtute officii* is not an "occupier" (*Clerke* v *St. Mary*, 26 L. J. C. P. 12; 1 C. B. N. S. 23; *Bent* v. *Roberts*, 47 L. J. Ex. 112; 3 Ex. D. 66; *R.* v. *Spurrell*, 35 L. J. M. C. 74; L. R. 1 Q. B. 72).—*Stroud.*

Ochlern. The chief of a branch of a great family.

Ochlocracy. A form of government wherein the populace has the whole power and administration in its own hand; a democracy; mob-rule.—*Wharton.*

Odhal. Complete property, as opposed to *feudal* tenure. The transposition of the syllables of Odhal makes it Allodh, and hence arises the word *allod* or *allodial*. *Allodh* is thus put in contradiction to *fee-odh*. *See* ALLODIAL.

Offence (*delictum*). Crime; act of wickedness; an act committed against a law, or omitted where the law requires it, and punishable by it. Offence means any act or omission made punishable by any law for the time being in force.—*Act X of* 1897 (*General Clauses*), *s*. 3 (37).—*Bom. Act I of* 1904 (*General Clauses*), *s*. 3 (33).—*Act V of* 1898 (*Crim. Pro.*), *s*. 4 (*o*). *See* CRIME.

Offer. An offer is usually the first step towards an agreement or contract; and when such offer is accepted, the agreement or contract as such is complete. Any variation between the terms of the acceptance and of the offer is however fatal to the acceptance, creating a want of that *assensus ad idem* which is one of the essential requisites to every contract.—*Brown.*

Off-going crop. *See* AWAY-GOING CROPS.

Office (*officium*). That function by virtue whereof a man has some employment in the affairs of another, whether judicial, ministerial, legislative, municipal, ecclesiastical, &c. It is a species of incorporeal hereditament.

Office copy. A copy made under the sanc-

tion of a public office, under the seal of such office, of any deed, record, or other instrument in writing deposited therein. *See* CERTIFIED COPY.

Office found. This is when, by an inquest of office, facts are found entitling the Crown to any real or personal property by forfeiture or otherwise. *See* INQUEST OF OFFICE.

Office of a judge. A criminal suit in an ecclesiastical court is regarded as a proceeding emanating from the *office of the judge*, and may be instituted by the mere motion of the judge. But in practice these suits are instituted by private individuals, with the permission of the judge; and the private prosecutor in any such case is, accordingly, said to *promote the office of the judge*.

Officers of justice. A general name applicable to all degrees of persons concerned in the administration of the law, but it is commonly confined to the lower degrees of such persons, and almost exclusively to those who execute the process of the courts, *e. g.*, writs of *fi. fa.*, of attachment, of sequestration, and the like.—*Brown*.

Official. Pertaining to a public charge. In the Civil Law, he is a minister of, or attendant upon, a magistrate. In the Canon Law, he is the person to whom a bishop commits the charge of his spiritual jurisdiction; there is one in every diocese, called *officialis principalis*, official principal, *i. e.*, the chancellor of the diocese; the rest, if there are more, are *officialis foranei*, *i. e.*, commissaries. The word also includes the deputy or substitute of an archdeacon.

Official Assignees. Officers of the Bankruptcy Courts appointed by the Lord Chancellor under the Bankruptcy Acts for the purpose of acting, as occasion might require, with other assignees in the winding up of bankrupts' estates.—*Mozley*.

Official Gazette. This is in Sind, the *Sind Official Gazette*, and elsewhere in the Bombay Presidency, the *Bombay Government Gazette*; In the Madras, Presidency, the *Fort St. George Gazette*; in the Bengal Presidency, the *Gazette of India*. That of the Government of India is the *Gazette of India*.

Official liquidator. A person appointed by the judge in Chancery in whose court a joint stock company is being wound up, to bring and defend suits and actions in the name of the company, and generally to do all things necessary for winding up the affairs of the company, and distributing its assets.—*Mozley*.

Official log-book. *See* LOG.

Official managers. Persons formerly appointed to superintend the winding up of insolvent companies under the control of the Court of Chancery.

Official oath. An oath taken by certain officers as soon as may be after their acceptance of their office.

Official receivers. Officers appointed to act as interim receivers and managers of bankrupts' estates, pending the appointment of trustees in bankruptcy.

Official referees. Officers attached to the Supreme Court of Judicature, to whom the trial of any question in any civil proceeding before the High Court of Justice or before the Court of Appeal may be referred by the Court, or by any divisional court, or by a judge, for inquiry and report.—*Mozley*.

Officious. Having a meaning, as opposed to meaningless. Uncalled for.

Officious will (*officiosum testamentum*). (*Rom. L.*) One by which a testator leaves his property to his family, according to his moral obligation. *See* INOFFICIOUS TESTAMENT.

Offspring. The word in its proper and natural sense extends to any degree of lineal descendants, and has the same meaning as *issue* (*per* Kindersley, V.-C., *Young* v. *Davies*, 32 L. J. Ch 373).

Old style. *See* NEW YEAR'S DAY.

Oleron, laws of. *See* LAWS OF OLERON.

Oligarchy. A form of government wherein the administration of affairs is lodged in the hands of the few persons.

Omittance. Forbearance.

On. *See* UPON.

Once a highway always a highway. *See* HIGHWAY.

Once a mortgage always a mortgage. *See* MORTGAGE.

Once a tenant always a tenant. *See* TENANT.

On demand. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 19. In a promissory note or bill of exchange the expressions *at sight* and *on presentment* mean on demand. The expression *after sight* means, in a promissory note, after presentment for sight, and in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non acceptance.—*Ibid.*, *s.* 21.

For the purpose of the Stamp Act II of 1899, a bill of exchange payable on demand includes (*a*) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any *condition* or *contingency* which may or may not be performed or happen; (*b*) an order for the payment of any sum of money weekly, monthly, or at any other stated periods; and (*c*) a letter of credit, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn.—*Act II of* 1899 (*Stamp*), *s.* 2 (3).

Onerous. A lease, contract, &c., is said to be onerous when the liabilities it entails outweigh the benefits.

Onerous cause. (*Sc. L.*) A good and legal consideration.

Oom-l-wulud. (*Meh. L.*) *See* MOOKATIB SLA'VE.

Open. Apparent; evident; not secret or concealed. To begin.

Open contract. A contract of which the terms are not expressly mentioned, as a contract to sell land without mentioning the day for completion of the purchase, or without stipulations as to title or otherwise.

Open Court. A court to which all the public have access as a matter of right.

Open law (*lex manifesta*). The making or waging of law. *See* MAKE LAW.

Open meadow or *field.* One which belongs to several owners, who share it in common for grazing purposes after each has raised a crop on his particular portion of it.

Open policy. One in which the value of the ship or goods insured is not fixed or agreed upon in the policy, as between the assured and the underwriter, but is left to be estimated in case of loss; as opposed to a *valued policy*, in which the value of the subject insured is fixed for the purpose of the insurance, and expressed on the face of the policy (*G. H. Davey* v. *Haji Kassim*, 22 Travancore L. R. 99).

Open theft (*open theof*). A theft that is manifest.

Open tide. The time after corn is carried out of the fields.

Opening a commission. The commencement of the judicial proceedings at an assize, by the reading of the commissions by virtue of which the judges sit to try cases.

Opening a rule. This is where the court allows the propriety of a rule to be again open for argument after it has been made absolute; this is allowed where a rule has issued improvidently through a mistake of the officer of the court, or in a case in which the court had no jurisdiction to grant it.

To open an account. To commence dealings on account; to *re-open* it, is to impugn it after it has been settled. *See* FALSIFY.

To open biddings. To put up an estate again to competition after it has once been put up and sold by auction. Prior to 1868, the Court of Chancery exercised this right to put an estate up to sale again, in all cases of sale by the court, if any advance was offered on the price already accepted, so that a *bona-fide* purchaser was never sure of his bargain. The opening of biddings is now allowed only in cases of fraud or misconduct in the sale.

To open a case. On a trial before jury the party who upholds the affirmative of the issue begins the case.

To open pleadings. To state briefly at a trial before a jury the substance and effect of the pleadings in the cause, in order that the jury may know what are the issues about to be tried; this is done by the junior counsel for the plaintiff at the commencement of the trial.

Operarii. Such tenants, under feudal tenures, who held some little portions of land by duty of performing many bodily labours and servile works for their lord, being no other than the *servi* and bondmen.

Operatio. One day's work performed by a tenant for his lord.

Operative part. Operative words. The operative part of a deed or other instrument is that part whereby the main object of the deed is effected, as opposed to the recitals, premises, covenants, conditions, and such like. That part which expresses (and purports to give) the effect, *i. e.*, operation, of the deed or instrument, especially the clause which contains the words of grant, *e.g.*, "doth hereby grant and convey." The operative words in a lease are those words by which the lessor actually lets the premises to the lessee; the terms generally used are "demise and lease"; but any words clearly indicating an intention of making a present demise will suffice.

Opposing creditor. A creditor who opposes to the personal discharge of a debtor in insolvency.

Option. A power or right to choose, *e. g.*, of *purchase*, whether one will buy or not at or within a certain time. When a new suffragan bishop is consecrated by the archbishop of the province, by a customary prerogative the archbishop claims the collation of the first vacant dignity or benefice in that see, at his own choice, which is called his option. In the Stock Exchange, it means a right to effect a certain dealing or not at a certain date, at the option of the person bargaining, who pays a premium for the right.

Optional writ. Original writs were either *optional* or *peremptory*. An *optional* writ, otherwise called a *præcipe*, was a writ commanding the defendant to do a thing required, or else to show the reason wherefore he had not done it; thus giving the defendant his choice, either to redress the injury, or to stand the suit. A *peremptory* writ directed the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim.

Or. Whether the instrument in which the word occurs is a will or deed, *or* may be construed to mean *and*, and *and* may be construed to mean *or*, if such a construction is necessary to give effect to the intention of the party by whom the word is used (*White* v. *Supple*, 2 Dr. & W. 47).

"You will find it said in some cases that *or* means *and*; but *or* never does mean *and*" (*per* Jessel, M. R., *Morgan* v. *Thomas*, 51 L. J. Q. B. 557).

As used in s. 55 of Bom. Act V of 1878 (Abkari), *or* is equivalent to *nor* (*per* Bayley,

C. J., *Framji Manekji* v. *Secretary of State*, 17 Bom. p. 161).

Oral. Delivered by mouth; not written.

Oral evidence. *See* EVIDENCE.

Oral pleading. Pleading by word of mouth (*viva voce*) in presence of the judges, which was formerly done.

Orator. A word formerly used in bills in Chancery to denote the plaintiff; a petitioner.

Oratrix. Oratress. A female petitioner. *See* ORATOR.

Orbation. Privation of parents or children; poverty.

Ordeal. Ordel. Ordal. An ancient manner of trial in criminal cases, practised among the Saxons, who affected to believe that God would actively interpose to establish an earthly right and to vindicate the guiltless. These were (1) camp fight, *duellum*, or combat; (2) Fire ordeal; (3) Hot water ordeal; (4) Cold water ordeal. Fire ordeal was performed either by taking up in the hand, unhurt, a piece of red-hot iron; or else by walking barefoot, and bindfold, over nine red hot ploughshares, laid lengthwise at unequal distances. If the party escaped being hurt, he was adjudged innocent, otherwise he was condemned as guilty. Hot water ordeal was performed by plunging the bare arm up to the elbow in boiling water and escaping unhurt therefrom. Cold water ordeal, by casting the person suspected into a river or pond of water; and if he floated therein without any action of swimming, it was deemed an evidence of his guilt; but, if he sunk, he was acquitted.—*Mozley.*

Ordeffe. Ordelfe. A word often used in charters of privileges, signifying a liberty whereby a man claims the ore found in his own ground. Also the ore lying under ground. A delfe of coal is coal lying in veins under ground, before it is dug up.—*Tomlins.*

Ordels. The right of administering oaths, and judging of trials by ordeal, within a given precinct or liberty.

Order. Mandate; precept; command; also a class or rank. Any command of a superior to an inferior may be so called. But the word is frequently applied to those acts of courts of justice which are of an interlocutory character and which do not dispose of the merits of any case before them. *See* DECREE.

Order and disposition. A phrase denoting the apparent possession, on the part of a bankrupt, of goods not his own, with the consent of the true owner. Where goods are left in the order and disposition of a trader, that is to say, within his possession or power to deal with them, and they are so left by the consent of the true owner, and the trader becomes bankrupt while having such goods in his order and disposition, the goods vest in the trustee in bankruptcy of the trader, as a sort of penalty upon the true owner, and become available for payment of the debts of the trader in the bankruptcy.—*Brown.*

Order of course. An order made on an *ex parte* application, and to which a party is entitled as of right on his own statement, and at his own risk.

Order of discharge. An order made by a court of bankruptcy, the effect of which is to discharge a bankrupt from all debts, claims, or demands, provable under the bankruptcy, except Crown debts and debts incurred by fraud.

Order of revivor. An order as of course for the revival or continuance of a suit which has become abated or defective by the death of some party thereto, or for some other cause.

Orders and Rules. When any statute of very wide operation is enacted, it has become usual in modern times to enact also various more or less elaborate orders and rules for working out its provisions.

Orders of the clergy. *See* HOLY ORDERS.

Orders of the day. Matters which the House of Commons may have agreed beforehand to consider on any particular day are called the "orders of the day," as opposed to original motions.

General Orders are promulgated by courts for the proper regulation of their own proceedings.

Payable to order. A bill or note payable to order is a bill or note payable to a given person, or as he shall direct by any indorsement he may make thereon. Until he has so indorsed it, no one else can maintain an action upon it; and in this respect it differs from a bill or note *payable to bearer*, which passes without any such indorsement. *See* NEGOTIATION.

Ordinance (*ordinatio*). Law; rule; precept.

Ordinance of Parliament. An act of Parliament which has not the sanction of all the three estates of the realm *e. g.*, one passed during the commonwealth; one which is merely declaratory and not enactive.

Ordinance of the forest (*ordinatio forestæ*). A statute made touching matters and causes of the forest (33 & 34 Edw. I).

Ordinary (*ordinarius*). In the Civil Law, any judge that has authority to take cognizance of causes in his own right, and not by deputation. In the common law, one who has exempt and immediate jurisdiction in causes ecclesiastical, who is generally the bishop of the diocese.

Ordinary jurisdiction. This embraces all such jurisdiction as is exercised in the ordinary course of law and without any special step being necessary to assume it; it is opposed to *extraordinary* jurisdiction, which the court may assume at its discretion upon special occasion and by special orders (*per* Lord Hobhouse, *In the matter of Cahandas Narandas*; *Navi Vahu* v. *C. A. Turner*, 13

Bom. p. 533, P. C.). *See* EXTRAORDINARY JURISDICTION.

Ordination. The admission by the bishop of any person to the order of priest or deacon.

Orfgild. A delivery or restitution of cattle. A penalty for taking away cattle.

Orgild. Without recompense or compensation; as where no satisfaction was to be made for the death of a man killed, so that he was judged lawfully slain.

Original. Opposed to *derivative* or *secondary*; also to *appellate*.

Original bill in equity. A bill filed in Chancery otherwise than by way of supplement or revivor.

Original charter. (*Sc. L.*) One by which the first grant of land is made; on the other hand, a *charter by progress* is one renewing the grant in favour of the heir or singlar successor of the first or succeeding vassals.

Original evidence. A phrase used in contrast to the phrase *derivative evidence*, and denotes evidence that has an independent probative force of its own, and which is unaffected with any of the infirmities attaching to derivative evidence.

Original writ (*breve originale*). This was formerly the beginning or foundation of every personal action. When a person had received an injury for which he desired satisfaction at law, the first step in the process of obtaining redress was to sue out, or purchase, by paying the stated fees, an *original*, or *original writ*, from the Court of Chancery. This original writ was a mandatory letter from the king on parchment, sealed with his Great Seal, and directed to the sheriff of the county wherein the injury was supposed to have been committed, requiring him to command the wrongdoer or party accused either to do justice to the complainant, or else to appear in court, and answer the accusation against him. —*Moxley.*

Original and derivative estates. An original is the first of several estates, bearing to each other the relation of a particular estate and a reversion; an original estate is contrasted with a *derivative* estate; and a derivative estate is a particular interest carved out of another estate of larger extent.

Orphanage part. That portion of an intestate's effects which his children were entitled to by the custom of London. *See* CUSTOM OF LONDON.

Ostensible. Apparent or pretended.

Ostensible partner. A man who allows his credit to be pledged as a partner; as in the case where a man's name appears in a firm, or where he interferes in the management of the business, so as to produce in strangers a reasonable belief that he is a partner. The person so acting is answerable as a partner to all who deal with the firm without having notice at the time that he is a stranger to it in point of interest.

Ostensio. A tribute anciently paid by merchants, for leave to expose their goods for sale in markets.

Otti. (*Ind.*) A sort of mortgage in which the mortgagee (*ottidar*) has the right of pre-emption, and also the prior right of making further advances. The *ottidar* may redeem a prior *kanam* (*Kunhamu* v. *A. Keshavan*, 3 Mad. 246; *Cheria Krishnan* v. *Vishnu*, 5 Mad. 198).

An *otti* differs from a *kanam* mortgage, first in respect of the right of pre-emption which the otti-holder possesses; secondly, in being for so large a sum that practically the *jenmi's* right is merely to receive a pepper-corn rent, (*Kumini Ama* v. *Parkam*, 1 Mad. H. C. R. 261). *See* JENMI, KANAM.

Ourlop. The lierwite or fine paid to the lord by the inferior tenant, when his daughter was corrupted or debauched.

Oust. To dispossess. *Ousted*, removed or put out of possession.

Ouster. The dispossession of a lawful tenant, whether of freehold or chattels real, whereby the wrongdoer gets occupation, and obliges him that has the right to seek his remedy at law in order to gain possession, with damages for the injury sustained. Its five principal varieties in respect to corporeal real property are, abatement, intrusion, deforcement, discontinuance, and disseisin. For the like torts in the case of incorporeal real property, there are also various technical names, such as, disturbance, obstruction, subtraction, and the like. See those titles.

Out dwellers. Persons occupying land in a parish, but dwelling outside it.

Outer Bar. Utter Bar. A phrase applied to the junior barristers who plead "ouster" or outside the bar, as opposed to King's Counsel, who are admitted to plead within the bar of the Courts, in seats specially reserved for themselves.

Outer House. A department of the Court of Session in Scotland, consisting of five Lords Ordinary, sitting each separately, to decide causes in the first instance. The term is used colloquially as expressive of the business done there in contradiction to the Inner House, the name given to the chambers in which the First and Second Divisions of the Court of Session had their sittings. *See* SESSION.

Outfangthef. A liberty or privilege whereby a lord was enabled to call any man dwelling in his manor, and taken for felony in another place out of his fee, to judgment in his own Court. *See* INFANGENTHEF.

Outgoings. An outgoing means something that has gone out. Hence an expense that some one has been at, such as duties, taxes, rates, assessments, &c.

Outhouses. These are the buildings belonging and adjoining to dwelling-houses.

Outland. The Saxon thanes divided their hereditary lands into *inland*, such as lay

nearest their dwelling, which they kept to their own use; and *outland*, which lay beyond the demesnes, and was granted out to tenants at the will of the lord, like copyhold lands. The outland they subdivided into two parts, one part they disposed amongst those who attended their persons, called *theodans* or lesser thanes; and the other part they allotted to their husbandmen or churls.

Outlaw (*utlagatus*). One deprived of the benefit of the law, and out of the king's protection. When a person is restored to the king's protection, he is *inlawed* again.

Outlawry (*utlagaria*). The being put out of the law. The loss of the benefit of a subject, that is, of the king's protection, for contempt in wilfully avoiding the execution of the process of the king's court. The maxim applicable to outlaws is "Let them be answerable to all, and none to them." Accordingly any person outlawed is *civiliter mortuus*. He can hold no property given or devised to him, and all the property which he held before is forfeited. He can neither sue on his contracts, nor has any legal rights which can be enforced; while at the same time, he is personally liable upon all causes of action. He can, however, bring actions *in autre droit*, as executor, administrator, &c., because in such actions he only represents persons capable of cotracting, and under the protection of the law. Outlawry has long been obsolete in civil proceedings. In criminal proceedings it is but little used, but is formally kept alive by 33 & 34 Vic. c. 23, which, while abolishing forfeiture for felony, expressly provides that nothing therein shall affect the law of forfeiture consequent on outlawry.—*Wharton*.

Out of court. He who has no legal status in court is said to be out of court, *i. e.*, he is not before the court. Thus, when the plaintiff in an action, by some act of omission or commission, shows that he is unable to maintain his action, he is frequently said to put himself out of court. Sometimes a person who is out of court is said to have no *locus standi*.—*Brown*.

Outparters. Stealers of cattle or other things.

Outputers. Such as set watches for robbing any man or house.

Outriders. Bailiffs-errant employed by sheriffs or their deputies to ride to the extremities of their counties or hundreds with the more speed to summon men to the county or hundred court.

Outstanding legal estate. One vested in some person other than the one beneficially entitled to the property in question. Where a mortgage debt charged on real estate is paid off but no reconveyance of the estate is executed, then the legal estate (if the mortgage was a legal one) remains in the mortgagee and passes to his heirs or devisee, and may be conveyed even by his legal personal representative.—*Brown*.

Outstanding term. A term of years (that is, an interest for a definite period of time) in land, of which the legal estate was vested in some person other than the owner of the inheritance in trust for such owner. Such a term was said to *attend* or *protect* the inheritance, because it took priorty of any charges which might have been made upon the inheritance, of which the owner had no notice when he took his conveyance and paid his purchase money. But in such cases if the owner took an assignment of the term for himself, it would become merged and lost in the inheritance; and he would lose the benefit of its protection. But for the benefit of a *bona fide* purchaser provision was generally made for the "cesser of the term" when its purposes should be accomplished or satisfied. The protection afforded by these terms was abolished by the Satisfied Terms Act (8 & 9 Vic. c 112) which provided that such terms should for the future cease and determine, and become attendant upon the inheritance. This, in effect, abolishes outstanding terms. —*Moxley*. *See* ATTENDANT TERM.

Outsucken multures. Multures or payments of corn made by persons who *voluntarily* use a mill for the purpose of grinding corn, as opposed to tenants *bound* to do so by their tenure. *See* INSUCKEN MULTURES.

Ovelty. Ovealty. A kind of equality of service in subordinate tenures. *See* OWELTY.

Over. A gift or limitation *over* means, in conveyancing, one which is to come into existence on the determination of the preceding estate

Overcyted. Convicted of crime.

Overdue. Past the time of payment. A bill or note is said to be *overdue* so long as it remains unpaid after the time for payment is past.

Overhernissa. Contumacy or contempt of court.

Over-insurance. This is where the whole amount insured in different policies is greater than the whole value of the interest at risk.

Overman. Oversman. (*Sc. L.*) An umpire chosen by arbitrators.

Overreaching clause. Overreaching clause, in a re-settlement, is one which saves the powers annexed in the original settlement to the estate of the tenants for life, when it is intended that they should not be affected by any of the provisions of the re-settlement.—*Rawson*.

Overrule. To set aside the authority of a former decision.

Overs. Acts, deeds, or works. *Ovrages* or *ouvrages* are day's works.

Oversamessa. An ancient fine laid upon those who, hearing of a murder or robbery, did not pursue the malefactor; a forfeiture for contempt or neglect in not pursuing a malefactor.

Overseers of the poor. Persons appointed

yearly in each parish to levy rates for the relief of the poor, and to provide for them.

Overseer of a will. Formerly a person appointed by a testator to advice the executor.

Oversewenesse. *See* OVERHERNISSA.

Overt. Open.

Overt act (*opertum factum*). An open act, which by law must be manifestly proved. Some overt act is to be alleged in every indictment for high treason, such as for treason in compassing the death of the king, the providing arms to effect it, &c. And no evidence shall be admitted of any overt act that is not expressly laid in the indictment.—*Tomlins.* An overt act is an open act, as opposed to an intention conceived in the mind which can be judged of only by overt acts.

Overt word. An open, plain word, not to be mistaken or misunderstood.

See MARKET OVERT.

Overture. An opening; a proposal.

Owel. Equal.

Owelty. Equality. Where there is lord paramount, mesne, and tenant, and the tenant holds of the mesne by the same services that the mesne holds of the lord above him, this is called owelty of services.

Owlers. Persons that carried wool, &c., to the seaside by night, in order to be shipped off contrary to law.

Owling. The offence of exporting wool or sheep out of the kingdom by night.

Owner. The owner or proprietor of property is the person in whom (with his or her assent), it is for the time being beneficially vested, and who has the occupation, or control or usufruct of it, *e. g.*, a lessee is, during the term, the owner of the property demised. —*Stroud.*

Owner's risk. Goods carried at "owner's risk" means, at the risk of the owner, *minus* the liability of the carrier for the misconduct of himself or servants (*per* Bramwell, J., *Lewis* v. *G. W. Ry.*, 47 L. J. Q. B. 134; 3 Q. B. D. 195); and a stipulation that goods shall be carried "at owner's risk" only exempts the carrier from the ordinary risks of the transit, and does not cover the carrier's negligent delay (*Robinson* v. *G. W. Ry.*, 35 L. J. C. P. 123); even though less than the usual freight be charged (*D'Arc* v. *London and N. W. Ry.*, L. R. 9 C. P. 325).—*Stroud.*

Oxfild. A restitution anciently made by a hundred or county, for any wrong done by one that was within the same.

Oxgang. Oxgate. Fifteen acres of land, or as much as one ox can plough in a year.

Oyer. To hear. The ancient word for assizes.

Oyer and terminer (*audiendo et terminado*). A commission directed to the judges and other gentlemen of the county to which it is issued, by virtue whereof they have power to *hear* and *determine* treasons and all manner of felonies and trespasses.

Oyer of deeds and records. The hearing them read in court. Formerly a party suing upon or pleading any deed was bound to make *profert* of the same that is to bring it into court (*profert in curiam*), and the opposite party was entitled to crave *oyer* of the same, that is, to have it read aloud by the officer of the court, in order that the defendant might be made aware of its contents.

Oyez. Hear ye. The introduction to any proclamation or advertisement given by the public criers in Courts and elsewhere. It is pronounced O yes.

Oze or **Ozy ground** (*solum uliginosum*). Moist, wet and marshy land.

P

Paage (*paagium*). A toll for passage through another's land.

Package. Package, scavage, bailage and portage or porterage were duties charged in the port of London on goods imported and exported by aliens, or by denizens, being the sons of aliens.

Pact (*pactum*). A promise, contract, bargain, covenant.

Paction (*pactio*). A bargain or covenant.

Padder. A robber; a foot highwayman.

Pae bund. (*Ind.*) Literally, tied by the leg, or fettered. Incumbered; burdened, made liable. It does not seem to imply *sale* (*Lal Behari* v. *Habib*, 26 Cal. p. 171).

Paik. *See* PYKE.

Pains and Penalties. Acts of Parliament to attaint particular persons of treason or felony, or to inflict pains and penalties beyond or contrary to the Common Law, to serve a special purpose. They are in fact new laws, made *pro re nata*, and by no means an execution of such as are already in being.

Pairing off. A kind of system of negative proxies, by which a member of the House of Commons or other deliberative assembly, whose opinions would lead him to vote on one side of a question agrees with a member on the opposite side that they both shall be absent at the same time, so that a vote is neutralized on each side.

Pakki adat. (*Ind.*) A sort of agency in the Bombay Presidency. The following incidents attach to the *pakki adat* system:— (1) The *pakka adatia* has no authority to pledge the credit of the up county constituent to the Bombay merchant, and no contractual privity is established between the up-county constituent and the Bombay merchant; (2) The up-country constituent has no indefeasible right to the contract (if any) made by the *pakka adatia* on receipt of the order, but the *pakka adatia* may enter into cross contracts with the Bombay merchant either on his own account or on account of another constituent.

and thereby cancel the same ; (3) The *pakka adatia* is under no obligation to substitute a fresh contract to meet the order of his first constituent ; (4) The contract of the *pakka adatia* is one whereby he undertakes or guarantees that delivery should, on due date, be given or taken at the price at which the order was accepted, or differences paid ; in effect, he undertakes or guarantees to find goods for cash or cash for goods or to pay the difference (*Bhagwandas* v. *Kanji Deoji*, 7 Bom. L. R. 611 ; affirming, on appeal, *Kanji Deoji* v. *Bhagwandas*, 7 Bom. L. R. 57). *See* KACHHI ADAT.

Palagium. A duty paid to lords of manors for importing and exporting vessels of wine without any of their ports.

Palak. Palakaputra. (*Ind.*) An adopted son ; sometimes applied to a boy who has been bought of his parents and is considered as a slave. *See* DATTAKA.

Palatine. Possessing royal privileges. *See* COUNTY PALATINE.

Palla. (*Ind.*) Dower ornaments, usually given by the husband to the wife or her parents, before marriage. Dower ornaments deposited in contemplation of marriage (*Bai Vijkor* v. *Fakirbhai* (2 Bom. H. C., A.C., 317).

Panayam. (*Ind.*) A mortgage ; a pawn ; a pledge.

Panchayat. (*Ind.*) A jury of five ; a committee of five held in towns and villages to try all questions affecting caste, usages, and occupation. A native jury or court of arbitration, consisting of five persons, to whom civil causes are referred for investigation. Municipal questions are thus settled amongst the natives in India.

Pan-dan. Kharach-i-pandan. (*Ind.*) *Pandan* means a betel-box ; and *Kharach-i-pandan*, betel-box expenses. This is a personal allowance to the wife customary among Mehomedan families, fixed either before or after the marriage, and which, when the parties are minors, is arranged for between their respective parents and guardians. It stands on a different legal footing from the English pin-money. Ordinarily the money would be received and spent in the conjugal domicile, but the husband has hardly any control over the wife's application of the allowance, either in her adornment or in the consumption of the article from which it derives its name. The wife's refusal to live with her husband is by itself no ground for depriving her of the allowance, and the wife, though no party to the agreement, is entitled to proceed in equity to enforce her claim to the allowance, she being the only person beneficially entitled under it (*Nawab Khwaja Muhammad* v. *Nawab Husaini Begam*, 14 Cal. W. N 865, P. C. ; 7 All. L. J. 871 ; 8 M. L. T. 147 ; 12 Bom. L. R. 638 ; 12 Cal. L. J. 205 : 20 M. L. J. R. 614 ; 31 All. 410 , *Bazir Ali* v. *Hafiz*, 13 Cal. W. N. 153).

Pandects. A name given to the Digest of Roman Law, compiled by the order of Emperor Justinian. *See* DIGEST.

Pandit. (*Ind.*) A learned Brahman ; an interpreter of the Hindu Law.

Panel. Pannel. A schedule or page, as a panel of parchment, or a counterpart of an indenture. But it is used more particularly for a schedule or roll of parchment containing the names of such jurors as the sheriff returns to pass upon a trial. Empannelling a jury is nothing but entering them into the sheriff's roll or book, In Scotch Law, it means a prisoner or accused person in a criminal trial.

Pannage. Pawnage (*pannagium*). A right granted to the owners of pigs to go into the wood of the grantor of the right, and to allow the pigs to eat the acorns or beach mast which fell upon the ground. The food which swine feed on in the woods, as mast of beach, acorns, &c. Also the money taken by agistors for the same.

Pannellation. The act of empannelling a jury.

Pannierman. One who called the members in the Inns of Court to dinner, &c., and provided mustard, pepper and vinigar for the hall ; whence those who wait at table at the Inns are called *panniers*.

Paper. Paper includes vellum, parchment, or any other material on which an instrument may be written.—*Act II of* 1899 (*Stamp*), *s.* 2 (18).

Paper blockade. The state of a line of coast proclaimed to be under blockade in time of war, when the naval force on watch is not sufficient to repel a real attempt to enter.—*Wharton.* Opposed to a *good* blockade.

Paper books, in proceedings in writ of error, are copies of the proceedings delivered beforehand to the judges, together with notes of the points to be urged.

Paper credit. Credit given on the security of any written obligation purporting to represent property.

Paper money. Bank-notes, bills of exchange, and promissory notes.

Paper office. An ancient office in the palace of Whitehall where all the public papers, writings, matters of state and council, proclamations, letters, intelligences, negotiations of the king's ministers abroad, and generally all the papers and despatches that pass through the offices of the Secretaries of State are lodged and transmitted. Also an office or room in the Court of Queen's Bench where the records belonging to that Court are deposited ; sometimes called *paper-mill*.

Papists. Persons professing the popish religion, otherwise distinguished by the denomination of Roman Catholics.

Par. State of equality ; equal value. A term in exchange, where a man to whom a bill is payable receives of the acceptor just so

much in value, &c., as was paid to the drawer by the remitter. In exchange of money, par is defined to be a certain number of the pieces of coin of one country, containing in them an equal quantity of silver to that of another number of pieces of the coin of some other country. The par of the currency of any two countries means, among merchants, the equivalency of a certain amount of the currency of the one in the currency of the other, supposing the currencies of both to be of the precise weight and purity fixed by their respective mints.—*Tomlins.*

Paracium. The tenure between parceners, *viz.*, that which the youngest owes to the eldest without homage or service.

Parage (*paragium*). Equality of name, blood, or dignity, but more especially of land, in the partition of an inheritance between coheirs; more properly, however, an equality of condition among nobles, or persons holding by a noble tenure; thus, when a fief is divided among brothers, the younger hold their part of the elder by parage, *i. e.*, without any homage or service. Paragium was also commonly taken for the equal condition between two parties, to be contracted in marriage; for the old laws did strictly provide, that young heirs should be disposed in matrimony, *cum paragio*, with persons of equal birth and fortune, *sine disparagatione*, without disparagement. *See* DISPARAGEMENT. Also the portion which a woman may obtain on her marriage.

Paramount. The highest lord of the fee, of lands, tenements, or hereditaments. The word is used to denote a superior lord, as opposed to a mesne lord holding under him. As there may be a lord mesne, where lands are held of an inferior lord who holds them of a superior under certain services, so this superior lord is lord paramount. The king is said to be the chief lord, or lord paramount of all the lands in the kingdom.

Parapharnalia Paraphernalia. Those goods which a wife is entitled to, over and above her dower or jointure, after her husband's death. This includes furniture for her chamber and all the personal apparel and ornaments which she possesses, and which are suitable to her rank and condition of life.

Parasava. (*Hin. L.*) The son of a man by a concubine.

Parasynexis. (*Rom. L.*) A conventicle, or unlawful assembly.

Paravail (*per-avail*). Tenant paravail is the lowest tenant of the fee; or he who is immediate tenant to one who holds of another, *i. e.*, to a mesne lord. He is called tenant peravail because he is presumed to make *avail* or profit of the land for another. It is thus the reverse of *paramount*.

Parcel (*particula*). The legal term for a part. A small piece of land. A description of *parcels*, in a deed or conveyance, is a description of lands with reference to their boundaries, local extent, occupying tenants, &c., in order to its easy identification. See ss. 21 & 22 of Act XVI of 1908 (Registration).

Bill of parcels. An account of the items composing a parcel or package of goods, transmitted with them to a purchaser.

Parcel makers These were two officers in the Exchequer who formerly made the parcels or items of the escheators' account, wherein they charged them with everything they had levied for the king during the term of their office.

Parcenary. The tenure of land by parceners. The same as co-parcenary.

Parceners. The same as co-parceners. Those who hold an estate in co-parcenary.

Pardon (*pardonatio*). Forgiveness of a crime; remission of punishment. The remitting or forgiving of an offence committed against the king, and is either *ex gratia Regis*, or by course of law. Pardon *ex gratia Regis* is that which the king affords by virtue of his prerogative Pardon by course of law is that which the law in equity affords for a light offence; as casual homicide, when one kills a man having no such meaning. The power of pardoning offences is inseparably incident to, and is the most amiable prerogative of the Crown.

Pardoners. Persons who carried about the Pope's indulgences, and sold them to any who would buy them.

Parent (*parens*). A father or mother, but generally applied to the father. Parents have power over their children by the law of nature, and the divine law; and by those laws they must educate, maintain, and defend their children.—*Tomlins.*

Parenticide. One who murders a parent.

Pares. Peers; equals. Thus the various tenants of the same manor were called *pares curtis*, or *pares curiæ*, as being *equals* in attendance upon the lord's court.

Parganna. (*Ind.*) An administrative division of territory under Mogul empire, and thenceforward, a sub-division of a district, containing a varying number of villages.

Pariator. A beadle; a summoner to the courts of civil law.

Parish (*parochia*). A circuit of ground committed to the charge of one parson or vicar, or other minister having the cure of souls therein.

Parish apprentices. The children of parents unable to maintain them may by law be *apprenticed* by the guardians or overseers of their parish, to such persons as may be willing to receive them as apprentices. Such children are called parish apprentices.

Parish clerk. In evey parish the parson, vicar, &c, has a parish clerk under him, who is the lowest officer of the church. He is generally appointed by the incumbent. By custom, however, he may be chosen by the inhabitants.

Parish constable. A petty constable exercising his functions within a given parish.

Parish officers. Church wardens, overseers, and constables.

Parish priest. The parson; a minister who holds a parish as a benefice. If the predial tithes are appropriated, he is called *rector*; if impropriated, *vicar*.

Parishioner (*parochianus*). An inhabitant of a parish, who is lawfully settled there.

Park A large quantity of ground *inclosed* and privileged for wild beasts of chase, by the king's grant or by prescription. A place of privilege for wild beasts of venery, and other wild beasts of the forest and chase, who are to have a firm place and protection there, so that no man may hurt or chase them without license of the owner. To a park three things are required:—(1) a grant thereof; (2) inclosure by pale, wall, or hedge; and (3) beasts of a park, such as the buck, doe, &c. And where all the deer are destroyed, it shall no more be accounted a park, for a park consists of vert, venison and inclosure; and if it is determined in any of them, it is a total disparking. A park created without grant or prescription is called *nominative*. *See* CHASE.

Parkbote. To be quit of inclosing a park, or any part thereof.

Parker. A park-keeper.

Parliament. A solemn conference of all the estates of the kingdom, summoned together by the authority of the Crown, to treat of the weighty affairs of the realm. The constituent parts of Parliament are the Sovereign and the three estates of the realm *viz.*, the Lords Spiritual and Lords Temporal, who sit together with the Sovereign, in one house, and the Commons, who sit by themselves, in another.—*Moxley.*

Parliamentary agents. Persons (generally solicitors) professionally employed in the promotion of or opposition to private bills and otherwise in relation to private business in Parliament, for pecuniary reward. No person may act as an agent before the House of Commons until he has subscribed a declaration engaging himself to observe the rules of the House; nor may any member or officer of the House act as an agent.

Parliamentary committee. A committee of members of the House of Peers, or of the House of Commons, appointed by either House for the purpose of making inquiries, by the examination of witnesses or otherwise, into matters which could not be conveniently inquired into by the whole House.—*Wharton.*

Parochial. Belonging to a parish.

Parochian. A parishioner.

Parol. Parole. Anything done by word of mouth. The word is also applied to writings not under seal. The pleadings in an action were, when they were given *viva voce* in court, frequently termed the *parol*.

Parol agreements. Agreements by word of mouth. Also agreements in writing, but not under seal, since at common law, prior to the Statute of Frauds, there was no difference between an agreement by word of mouth and one in writing without seal.

Parol arrest. An arrest ordered by a justice of the peace, of one who is guilty of a breach of the peace in his presence.

Parol demurrer. The staying of proceedings in a real action brought by or against an infant, until the infant should come of age. Now abolished.

Parol evidence. Evidence given *viva voce* by witnesses, as opposed to that given by affidavit. Otherwise called *oral evidence*.

Parricide. He that kills his father.

Parson (*persona ecclesiæ*). The rector or incumbent of a parochial church, who has full possession of all the rights thereof. He is called parson (*persona*), because by his person the church, which is an invisible body, is represented; and he is himself a body corporate, in order to protect and defend the rights of the church, which he personates, by a perpetual succession. In a larger sense the word includes all clergymen having ecclesiastical preferment.—*Tomlins.*

Parson imparsonee (*persona impersonata*). The parson in complete and full possession of his spiritual benefice. *See* IMPARSONEE, INDUCTION.

Parson mortal (*persona mortalis*). The rector of a church instituted and inducted for his own life, as opposed to *persona immortalis*, *i. e.*, collegiate body, to whom a church might be for ever appropriated.

Parsonage (*personatus personagium*). A certain portion of lands, tithes and offerings, established by law, for the maintenance of the minister who has the cure of souls; the benefice of a parish. The word is generally used for the *house* set apart for the residence of the minister.

Partial insanity. Mental unsoundness always existing, although only occasionally manifest; in fact, monomania.

Partial loss. Otherwise called *average* loss. In marine insurance, this is one in which the damage done to the thing insured is not so complete as to amount to a *total loss*, either actual or constructive. In every such case, the underwriter is liable to pay such proportion of the sum which would be payable on total loss, as the damage sustained by the subject of insurance bears to the whole value at the time of insurance.—*Moxley.* *See* ABANDONMENT, AVERAGE.

Particular average. Every kind of expense or damage, short of total loss, which regards a particular concern, and which is to be borne by the proprietors of that concern alone. A loss borne wholly by the party upon whose property it takes place. *See* AVERAGE.

Particular averment. *See* AVERMENT.

Particular estate. That interest which is

granted or carved out of a large estate, which then becomes an expectancy either in reversion or remainder. An estate in land which precedes an estate in remainder or reversion, so called because it is a *particula*, or small part, of the inheritance. *See* REMAINDER.

Particularity. This is a defect in pleading, and consists either in pleading details where general allegations would suffice, or in pleading details in excess of what is sufficient where some amount of detailed allegation is required.—*Brown.*

Particular lien. A right of retaining possession of a chattel from the owner, until a certain claim upon it be satisfied. A lien upon a particular article for the price due or the labour bestowed upon that article. *See* LIEN.

Particular tenant. The tenant or holder of a particular estate.

Particulars of sale. At an auction, the particulars of the property which is to be sold, and the terms and conditions on which the sale is to take place. *See* CONDITIONS OF SALE.

Particulars of the plaintiff's demand. A detailed statement by a plaintiff of the items of his claim, which the plaintiff, in every suit for money due on the most ordinary causes of action, furnishes to the defendant together with his declaration, unless such particulars have been specially endorsed on the writ of summons.—*Mozley.*

Parties. Persons jointly concerned in any act; litigants. Persons who voluntarily take part in anything, in person or by attorney; as the parties to a deed. Persons required to take part in any proceeding, and bound thereby, whether they do so or not; as the defendants in a suit or action. One of several owners in joint tenancy, in coparcenary, or in common. Parties to an instrument are distinguished as being of the first part, second part, and so on.

Parties and privies. *Parties* to a deed or contract are those with whom the deeds or contract is actually made or entered into. By the term *privies*, as applied to contracts, is frequently meant those between whom the contract is mutually binding, although both are not literally parties to such contract. Thus, in the case of a lease, the lessor and lessee are both parties and privies, the contract being literally made between the two, and also being mutually binding; but if the lessee assign his interest to a third party, then a privity arises between the assignee and the original lessor, although such assignee is not at all a party to the original lease.—*Brown.* *See* PRIVIES.

Partition (*partitio*). The act of dividing. A dividing of land held in joint tenancy, in coparcenary, or in common, between the parties entitled thereto; so that the estate in joint tenancy, coparcenary, or common, is destroyed, and each party has henceforth an undivided share.

There is two-fold application of the word partition, *viz.*, a division of a right in a joint property, or the division of the property itself by metes and bounds (*Narayan Balaji* v. *Pandurang*, 12 Bom. H. C. R. p. 155).

For the purpose of the Stamp Act, instrument of partition means any instrument whereby co-owners of property divided or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court, and an award by an arbitrator directing a partiton —*Act II of* 1899 (*Stamp*), *s.* 2 (15).

Partner Partaker; sharer; one who has part in anything; associate.

Partnership. This is where two or more persons agree to carry on any business or adventure together, upon the terms of mutual participation in its profits and losses. It is generally constituted by a deed the provisions of which are usually denominated *articles of partnership.*—*Mozley.*

Partnership is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.—*Act IX of* 1872 (*Contract*), *s.* 239.

Firm. Persons who have entered into partnership with one another are called collectively a firm.—*Ibid.*

In the *absence of any contract to the contrary*, the relations of partners to each other are determined by the following rules.—(1) All partners are joint owners of all property originally brought into the partnership-stock, or bought with money belonging to the partnership, or partnership-property. The share of each partner in the partnership-property is the value of his original contribution increased or diminished by his share of profit or loss. (2) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership. (3) Each partner has a right to take part in the management of the partnership-business. (4) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business. (5) When differences arise as to ordinary matters connected with the partnership business the decision shall be accordingly to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made except with the consent of all the partners. (6) No partner can introduce a new partner into a firm without the consent of all the partners (7) If, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members. (8) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time. (9) Where a partnership has been entered into for a fixed term, no partner can, during such

term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court. (10) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.—*Ibid.*, s. 253.

A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself constitute the lender a partner, or render him responsible as such.—*Ibid.*, s. 240.

In the absence of any contract to the contrary, property left by a retiring partner, or the representatives of a deceased partner to be used in the business, is to be considered a loan within the meaning of the above section. —*Ibid.*, s. 241

No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall, of itself render such servant or agent responsible as a partner therein, or give him the rights of a partner.—*Ibid.*, s. 242.

No person being a widow or child of a deceased partner of a trader, and receiving by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.—*Ibid.*, s. 243.

No person receiving by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the good will of such business shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities —*Ibid.*, s. 244.

A person who has by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm. —*Ibid.*, s. 245.

Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons, who, on the faith thereof, give credit to the partnership.—*Ibid.*, s. 246.

Although a right to participate in the profits of trade is a strong test of partnership, and there may be cases where, from such participation alone, it may, as a presumption not of law, but of facts be inferred, yet whether that relation does or does not exist must depend on the real intention and contract of the parties. To constitute a partnership the parties must have agreed to carry on business and to share profits in some way in common; but where a contract is entered into between partners and a third person, for the protection of that person as a creditor, whereby it is agreed that he shall receive in consideration of advances commission on the net profits of the partnership-business, and large powers of control over the business are given to him, but no power to direct transactions, the court, if satisfied that the contract was one of loan and security, will not interpret it as constituting a partnership.—*Mollwo, March* v. *Court of Wards* (10 B. L. R., P. C., 312).

It is the *carrying on* of a business, and not an *agreement* to carry it on, which is the test of partnership. Hence, where the carrying on of the business of a partnership has already commenced, heavy liabilities have already been incurred, and some expenditure has been made, the mere delay in the formal execution of the deed of partnership is immaterial (*Lakshmishankar* v. *Motiram*, 6 Bom. L. R. 1106).

The right to control the property, the right to receive the profits, and the liability to share in losses are the elements of partnership. Participation in profits is no conclusive evidence of the existence of a partnership, but it is one of the circumstances, and a very strong one, which is to be taken into consideration for the purpose of seeing whether or not a partnership exists (*Vadilal* v. *Khushal*, 4 Bom. L. R. 968; 27 Bom. 157).

Part-owners. Persons who have a share in anything, especially those who have an interest in a ship. Part-ownership must always be distinguished from partnership. For example, the real estate of partners is treated as personal estate and is distributable accordingly, but the real estate of part-owners continues real estate, and is descendible accordingly. Also, one co-owner is not of necessity the agent of the other or others, whereas a partner necessarily is.—*Brown.*

Part-payment. *See* PAYMENT.

Party structure. A structure separating buildings, stories, or rooms which belong to different owners, or which are approached by distinct staircases or separate entrances from without, whether the same be a partition, arch, floor, or other structure.—*Mozley.*

Party wall. A wall that separates one house from another. A wall adjoining lands or houses belonging to two different owners. The common use of such a wall by the adjoining owners is *prima facie* evidence that it belongs to them in equal moieties as tenants in common.

Parwana. (*Ind.*) An order; a written precept or command, a letter from a man in power to a dependant; a custom house permit or pass; an order for the possession of an estate or an assignment of revenue; a warrant; a license; a writ; a paper of permission from a zemindar to a cultivator to take up lands, leaving the rent to be subsequently settled; a royal patent; a pass; a permit.

Paschel rents. Rents or annual duties payable by inferior clergy to the bishop or archdeacon at their Easter visitation.

Pascuage (*pascuagium*). The grazing or pasturage of cattle.

Pasnage. Pathnage in woods. Money taken for feeding hogs. *See* PANNAGE.

Pass. To bring or come into force; as the passing of an act of parliament, &c. The word also means to be conveyed by deed, will, or other instrument of conveyance, it being used of the subject matter of the conveyance; thus, it is often a question whether such an estate *passes* by a clause in a deed or will by which property is conveyed, meaning, whether such an estate is comprised in the property so conveyed.

Pass-book. *See* BANK-BOOK.

Passage (*passagium*). A way over water. *Passage* is properly over water, as *way* is over land. It relates to the sea and great rivers.

Passage Court. An ancient court of record in Liverpool, originally called the Mayor's Court of Pays Sage, but now usually called the Court of the Passage of the Borough of Liverpool.

Passater. He who has the interest or command of the passage of a river, or the lord to whom a duty is paid for passage.

Passing accounts. When an auditor appointed to examine into any accounts certifies to their correctness, he is said to *pass* them, *i. e.*, they pass through the examination without being detained or sent back for inaccuracy or imperfection. And the accounting party himself is also said to *pass* his accounts when he obtains the Court's approval of them. —*Brown.*

Passing ticket. A kind of permit, being a note or cheque which the toll-clerks on some canals give to the boatmen, specifying the lading for which they have paid toll.

Passive debt. A debt upon which no interest is payable, as distinguished from *active* debt, *i. e.*, a debt upon which interest is payable.

Passive trust. A trust in which the trustee has no active duty to perform.

Passive use. A permissive use.

Passport. A license to *pass* a *port* or haven. A license for the safe passage of any man from one place to another, or from one country to another.

Pasturage and herbage. A right of common pasturage and herbage only authorizes taking what can be taken by the mouth or bite of cattle, and not to cut or carry away any part of the growth of the soil (*De la Warr* v. *Miles*, 50 L.J. Ch. 754, 17 Ch. D.535).—*Stroud.*

Pasture. Any place where cattle may feed; also feeding for cattle. The right of grazing cattle. It includes both the herbage and the leaves, mast, &c., of trees. It may be either *several*, *i. e.*, excluding the owner's right; *common*, *i. e.*, exercised together with him; or seignorial.

Pastus. The procuration or provision which tenants were bound to make for their lords at certain times, or as often as they made a progress to their lands; this, in many places, was turned into money.—*Tomlins.*

Pat. (*Ind.*) The second marriage of a wife or widow.

Patel. (*Ind.*) The head man of a village; he is head of the police, and acts to a limited extent as Magistrate.

Patent. *See* LETTERS PATENT.

Patent ambiguity. A doubt apparent upon the face of an instrument. *See* AMBIGUITY.

Patent rights. A patent right is a privilege granted by the Crown (by letters patent) to the first inventor of any new manufacture or invention, that he and his licensees shall have the sole right, during a fixed period, of making and vending such manufacture or invention.—*Underhill on Torts.*

Subject to the provisions of the Patent and Designs Act II of 1911, a patent granted under the Act confers on the patentee the exclusive privilege of making, selling, and using the invention throughout British India, and of authorizing others so to do, and the term limited in every patent for the duration thereof is fourteen years from its date.—*Act II of* 1911, *ss.* 12 *and* 14.

Letters patent are void and of no effect if one or more of the five following conditions are absent, *viz.*, (1) the subject of the patent must be a manufacture; (2) it must be a new invention; (3) the patentee or one of the patentees (where there are more than one) must be the true and first inventor; (5) the subject of the patent must be of general public utility, (5) a complete specification (*i. e.*, a sufficient description of the nature of the invention and the mode of carrying it into effect, so as to enable ordinary skilful persons to practise and use it at the end of the term for which the patent is granted) must be filed within the time prescribed therefor.—*Underhill on Torts.*

The Inventions and Designs Act (II of 1911), s. 26 is to the same effect, and imposes one more condition that the specification should not contain a wilful or fraudulent mis-statement.

(1) *Manufacture.* A manufacture, according to the derivation of the word, means some article made by hand; but this is hardly the sense in which it is used above The word manufacture denotes either a thing made which is useful for its own sake and vendible as such, as a medicine, a stove, a telescope, and many others; or an engine or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article, or some other useful purpose; or a new process to be carried on by known implements or elements, acting upon known substances, and ultimately producing some other known substances, but in a cheaper or more expeditious manner, or of a better or more useful kind.—*Underhill on Torts.*

Manufacture includes any art, process, or

manner of producing, preparing or making an article, and also any article prepared or produced by manufacture.—*Act II of* 1911, *s.* 2 (10.)

(2) *Newness of manufacture or invention.* The prior knowledge of an invention, to avoid a patent, must be such knowledge as will enable the public to perceive the very discovery and to carry the invention into practical use. Thus, a new combination of purely old elements is a novel invention, because the public could not have perceived the combination from the separate parts. On the other hand, the mere application of a known instrument to purposes so analogous to those to which it has been previously applied as to at once suggest the application, is no ground for a patent. —*Underhill on Torts.*

An invention shall be deemed a new invention if it has not, before the date of the application for a patent thereon, been publicly used in any part of British India, or been made publicly known in any part of British India. The public use or knowledge above referred to shall not be deemed to be a public use or knowledge, if the knowledge has been obtained surreptitiously or in fraud of the inventor, or has been communicated to the public in fraud of the inventor, or in breach of confidence; provided that the inventor has not acquiesced in the public use of his invention, and that, within six months after the commencement of that use he applies for a patent.—*Act II of* 1911, *s.* 38.

(3) *True and first inventor.* If the invention has been communicated to the patentee by a person in this county, he cannot claim to be the true and first inventor; but if he has acquired the knowledge of the invention abroad, and introduces it here, the law looks upon him as the true and first inventor (*Lewis* v. *Marling*, 10 B. & C. 22; *Marsden* v. *Saville St. Co.*, L. R., 3 Ex. D. 203). And so if the invention has been discovered before, but kept secret by the inventor, it does not render the patent of a subsequent inventor of it invalid; for it is new so far as the public are concerned.—*Underhill on Torts.*

(4) *General public utility.* The community at large must receive some benefit from the invention. The reason of this condition is obvious, for an useless invention not only does not merit the premium of a monopoly, but what is worse, prevents other inventors from improving upon it. Thus if one produces old articles in a new manner, such new way must, in some way, be superior to the old method, in order to support a patent; for otherwise the old method is as good as the new; but the court construes such an invention very strictly, as it looks very jealously at the claims of inventors seeking to limit the rights of the public in affecting a well-known object. If the article is produced at a cheaper rate by the new machine, or in a superior style, it is a good ground for a patent.—*Ibid.*

(5) *Specification.* As the object of letters patent is to give the benefit of an invention to the public at large, instead of allowing it to remain a secret in the hands of the inventor, it follows that the nature of the invention must be declared by the inventor. If the specification (as the description is called) be ambiguous, insufficient, or misleading, it will render the patent void (*Simpson* v. *Holliday*, L. R., 1 H. L. 315; *Savory* v. *Price*, Ry. & Mo. 1; *Hinks* v. *Safety Lighting Co.*, L. R., 4 Ch. D. 607; *Act II of* 1911, *ss.* 4 *and* 26 [*d*]) unless the ambiguity, variation, or imperfection be slight or immaterial (*Gibbs* v. *Cole*, 3 P. Wms. 255).—*Ibid.*

A man cannot have a patent for a principle alone, but he may take out a patent for a principle coupled with the mode of carrying the principle into effect, provided he has not only discovered the principle but invented some mode of carrying the principle into effect. Generally a patent protects the process, not the product; and hence where a patent is for a process for arriving at a known result any person may use another process for arriving at the same result without its being an infringement of the patent; but where a patent is for a new result or product coupled with an effectual process, the patentee is protected from the use of any process for the same result or product. A patentee can only claim to work out his process by means of materials known at the date of the patent; he cannot claim the use of materials discovered subsequently, and his specification will be construed with regard to this consideration.—*Collett on Torts.*

Infringement of a patent. A person infringes a patent by using, exercising, or vending the invention within the realm. —*Underhill on Torts.*

To manufacture abroad according to a process patented in India, and then import such substance for sale in India, is a violation of the patent. So also to import such an article, though not for *sale*, yet for the purpose of experiment or instruction, is a user for advantage and an infringement.

Patent of precedence. Letters patent granted to such barristers as the Crown thinks fit to honour with that mark of distinction, whereby they are entitled to such rank and pre-audience as are assigned in their respective patents, which is sometimes next after the Attorney-General, but more usually next after his Majesty's Counsel then being. These rank promiscuously with the King's Counsel, but are not the sworn servants of the Crown. —*Mozley.*

Patent rolls. Registers in which letters patent are recorded.

Patentee. One who has a patent; a person to whom a patent has been granted. The person for the time being entitled to the benefit of a patent.—*Act II of* 1911 (*Patents and Designs*), *s.* 2 (12).

Patibulary. Belonging to the gallows.

Patibulated. Hanged on a gibbet.

Patriarch. The chief bishop over several countries or provinces, as an archbishop is of several dioceses.

Patricide. One who has killed his father.

Patrimony. A hereditary estate, or right descended from ancestors. The legal endowment of a church or religious house was called ecclesiastical patrimony.

Patron. One who has the disposition of an ecclesiastical benefice. In Roman Law, he that has manumitted a servant, and thereby is justly accounted his benefactor and challengeth reverence and duty of him during his life; also an advocate or defender.

Patronage. The right of presenting to a benefice. A disturbance of a patronage is a hindrance or obstruction of a patron to present his clerk to his benefice.

Patta. Pottah. (*Ind.*) A deed of lease. Every rayat is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable, a patta or memorandum of the terms of tenancy containing the following particulars:—the quantity of land, and, where the fields have been numbered in a Government survey, the number of each field; the term for which the tenancy is to run; the amount of annual rent; the instalments in which the same is to be paid; and any special conditions of the lease. If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery.—*Act X of* 1859 (*Bengal Rent Recovery*), *s.* 2.—*Act XXII of* 1886 (*Oudh Rent*), *s.* 8.

A *patta* is a generic term embracing every kind of engagement between a zamindar and his tenant or ryots (*Babu Dhanpat Singh* v. *Gooman Singh*, 11 Moo. I. A. 433)

Kabulayat. Every person who grants a patta is entitled to receive from the person to whom the patta is granted a kabulayat or counterpart engagement in conformity with the terms of the patta.—*Act X of* 1859, *s.* 9.—*Act XXII of* 1886, *s.* 11.

Patta-chitta. A deed of lease; a written engagement given by the landlord to the tenant, also by the tenant to the landlord, agreeing to pay a certain amount of rent.

Pattadar. One who holds a patta for his lands; a lease-holder.

Pattani. A tenure by which the occupant holds of a zemindar a portion of the zemindari in perpetuity, with the right of hereditary succession, and of letting or selling the whole or part so long as a stipulated amount of rent is paid to the zemindar, who retains the power of sale for arrears, and is entitled to a regulated fee or fine upon any transfer.

Pattani talook. The word *pattani-talook* prima facie conveys an hereditary and transferable interest in land (*Tarini Charan* v. *John Watson*, 3 B. L. R., A. C., 487).

Paunarbhava. (*Hin. L.*) The son of a twice married woman.

Pauper. A person who, on account of his poverty, becomes chargeable to the parish. A person who, on account of his poverty, is admitted to sue or defend *in forma pauperis*. —*Mozley.*

Under the Code of Civ. Pro. V of 1908, Sch. I, O. XXXIII, R. 1, Explanation, a person is a *pauper* when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-appeal and the subject-matter of the suit.

Pauperies. (*Rom. L.*) Damage done by some domesticated animal during some sudden wilfulness occasioned, *e. g.*, by heat, for which the owner was liable. *See* NOXA.

Pavage. Money paid towards paving the streets or highways.

Pawn. (*pignus*). The transfer of a chattel as security for a debt; a bailment of goods by a debtor to his creditor, to be kept till the debt is satisfied; otherwise called a pledge. A mortgage of goods is in the Common Law distinguishable from a mere pawn. By a mortgage the whole legal title passes conditionally to the mortgagee; and if the goods be not redeemed at the stipulated time, the title becomes absolute at law, although equity allows a redemption. But in a pledge, a special property only passes to the pledgee, the general property remaining in the pledgor. Also, in the case of a pledge, the right of the pledgee is not consummated, except by possession; and, ordinarily, when that possession is relinquished, the right of the pledgee is extinguished or waived. But, in the case of a mortgage of personal property, the right of property passes by the conveyance to the mortgagee, and possession is not or may not be essential to create or support title.—*Wharton.* *See* PLEDGE.

A deposit or pawn is of moveable property, not of land (*Doorjun* v. *Chaina*, 2 N.-W.P.43).

Pawnage. *See* PANNAGE.

Pawn-broker. One who lends money on goods which he receives upon pledge. *See* BROKER.

The mere taking of goods as security for money lent would not make the lender a pawn-broker. To show that a person comes within the definition of pawn-broker (s. 172 of the Contract Act IX of 1872), it must be proved that he carries on the business of lending money on the security of goods pledged to him, and that he holds himself out to lend money on such security and is in the habit of doing so. In India as the English law on the subject of pawning and pawnbrokers is not applicable. But Ch. IX of the Contract Act is the law in force in India (*King-Emperor* v. *Kanappa Chetty*, 4 L. B. R. 8; 6 Crim. L. J. 118).

Pawnee The person with whom a pawn is deposited.

Pawner. Pawnor. The person depositing a pawn.

Payee. The person named in an instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the *payee.—Act XXVI of* 1881 (*Nego. Instr.*), *s.* 7.

Paymaster-General A public officer whose duties consist in the payment of all the voted services for the army and navy, and all charges connected with the naval and military expenditure. He likewise makes payments for the civil services in England and for same in Scotland.—*Mozley.*

Payment. *Effect of payment of interest or principal on limitation.* When *interest* on a debt or legacy is, *before* the expiration of the prescribed period, paid *as such* by the person liable to pay the debt or legacy, or by his agent *duly authorized* in this behalf, or when part of the *principal* of a debt is, *before* the expiration of the prescribed period, paid by the debtor or by his agent *duly authorized* in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. Provided that, in the case of part payment of the *principal* of a debt, the fact of payment appears in the *handwriting* of the person making the same. Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of this section.—*Act IX of* 1908 (*Limitation*), *s.* 20.

Payment in due course means payment in accordance with the apparent tenor of the instrument, in good faith and without negligence, to any person in possession thereof, under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 10.

See APPROPRIATION OF PAYMENTS, SUSPENSION OF PAYMENT.

Peace (*pax*). This, in its general signification, is opposite to war or strife; but particularly, in law, it intends a quiet behaviour towards the king and his subjects. It is one of the prerogatives of the Crown to make war and peace.

Articles of the peace. Where a person says that his life is endangered through the hostility of some one, he may exhibit articles of the peace (being a formal statement of the danger) to the Court or a Magistrate, who will thereupon require the party informed against to give security to keep the peace. But the Court must be satisfied that there is a reasonable ground of fear.—*Brown.* *See* Act V of 1898 (Crim. Pro.), Chap. VIII, *See* SWEARING THE PEACE.

Bill of peace. A bill filed in Chancery for quieting litigation by a person threatened with a multiplicity of actions, all involving the same point. *See* BILL OF PEACE.

Breach of the peace. A violation of that quiet, peace, and security which is guaranteed by the laws for the personal comfort of the subject of the kingdom.

Clerk of the peace. An officer who acts as clerk to the Court of quarter sessions, and records all their proceedings.

Commission of the peace. A special commission under the Great Seal, appointing justices of the peace.

Peace of God and the Church (*pax Dei et ecclesiæ*), anciently used to signify that rest and cessation which the king's subjects had from trouble and suit of law between the terms, and on Sundays and holidays.

Peace of the King (*pax regis*). *Peace of the Queen* (*pax regina*). That peace and security both for life and goods which the king or queen promises to all the subjects or others taken into his or her protection.

Peculiar. A particular parish or church that has jurisdiction within itself, and exemption from that of an ordinary. All ecclesiastical causes arising within them are cognizable in the Court of Peculiars. *See* COURT OF PECULIARS.

Pecuniary causes. Causes cognizable in the Ecclesiastical Court which arise from the withholding ecclesiastical dues, or the doing or neglecting some act relating to the church whereby some damage accrues to the plaintiff.

Pecuniary legacy. A testamentary gift of money.

Pedage (*pedagium*). Money given for the passing by foot or horse through any country.

Pedigree. Genealogy; lineage; account of descent. The term pedigree embraces not only general questions of descent and relationship, but also the particular facts of *birth*, *marriage*, and *death*, and the *times* when, either absolutely or relatively, these events happened.—*Taylor on Evidence.*

Peer. An equal; one of the same rank; a member of the House of Lords.

Peerage. The dignity of the lords or peers of the realm.

Peerage case. A case in which a question of a right to that dignity is involved.

Peeress. A woman who has the dignity of peerage, either in her own right or by right of marriage. In the latter case she loses the dignity by a second marriage with a commoner.

Peers (*Pares*). Those who are empannelled in an inquest upon a man for convicting or clearing him of any offence for which he is called in question; because the custom of the realm is to try every man in such case by his peers or equals. The co vassals by whose verdict a vassal is condemned of felony. Those that are of the nobility of the realm

and lords of parliament. As every one of the nobility, being a lord of parliament, is a peer, or equal to all the other lords, though of several degrees, so the commons are peers to one another, although distinguished as knights, esquires, gentlemen, &c.

Peers of fees. The word peer denoted originally one of the same rank; afterwards it was used for the vassals or tenants of the same lord, who were obliged to serve and attend him in his courts, being equal in function; these were termed peers of fees, because holding fees of the lord, or because their business in court was to sit and judge, under their lord, of disputes arising on fees; but if there were too many in one lordship, the lord usually chose twelve, who had the title of peers, by way of distinction; whence it is said, we derive our common juries, and other peers.—*Cowel.—Tomlins.*

Peers of the realm (pares regni). The nobility of the kingdom, and lords of parliament; who are divided into dukes, marquises, earls, viscounts, and barons. The reason why they are called peers is, that notwithstanding a distinction of dignities in our nobility, yet in all public actions they are equal; as in their votes of parliament, and trial of any nobleman.—*Tomlins.* During bankruptcy peers are disqualified from sitting or voting in the House of Lords.

Pejoration. Deterioration.

Pelfe. Pelfre. Booty; also the personal effects of a felon convict.

Penal bill. An instrument formerly in use, by which a party bound himself to pay a certain sum of money, or to do certain acts, or in default thereof to pay a certain specified sum by way of penalty, thence termed a penal sum. These instruments have been superseded by bonds in a penal sum with conditions.—*Brown.*

Penal irritancy. (*Sc. L.*) Forfeiture by way of penalty.

Penal laws. Those laws which prohibit an act, and impose a penalty for the commission of it.

Penal servitude. A punishment which has superseded transportation beyond seas, but in all respects as to hard labour, &c., similar to it.

Penal statutes. Those which impose penalties or punishments for an offence committed; they are construed strictly in favour of the person charged with the offence. In actions on penal statutes, the penalties or forfeitures under them are generally made recoverable by the Crown, or the party aggrieved, or a common informer, as the case may be. This remedy is generally designated a penal action; or, where one part of the forfeiture is given to the Crown, and the other part to the informer, a *popular* or *qui tam* action.

Penal sum. A sum declared by a bond to be forfeited if the condition of the bond be not fulfilled. This is otherwise called the *penalty* of the bond. It is regarded in courts of equity as a security for the fulfilment of the condition of the bond. *See* PENALTY.

Penalty. Punishment; especially used of a pecuniary fine. Money recoverable by virtue of a penal statute. A sum named in a bond as the amount to be forfeited by the obligor in case he comply not with the conditions of the bond.

If the parties to a contract have, by the terms of their agreement, fixed upon a particular sum as payable in the event of a breach, the question arises, whether the sum so fixed ought to be regarded as a penalty or as an ascertained or liquidated sum, fixed and agreed on between the parties, and, therefore, the proper measure of the damages. The decision of the question (which is a question of law) does not depend so much upon the mere terms of the agreement, or the mere largeness or otherwise of the sum named, as upon the intention and object of the parties to be derived from a view of the whole contract. Where a certain gross sum of money is reserved in an agreement to be paid in case of nonperformance of such agreement, it is generally to be considered as a penalty, the legal operation of which is, not to create a forfeiture of that entire sum, but only to cover the actual damages occasioned by the breach of contract. And, notwithstanding that a sum may be so named, still, in an action on the bond, the court or jury will inquire what damages the plaintiff has sustained by breach of the condition, and the plaintiff cannot take out execution for a larger amount than the amount thus assessed. See Act IX of 1872 (Contract), s.74, as amended by Act VI of 1899, s. 4. The distinction between a penalty and a sum payable as liquidated damages is this, that the penal sum is generally or always double the amount of the debt secured by the bond, whereas liquidated or ascertained damages, as the name indicates, are intended to denote, and usually denote, the exact amount of the debt. *See* LIQUIDATED DAMAGES.

Ss. 73 and 74 of the Contract Act IX of 1872 are intended to get rid of the distinction between penalties and liquidated damages, and s. 74 as amended by Act VI of 1899 shows with sufficient clearness that a deposit, as such only, is not forfeited by any breach of contract. The "penalty" in this section means any provision intended to compel the performance of a contract, and hence includes a deposit (*per* Sankaran Nair, J., *Natasa* v. *Appavu*, 6 M. L. T. 334).

Penance. An ecclesiastical punishment which affects the body of the penitent, by which he is obliged to give public satisfaction by confession, or otherwise, to the church.

Pending. Hanging; undecided. An action or suit is said to be *pending*, when it is being tried or conducted in court, and not yet decided.

A cause is said to be pending in a court of justice, when any proceeding can be taken in it. That is the test. If you can take any proceeding, it is pending. Pending does not mean that it has not been tried. It may have been tried years ago. In fact, in the days of the old Court of Chancery, we were familiar with cases which had been tried fifty or even one hundred years before, and which were still pending (*per* Jessel, M.R., *In re Clagett's Estate*; *Fordham* v. *Clagett*, 20 Ch. D. 637, 653).

Penetration. A term used in criminal law, and denoting (in cases of alleged rape or adultery), the insertion of the male part into the female parts, to however slight an extent; and by which insertion the offence is complete without proof of emission. See Act XLV of 1860 (Penal Code), ss. 375 and 377.

Penitentiary houses. Prisons where criminals are confined to hard labour.

Pension. The payment of a sum of money; especially (1) A periodical payment for past services; (2) Annual payments to each Inn of Court by the members thereof; (3) Money paid to clergymen in lieu of tithes; (4) A payment made by one church, or the parson or vicar thereof, to the use of another, in virtue either of a prescription or of some ordinance or reservation made at the time of the endowment. An assembly of the members of the Society of Gray's Inn to consult of the affairs of the house.—*Mozley*

Pension list. The list of persons receiving pensions from the royal bounty.

Pension-writ. A peremptory order against a member of an Inn of Court who is in arrear for pensions and other duties.

Pensioners. A band of gentlemen so called, in attendance upon the king's person. Persons receiving payments from the Crown. Persons receiving periodical payments, especially for past services. Persons making periodical payments are sometimes so called.—*Mozley.*

Peon. (*Ind.*) A messenger; a porter, a police officer.

Peppercorn rent. A rent of a peppercorn, that is, a nominal rent. Rent is not an essential constituent in a lease; but instances of leases without rent are seldom or never met with; and, even where an actual valuable return is not payable, it is usual to indicate the relation of reversioner and tenant by reserving a peppercorn or other nominal rent.—*Mozley.*

Perambulation (*perambulatio*). A travelling through or over.

Perambulation of the forest. The surveying or walking about the forest, and the utmost limits of it, by justices or other officers thereto assigned, to set down and preserve the metes and bounds thereof.

Perambulation of parishes. This is made by the minister, church wardens, and parishioners, by going round the same once a year; and the parishioners may well justify going over any man's land in their perambulation, according to usage; and, it is said, may abate all nuisances in their way.

There is also a *perambulation of manors*; and a writ *de perambulatione facienda*, which lies where any encroachments have been made by a neighbouring lord, &c.; then, by the assent of the lords, the sheriff shall take with him the parties and neighbours, and make a perambulation, and settle the bounds. —*Tomlins.*

Perception of profits. The taking or receiving of profits.

Perdings. The dregs of the people, *i. e.*, men of no substance.

Perduellion. Treason.

Perdurable. As applied to an estate, it means lasting long, or for ever.

Peremption. A non-suit; also a quashing or killing. Loss, by acquiescence or the like, of the right of appeal.

Peremptory. Final and determinate, without hope of reviewing or altering.

Peremptory challenge. An arbitrary species of challenge to a certain number of jurors without showing any cause.

Peremptory day. A precise day when certain business, by rule of Court, ought to be spoken to; but if it cannot be spoken to then, the Court, at the prayer of the party concerned, will give a further day without prejudice to him

Peremptory mandamus. A mandamus to do a thing at once, directed to a person to whom a previous writ of mandamus has issued to do the thing in question, and who has made some excuse, either insufficient in law, or false in fact, for not doing it.—*Mozley.*

Peremptory paper. A Court paper containing a list of all motions, &c., which are to be disposed of before any other business.

Peremptory pleas or *Pleas in bar.* Pleas by a defendant tending to impeach the plaintiff's right of action, as opposed to what are called *dilatory pleas.* See DILATORY PLEA, PLEA.

Peremptory rule. A rule to show cause peremptorily on a given day.

Peremptory undertaking. An undertaking by a plaintiff to bring on a cause for trial at the next sittings or assizes, upon payment of costs; this is done where the plaintiff has been delayed on account of his witnesses, or the like.

Peremptory writ. A class of original writs not optional The peremptory writ was called a *si fecerit te securum.* It directed the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim. See OPTIONAL WRIT.

Perfecting bail. A phrase used to signify the completion of the proceedings whereby persons tendering themselves as sureties for the appearance of a party in court on a day

assigned are admitted in that capacity, when they have established their pecuniary sufficiency.—*Mozley.*

Perfect trust. An executed trust.

Performance. The doing wholly or in part of a thing agreed to be done. *See* SATISFACTION.

Plea of performance. A plea of performance in an action on a bond, covenant, or contract, is a plea by which the defendant alleges that he has satisfied the condition of the bond, or has performed the covenant or contract upon which he is sued.

Pergunnah. (*Ind.*) A small district or division of country containing several villages.

Perils of the sea. They are strictly the natural accidents peculiar to the water, but the law has extended this phrase to comprehend events not attributable to natural causes, as captures by pirates, and losses by collision, where no blame is attachable to either ship, or at all events to the injured ship.—*Wharton.* Policies of marine insurance include all fortuitous occurrences which are incident to navigation, and the extraordinary action of the winds and waves proximately causing loss or damage to the subject insured. If the damage or loss arises from no unusual cause, though the winds and waves may be concerned in it, the loss is to be attributed to wear and tear, for which the underwriters are not responsible.—*Mozley.*

Periphrasis. Circumlocution; use of many words to express the sense of one.

Perishable goods. Goods which decay and lose their value if not consumed soon, such as fish, fruit, and the like.

Perjury. Under the English law, this is defined to be a crime committed, when a lawful oath is administered by any who has authority, to a person in any *judicial* proceeding, who swears wilfully, absolutely and falsely, in a matter *material* to the issue or cause in question, by his own act or by the subornation of others. In some cases, a false oath taken not in judicial proceedings amounts to perjury. The corresponding offence under the Indian Penal Code is giving false evidence. *See* FALSE EVIDENCE.

Subornation of perjury. This is an offence in procuring a man to take a false oath amounting to perjury, who actually takes such oath.

Permanent tenure. Permanent tenure means a tenure which is heritable, and which is not held for a limited time.—*Act VIII of* 1885 (*Bengal Tenancy*), *s.* 3 (8).

Permissions. Negations of law, arising either from the law's silence, or its express declaration.

Permissive waste. The neglect of necessary repairs. *See* WASTE.

Permit. A license or warrant for persons to pass with and sell goods, on having paid the duties of customs or excise for the same. —*Tomlins.*

Permutation or Barter. The exchange of one moveable subject for another.

Pernancy. A taking or receiving.

Tithes in pernancy. Tithes taken, or that may be taken, in kind.

Pernancy of profits. The taking of profits. The king has a pernancy of the profits of the lands of an outlaw, in personal actions.

Pernor of profits. He who receives the profits of lands, &c. Thus, a *cestui que use* was said to be a *pernor of profits.* *See* USE.

Perpetual curate. A minister in holy orders, who is charged with the permanent care of a parochial church, which, although an appropriation, has no endowed vicar. He is entitled to emolument for his services.—*Wharton.*

Perpetual injunction. An injunction which finally disposes of the suit, and is indefinite in point of time. *See* INJUNCTION.

Perpetuating testimony. When evidence is likely to be irrevocably lost, by reason of a witness being old, or infirm, or going abroad before the matter to which it relates can be judicially investigated, equity will, by anticipation, preserve and perpetuate such evidence in order to prevent a failure of justice. If witnesses to a disputable fact are old and infirm, it is usual to file a bill in Chancery to perpetuate the testimony of those witnesses, touching a matter for which no suit is pending, and which cannot be immediately investigated in a Court of Law, where the evidence of a material witness is likely to be lost by his death, or departure from the realm, before the facts can be investigated; for, it may be, a man's antagonist only waits for the death of some of them to commence his suit.

Perpetuity. Unlimited duration. The settlement of an estate in tail so that it cannot be undone or made void. Exemption from intermission or ceasing, where, though all who have interest should join in a covenant, they could not bar or pass the estate. But if, by concurrence of all having interest, the estate tail may be barred, it is no perpetuity Perpetuity is odious in law, and destructive to the commonwealth; it would put a stop to the commerce, and prevent the circulation of the property of the kingdom. It is absolutely against the constant course of Chancery to decree a perpetuity, or give any relief in that case. An attempt by deed, will, or other instrument to control the devolution of an estate beyond the period allowed by law, is spoken of as an attempt to create a *perpetuity*, and the disposition so attempted to be made is void for remoteness, though in some cases the courts will, by operation of the *cypres* doctrine, give effect to the disposition to the extent permitted by law. *See* RULE AGAINST PERPETUITY.

Perpetuity of the king. The continuance, or the immortality of the king in his political

capacity. This is what is meant when it is said that the king never dies. The royal office is never without a living occupant, for on the decease of a reigning prince the royal office is supposed to be instantly filled by his successor, for all political purposes.

Perquisites. Things gotten by a man's own industry, or purchased with his own money, as opposed to things which come to him by descent. Something gained by a place or office over and above the stated wages. Profits accruing to a lord of a manor by virtue of his court baron, over and above the yearly profits of his land; also other things that come casually and not yearly, as fines of copyholds, heriots, amerciaments, escheats, waifes, estrays, forfeitures, &c.

Perquisitor. A searcher.

Person. The word is used variously as follows:—(1) A human being, whether male or female; (2) A human being capable of rights; (3) A character, as when we say "he appears in such a character"; (4) A corporation or legal person, otherwise called a fictitious person; (5) A parson, being *persona ecclesiæ*.—*Wozley.*

Person shall include any company or association or body of individuals whether incorporated or not.—*Act X of* 1897 (*General Clauses*), *s.* 3 (39).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (35).

Personable (*personabilis*). An old word signifying that a man was enabled to maintain a plea in Court, that is, to bring an action, *e. g.*, the defendant was judged *personable* to maintain the action, as opposed to one disabled to sue, as being an outlaw or personal enemy, &c.

Personal (*personalis*). Being joined with the substantives things, goods, or chattels, as things personal, goods personal chattels personal, signifies any moveable thing quick (*i.e.*, living) or dead. Anything connected with the person, as distinguished from that which is connected with land.

Personal actions. Personal actions include those which are brought for the recovery of goods and chattels, or for damages for breach of contract, or wrongs done to the person or property; they do not include actions for the recovery of land. The term is often used in a narrower sense to express an action for injury to the person, as for slander, assault, injury by accident, as distinguished from injury to property, and it is in this sense that it is said *actio personalis moritur cum persona*, a personal action dies with the person. Personal actions are divided into (1) actions *ex contractu* and (2) actions *ex delicto*. When the cause of action springs directly out of or is founded upon contract, the action will fall within the former of these classes and will be described as originating *ex contractu*; when the cause of action is founded upon a wrong independent of contract, it will fall within the latter of the above classes, and the action will be said to originate *ex delicto*.

Actions *ex contractu* are divisible into assumpsit, debt, detinue, covenant, account, and annuity.

Assumpsit. An action of assumpsit is founded upon a promise, express or implied, or upon a contract or agreement not under seal. Every contract executory imports in itself an assumpsit; for when one agrees to pay money, or to deliver anything, he thereby assumes or promises to pay or deliver it; and therefore when one sells any goods to another, and agrees to deliver them at a day to come, and the other in consideration thereof agrees to pay so much money at such a day, in that case both parties may have an action of debt, or an action *on the case on assumpsit*. A claim for a debt due upon simple contract would lie equally well in assumpsit as in debt.

Debt. Debt is the appropriate remedy where a specific and determinate sum of money is claimed. It lies to recover a sum certain or capable of being reduced to certainty by calculation, payable in respect of a direct and immediate liability by a debtor to a creditor. Debt, therefore, is not a form adapted to claims sounding in damages.

Detinue. The action of detinue is, as the term indicates, framed with a view to the recovery of personal chattels unjustly detained. Whenever money is deemed by the plaintiff an inadequate compensation for the loss to him of the chattel in respect of which he is suing, he may apply to the Court to order that execution shall issue for the return of the chattel detained, without giving the defendant the option of retaining such chattel upon paying the value assessed.

Covenant. Covenant lies (often concurrently with debt) for the recovery of damages for the breach of a covenant or contract *under seal*. A covenant is a contract under seal, whereby a party enters into an obligation either to do or to abstain from doing an act, or pledges himself to the truth of certain facts. A breach of covenant occurs wherever he who has entered into such a contract fails to carry it out according to the legal meaning and effect of the words which he has used.

Account. Account is a form of action which lies against a bailiff or receiver, for money which has come into his hands, and for which he is bound to account. The use of an action of account is where the plaintiff wants an account, and cannot give evidence of his right without it.

Annuity. The action of annuity is met with, though really, in the old reports. It was invented for the recovery of money payable by way of annuity, but has long been obsolete.—*Broom's Com. Law.*

For actions *ex delicto*, *see* TORT.

Personal chattels Things moveable, as goods, money, &c., as opposed to interests in land. *See* CHATTELS.

Personal covenants. *See* COVENANT.

Personal estate. The words 'personal estate'

shall extend to leasehold estates and other chattels real, and also to monies, shares of Government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein.—*Act XXV of 1838 (Wills), s.* 1.

Personal law. The law applicable to persons not subject to the law of the territory in which they reside, as opposed to territorial law.

Personal property. Property of a personal or moveable nature, as opposed to property of a local or immoveable character. It includes money, goods, leases for years, however long, and other chattels, not comprehended under the definition of real property, such as land, houses, and leases for lives, however short. *See* REAL AND PERSONAL PROPERTY.

Personal representatives. This phrase is used to denote the executors or administrators, who have the charge of the personal property of the deceased. *See* LEGAL REPRESENTATIVES.

Personal rights. The right of personal security, comprising those of life, limb, reputation, and liberty.

Personal service. *See* SERVICE.

Personal tithes. Tithes paid out of the fruits of personal labour, as by buying and selling, gains of merchandise, handicrafts, manual occupations, fisheries, &c. *See* TITHES.

Personality (*personalitas*). Said of an action when it is brought against the right person; as when we say, the action is in the personality, *i. e.*, it is brought against the right person, or the person against whom in law it lies.

Personality of laws. All laws concerning the condition, state, and capacity of persons, as distinguished from the *reality* of laws, which means all laws concerning property or things. Whenever foreign jurists wish to express that the operation of a law is universal, they compendiously announce that it is a personal statute; and whenever, on the other hand, they wish to express that its operation is confined to the country of its origin, they simply declare it to be a real statute.—*Wharton.*

Personalty. Personal property, as money, shares in a public company, cattle, furniture, leaseholds, as distinguished from *realty*, or real property, as freehold land or houses; that which relates to the person. Personalty is either *pure* or *mixed*. Pure personalty is personalty unconnected with land; mixed personalty is a personal interest in land, or connected therewith. *See* CHATTELS.

Action in the personalty. An action was said to be in the personalty when it was brought for damages out of the personal estate of the defendant.

Personation. Pretending to be some other particular person, whether existent or fictitious. *See* CHEATING BY PERSONATION.

Pertinents. (*Sc. L.*) Appurtenances.

Perturbatrix A woman who breaks the peace.

Perverse verdict. A verdict whereby the jury refuse to follow the direction of the judge on a point of law.

Pesage (*pesagium*). A duty paid for the weighing of merchandise and other wares.

Peshkar. (*Ind.*) An officer of revenue, inferior to the Tahsildar.

Peshkash. (*Ind.*) A present, particularly to Government, in consideration of an appointment, or as an acknowledgment for any tenure. Tribute, fine, quit rent, advance on the stipulated revenues. The first price of an appointment or grant of land. The fixed payment made to Government by zemindars.

Peter-pence (*denarii Sancti Petri*). An ancient levy or tax of a penny on each house throughout England paid to the Pope. It was called Peter-pence because collected on the day of St. Peter ad Vincula.

Peth. (*Ind.*) A duplicate of a hundi or bill of exchange, demanded from the drawer, when the original is lost. Such duplicate requires the drawee to pay the amount of the peth only if he has not already paid the amount on the original bill. The demand of a peth cannot be deemed to be equivalent to a notice of dishonour (*Megraj* v. *Gokaldas*, 7 Bom. H C., O. C., 137).

Petit jury. The same as petty jury.

Petit larceny. The same as petty larceny.

Petit serjeanty (*parva serjeantia*). A tenure whereby lands are held of the king by the service of rendering to him annually some small implement of war, as a bow, a sword, a lance, an arrow, or the like. The services of this tenure being free and certain, it is in all respects like free socage. No wardship of lands or body could be claimed by the king in virtue of petit serjeanty.—*Mozley* *See* GRAND SERJEANTY.

Petit treason (*parva proditio*). A lower kind of treason which might be committed by a servant killing his master, by a wife killing her husband, by an ecclesiastical person killing his superior, to whom he owes faith and obedience. The crime of petit treason is now abolished, and any killing which formerly amounted to petit treason now amounts to murder only.—*Mozley.* *See* TREASON.

Petition (*petitio*). A general signification for all kinds of supplications made by an inferior to a superior, especially one having jurisdiction and authority. Thus we speak of petitions to the King, petitions to Parliament, petitions to the Court of Chancery.

Cause petition. Ex parte petition. Petitions are either *cause* petitions, or petitions *ex parte*. The former are when the petitioner is a party to a suit to which the petition re-

lates, or at least derives a right or title from some such party, in which last case it may properly be termed both a *cause* and an *ex parte* petition united. But petitions exclusively *ex parte* are those which relate only to the petitioner, and where no issue exists.—*Tomlins.*

Petition in Chancery. An application addressed to the Lord Chancellor, or Master of the Rolls, stating the matters on which it is founded, put in the same manner as a bill, and concluding with a prayer for the specific order sought, or for such other order as the Lord Chancellor or Master of the Rolls shall think right.

Petition of course. Petition special. Petitions are either of course, or special. *Ex parte* petitions are always of the latter kind; cause petitions, of both. Cause petitions, *of course*, are for those matters of course which in general may also be obtained by motion of course for the ordinary purposes of forwarding a suit, such as for time to plead, answer or demur, for a commission, and such like. Special petitions, whether not in a cause but strictly *ex parte*, or in a cause and yet concerning a person who is not in it, as they always implicate more or less, or at least are always supposed so to implicate, the rights of others, besides the petitioner, are therefore never granted without being heard in Court or at the Rolls.—*Tomlins.*

Petition of right. A petition for obtaining possession or restitution of property, either real or personal, from the Crown, which suggests such a title as controverts the title of the Crown, grounded on the facts disclosed in the petition itself, in which case the petitioner must be careful to state truly the whole title of the Crown, otherwise the petition shall abate. As if a disseisor of lands dies without heir, and the Crown enters, the disseisee has remedy by petition of right.—*Mozley.*

Petition to Parliament. A written address to the House of Lords or the House of Commons, concluding with a prayer.

See TUMULTUOUS PETITIONING.

Petitioning creditor. A creditor who petitions that his debtor may be adjudicated bankrupt.

Petitory actions. (*Sc. L.*) Those in which the plaintiff seeks for a decree that something should be done by the defendant.

Pettifogger. A petty attorney or lawyer. A dishonest lawyer in a mean way of business.

Petty. Small, inferior.

Petty-bag office. The office belonging to the common law side of the Court of Chancery, out of which writs issued in matters wherein the Crown was mediately or immediately concerned; so called because the writs were kept originally in a little bag, *in parva baga*. The petty-bag office was also formerly used for suits for and against solicitors and other officers of the Court of Chancery.

Petty constables. Inferior officers in every town and parish, subordinate to the high constable of the hundred.

Pettyfogger. See PETTIFOGGER.

Petty jury. Twelve good and lawful men of a county impannelled by the sheriff for the trial of issues of fact in civil and criminal cases; so called in opposition to the grand jury. A jury in criminal cases who try the bills found by the grand jury. *See* GRAND JURY, JURY.

Petty larceny. Theft under the value of twelve pence, formerly distinguished from *grand* larceny, which was theft to a higher amount. The distinction is now abolished. *See* GRAND LARCENY, LARCENY.

Petty serjeanty. See PETIT SERJEANTY.

Petty sessions. The meeting of two or more justices for trying offences in a summary way under various Acts of Parliament empowering them to do so, for committing offenders for trial, for making orders in bastardy, hearing poor appeals, and other similar purposes.

Petty treason. See PETIT TREASON

Pew. An elevated place or balcony. A pulpit or reading desk. An enclosed seat in a church. The right to sit in a particular pew in a church arises either from prescription, pew being appurtenant to a messuage, or from a faculty or grant from the ordinary, who has the disposition of all pews which are not claimed by prescription. Pews in a church are somewhat in the nature of an heir-loom, and may descend by immemorial custom, without any ecclesiastical concurrence, from the ancestor to the heir.—*Tomlins.*

Phala-bhoga. (*Ind.*) Usufruct, receiving the profit or produce or any thing, enjoying the fruits.

Pharos. A watch-tower or sea mark. No man can erect a pharos, light-house, bacon, &c., without lawful warrant and authority.

Placle (*piaculum*). An enormous crime.

Picaroon A robber; a plunderer.

Piccage. Picage. Pickage (*piccagium*). Money paid for the breaking up of ground to set up booths, stalls or standings, in fairs; payable to the lord of the soil. *See* STALLAGE AND PICKAGE.

Pickery. Petty theft, stealing things of small value.

Picketing. The offence of posting persons outside a manufactory, or place of business, for the purpose of molesting or intimidating workmen engaged there.—*Rawson.*

Pick-lock. An instrument by which locks are opened without a key.

Pick of land. A narrow slip of land running into a corner.

Pick-pocket. A thief who steals by putting his hand privately into the pocket or purse of another.

Picle. Pickle (*pictellum*). A small piece of land inclosed with a hedge; a little close.

Piedpoudre Court *See* COURT.

Pierage. The duty for maintaining piers and harbours.

Pightel. A little inclosure. *See* PICLE.

Pignoration. Pawning or pledging.

Pilferer. One who steals petty things.

Pillery. Rapine; robbery.

Pillory A frame erected on a piller and made with holes and moveable boards, through which the heads and hands of criminals were put.

Pilot. One who has the government of a ship, under the master. An officer serving on board a ship during the course of a voyage, and having the charge of the helm and the ship's route; or a person taken on board at any particular place for the purpose of conducting a ship through a river, road or channel, or from or into a port.

Pilotage. The compensation of a pilot.

Pilotage authorities. Various bodies of persons in different parts of the kingdom, having powers and jurisdiction with regard to the appointment and regulation of pilots for the districts in which they respectively act.

Compulsory pilotage. This is where every ship in a certain water is obliged by law to employ a *qualified* pilot, *i. e.*, one licensed by a pilotage authority, if he offers his services.

Pimp tenure. A very singular and odious kind of tenure mentioned by old writers.

Pin money. An annual sum settled on a wife to defray her personal expenses in dress and pocket money.

Pinnage. Poundage of cattle.

Pinner. A pounder of cattle, a pound-keeper.

Pipe (*pipa*). A roll in the Exchequer, otherwise called the Great Roll, on which were taken down the accounts of debts due to the king. It was called a pipe because it was put together like a pipe.

Piquant A French word for sharp, made use of to express malice or rancour against any one.

Piracy. Robbery and depredation upon the high seas. In common law, piracy consists in committing those acts of roberry and depredation upon the high seas, which, if committed upon land, would have amounted to felony there; if committed by an alien, it was held to be felony; if by a subject, it was a species of treason. By statue law, the following offences are to be deemed piratical:—Hostilities by a natural born subject against any of His Majesty's subjects, under colour of a commission from a foreign power; the betrayal of his trust by a commander or other seafaring person; endeavouring to make a revolt on board ship; trading with known pirates, or fitting out a vessel for piratical purpose, &c. Piracy, by the law of nations, includes such piratical acts as are committed on board vessels, whose *de facto* possessors are not recognized by any sovereign power as the lawful owners thereof; also all unauthorized acts of private hostility committed at sea.—*Mozley.*

Piracy of works. The infringement of a copyright. An offence against the law of copyright or an author's right to his works.

Pirate. A person guilty of piracy. Pirates certainly take by force and not by stealth. A person to whose care the mole or pier of a haven was entrusted was sometimes so called. A sea-soldier.—*Mozley.*

Pirmurshid. (*Ind.*) An aged instructor. A family priest.

Pirotar. (*Ind.*) Allowance to Mehomedan sages. A particular description of lands held rent free, or assignments of the Government dues from particular lands engaged by such persons.

Pisacha. (*Hin. L.*) One of the disapproved forms of marriage. When the lover secretly embraces the damsel, either sleeping or flushed with strong liquor, or disordered in her intellect, that sinful marriage is called *Pisacha*, and is the basest of all forms of marriage. Now obsolete.

Piscary (*piscaria*; *privilegium piscandi*). A right or liberty of fishing in the waters of another person. *See* COMMON, FISHERY.

Pitching-pence. Money, commonly a penny, paid for pitching or setting down every bag of corn or pack of goods in a fair or market.

Pittance (*pietancia modicum*). A small repast of fish or flesh eaten with bread. Hence it signifies a small portion of anything

Pittridatta. (*Hin. L.*) A kind of woman's property given her by her father.

Pixing the coin. The ascertaining whether coin is of the proper standard. For this purpose resort is had to an ancient mode of inquisition called the *trial of the pyx*, before a jury of members of the Goldsmiths' Company, called the *pyx jury*. They ascertain whether the coin of the realm, manufactured at his Majesty's mint, is of the proper or legal standard.

Placard. An edict; a declaration; a manifesto. Also an advertisement or public notification.

Placeman. One who exercises a public employment, or fills a public station; one who lays himself out for the obtaining of public appointments.—*Wharton.*

Placitare. To plead.

Placitator. A pleader.

Placitory. Relating to pleas or pleading.

Plagiarist. Plagiary. One who publishes the thoughts and writings of another as his own.

Plagiary (*plagiarius*). A man-stealer.

Plaideur. An attorney who pleaded the cause of his client; an advocate.

Plainant. A plaintiff.

Plaint (*querela*). The statement in writing of a cause of action. The propounding or exhibiting of any action in writing. A private memorial tendered in open court to a judge, wherein the party injured sets forth his cause of action.

Plaintiff. He who presents a plaint; he who commences an action against another. He that sues or complains in an assize or action personal; the plaintiff in an assize or real action (now abolished) was generally called a demandant.

Plaintiff in error. A party who brings error, complaining of the judgment of the court below.

Plant. The fixtures, tools, machinery, and apparatus which are necessary to carry on a trade or business.

Plantation (*plantatio*; *colonia*). A place where people are sent to dwell; or a company of people transplanted from one place to another, with an allowance of land for their tillage. A district, settlement, or colony, dependent on a mother country, with whose inhabitants it was originally peopled.

Play-debt. Debt contracted by gaming.

Plea (*placitum*). That which either party alleges for himself in Court in a cause there pending to be tried. The defendant's answer to the declaration of the plaintiff in an action at common law. *See* PLEADING.

Pleas were devided into *common pleas*, relating to civil causes between man and man, and *pleas of the Crown*, relating to criminal prosecutions at the suit of the Crown.

At common law, pleas were divided into *dilatory pleas* and *peremptory pleas*, or which is nearly the same thing, *pleas in abatement*, and *pleas in bar*. Dilatory pleas relate to the jurisdiction of the Court, the suspension of the action, or the abatement of the writ or declaration. *See* DILATORY PLEA. Peremptory pleas are in bar of the action. The distinction between the two classes of pleas was, that the dilatory showed some ground for quashing the declaration; the peremptory, for defeating the action. *See* BAR, PLEAS IN SUSPENSION. A defendant now raises his defence in all actions in the High Court of justice by a *statement of defence*.

The word plea was also frequently used to signify suit or action. thus, *holding pleas* meant entertaining or taking cognizance of actions or suits.

Plead. To make an allegation in a cause, also to argue a cause in court

Plea of performance. *See* PERFORMANCE.

Plea of tender. *See* TENDER.

Plea side. The plea side of a Court meant that branch or department of the Court which entertained or took cognizance of *civil* actions and suits, as distinguished from its criminal or *Crown* side.

Pleader. One who pleads; one who draws pleadings.

Liability of pleader. By reason of the contract of employment between the parties, a solicitor, and in India, a vakeel, is bound to exercise ordinary diligence, and to employ a fair average amount of professional skill and knowledge; and he is liable to his client for damage from a breach of duty in not using such diligence and skill; as if he negligently or ignorantly conducts his client's suit or suffers him to enter into covenants and stipulations more onerous than usual without explaining to him the peculiar liability that will be incurred. But if the solicitor or vakeel can prove affirmatively that even his diligence would have been ineffectual, it is a bar to the action, unless loss has occurred independent of the necessary result of the suit or other proceeding. So, it is a fraud and breach of faith to the client, if a solicitor or vakeel, in any way, uses to the client's prejudice, the knowledge of the client's affairs which he acquired during the fiduciary relation between them (Evidence Act I of 1872, s. 126); and not only may he be made liable in an action for damages, but he may also be prevented, by injunction, from so using such knowledge. A solicitor retained to conduct a case has authority to compromise, unless expressly forbidden to do so, and so also has a counsel (*Jang Bahadur* v. *Shankar Rai*, 13 All. 272); and the compromise being *within* his *apparent general* authority, it binds his client though he dissented, unless such dissent was known to the other side (*Jagannathdas* v. *Ramdas*, 7 Bom. H. C., O. C., 79). But it is not competent to a pleader to enter into a compromise on behalf of his client without his express authority to do so (*Jagapati* v. *Ekambara*, 21 Mad. 274; *Mt. Sirdar Begum* v. *Mt. Izzat-ool-nissa*, 2 N. W. P. 149). But where the compromise extends to *collateral* matters, to matters quite *outside* the scope of the particular case in which counsel is engaged, in order to bind his client, it must be shown that he had given his counsel special authority to compromise upon the terms upon which the compromise was effected, and the other side cannot avail themselves of the position that they did not know that it had not been given; they are not entitled to assume, as in the case of an apparent or *general* authority, that it was given and was existing (*Nundo Lal* v. *Nisturini*, 27 Cal. 428). Generally the force of a solicitor's retainer ceases when judgment is recovered, but if there is evidence that the relation was continued the solicitor has still authority after judgment to compromise. There is, and can be, no contract between a barrister and his client. If the barrister acts in good faith, he is not liable to his client, he may be liable if he acts towards him with fraud, malice, or treachery, but the relation of counsel and client renders the parties mutually incapable of making an alleged contract of hiring or service concerning advocacy, whether before, or during, or after, litigation.—*Collett on Torts*. See also *Pallonji Merwanji* v. *Kallabhai Lallubhai* (12 Bom. 85).

A consent by a vakil of the party to a decree being made, binding property other than what the parties to the suit may have an interest in, is a consent to what is beyond the scope of the suit, and could be neither binding on the party, nor acted upon by the court (*Avul Khadar* v. *Andhu Set*, 2 Mad. H. C. R. 423.) The greatest caution should be exercised by the courts before acting upon statements out of the ordinary scope of the vakil's authority in the particular matter for which he was employed (*B. Venkataramanna* v. *Chavela*, 6 Mad. H. C. R. 127).

Pleading. Drawing the written pleadings in a suit or cause; the proceedings from the statement of claim to issue joined, *i. e.*, the opposing statements of the parties; also any part of these proceedings. Advocating a client's causg *viva voce* in court. Before the Judicature Acts, pleading in equity consisted of long statements of fact in 'bill' and 'answer'; while pleading at common law mainly consisted of short technical statements in *declaration* (by the plaintiff), *plea* (by the defendant), *replication* (by the plaintiff), *rejoinder* (by the defendant), *surrejoinder* (by the plaintiff), *rebutter* (by the defendant), *surrebutter* (by the plaintiff), the last four being rarely used. Under the Judicature Act, every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies, but not the evidence by which they are to be proved. *See* PLEADINGS.

Pleading shall mean plaint or written statement.—*Act V of* 1908 (*Cov. Pro.*), *Sch. I, O. VI, R.* 1.

Pleading issuably. Pleading such a plea as was calculated to raise a material issue either of law or of fact. *See* ISSUABLE PLEA.

Pleading over. This is where a party pleads without taking advantage, by demurrer or otherwise, of a defect in his adversary's pleading When a defendant in his pleadings passed by or took no notice of a material allegation in the declaration, he was said to plead over it. At the present day such a passing by would amount to an admission by the defendant of the truth of the allegation passed over, unless the allegation was purely a matter of law, or was the allegation of something impossible in law.—*Brown.*

Pleadings. The mutual formal altercations between the parties in a suit or action, with a view to the development of the points in controversy between them. The object of any system of pleading is that each side may be made fully aware of the questions that are about to be argued, in order that each may bring forward evidence appropriate to the issues (*Sayad Muhammad* v. *Fatteh Muhammad*, 22 Cal. 324; *Jacob* v. *Dossa Kalian*, 5 Sind. L.R. 192). The determination in a cause must be founded upon a case, either to be found in the pleadings, or involved in, or consistent with, the case thereby made (*Mylapore* v. *Yeo Kay*, 14 Cal. 801, P. C.; L. R. 14 I. A. 168).

Pleadings in Indian Courts must not be construed with the same strictness as in English Courts (*Natha Singh* v. *Jodha Singh*, 4 All. W. N. 140).

Delivery of pleadings. The mutual allegations of statements which are made by the plaintiff and the defendant in an action are written or printed and delivered between the contending parties, or to the proper officers appointed to receive them.

Pleas. Suits and actions (in the widest sense of these terms), which are divided into *pleas of the Crown* and *common pleas.*

Pleas of the Crown. These are suits in the king's name against offences committed against his Crown and dignity, that is to say, crimes and misdemeanours generally; so called, because the sovereign, in whom centres the Majesty of the whole community, is supposed by the law to be the person injured by every wrong done to that community, and is, therefore, in all cases, the proper prosecutor for every such offence.

Common pleas. Those that are held between common persons, *i. e.*, civil suits.

Buying of pleas. See MAINTENANCE.

See PLEA.

Pledge. The bailment of goods as security for payment of a debt or performance of a promise is called *pledge.* The bailor is in this case called the *pawnor.* The bailee is called the *pawnee.*—*Act IX of* 1872 (*Contract*), *s.* 172. Also the goods or chattels so pledged. A surety, bail, or hostage. *See* BAILMENT.

Pledge or pawn may be defined to be a bailment of goods to a creditor, as security for some debt or engagement. The pawnee is bound to use ordinary diligence in the care and safeguard of the pawn, so that if the thing pawned be lost, notwithstanding the exercise of such diligence, the pawnee may still resort to the pawnor for the amount of the debt secured by the pawn.—*Broom's Com. Law.*

A pawn is where goods or chattels are delivered to one as security for money borrowed of him by the pawnor; it is completed by delivery, and without delivery it would be an hypothecation only. Chattels, money, choses in action, shares and any valuable thing of a personal nature, may be pawned. The pledge need not be the property of the pledgor, and he is estopped from denying that he is the owner, so as to reclaim it without discharging the debt. The pledgee is also ordinarily estopped to deny the pledgor's title to redeem by setting up a right in another. Accessories and increments are pledged along with the principal thing, as the young of a flock of sheep. The second essential is the delivery of the pledge, either actual or constructive, as by transfer of a bill of lading, the key of a warehouse, &c.; without delivery it is only an hypothecation. Restitution of the pledge terminates the pledgee's title, unless the return was for a special purpose only. So, also, if

the pledgee voluntarily by his own acts place it beyond his power to restore the pledge, it is a waiver of his own interest, as where he agrees to let it be attached at the suit of an other Thirdly, the pledge must be by way of security for some debt or engagement, which may be either future or past, express or implied, and of any nature. Generally, the security is for the whole and every part of the debt or engagement.—*Collett on Torts.*

A contract of pledge will entitle the pledgee to sell without instructions from the pledgor. But, a contract creating only the relation of principal and agent and authorizing the agent to sell the principal's goods for commission with the latter's instructions would not authorize the agent to sell in contravention of the principal's directions (*Chelapati* v. *Surayya*, 12 M. L. J. R. 375).

Pledgee. One who receives a pledge; a pawnee.

Pledgery. Pleggery. Suretyship; an undertaking or answering for.

Pledges. Sureties which a plaintiff was formerly required to find, in order to prosecute an action.

Pledgor. One who offers a pledge; a pawnor

Plenarty. Fulness. Said of a benefice when full, or possessed by an incumbent; as opposed to *vacancy* or *avoidance*.

Plenary Full; complete. An ordinary proceeding through all its gradations and formal steps, as opposed to a *summary* proceeding.

Plenipotentiary. A person who has full power and commission to do anything.

Plevin. A warrant or assurance.

Plight. An old word signifying the estate held by any one in land; also the habit and quality thereof.

Affidavit of plight. See AFFIDAVIT.

Plough alms (*eleemosyna aratrales*). The ancient payment of a penny to the church from every plough land.

Plough-bote. A right to tenants to take wood to repair ploughs, carts and harrows, and for making rakes, forks, &c. Wood to be employed by tenants in making instruments of husbandry. See BOTE.

Plough land The same as a hide of land, which *see*.

Plough silver. Money formerly paid by tenants in lieu of the service of ploughing the lord's lands.

Pluralist. One who holds more than one ecclesiastical benefice.

Plurality (*pluralitas*). The having two, three or more ecclesiastical benefices.

Poach. To encroach upon another man's employment, practice or trade.

Poaching. Taking game by trespass. The unlawful destruction of game, especially by night. Also trespass by night on land in pursuit of game.

Pocket defendant. A defendant acting collusively with the plaintiff.

Pocket judgment. A statute merchant which was enforceable at any time after nonpayment on the day assigned, without further proceeding. *See* STATUTE MERCHANT.

Pocket-sheriff. A sheriff appointed by the sole authority of the King without the interposition of the Judges, not being one of the three nominated in the Exchequer.

Poinding. (*Sc. L.*) In the Law of Scotland, the taking of goods, &c., in execution, or by way of distress. It is defined to be the diligence (or legal process) which the law has devised for transferring the property of the debtor to the creditor in payment of his debt. It answers to the *distress* of the English law. It is of three kinds:—

Real poinding or *poinding of the ground.* This is the action by which a creditor, having a security on the land of his debtor, is enabled to appropriate the rents of the land, and the goods of the debtor or his tenants found thereon, to the satisfaction of the debt.

Personal poinding. This consists in the seizure of the goods of the debtor, which are sold under the direction of a court of justice; and the nett amount of the sales paid over to the creditor in satisfaction of his debt; or, if no purchaser appears, the goods themselves are delivered.

Poinding of stray cattle Seizure of cattle committing depredations on corn, grass or plantations, until satisfaction is made for the damage. This corresponds to the English process of distraining cattle *damage feasant.* —*Mozley.*

Poison. Under Bom. Act VIII of 1866 (Sale of Poisons), s 3 and Sch. A, the word poison denotes the poisonous drugs and deleterious substances specified below.—

Vegetable poisons—Aconite (*butchnag*), Cocculus Indicus (*kakmari, kakphul*), Datura (*dhatoora*), Henbane (*khorasani ajwan*), Nux-vomica (*khoochi a* and *kajra*), *Saint Ignatius' Bean* (*papeeta*), Calabar Bean.

Mineral poisons—White arsenic (*phutkya somul, Somul*), Red Arsenic (Realgar) (*Munseel*), Yellow Arsenic (Orpiment) (*hurtal*), Scheele's Green (Arsenic of Copper) (*Hirwa*), Schweinforth Green (Aceto-arsenite of Copper) (*Hirua*), Corrosive Sublimate (*ruskapoor*).

Police. The due regulation and domestic order of the kingdom, especially that part of it which is connected with the prevention and detection of crime.—*Mozley.*

Policy. The general principles by which a Government is guided in its management of public affairs; or the legislature in its measures. *See* PUBLIC POLICY.

Policy of assurance or *insurance.* An instrument by which one party, in considera-

tion of a premium, engages to indemnify another against a contingent loss. *See* COURT OF POLICIES of ASSURANCE, INSURANCE, MIXED POLICY, OPEN POLICY, TIME POLICY, WAGERING POLICIES.

Policy of a statute. The object or intention of a statute; sometimes distinguished from the *letter* of it.

Policy broker's general lien. *See* BANKERS' GENERAL LIEN.

Poligar. (*Ind.*) A chieftain or head of a tract of country.

Political liberty. The liberty from legal obligation, which is left or granted by a sovereign government to any of its subjects. Every supreme political government, by the laws which it makes, controls the actions of those subject to it; and political liberty is that choice or freedom of action to which such control does not extend.—*Austin.*

Poll. The process of giving and counting votes at an election. The place where polling takes place for the purpose of an election. A catalogue or list of persons. A register of heads. The act of registering votes at an election.

Polling. Counting heads; especially used of counting voters at an election.

Deed poll. *See* DEED.

Poll money. Poll silver. Poll tax. A tax formerly assessed by the head on every subject according to their respective ranks.

Challenge to the polls. Where one or more jurors are excepted against, it is called a challenge to the polls. *See* CHALLENGE.

Pollards. Pollengers. Such trees as have been usually cropped, therefore distinguished from timber trees.

Polliam. Poligar. (*Ind.*) A *Polliam* is in the nature of a *Raj*. It may belong to an undivided family, but it is not the subject of partition; it can be held only by one member of the family at a time, who is styled the *Poligar*, the other members of the family being entitled to maintenance or allowance out of the estate (*Kachi Kalyana Rengappa* v. *Kachi Yuya Rengappa*, 2 Cal. L.J. 231, P.C.; 10 Cal W. N. 95; 15 M. L. J. R. 312; 2 All. L. J. 845; 7 Bom. L. R. 907).

Pollicitation (*Rom. L.*) A promise before it is accepted.

Polyandry. The state of a woman who has several husbands. Plurality of husbands.

Polygamy (*polygamia*). Plurality of wives. The having more wives or husbands.

Polygarchy. That kind of government which is in the hands of many.

Pondus. Poundage, *i. e.*, a duty paid to the Crown according to the weight of merchandise.

Pontage (*pontagium*). A toll or tax for the maintenance or repair of bridges. Also a toll taken for this purpose of persons or merchandise that pass over rivers, bridges, &c.

Poor laws. The laws relating to the relief of the poor.

Poor rate. The rate levied by church wardens and overseers for the relief of the poor.

Populace. Poulacy. The vulgar; the multitude.

Popular action. *See* ACTIONS POPULAR.

Porrecting. Producing for examination or taxation, as porrecting a bill of costs, by a proctor.

Port (*portus*). A harbour or place of shelter, where ships arrive with their freight, and customs for goods are taken.

It includes also any part of a river or channel in which the Indian Ports Act is for the time being in force.—*Act XV of* 1908 (*Indian Ports*), *s.* 3 (4).

Portatica. Port duties charged on ships.

Porter. An officer who carries a white or silver rod before the justices in eyre. Also a person employed to carry messages, parcels, &c.

Porterage. A duty formerly paid at the custom house to those who attended the water-side, and belonged to the package office; these porters had tables set up, ascertaining their dues for landing of strangers' goods, and for shipping out the same.—*Tomlins.*

Porteur of a bill. (*Sc. L.*) The holder or payee of the bill.

Portgreve. Portreve. Portreeve (*portgrevius*; *portus prafectus*). A magistrate in certain sea coast towns. The chief magistrate of London was so called in the time of William the Conqueror.

Portion. That part of a person's estate which is given or let to a child. The word is especially applied to payments made to younger children out of the funds comprised in their parents' marriage-settlement and in pursuance of the trusts thereof. *See* RAISING PORTIONS.

Portioner (*portionarius*). Where a parsonage is served by different ministers alternately, the ministers are called portioners; because they have but their portion, or proportion of the tithes or profits of the living. The term is also applied to that allowance which a vicar commonly has out of a rectory or impropriation.—*Tomlins.*

Portmen. The burgesses of Ipswich. Also the inhabitants of the Cinque Ports.

Portmote. Portmoot. A court kept in haven-towns, or ports. Portmote is said to be held not only in port towns, as generally rendered, but in inland towns, the word port in Saxon signifying the same with city.

Portsale. A public sale of goods to the highest bidder; also a sale of fish as soon as it is brought into the haven.

Portsoka. Portsoken. The suburbs of a city, or any place within its jurisdiction.

Positive. Actual; direct; as opposed to negative.

Positive easement. *See* EASEMENT.

Positive evidence. Proof of the very fact; opposed to negative evidence.

Positive law. This is properly synonymous with law properly so called. But in practice the expression is confined to laws set by a sovereign to a person or persons in a state of subjection to its author; that is, to laws enacted by sovereign states, or by their authority.—*Austin.* Used in contradistinction to *moral* or *natural* law. Positive law is also distinguished from adjective law, which relates to the law of procedure only.

Possession (*possessio*; *quasi pedis positio*). The state of owning or having a thing in one's own hands or power. The exercise of the right of ownership, whether rightfully or wrongfully. The thing possessed. Possession is either *actual*, where a person actually enters into lands or tenements descended or conveyed to him; or *in law*, when lands, &c., are descended to a man, but he has not actually entered into them. Thus we speak of estates in possession as opposed to estates in remainder or reversion. Into the former a man has a right to enter at once; of the latter the enjoyment is dalayed.

The general rule is that possession constitutes a sufficient title against every person not having a better title. He that hath possession of lands, though it be by disseisin, hath a right against all men but against him that hath right, for, till some act be done by the rightful owner to divest this possession and assert his title, such actual possession is *prima facie* evidence of a legal title in the possessor, so that, speaking generally, the burden of proof of title is thrown upon any one who claims to oust him; this possessory title, moreover, may, by length of time and negligence of him who had the right, by degrees ripen into a perfect and indefeasible title.

Apparent possession is a species of presumptive title where land descended to the heir of an abator, intruder, or disseisor, who died seised.

Naked possession is mere possession, without colour of right.

Constructive possession. Possession through an agent, tenant, or servant.

When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of the Indian Penal Code. —*Act XLV of* 1860 (*Penal Code*), *s.* 27.

Possession money. The man whom the sheriff puts in possession of goods taken under a writ of *fieri facias* is entitled whilst he continues so in possession to a certain sum of money *per diem*, which is thence termed possession money.

Writ of possession. The process of execution in an action of ejectment. A writ giving a person possession of land.

Possessory action. The action of trespass, the gist of which is the injury to the possession; a plaintiff, therefore, cannot maintain it, unless at the moment of the injury, he was in actual, or constructive, and exclusive possession.—*Wharton.* An action brought for the purpose of regaining possession of land whereof the plaintiff or his ancestor had been unjustly deprived by the tenant or possessor of the freehold, or those under whom he claimed.—*Mozley.*

Possibility (*potentia*). A chance or expectation. An uncertain thing which may or may not happen. It is either *near* or *ordinary* (*potentia propinqua*), or *remote* or *extraordinary* (*potentia remota*). When an estate is limited to one, after the death of another, this is a near possibility; but that one man shall be married to a woman, and then that she shall die, and he be married to another, this is a remote or extraordinary possibility And the law does not regard a remote possibility that is never likely to be.—*Tomlins*

Possibility on a possibility. A remote possibility. *See* DOUBLE POSSIBILITY.

Possibility coupled with an interest. In other words, a possibility recognized in law as an estate or interest; as the chance of B succeeding to an estate held by A for his life, in the event of C not being alive at A's death. In this sense it includes a contingent remainder.—*Mozley.*

Bare possibility. Possibility not coupled with an interest.

Post. After. A conveyance for letters or despatches.

Writ of entry in the post. Otherwise called a writ of entry *sur disseisin in the post.* An abolished writ brought by a party claiming land, and alleging that the tenant, or party in actual possession, had not entry unless *after* the injury done by the original dispossessor, and rightly concluding that, if the original title was wrongful, all claims derived from thence must participate in the same wrong.—*Mozley.*

Post-dating. The dating of an instrument as of a date *after* that on which it is executed, as post dating bills, notes or cheques. *See* ANTEDATE.

Post entry. When goods are weighed or measured, and the merchant has got an account thereof at the Custom House, and finds his entry already made too small, he must make a *post* or *additional* entry for the surplusage, in the same manner as the first was done.

Posthumous child. A child born after its father's death. A child *en ventre* (in the womb) at the date of its title to property accruing. It is considered in law as already born for the purpose of acquiring the title, whether in real or in personal property, but not in the interim rents or dividends.—*Brown.* A child taken out of the body of a dead mother.

Postliminy. In Roman Law, *jus postliminii* was a rule of law whereby it was assumed or feigned (in certain cases) upon a man's recovery of his civil status, that he had never in fact lost it, and the intervening period was deemed a blank. It is a species of *remitter*, and operates as a sort of *relation back*.—*Brown.* *See* RELATION.

Postman. This word, besides its ordinary signification, was used to denote a barrister in the Court of Exchequer, who, with the tubman, had a general precedence in motions in that court, till the Exchequer was merged in the Queen's Bench Division of the High Court. The Attorney-General, however, in moving for the Crown, is entitled to be heard before the postman and tubman. *See* TUBMAN.

Post-note. A bank-note intended to be transmitted to a distant place by the public mail, and made payable to order; differing in this from a common bank-note, which is payable to the bearer.—*Wharton.*

Post-nuptial. After marriage; thus, a post-nuptial settlement is a settlement made after marriage, and, not being made in consideration of marriage, it is in general considered as *voluntary*, that is, as having been made on no valuable consideration, unless made *pursuant to* written articles entered into *before* marriage. *See* ANTE-NUPTIAL.

Posteriority (*posterioritas*). Coming after; the correlative of *priority*.

Posterity. Succeeding generations, descendants; as opposed to *ancestry*.

Posting. In book keeping, it signifies the copying or transferring into the ledger, the entries made in the day book, invoice book, &c.

Postponement. Adjournment; puting off to a future day; as of a trial or other proceeding.

Postremogeniture. The right of the youngest son. *See* BOROUGH ENGLISH.

Postulation (*postulatio*). A petition. Specially used in former times of a petition to the Pope to allow of the translation of a bishop from one see to another. The reason was that the bishop was "married" to the first church, which marriage could not be dissolved except by the Pope.

Potwallers. Potwallopers. Persons who cooked their own food in a fire-place of their own, and were on that account in some boroughs entitled to vote for Members of Parliament.

Pound (*parcus*). Any place inclosed to keep beasts. An inclosure for keeping cattle or other goods distrained. An inclosure in which beasts seized for rent or caught on the land of another, damage feasant, may be kept until they are replevied or redeemed. Any person distraining for rent may turn any part of the premises, upon which a distress is taken, into a pound, *pro hac vice*, for securing of such distress. A pound is either pound *overt i. e.*, open overhead; or pound *covert*, *i. e.*, close, such as a house.

Pound of land. This is an uncertain quantity of land, said to be about 52 acres.

Poundage. A subsidy of twelve pence in the pound, anciently granted to the king, on the value of all merchandise exported or imported. A sheriff's allowance on the amount levied by him in execution, in addition to such fees as are from time to time allowed by the judges. See *Roychurn* v. *Ameena* (2 Cal. 385); *Muthu Ayyar* v. *Ramasami* (20 Mad. 158); *Maahu Sudan* v. *Purna Chandra* (9 Cal. L. J. 115).

Pound-breach. The destruction of a pound, or any part, lock, or bolt thereof, or the taking of cattle or other goods from the place where they are impounded.

Pourparty. That part or share of an estate first held in common by parceners which is by partition alloted to them. Thus, it is contrary to *pro indiviso*; for, to make pourparty is to divide the lands that fall to parceners, which before partition they hold jointly, and *pro indiviso*.—*Tomlins.*

Pourpresture (*pourprestura*). The wrongful enclosing of another man's property, or of the property of the public. Thus, a house erected, or an enclosure made, on any public property, is called a *pourpresture*.—*Mozley.* Anything done to the nuisance or hurt of the king's demesnes or the highways, &c., by inclosure or buildings, endeavouring to make that private which ought to be public. It is said to be of three sorts, (1) against the king; (2) against the lord of the fee; (3) against a neighbour by a neighbour. That against the king happens by the negligence of the sheriff or deputy, or by the long continuance of wars, inasmuch as those who have lands near the Crown lands, take or inclose a part of them, and add it to their own. That against the lord is when the tenant neglects to perform what he is bound to do for the chief lord, or in anywise deprives him of his right. That against a neighbour is of the same nature.—*Tomlins.* The difference between a *pourpresture* and a public nuisance is that *pourpresture* is an invasion of the *jus privatum* of the Crown, but where the *jus publicum* is violated, it is a nuisance.—*Wharton.*

Poursuivant. The king's messenger, attending upon him in his wars, or at the council table, exchequer, in his court, or his chamber, to be sent upon any occasion or message. Those employed in martial causes were called *Poursuivants at-Arms.*

Pourveyance. Purveyance. The providing necessaries for the king's house. The profitable prerogative of purveyance and preemption was a right enjoyed by the Crown of buying up provisions and other necessaries, by the intervention of the king's purveyors, for the use of his royal household, at an appraised valuation, in preference to all others, and even without consent of the owner. It was a royal right of spoil. Now abolished.

Pourveyor. Purveyor. An officer of the

king or queen or other great personage, that provides corn or other victual for their house.

Power. An authority which one man gives another to act for him or to do certain acts. An authority enabling one person to dispose of an interest which is vested in another.

Power is an authority to dispose of any real or personal property independently of any estate or interest therein. This may be either because the person entitled to exercise the power (who is called the *donee of the power*) has no interest whatever in the premises, or because it is desired to enable him to dispose of the same further or otherwise than his own interest would warrant; as in the common case of a parent having a life interest in a fund, with power to appoint the shares to his children after his death. If the donee of the power be one who has no interest in the property in question, the power is called a power *collateral* or *in gross*, or *naked*, or a power *not coupled with an interest*, or *not an interest*. If he be one who has an interest in the property, the power is then called a power *coupled with an interest*, or a power *appendant* or *appurtenant*. A power, then, is a method of constituting any given person the owner of property otherwise than by the ordinary methods of grant, conveyance and testamentary disposition. The exercise of the power is called an *appointment*; and the persons taking the property under such an appointment are called *appointees*, and not grantees or assignees. Properly speaking, therefore, every power, as above defined, is a power of appointment. A power of sale is a power of appointing a purchaser, a power of leasing is a power of appointing a person as lessee, &c.—*Mozley*.

Powers are either *general* or *special* (or *particular*); the former enabling the donee of the power to appoint to any one he pleases and even to himself, the latter enabling him to appoint among particular individuals only, or not at all. There is also the following distinction between these two kinds of powers, *viz*, that the general power, when exercised, dates from the exercise thereof, and not earlier, while the special power, when exercised, dates from the creation thereof, which is necessarily an earlier period than that of the exercise.—*Brown*

A *mixed* power is one which is neither *exclusive* nor *distributive*, but enables the donee either to give the whole to one member of a class, or to apportion it amongst such members as he may select.—*Rawson*.

See APPOINTMENT IN EXERCISE OF POWER, ILLUSORY APPOINTMENT.

Power of appointment. Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.—*Act X of* 1865 (*Succession*), s. 56.

Power-of-Attorney. Letter-of-Attorney. Procuration. This is an instrument by which one person empowers another to act in his stead. The donor of the power is called the *principal*, the donee is called the *attorney*, or (when appointed by a corporation aggregate to receive administration), the *syndic*. A power-of-attorney which simply authorizes the attorney to vote is called a *proxy*; one which simply authorizes the attorney to appear in an action and confess the action or suffer judgment to go by default is called a *warrant-of-attorney*. All other authorities are called simply powers-of-attorney, the power being *special* if it is to do one particular act, and *general*, if to do generally all matters connected with a particular employment. Again, a general power-of attorney may be either *limited*, as when it leaves nothing to the discretion of the attorney; or *unlimited* (or *absolute*), as when it leaves everything to his discretion.—*Brown*. Where an attorney sues on behalf of his principal, the suit should be brought in the name of the person for whom he professes to appear, not in his own (*Choonnee Sookul* v. *Hur Purshad*, 1 N.-W. P. 277, *Hursarun* v. *Purshun*, 2 N.-W. P. 415, *Juggun Nath* v. *Beck*, 2 N.-W. P. 60). *See* ATTORNEY.

Power of the County (*posse comitatus*). The people of the county which the sheriff may command to attend him for keeping of the peace and pursuing felons, also for defending the county against the king's enemies. To this summons all persons, except peers, women, clergymen, persons decrepit, and infants under the age of fifteen, are bound to attend. Compare Act V of 1898 (Crim. Pro.), s. 42.

Poynding. *See* POINDING.

Practice. This term is sometimes applied, in an unfavourable sense, to signify fraud or bad practice. Thus, clandestine proceedings are said to be by practice.—*Tomlins*.

Practice of the Courts The form and manner of conducting and carrying on suits, actions, or prosecutions at law or in equity, civil or criminal, through their various stages, from the commencement of the process to final judgment and execution, according to the principles of law and the rules laid down by the several courts.—*Tomlins*.

The *practice* of a court, when that word is used in its ordinary and common sense, denotes the rules that make or guide the *cursus curiæ*, and regulate procedure within the walls or limits of the court itself, and does not involve or imply anything relating to the extent or nature of its jurisdiction.—*Stroud*.

Rules of pleading are distinguished from rules of practice in that the former tell what is the most efficient form to adopt in shaping the pleadings, the latter tell in what manner the pleadings should be brought under the notice of the court, and what steps should be taken to obtain the benefit of them.—*Mozley*.

Practice Court. The name sometimes given to the Bail Court. *See* BAIL COURT.

Practitioner. He who is engaged in the exercise or employment of any art or profession.

Præceptories. (*præceptoria*). A kind of benefices, so called because they were possessed by the more eminent Templars, whom the chief Master by his authority created and called *præceptores Templi*.

Prædial servitudes. *See* SERVITUDE.

Prædial tithes (*decimæ prædiales*). Tithes paid out of the produce of land; such as arise merely and immediately from the ground, as grain of all sorts, hops, hay, wood, fruit, herbs. *See* TITHES.

Præfine. The same as *primer fine*. *See* FINE.

Pragmatic sanction. (*Civ. L.*) A rescript or answer of the Sovereign, delivered by advice of his council to some college, order, or body of people, who consult him in relation to the affairs of the community. A similar answer given to an individual is simply called a rescript.—*Wharton*.

Prajapati. (*Hin. L.*) One of the approved forms of marriage. This is when the father gives away his daughter with due honour, saying distinctly, 'May both of you perform together your civil and religious duties.' Now obsolete.

Prativeshikatwam. (*Hin. L.*) Neighbourship; in law, pre emption from vicinage, or the right of a neighbour or co-parcener to purchase any property in his vicinage which is for sale, in preference to a stranger, on agreeing to give the same price. *See* SHOOFAA.

Pray in aid. A phrase often used to signify "claiming the benefit of an argument." Especially in suits or actions in which there are several parties, the above phrase is sometimes used by a counsel who claims the benefit, on behalf of his own client, of an argument already used on behalf of some other party in the suit or action.—*Moxley*. A petition made in a court of justice for the calling in of help from another that has an interest in the cause in question. *See* AID PRAYER.

Prayer of a bill. The concluding portion in which the plaintiff asks for the relief to which he conceives himself entitled. The concluding paragraphs of the statement of claim in which the plaintiff asks for the relief he claims.

Prayer of process. A prayer for the issue of process, with which a bill in equity formerly concluded.

Praying a tales. *See* TALES.

Preamble. Introduction; preface. The beginning of an act of parliament serving to pourtray the intents of its framers, and the mischiefs to be remedied. The preamble is undoubtedly a part of the Act and may be used to explain it (*Salked* v. *Johnson*, 2 Exch. 283). Where the enacting sections of a statute are clear, the terms of the preamble cannot be called in aid to restrict their operation or to cut them down (*Queen Empress* v. *Indarjit*, 11 All. 262). But the enacting words of a statute may be carried beyond the preamble, if words be found in the former strong enough for the purpose (*China Aiyan* v. *Mahomed Fakr u din*, 2 Mad. H. C. R. 322).

Although the preamble is generally a key to the construction (*Cracknall* v. *Janson*, 11 Ch. Div. 22), yet it does not always open or disclose all the parts of it (*Mann* v. *Cammel*, Loft. 783). A reference to the preamble is therefore only an insufficient guide to the true interpretation of the statute.—*Brown*.

Pre-audience. The right of one to be heard before another. The priority of right of being heard in a court of justice. Pre-audience, in courts, is of considerable importance. The following is a table of precedence which usually obtains among counsel:—(1) The king's premier serjeant (so constituted by special patent); (2) The king's ancient serjeant, or the eldest among the king's serjeants; (3) The king's advocate-general; (4) The king's attorney-general; (5) The king's solicitor-general; (6) The king's serjeants; (7) The king's counsel, with the queen's attorney and solicitor, and those who have patents of precedence; (8) Serjeants-at-law; (9) The recorder of London; (10) Advocates of the *civil law*; (11) Barristers. But Nos. (4) and (5) now take precedency before Nos. (1) and (2). In the court of Exchequer two barristers appointed by the Lord Chief Baron, called the *postman* and the *tub-man* (from the places in which they sit), have also a precedence in motions. —*Tomlins*. But as to the precedence of the king's premier serjeant now, *see* PREMIER SERJEANT.

Prebend (*prebenda*). A fixed portion of the rents and profits of a cathedral church set apart for the maintenance of prebendaries. A simple prebend is merely a revenue; a prebend, with dignity, has some jurisdiction attached to it.

Prebendary (*prebendarius*). He that has a prebend, a stipendiary of a cathedral, he who has a prebend or stipend for his maintenance. Prebendaries are said to have an estate in fee simple in right of their churches, as well as bishops of their bishoprics, deans of their deaneries, &c.—*Tomlins*.

Prebenda. Probanda. Provisions; provand; or provender.

Precariæ. Day-works which the tenants of some manors were bound by their tenure to do for the lord in harvest. Special work done by a tenant at the request of his lord, as distinguished from fixed services.

Precarious loan (*precarium*). A contract by which the owner of a thing, at another's request, gives him the thing to use so long as the owner shall please. A form of permissive occupancy, the duration of which depended on the owner's will.

Precatory words. Expressions in a will,

praying, entreating or recommending that a thing be done, rather than commanding. Precatory words in a will, such as "desire," "hope," "trust," "wish" create an implied trust, unless the trust is one which the court is unable to enforce. Such a trust is called a precatory trust.

Precedence. Precedency. The right to go before another. The act or state of going before; adjustment of place. The rules of precedence, in England, are reduced by Blackstone, to the following table:—The King's children and grand children; brethren, uncles; nephews. Archbishop of Canterbury. Lord High Chancellor, if a baron. Archbishop of York. Lord Treasurer; Lord President of the Council; Lord Privy Seal, if barons. Lord Great Chamberlain (but see private stat. 1 Geo I, c. 3); Lord High Constable; Lord Marshal; Lord Admiral; Lord Steward of the Household; Lord Chamberlain of the Household; above all peers of their own degree. Dukes. Marquesses. Dukes' eldest sons. Earls. Marquesses' eldest sons. Dukes' younger sons. Viscounts. Earls' eldest sons. Marquesses' younger sons. Secretary of State, if a bishop. Bishop of London, Durham, Winchester. Bishops. Secretary of State, if a baron. Barons. Speaker of the House of Commons. Lords Commissioners of the Great Seal. Viscounts' eldest sons. Earls' younger sons. Barons' eldest sons. Knights of the Garter. Privy Councillors. Chancellor of the Exchequer. Chancellor of the Duchy of Lancaster. Chief Justice of the Queen's Bench Master of the Rolls. For the present precedence of the Judges of the Court of Appeal and of the High Court of Justice, see Jud. Act, 1873, s. 11, and Jud. Act, 1875, s. 6. Knights Bannerets, royal. Viscounts' younger sons. Barons' younger sons. Baronets. Knights Bannerets. Knights of the Bath. Attorney-General. Solicitor-General. The King's Advocate-General. Serjeants-at law. Knights Bachelors. Baronets' eldest sons. Knights' eldest sons. Baronets' younger sons. Knights' younger sons. Colonels. Doctors, with whom, it is said, rank barristers (as to whose precedence among each other, *see* PREAUDIENCE). Esquires (of whom Companions of the Bath rank first). Gentlemen. Yeomen. Tradesmen. Artificers. Labourers.—*Wharton.—Tomlins.*

Married women and widows are entitled to the same rank among each other as their husbands would respectively have between themselves; except such rank is merely professional or official; and unmarried women to the same rank as their eldest brothers would bear among men, during the lives of their fathers.—*Tomlins.*

See PATENT OF PRECEDENCE.

Precedent condition. Such as must happen or be performed before an estate can vest or be enlarged. *See* CONDITION.

Precedents. Authorities or examples to be followed by courts of justice. A decision in a court of justice cited in support of any proposition for which it is desired to contend. Drafts of deeds, wills, mortgages, pleadings, &c., which may serve as patterns for future draftsmen and conveyancers.—*Mozley.*

Precept (*præceptum*). A rule authoritatively given; a mandate; a command in writing by a justice of the peace or other like officer for the bringing of a person or record before him; the direction of a sheriff to the proper officer to proceed to the election of members of parliament; a command to a sheriff to empannel a jury; a provocation whereby one incites another to commit a felony; an instigation to murder or other crime.

A *precept of clare constat* ("it clearly appears") is a deed in the Scotch law by which a superior acknowledges the title of the heir of a deceased vassal to succeed to the lands.

A *precept of sasine*, in the Scotch law, is the order of a superior to his bailie (or agent) to give infeftment (*i. e.*, feudal possession) of certain lands to his vassal.

Precinct. Boundary. The immediate neighbourhood of a place or court. A limited district round some important edifice, as a cathedral. A constable's district. A place formerly privileged from arrest.

Precognition. (*Sc. L.*) An examination by a judge ordinary or justices of the peace, where any crime has been committed, that the fact may be ascertained, and full and perfect knowledge given to the public prosecutor in carrying on the prosecution. In this examination the witnesses are not put upon oath.—*Mozley.*

Precognization. Proclamation.

Pre-contract. A contract made before another contract. Where one of the parties to a marriage was under a prior agreement to marry a third person, such prior agreement was called a pre-contract, and, according to the ancient law, rendered void such subsequent marriage solemnized in violation of it.

Predecessor. One who precedes another, the correlative to "successor," as ancestor is to "heir." *See* ANCESTOR.

Pre-emption (*præ-emptio*). The power or right of buying a thing before others; a privilege formerly allowed to the royal purveyor to have the first buying of corn and other provision for the king's house, without the consent of the owner, but now abolished. *See* POURVEYANCE, PARFIVESHIKATWAM SHOOFAA.

Prefer. To apply; to move for; to bring a matter before a Court of justice; as when we say that A preferred a charge of assault against B. To prefer for costs is to apply for costs.

Preference. A word often used in connection with payments made by a bankrupt by way of fraudulent preference to some of his creditors over others. *See* FRAUDULENT PREFERENCES.

Preference (or *preferential*) *shares* (or *stock*). Shares or stock in a company which

have or has priority as to payment of dividends of a fixed amount over the ordinary shares. The dividends are usually contingent upon the profits of each year or half year. In some cases, however, the arrears of dividend form an accumulating debt by the ordinary to the preference shareholders, the preference being described as a *non-contingent* or *cumulative* preference. *See* DEFERRED STOCK.

Preferential debts (or payments). *See* PRIVILEGED DEBTS.

Pregnancy. The state of having conceived, the most common signs of which are vomiting and suppression of the monthly discharge. *See* ABORTION.

Plea of pregnancy. When a woman is capitally convicted and pleads her pregnancy, execution will be respited until she be delivered. *See* JURY OF MATRONS.

Prejudice. Prejudging a matter. Thus, a court may decide that A is entitled for his life to the income of a fund *without prejudice* to any question between B and C who claim adversely to each other the income of the fund after his death. And generally, the expression *without prejudice* implies that the consideration of the question to which it refers is postponed to a future time. And the phrase is often used in a lawyer's letter for the purpose of guarding himself as to anything therein contained being construed as an admission of liability.—*Mozley.* The phrase is applied to overtures and communications between litigants before action, or after action, but before trial or verdict. It imports an understanding that if the negotiations fall, nothing that has passed shall be taken advantage of thereafter.—*Wharton.* See *Halford* v. *East Indian R. Co.* (12 B. L. R., Ap., 19).

Prelector. A reader or lecturer.

Premier serjeant. A serjeant-at-law constituted *premier-serjeant* by special patent. Formerly he took precedence of the attorney and solicitor-general, but now the latter have place and audience before him.

Premises. That part in the beginning of a deed which sets forth the names of the parties, and the recital, if any, of such deeds and matters of fact as are necessary to explain the reasons upon which the deed is founded, the consideration upon which it is made, and if the deed be a disposition of property, the particulars of the property intended to be thereby transferred. Hence it has come to signify the houses and lands granted; and hence any specified houses and lands. Propositions antecedently supposed or proved.

The *premises* of a deed are all the foreparts of the deed before the *habendum*. The word premises in fact signifies what has gone before; and therefore may, with propriety, be used in relation to any preceding subject or subjects.—*Stroud.*

Premium (*præmium*). A reward; a consideration; something given to invite a loan or a bargain, as the annual payment upon insurances; the consideration paid to the assignor by the assignee of a lease, or to the transferor by the transferee of shares or stock, &c.—*Wharton.* *See* LEASE.

Prender. The right of taking a thing before it is offered. *See* RENDER.

Prepense (*præpensus*). Aforethought; preconceived; contrived beforehand. Thus, malice prepense is malice aforethought. *See* MALICE.

Prerogative. A peculiar or exclusive privilege. The special power, pre eminence or privilege which the king has, over and above other persons, in right of his Crown.

Prerogative Courts (*curia prærogativa*). The courts of the provinces of Canterbury and York, respectively, presided over by judges appointed by the respective archbishops. These courts had testamentary jurisdiction, which has now ceased.

Prerogative law. That part of the Common Law of England which is more particularly applicable to the king.

Prerogative writs. Processes issued upon extraordinary occasions on proper cause shown. They differ from other writs mainly in two things:—(1) They do not issue as of mere course, nor without some probable cause why the extraordinary power of the Crown should be called into the party's assistance; (2) They are generally directed, not to a sheriff or other public officer, but to the parties themselves, whose acts are the subject of complaint. They are the writs of *procedendo*, *mandamus*, *prohibition*, *quo warranto*, *habeas corpus*, and *certiorari*.

Prescribe to. To assert or claim anything by title of prescription, *i. e.*, on the ground of having hitherto had the uninterrupted and immemorial enjoyment of it.

Prescription (*præscriptio*). Rules produced and authorized by long usage. Title by prescription arises from a long continued and uninterrupted possession of property.

Every species of prescription, by which property is acquired or lost, is founded on the presumption that he who has had a quiet and uninterrupted possession of anything for a long period of years, is supposed to have a just right, without which he would not have been suffered to continue in the enjoyment of it. For a long possession may be considered as a better title than can commonly be produced, as it supposes an acquiescence in all other claimants, and that acquiescence also supposes some reason for which the claim was forborne.—*Wharton.*

Prescription at common law, as defined by Blackstone is where a man can show no other title to what he claims than that he, and those under whom he claims, have immemorially used and enjoyed it. The difference between *prescription* and *custom* is that

custom is a *local* usage, and not annexed to any *person*, whereas prescription is a *personal* usage. Prescription may, perhaps, in this sense, be defined as the presumption of a grant arising from long usage.—*Mozley*.

There are two kinds of prescription, *viz.*, (1) *Positive*, otherwise called *acquisitive*, which relates to incorporeal hereditaments and by which a title is acquired, and which originated at common law from immemorial or long usage only. (2) *Negative*, which relates to realty or corporeal hereditaments, whereby an uninterrupted possession for a given time gives the occupier a valid and unassailable title by depriving all claimants of every stale right and deferred litigation, whose right of challenge is thereby lost under the statutes of limitation.

Prescription in the English law properly applies to incorporeal hereditaments only. For a prescription is the presumption of a grant; and, until recently, none but incorporeal hereditaments could pass by grant; though by some writers, and especially by Cowel, it is extended to *any* right, privilege, exemption, or immunity, arising from lapse of time.—*Mozley*.

Before the Prescription Act (2 & 3 Wm. IV, c. 71) the enjoyment required in English Law to constitute a prescription must have existed time out of mind, or beyond the memory of man, *i. e.*, before the reign of Richard I; but now, the period of enjoyment necessary to constitute a title by prescription is in many cases by the above Act considerably shortened.—*Brown*.

The subject of prescription is now regulated in England by the Prescription Act, 1832 (2 & 3 Wm. IV, c. 71). As to the Indian law on the subject, *see* EASEMENT.

Corporations by prescription. Those which have existed beyond the memory of man, and therefore are looked upon in law to be well created, such as the City of London.

Present. To make a presentment or presentation.

Present use. A use of land which may be enjoyed now, as opposed to a future use. One which has an immediate existence. *See* USE.

Presentation (*presentatio*). The act of a patron in offering his clerk to the bishop, to be instituted in a benefice of his gift. *See* ADVOWSON.

Presentative advowson. *See* ADVOWSON.

Presentee. A clerk presented by the patron of a living to the bishop; one presented to a benefice.

Presenter. One that presents.

Presentment. The old term for presentation to a benefice. Generally taken, this is a very comprehensive term, including, not only presentments, properly so called, but also inquisitions of office, and indictments by a grand jury. A presentment, properly speaking, is the notice taken by a grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them, at the suit of the king; as the presentment of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment before the party presented can be put to answer it.—*Tomlins*. The formal information to the lord, by the tenants of a manor, of anything done out of court. The presenting a bill of exchange to the drawee for acceptance. Presentments are also made in courts-leet and courts-baron, before the stewards; and in the latter, of surrenders, grants, &c.

Presents. *These presents* is the phrase by which a deed mentions itself; the thing then actually made or spoken of. It is especially used in a deed-poll which cannot be described as *This indenture*.

Preses. (*Sc. L.*) A president or chairman.

Presidency-town. Presidency-town means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras, or Bombay, as the case may be.—*Act X of* 1897 (*General Clauses*), *s.* 3 (41). Presidency town means generally the town of Calcutta, Madras, or Bombay, as the case may be.

President. One placed in authority over others; a governor, a chairman. The king's lieutenant in any province, as President of Wales, &c.

President of the Council. The fourth great officer of the State; a member of the cabinet. *See* PRECEDENCE. He attends on the sovereign, proposes business at the council table, and reports to the sovereign the transactions there.

Pressing sea-men. *See* IMPRESSING.

Prest. A duty in money that was to be paid by the sheriff on his own account, in the Exchequer, or for money left or remaining in his hands.

Prest-money. A payment that binds those who receive it to be ready at all times to be appointed, being meant especially of soldiers.

Prestation-money. A sum of money paid by archdeacons yearly to their bishops; also purveyance.

Presume. Whenever it is provided by the Evidence Act that the court *may* presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it. Whenever it is directed by the Evidence Act that the court *shall* presume a fact, it shall regard such fact as proved, unless and until it is disproved.—*Act I of* 1872 (*Evi.*), *s.* 4. *See* CONCLUSIVE PROOF.

Presumption (*præsumptio*). A supposition, opinion or belief previously formed. That which comes near, in greater or less degree, to the proof of a fact. It is called violent, probable, or light, according to the degree of its cogency.

Presumptions are said to be either:—(1) *præsumptiones juris et de jure*, otherwise

called irrebuttable presumptions, which the law will not suffer to be rebutted by any counter evidence, and where the law or custom establishes the truth of any point; as, that an infant under seven years is not responsible for its actions; (2) *præsumptiones juris tantum*, which hold good in the absence of counter evidence, but against which counter evidence may be admitted; as, the property of goods is presumed to be in the possessor; (3) *præsumptiones hominis vel judices*, which are not necessarily conclusive, though no proof to the contrary be adduced, and which are convictions arising from the circumstances of any particular case. The first and the second are called presumptions of *law*; the third, presumptions of *fact*. There are also presumptions of mixed *law* and *fact*, consisting chiefly of inferences which, from their frequent occurrence or from any other like cause, attract the observation of the law, and therefore are constantly recommended by the judges to be drawn and acted on by juries *e. g.*, the presumption of lost conveyance (or lost grant) in favour of long established rights. *See* MIXED PRESUMPTIONS.

Presumption of life or death. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it. Provided that, when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.—*Act I of* 1872 (*Evi.*), *ss.* 107-8.

Presumption of survivorship. The presumption that A survived B, or B survived A, when there is no evidence who died first. When two or more persons perish by the same calamity, such as shipwreck, battle, fire, collision of trains, &c., the law of some countries has recourse to artificial presumptions, based upon the probabilities of survivorship resulting from age and sex; but the law of England recognises no such presumption, but requires proof of survivorship from the person who relies upon it, and, in the absence of evidence, it considers that both or all of the persons so dying perished at the same time.

For presumptions as to negotiable instruments, *see* NEGOTIABLE INSTRUMENT.

Presumptive evidence. Evidence which, if believed, would not be necessarily conclusive as to the fact in issue, but from which, according to the ordinary course of human affairs, the existence of that fact might be presumed. Otherwise called circumstantial evidence. *See* CIRCUMSTANTIAL EVIDENCE.

Presumptive heir. *See* HEIR.

Presumptive title. A title which arises out of, or is presumed from, mere possession without claim of right. A title of the very lowest order arising out of mere occupation or simple possession of property, without any apparent right, or any pretence of right, to hold and continue such possession.

Pretences. Allegations sometimes made in a bill in Chancery for the purpose of negativing an anticipated defence.

Pretended (or pretensed) right (or title) (*jus prætensum*). Where one is in possession of land, and another who is out of possession claims and sues for it; here the pretensed right or title is said to be in him who so claims and sues for the same.—*Tomlins.*

Buying or selling of pretensed titles is buying or selling lands, of which the title is known to be in dispute, below the value which they would have if the title was not in dispute, and to the intent that the buyer may carry on the suit in place of the seller.—*Stroud.* *See* CHAMPERTY, MAINTENANCE.

Preterition. (*Civ. L.*) The entire omission of a child's name in the father's will, which rendered it null.

Prevarication. The word originally signified the conduct of an advocate who betrayed the cause of his client, and by collusion assisted his opponent. It is defined by Cowel to be when a man falsely and deceitfully seems to undertake a thing, with intent that he may defeat the object which he professes to promote. At the present day when we say that a witness prevaricates, we mean that he gives squibbling, evasive or equivocating answers to questions put to him, for the wilful concealment or misrepresentation of truth. Any secret abuse committed in a public office or private commission.

Preventive justice. That portion of law which has reference to the direct prevention of offences. See Act V of 1898 (Crim. Pro.), Chap. VIII to XIII.

Preventive relief. *See* RELIEF.

Price current. A list or enumeration of various articles of merchandise with their prices, the duties (if any) payable thereon, when imported or exported, with the drawbacks occasionally allowed upon their exportation, &c.—*Wharton.*

Pricking for sheriffs. *See* SHERIFF.

Pricking note. Where goods intended to be exported are put direct from the station of the ware-house into a ship alongside, the exporter fills up a document to authorize the receiving the goods on board. This document is called a "pricking note" from a practice of pricking holes in the paper corresponding with the number of packages counted into the ship.—*Mozley.*

Primage. A certain allowance due to the master and mariners of a ship; to the master, for the use of his cables and ropes to discharge the goods of the merchant; and to the mariners, for lading and unlading in any port or haven.

Primary allegation. The opening pleading in a suit in the Ecclesiastical Court. It is also called a *primary plea.*

Primary conveyances. Original conveyances. Conveyances which do not take effect by way of enlarging, confirming, altering, or otherwise affecting other conveyances. Opposed to *derivative conveyances*. Original conveyances are—(1) Feoffments, (2) Grants, (3) Gifts, (4) Leases, (5) Exchanges, (6) Partitions.

Primary evidence. The best evidence, as distinguished from *secondary* evidence. Evidence which is not *secondary*, second-hand or hearsay evidence. *See* SECONDARY EVIDENCE.

Primary evidence of a document means the document itself produced for the inspection of the court. Where a document is executed in several parts, each part is the primary evidence of the document. Where a document is executed in counterparts, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it. Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original. *Illustration.*—A person is shown to have been in possession of a number of placards, all printed at one time from the original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.—*Act I of* 1872 (*Evi.*), *s.* 62.

Primer election. First choice.

Primer fine. *See* FINE.

Primer seisin (*prima seisina*). The first possession or seisin. A burden incident to the king's tenants *in capite*, by which the king was entitled, when any of such tenants died, to receive of the heir, one whole year's profits of the lands, if they were in immediate possession; and half a year's profits, if they were in reversion expectant upon an estate for life.

Primier serjeant. The king's first serjeant-at-law. *See* PREMIER SERJEANT.

Primogeniture (*primogenitura*). Seniority; eldership; state of being first born. The title of an eldest son in right of his birth. The right of primogeniture obtaining in the United Kingdom is that right whereby the eldest son succeeds to all the real estate of an intestate parent.

Where a custom, such as one of primogeniture, in derogation of the ordinary Hindu law governing devolution of property is set up by a party, it lies upon him to establish, by clear and unambiguous evidence, that the same is an ancient continuous and invariable rule in the family (*Shyamanand* v. *Rama Kanta*, 32 Cal. 6).

The law of primogeniture may exist by *Kulachar* or family custom, although the estate may not be what is technically known as a *Raj* in the north, or as a *Polliam* in the south, of India (*Ibid.*).

Prince (*princeps*). A sovereign.

Prince of Wales. The eldest son of the reigning sovereign in England.

Prince of the royal blood. The younger sons and daughters of the sovereign, and other branches of the royal family who are not in immediate line of succession.

Princess royal. The eldest daughter of the sovereign.

Principal (*principalium*). An heirloom. The amount of money which has been borrowed, as opposed to the interest payable thereon. The head of a college or other institution. The person directly concerned in the commission of a crime, as opposed to an accessory (*see* ACCESSORY). A person who employs an agent (*see* AGENT, POWER-OF-ATTORNEY). A person for whom another becomes surety.—*Moxley.*

Principal challenge. A species of challenge to the array made on account of partiality or some default in the sheriff or his under-officer who arrayed the panel. *See* CHALLENGE.

Principal in the first degree. The actor or actual perpetrator of a crime.

Principal in the second degree. One who is present and abets the commission of a crime.

An *accessory* is he who is not the chief actor in the offence, nor yet present at its performance, but who is someway concerned in it, either *before* or *after* the fact committed. *See* ACCESSORY.

Printing press. This includes all engines, machinery, types, lithographic stones, implements, utensils, and other plant or materials used for the purpose of printing.—*Act VII of* 1908 (*Newspapers—Incitement to Offences*), *s.* 2 (1) (*c*).—*Act I of* 1910 (*Press*), *s.* 2 (*f*).

Prior. The chief of a convent, next in dignity to an abbot.

Priority (*prioritas*). An antiquity of tenure, in comparison with one not so ancient. That which is before another in order of time. Any legal precedence or preference; as when we say that certain debts are paid in *priority* to others, or that certain incumbrances of an estate are allowed *priority* over others, that is, are to be allowed to satisfy their claims out of the estate before the others can be admitted to any share therein.

Prisage. The share which belongs to the Crown of such merchandises as are taken at sea by way of lawful prize. *See* BUTLERAGE.

Pritidatta. (*Hin. L.*) A kind of woman's property. Whatever is given her through affection by her mother-in-law, or by her father-in law, and what has been given as a token of respect at the time of making obeisance at the feet of elders (*padavandanika*) is denominated an affectionate gift, *pritidatta*. Property or valuables presented to a female by

her relations and friends at the time of her marriage.

Privacy, invasion of. Intruding upon the private apartments of another; as by a man opening doors or windows in his house in a way which will enable him to overlook those portions of his neighbour's premises which are ordinarily secluded from observation, and thus to intrude upon his privacy. Such invasion of privacy is not an actionable wrong, except where a right to privacy exists by custom. See act V of 1882 (Easements), s. 18.

Private Act of Parliament. An Act of Parliament operating upon particular persons and private concerns. Courts of law are not bound to take judicial notice of such Acts. In order that this may be the case, it must be expressly so stated in the Act. Of private Acts of Parliament, some are printed and others not printed.

Private Bills. Bills brought into Parliament on the petition of parties interested. Such bills are brought in the interest of individuals, and are distinguished from measures of public policy in which the whole community are interested.

Private Bill Office. An office of Parliament where the business of obtaining private acts of parliament is conducted.

Private chapels. Chapels owned by noblemen and other privileged persons and used by themselves and their families; as opposed to *public chapels*, otherwise called *chapels of ease*, which are built for the accommodation of particular districts within a parish in *ease* of the original parish church.—*Mozley.* *See* PUBLIC CHAPELS.

Private company. *See* COMPANY.

Private defence. Nothing is an offence which is done in the exercise of the right of private defence.—*Act XLV of* 1860 (*Penal Code*), *s.* 96.

Private defence of body and property. Every person has a right, subject to the restrictions contained in s. 99, to defend—*First*, his own body and the body of any other person, against any offence affecting the human body; *secondly*, the property, whether moveable or immoveable, of himself or any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.—*Ibid.*, *s.* 97.

Private defence against the act of a person of unsound mind, &c. When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication, of the person doing the act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.—*Ibid.*, *s.* 98.

Acts against which there is no right of private defence. (1) There is no right of private defence against an act which does not reasonably cause the apprehension of death or grievous hurt, if done, or attempted, to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law. (2) There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law. (3) There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. (4) The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant. A person is not deprived of the right of private defence against an act done or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.—*Ibid.*, *s.* 99.

As to the commencement and continuance, and the extent, of the right of private defence, see *ibid.*, ss. 100 to 105.

If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.—*Ibid.*, *s.* 106.

The right of private defences is absolutely necessary. The vigilence of magistrates can never make up for the vigilence of each individual on his own behalf. The fear of the law can never restrain bad men so effectually as the fear of the sum total of individual resistance. Take away this right, and you become in so doing the accomplice of all bad men.—*Bentham.*

Privateers. *See* LETTERS OF MARQUE.

Private nuisance. *See* NUISANCE.

Private way. A way in which one man may have an interest and a right, though another is the owner of the soil. *See* EASEMENT, WAY.

Privation (*privatio*). A taking away or withdrawing. It seems to be an abbreviation of the word deprivation. *See* DEPRIVATION.

Privies. Those who are partakers or have an interest in any action or thing, or any re-

lation to another. *See* PARTIES AND PRIVIES, PRIVITY.

Privies of blood, such as an heir to his ancestor.

Privies in representation, as executors or administrators to their deceased testator or intestate.

Privies in estate, as a grantor and grantee, lessor and lessee, assignor and assignee, baron and feme, joint tenants. Privity of estate between two persons is where their estates are so related to eath other, that they make but one estate in law, being *derived at the same time*, out of the *same original seisin*. Thus if A, the owner of an estate, convey it to B, for a term of years, with remainder to C for his life, there is privity of estate between B and C. But if A conveys to B for his life, and B makes a lease for years to C, there is no privity between A and C.

Privies in contract. Privities in respect of contract are personal privities and extend only to the *persons* of the lessor and lessee. Privity of contract is the relation subsisting between the parties to the same contract. Thus, if A, B and C mutually contract, there is privity of contract between them. But if A contract with B, and B make an independent contract with C on the same subject matter, there is no privity of contract between A and C.

Privies in respect of estate and contract, as where the lessee assigns his interest, but the contract between lessor and lessee continues, the lessor not having accepted of the assignee.

Privies in law, when the law, without blood or privity of estate, casts the lands on one and makes his entry lawful; as lord by escheat, a tenant by the curtesy (*see* CURTESY), or in dower (*See* DOWRESS), the incumbent of a benefice, a husband suing or defending in right of his wife.

Privies to a fine, such as were bound by a fine, though they might not have consented thereto; as the issue in tail, when the fine was levied by a tenant in tail. *See* FINE.

Privilege (*privilegium*). An exemption from some duty, burden or attendance, to which certain persons are entitled, from a supposition of law, that the stations they fill, or the offices they are engaged in, are such as require all their care; and that, therefore, without this indulgence, it would be impracticable to execute such offices so advantageously as the public good requires.—*Tomlins*. That which is granted or allowed to any person, or any class of persons, either against or beyond the course of the common law; as the non-liability of a member of the legislature to any court other than the Parliament itself, for words spoken in his place in Parliament.—*Mozley*.

Writ of privilege. A writ formerly in use whereby a member of Parliament, when arrested in a civil suit, might claim his deliverance out of custody by virtue of his Parliamentary privilege.

Privileged communications. Communications which, though *prima facie* libellous or slanderous, yet, by reason of the circumstances under which they are made, are protected from being made the ground of proceedings for libel or slander; as in the case of confidential communications without malice, &c. *See* LIBEL. Also, communications which are protected from disclosure in evidence in any civil or criminal proceeding; as in the case of communications between husband and wife, between a client and his legal adviser in reference to the matter before the court, which cannot be disclosed without the client's consent, secrets of State, &c. See Act I of 1872 (Evi.), ss. 122 to 129.

Privileged copyholds. Estates having most of the incidents of copyholds but in which the holding is not said to be at the will of the lord. They are otherwise called *customary freeholds*. *See* COPYHOLD, CUSTOMARY FREEHOLD.

Privileged debts. Debts payable before other debts, in case of bankruptcy, administration of estates of persons dying insolvent, or winding up of a company; such as rates and taxes, salaries of clerks, wages of labourers and servants, funeral expenses, deathbed charges, including fees for medical attendance, board and lodging, &c. Debts which an executor may pay before all others. See Act V of 1881 (Prob. and Admin.), ss. 101-3. *See* WAGES.

Under s. 33 of Act III of 1907 (Provincial Insolvency), in distribution of the property of the insolvent, there shall be paid in priority to all other debts—(*a*) all debts due to the Crown or to any local authority; and (*b*) all salary or wages, not exceeding rupees twenty in all, of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition. These debts shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

Under s. 49 of Act III of 1909 (Presidency-Towns Insolvency), there shall be paid, in priority to all other debts:—(*a*) all debts due to the Crown or to any local authority; and (*b*) all salary or wages of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition, not exceeding three hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer, and (*c*) rent due to a landlord from the insolvent, provided the amount payable under this clause shall not exceed one month's rent. These debts shall rank equally between themselves and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

Privileged villenage. Otherwise called villein-socage. A tenure in which the services were *base* as in villenage, but were *certain* as in free and common socage. *See* SOCAGE, VILLENAGE, VILLEIN SOCAGE.

Privileged will. *See* WILL.

Privity (*privitas*). Private familiarity; friendship; inward relation. Participation in interest or knowledge.

The term *privity*, when used by legal writers, must be understood to mean a connection or bond of union (*ligamen*) existing between parties in relation to some particular transaction; and when it is said that an action will not lie for "want of privity" this phrase signifies that the plaintiff and defendant are strangers to each other *quod* the subject matter in dispute, or, at all events, that the plaintiff, the contractee, did not with sufficient directness conduce to the consideration for the undertaking or promise of the defendant, the contractor.—*Broom's Com. Law.* *See* PRIVIES.

Privity of tenure. The relation subsisting between a lord and his immediate tenant. If there be lord and tenant, and the tenant holds of the lord by certain services, there is a privity between them in respect of the tenure.

Privy. He who is partaker, or has an interest in any action or thing. He who has a participation in interest or knowledge. *See* PRIVIES.

Privy Council (*Consilium Regis*; *Privatum Consilium*). The principal council belonging to the sovereign. Privy Councillors are made such by the sovereign's nomination, without either patent or grant, with the title of Right Honourable during the life of the sovereign who has chosen them, but subject to removal at his discretion. The Privy Council has power to inquire into all offences against the Government, and to commit the offenders to take their trial. It has also the judicial authority of a court of justice in colonial causes; in appeals from the ecclesiastical courts; in applications to prolong the term of patents for new inventions; and in certain cases arising out of the Copyright Acts. These functions are exercised through the Judicial Committee. There are also other committees of the Privy Council charged with various matters. The jurisdiction of the Judicial Committee upon appeals from the High Court of Admiralty, and from orders in lunacy made by the Lord Chancellor or other person having jurisdiction in lunacy, is, by s. 18 of the Judicature Act, 1873, transferred to the Court of Appeal, established by that Act.—*Mozley.* It is generally called, by way of eminence, The Council. *See* SUPREME COURT OF JUDICATURE.

Privy purse. That portion of the public money voted to the sovereign which he may deal with as freely as any private individual may with his property. The income set apart for the sovereign's personal use. *See* CIVIL LIST.

Privy Seal (*privatum sigillum*). *Privy Signet.* Privy Seal is a seal of the sovereign under which charters, pardons, &c., signed by the sovereign, pass before they come to the Great Seal, and also used for some documents of less importance which do not pass the Great Seal at all, such as discharges of recognisances, debts, &c. The privy signet is one of the sovereign's seals, used in sealing his private letters, and all such grants as pass his hand by bill signed, which seal is always in the custody of the king's secretaries.—*Wharton.* Grants from the Crown first pass the privy signet, then the privy seal, and lastly, the Great Seal of England.

Privy tithes. Small tithes, which *see.*

Privy verdict. This is when the judge has left or adjourned the court, and the jury being agreed, in order to be delivered from their confinement, obtain leave to give their verdict privily to the judge out of court. Such verdict is of no force unless afterwards affirmed in open Court; and at the present day it is wholly disused.—*Mozley.*

Prize Commission. A commission issued in every war under the Great Seal, requiring the Court of Admiralty to adjudicate upon all and all manner of captures, seizures, prizes and reprisals, and terminate the same according to the law of nations. *See* ADMIRALTY.

Prize Court. The Admiralty Court sitting under a Prize Commission to adjudicate on captures by land and sea. *See* ADMIRALTY.

Prize of War (*captio*; *præda*). Things captured from an enemy in war, which fall to the forces capturing it by grace of the Crown. As opposed to *booty of war*, which signifies prize taken *at sea.*

Probate (*probatio testamentorum*). The exhibiting and proving wills in the Probate Court, upon which the original is deposited in the registry of the Court, and a copy is made out under the seal of the Court, and delivered to the executor, together with a certificate of its having been proved. The official copy of a will. To claim a thing as a man's own.

Probate means the copy of a will certified under the seal of a Court of competent jurisdiction, with grant of administration to the estate of the testator.—*Act X of* 1865 (*Succession*), *s.* 3.—*Act XXI of* 1870 (*Hindu Wills*), *s.* 6.—*Act V of* 1881 (*Prob. and Admin.*), *s.* 3.

Effect of probate. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor, as such.—*Act X of* 1865, *s.* 188.—*Act V of* 1881, *s.* 12.

Obtaining probate of a will means nothing more than that the will was executed by the testator. Whether he had power to make the will and whether the dispositions under the will were valid or not, are questions beyond the probate proceedings (*Bhabangana* v. *Harendra*, 17 Cal. W. N. 445).

The grant of probate is decisive only on the *genuineness* of the will propounded and the right of the executors thereby appointed to represent the estate of the testator. It in no respect decides any question as to the *disposing power* of the testator or to the existence of any disposable property (*B. G. Tilak* v. *Sakwarbai*; *Ganesh* v. *Sakwarbai*, 4 Bom. L. R. 637; 26 Bom. 792).

Revocation of probate. *See* LETTERS OF ADMINISTRATION.

Probate-duty. The duty payable on proving a will. A tax upon the gross value of the personal property of the deceased testator.

Probation. Proof; evidence; testimony.

Probationer. One who is upon trial.

Probator. An accuser or approver, or one who undertakes to prove a crime charged upon another. An examiner.

Probatory term. A term for taking testimony.

Procedure. The steps taken in an action or other real proceedings; the mode in which successive steps in litigation are taken. The procedure is commonly opposed to the sum of legal principles which constitute the substance of the law, otherwise called *substantive* law, law of procedure being called the *adjective* law.

Proceeding. A measure or step taken in a Court.

Proceeds. The sum, amount or value of goods, &c., sold or converted into money.

Process (*processus*). So called because it proceeds or goes out, upon former matter. It is largely taken for all the proceedings in any action or prosecution, real or personal, civil or criminal, from the beginning to the end. The various writs formerly issued in the course of an action. The writ commanding the defendant's appearance in an action; this is sometimes called the *original* process. Those issued subsequently to the first or original writ and prior to the writs of execution, were called the *mesne* process, and the writs of execution were called the *final* process. The steps taken upon an indictment or other criminal proceeding.

Proclamation (*proclamatio*). A notice publicly given of any thing, whereof the king thinks fit to advertise his subjects.

Proclamation of courts is used particularly in the beginning or calling of a court, and at the discharge or adjourning thereof, for the attendance of persons and despatch of business. Proclamation is made in courts baron for persons to come in and claim vacant copyholds, of which the tenants died seised since the last courts; and the lord may seize a copyhold, if the heir come not in to be admitted on three proclamations, &c.—*Tomlins.*

Proclamation of a Fine. Where any fine of land was passed, proclamation was solemnly made thereof in the Court of Common Pleas where levied, after engrossing it, and transcripts were also sent to the justice of the peace of the county in which the lands lay, to be openly proclaimed there.—*Ibid.* *See* FINE.

Proclamation of Nuisance. A proclamation for the removal of nuisance.

Proclamation of Rebellion. A writ whereby a man not appearing upon a *subpœna*, or an attachment in the Chancery, is reputed and declared a rebel, if he render not himself by a day assigned.

Proclamation of Recusants. A proclamation whereby recusants were formerly convicted, on non-appearance at the assizes. *See* RECUSANT.

Proconsuls. A name applied to justices in eyre.

Proctor (*procurator*). He who undertakes to manage another man's cause in any court of civil or ecclesiastical law for his fee; especially certain officers who formerly were exclusively entitled to conduct suits in the Ecclesiastical and Admiralty Courts. All such officers are now, by s. 87 of the Judicature Act, 1873, entitled to be called Solicitors of the Supreme Court. An executive officer of the University.

Proctors of the Clergy (*procuratores cleri*). They who are chosen and appointed to appear for cathedral or other collegiate church; as also for the common clergy of every diocese to sit in the convocation house in the time of parliament.—*Tomlins.*

Procuration. Generally signifies agency, or the acting by one man in the affairs of another by the latter's instructions. The word is specially used with reference to the drawing, &c., of bills of exchange by an agent on behalf of his principal. The word "per procuration" attached to a signature on a bill of exchange, are held to be an express intimation of a special and limited authority, and a person who takes a bill so drawn, accepted or indorsed, is bound to inquire into the extent of the authority. *See* POWER-OF-ATTORNEY.

Procuration fee. A sum of money, fee or commission taken by scriveners or brokers on effecting loans of money, or for making bonds.

Procuration of women. The providing of women for the purpose of illicit intercourse. The person so providing is called a *procurer.*

Procurations (*procurationes*). Certain sums of money which parish priests pay yearly to the bishop or archdeacon for his visitation. Procuration is the providing necessaries for the bishops, who, in travelling through their dioceses, visit the churches subject to them.

Procurator. One who has a charge committed to him by any person; an agent; a proctor.

Procurator Fiscal. (*Sc. L.*) The public prosecutor for the district, who institutes the preliminary inquiry into crime within his dis-

trict, and also takes the place of the coroner in England, there being no coroner in Scotland.

Procuratory of resignation. A term in the law of Scotland, by which a vassal authorises the fee to be returned to his superior, either to remain the property of the superior, in which case it is said to be a resignation *ad remanentiam*, or for the purpose of the superior's giving out the fee to a new vassal, or to the former vassal and a new series of heirs, which is termed a resignation *in favourem*. It is somewhat analogous to the surrender of copyholds in England.—*Tomlins.*

Procurement. The causing or procuring a thing to be done, whether civil or criminal. —*Brown.*

Procureur. (*Fr. L.*) An attorney; one who has received a commission from another to act on his behalf; an agent.

Proditon. Treason; treachery.

Proditor. A traitor.

Producent. The person calling a witness.

Profaneness. A disrespect to the name of God, and to things and persons consecrated to him. *See* BLASPHEMY.

Profane swearing. *See* SWEARING.

Profer. To produce; the offer or endeavour to proceed in an action by a person concerned so to do. The time appointed for the production of the accounts of sheriffs and other officers in the Exchequer.

Profession (*professio*). Calling; vocation; known employment. Divinity, physic, and law are called the learned professions. Entering into any religious order.

Professional communications. Communications or instructions made or given to a professional man, *e. g.*, a legal adviser, by a client in the course of his employment as such. Such communications, being made in confidence, are not generally allowed to be disclosed in a court of justice, unless with the client's permission. See Act I of 1872 (Evi.), ss. 126–9.

Professional privilege. The privileges which belong to the members of certain professions (*e.g.*, clergymen, barristers, &c.) during such times as they are exercising the business of their professions; such as exemption from arrest, freedom of speech, &c. Also the privileges of a barrister or solicitor in communicating with clients. *See* ARREST, PRIVILEGED COMMUNICATIONS, PROFESSIONAL COMMUNICATIONS.

Professional witnesses. *See* EXPERTS, SKILLED WITNESSES.

Profits. The advantages which land yields in the shape of rent, issues, or other emoluments. Profits are said to *lie in prender*, when they consist of a right in the lord to take something, *e. g.*, some produce of the soil before it is offered; and to *lie in render*, when the tenant is bound to offer to pay them, as in the case of rent. Also gains, from whatever source derived. *See* MESNE PROFITS, VIOLENT PROFITS.

Prohibition (*prohibitio*). A writ to forbid any court to proceed in any cause there depending on the suggestion that the cognizance thereof belongs not to such court. It is a remedy provided by the common law against the encroachment of jurisdiction.—*Wharton.* The writ of prohibition issues out of a superior Court at Westminster and is directed to the judge of an inferior Court, or the parties to a suit therein, or both conjointly, requiring that the proceedings which have been commenced there be either conditionally stayed or peremptorily stopped. The object of the writ is the keeping of the court to which it is directed within its proper jurisdiction, or to repress the assumption of authority by any pretended court. The writ of prohibition may issue to a court ecclesiastical where some thing is being done by it contrary to the general law of the land, or manifestly out of the jurisdiction of the court.—*Broom's Com. Law.* Prohibition differs from injunction, in that prohibition is directed to a court as well as to the opposite party, whereas an injunction is directed to the party alone.—*Mozley.*

Proles. Progeny; issue; children.

Proletarius. (*Civ. L.*) A person who had no property to be taxed, but paid a tax only on account of his children.

Prolicide. The destruction of human offspring. It is either fœticide or infanticide.

Prolixity. An unnecessary, irrelevant, superfluous or impertinent statement. An unduly lengthy statement of facts.

Prolocutor. The foreman; the speaker of a convocation. An officer chosen by ecclesiastical persons publicly assembled in convocation by virtue of the sovereign's writ.

Promise. An engagement by one man to another for the performance or non-performance of some particular thing. A promise is in the nature of a verbal covenant; and in strictness it differs from a contract in that a contract involves the idea of mutuality which a promise does not.—*Mozley.* A promise may be made either by deed, or without deed, when it is said to be by parol; *promise* is usually applied when the engagement is by parol only, for a promise by deed is technically called a *covenant.*—*Wharton. See* CONTRACT, PROPOSAL.

Promisor. Promisee. *See* PROPOSAL.

Promissory note. Otherwise called a *note of hand*, means an instrument in writing (not being a bank-note or currency-note) containing an *unconditional* undertaking, signed by the maker, to pay a *certain* sum of *money only* to, or to the order of, a *certain* person, or to the bearer of the instrument.—*Act XXVI of* 1881 (*Nego. Instr.*), *s.* 4.

For the meanings of *conditional* and *certain*, *see* BILL OF EXCHANGE.

The person signing the instrument is called

the *maker*; the person to whom it is made payable the *payee*; when transferred by indorsement, the immediate parties to such transfer are, as in the case of a bill, termed the *indorser* and *indorsee*. But no particular form of words is necessary to constitute a promissory note.—*Broom's Com. Law.*

A document is not a promissory not, if it does not contain an express promise to pay (*Govind* v. *Balwantrao*, 22 Bom. 986).

For the purpose of the Stamp Act promissory note includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen.—*Act II of* 1899 (*Stamp*), *s.* 2 (22).

For the purpose of the Limitation Act, promissory note means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight.—*Act IX of* 1908 (*Limitation*), *s.* 2 (9).

Notes payable to bearer on demand. *See* BILL OF EXCHANGE.

For presumptions as to promissory notes, *see* NEGOTIABLE INSTRUMENT.

Bill of exchange and promissory note distinguished. The distinction in general structure and character which exists in a bill of exchange and a promissory note, is thus pointed out by Dr. Story. In a bill of exchange, there are usually three original parties, the drawer, the payee, and the drawee, who after acceptance becomes the acceptor. In a promissory note, there are but two original parties, the maker and the payee. In a bill of exchange the acceptor is, in contemplation of law, the primary debtor to the payee, and the drawer is but collaterally liable. In a promissory note, the maker is, in contemplation of law, the primary debtor. When a negotiable note has been endorsed by the payee, then there occurs a striking resemblance in the relation of the parties upon both instruments, although they are not in all respects identical. The indorser of a note stands in the same relation to the subsequent parties to it as the drawer of a bill; and the maker of the note is under the same liabilities as the acceptor of a bill. Hence the rights and liabilities of parties to bills may readily be applied to determine the mutual obligations of the parties to promissory notes.—*Broom's Com. Law.*

Promissory oaths. *See* OATH.

Promoters (*promotores*). Those who in popular and penal actions prosecute offenders in their own name and the king's as informers, for having a part of the fines or penalties for the reward. Persons or corporations at whose instance private bills are introduced into, and passed through, parliament. Persons who assist in establishing joint stock companies. Those who press forward bills in parliament for the taking of land for railways and other public purposes, who are then called promoters of the undertaking. The prosecutors of ecclesiastical suits.

Promoting the office of Judge. Prosecuting a criminal suit in Ecclesiastical Court. *See* OFFICE OF A JUDGE.

Promotion money. Money paid to the promoters of a joint stock company, for their services in launching the concern.

Promulgation of law. The publication of law already made; the declaring, publishing, and proclaiming a law to the people; and so 'promulgated' (*promulgatus*) signifies published or proclaimed. But the expression *promulgare legem* in Roman Law mean "to submit a proposed law to the legislature," or, as we should say, "to introduce a bill."

Promutuum. (*Civ. L.*) A quasi-contract, by which he who receives a certain sum of money, or a certain quantity of fungible things delivered to him through mistake, contracts the obligation of restoring as much.

Pronotary. First notary. *See* PROTHONOTARY.

Proof (*probatio*). Evidence; testimony; means of conviction.

To lead proof (*Sc. L.*) is to produce evidence.

Living proof (*probatio viva voce*), proof by witnesses.

Dead proof (*probatio mortua*), proof by deeds, writings, &c.

Proof before answer (*Sc. L.*) is where an issue of fact is tried before an issue of law.

Proof of debt. The establishment by a creditor of a debt due to him from an insolvent estate.

Proof of will. *See* PROBATE.

Propel. Propulsion. (*Sc. L.*) An heir of entail in possession may *propel* the estate to the next heir in order of succession. Such renunciation of the estate is called *propulsion*.

Proper feuds. The genuine or original feuds in the hands of military persons, and held by pure military services. *See* IMPROPER FEUDS.

Property (*proprietas*). This is the generic term for all that a person has dominion over. The highest right a man can have to any thing; being used for that right which one has to lands or tenements, goods or chattels, which no way depends on another man's curtesy. Property is either *real* or *personal*. *See* REALTY, PERSONALTY. Property in lands and tenements is acquired either by entry, descent by law, conveyance, or devise; and in goods and chattels, it may be gained in many ways, though usually by deed of gift, bargain and sale, or bequest. *See* MIXED PROPERTY.

There are also three sorts of properties, viz., property absolute (or general), property qualified (or special), and property possessory. An *absolute* proprietor has an absolute power to dispose of his estate as he pleases, subject to the laws of the land. The husband has a

qualified property in his wife's land. *See* QUALIFIED PROPERTY. The right of *possession* of real property, though it carries with it a strong presumption, is not always conclusive evidence of the right of *property*, which may still subsist in another man; for one may have the possession, and another the right of possession, which is recovered by possessory action. In this sense the word *property* is used as opposed to *possession*. *Property* is also used to designate the subject of a right, as when we say, that horse or that field is my property; and for the assets of a bankrupt available for distribution among his creditors.

For preserving property the law has these rules:—(1) No man can deprive another of his property, or disturb him in enjoying it, (2) Every person is bound to take due care of his own property, so as the neglect thereof may not injure his neighbour; (3) All persons must so use their right, that they do not, in the manner of doing it, damage their neighbour's property.

Care must be taken to distinguish between *property* and *power*. The power of a person to appoint an estate to himself, is no more his property, than the power to write a book or to sing a song (*per* Fry, L. J., *Re Armstrong*, 55 L.J.Q.B.579).—*Stroud. See* POWER.

Property in action, as opposed to property in immediate possession, is the right to recover any thing (if it should be refused) by suit or action at law. *See* CHOSE.

Property-mark. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.—*Act XLV of* 1860 (*Penal Code*), *s.* 479, *as amended by Act IV of* 1889 (*Merchandise Marks*), *s.* 3.

Using a false property-mark. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong is said to use a false property-mark.—*Ibid.*, *s.* 481, *as amended by Act IV of* 1889, *s.* 3.

Property qualification. A qualification or right which a man has, by reason of his being the owner of certain property.

Property tax. An annual tax, called also *income tax*, on the income of every man, exceeding a certain amount.

Propinquity. Kindred; parentage.

Proponent. The propounder of a thing.

Proportum. Purport; intent or meaning.

Proposal. When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a *proposal*. When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted; a proposal when accepted becomes a *promise*. The person making the proposal is called the *promisor*. The person accepting the proposal is called the *promisee*. Promises which form the consideration or part of the consideration for each other are called *reciprocal promises*. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be *express*. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be *implied*—*Act IX of* 1872 (*Contract*), *ss.* 2 *and* 9.

Propound To produce as authentic, *e. g.*, a will or model.

Propounder. A monopolist. A person who, as executor or administrator of a deceased person, produces the will of the deceased as genuine in the Court of Probate.

Proprietary. Proprietor (*proprietarius*). He who has a property in anything; an owner. He that had the fruits of a benefice to himself, his heirs or successors.

Proprietary chapels. Chapels of ease, which are the property of private persons, who have purchased or erected them with a view to profit or otherwise. *See* PRIVATE CHAPELS.

Proprietary governments. Governments granted out by the Crown to individuals, in the nature of feudatory principalities, with inferior regalities and subordinate powers of legislation, such as formerly belonged to the owners of counties palatine. *See* COUNTY PALATINE.

Prorogated jurisdiction. (*Sc. L.*) A power conferred by consent of the parties upon a judge who would not otherwise have jurisdiction. But the rule of law is that no consent of parties can give the court a jurisdiction which it does not possess (*Govt. of Bombay* v. *Ramalsingji*, 9 Bom. H. C., A. C., 242).

Prorogation. Prolonging or putting off to another day. A continuation of parliament from one session to another, as an adjournment is a continuation of the session from day to day. Its effect is to put an end to a particular session of an existing parliament, and not to dissolve the parliament; and it differs from an *adjournment* in this, that after an adjournment all things continue as they were at the time of the adjournment; whereas after a *prorogation*, bills introduced and not passed are as if they had never been begun at all.

Prorogue. To prolong or put off to another day.

Prosecute with effect. To prosecute with effect is to prosecute to a not unsuccessful termination.

Prosecution. The proceeding with, or following up, any matter in hand. The proceeding with any suit or action at law. A proceeding either by way of indictment or information, in the criminal courts, or order

to put an offender upon his trial. The party by whom criminal proceedings are instituted; as we say, such a course was adopted by the prosecution, &c.

Prosecutor. Any person who prosecutes any proceeding in a court of justice, whether civil or criminal; but the word is generally confined to the party who institutes criminal proceedings on behalf of the Crown.

Protected transactions. In bankruptcy, the order of adjudication, when once made, relates back to the act of bankruptcy upon which the petition was founded, and even to any earlier act of bankruptcy (within a year from the order) that is still available as such; and in this manner many transactions with the bankrupt that have taken place in good faith and for value before the adjudication order are comprised within the bankruptcy. But the law specially protects such transactions, being in good faith and for value. These are called protected transactions.

Protection (*protectio*). The benefit or safety which is secured to every subject by the laws. Every man who is a loyal subject is in the king's protection; and in this sense, to be out of the king's protection is to be excluded from the benefit of the law. Protection also means an immunity granted by the king to a certain person to be free from suits at law or other vexations, in respect of the party being engaged in the king's service, or for some other reasonable cause.

Protection note. *See* COVERING NOTE.

Protection order. An order for the protection of a wife's property as against her husband or his creditors, granted by a Divorce Court or by a Magistrate, to a wife whose husband has deserted her without reasonable cause. By virtue of the protection order she becomes entitled, during the continuance of such order, to enjoy her own property and to bring actions as if she were unmarried. See Act IV of 1869 (Divorce), ss. 27 to 31 Also an order for the protection of an insolvent debtor from arrest by his creditors, granted under the Insolvent Act, An insolvent who has obtained a protection-order is not liable for arrest or imprisonment in respect of the debts included in the Schedule filed by him.

Writ of protection. The writ whereby the king's protection is secured. It is very rarely granted.

Protectorate. The period of English history during which Cromwell was protector. A relation sometimes adopted by a strong country towards a weak one, in the nature of a feudal sovereignty, whereby the former protects the latter from hostile invasion, and interferes more or less in its domestic concerns.

Protector of the settlement. The person or persons whose consent, under the Fines and Recoveries Abolition Act, 1833 (3 & 4 Wm. IV, c. 74), is necessary to enable a tenant in tail in remainder to bar the subsequent estates in remainder or reversion. The protector is generally the prior tenant for life.—*Mozley.*

Protest (*protestatio*). A caution by which a person declares that he does either not at all, or only conditionally, yield his consent to any act to which he might otherwise be deemed to have yielded an unconditional assent. The dissent of a peer to a vote of the House of Peers, entered on the journals of the House, with his reasons for such dissent.

Master's protest. A writing attested by a justice of the peace or consul, drawn up by a master of a ship, stating the circumstances under which an injury has happened to the ship, or to the cargo, or other circumstances calculated to affect the liability of the shipowner or the charterer, &c.

Protest of a bill. A formal declaration by the holder of a bill of exchange, or by a notary public at his request, that the bill of exchange has been refused acceptance or payment, and that the holder intends to recover all the expenses to which he may be put in consequence thereof. In the case of a foreign bill such a protest is essential to the right of the holder to recover from the drawer or indorsers.—*Mozley.*

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.—*Act XXXVI* of 1881 (*Nego. Instr.*), *s.* 100.

Protest for better security. When the acceptor of a bill of exchange has become insolvent or his credit has been publicly impeached before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and, on its being refused, may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.—*Ibid.*

Protest of foreign bills. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.—*Ibid.*, *s.* 104.

Protestation (*protestatio*). In pleading, the interposition of an oblique allegation or denial of some fact, by protesting (*protestando*) that such a matter did not exist, and at the same time avoiding a direct affirmation or denial. The use of it was to save the party from being concluded by some fact which could not be directly affirmed or denied without duplicity of pleading. *See* DOUBLE PLEADING. A proceeding taken by a defendant in a Scotch Court where the pursuer neglects to proceed.

Prothonotary. Protonotary (*protonotarius*; *primus notarius*). A chief scribe in a court of law There were formerly three of such officers in the court of Common Pleas, and one in the court of King's Bench.

Protocol. The first copy; the original draft or record; especially of proceedings in an ecclesiastical cause. The entry of any instrument in the book of a notary or public officer, and which in case of the loss of the instrument may be admitted as evidence of its contents. In international law, a record of preliminary negotiations.

Prove. To establish by evidence.

To prove a debt. To establish a debt due from an insolvent estate, and to receive a devidend thereon.

To prove a will. To procure probate of a will. *See* PROBATE.

Proveable debt. A debt which may be proved in bankruptcy, comprising debts of all kinds generally, except debts contracted by a person having notice of an act of bankruptcy committed by the debtor (*See* ACT OF BANKRUPTCY), and demands in the nature of unliquidated damages arising from a tort committed by the debtor.

Proved. A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.—*Act I of* 1872 (*Evt.*), *s.* 3.

Prover. The same as approver. *See* APPROVER.

Provided always. These words, inserted in a deed, refer to and qualify what has preceded. *See* PROVISO.

Province. The circuit of an archbishop's jurisdiction. A colony or dependency.

Provincial. Of or belonging to a province. A chief governor of a religious order; as of friars, &c.

Provincial Courts. The several archiepiscopal courts in the two ecclesiastical provinces of England.

Provision (*provisio*). The providing a bishop or any other person with an ecclesiastical living by the Pope, before the incumbent was dead.

Provisional. Made or existing for a time, or until something further is done; temporary.

Provisional assignee. An assignee formerly appointed provisionally by the Court of Bankruptcy until regular assignees should be appointed by the creditors.

Provisional committee. A committee appointed for a temporary occasion; a committee formed for carrying into effect the preliminary arrangements necessary to promote a scheme.

Provisions. Those Acts of Parliament which were passed at Oxford, 1258, to curb the arbitrary power of the Crown.

Proviso. A stipulation, caution or condition, inserted in any deed, on the performance whereof the validity of the deed depends. A covenant. A clause in an Act of Parliament whereby a condition or limitation is imposed on the operation. Proviso, in the most common acceptation, is that clause in a mortgage, whereby the deed is declared to be void on payment of principal and interest. The word proviso is generally taken for a condition and signifies some quality annexed to a real estate by virtue of which it may be defeated, enlarged or created upon an uncertain event; such qualities annexed to personal contracts and agreements are generally called conditions.

The terms *proviso* and *condition* are said to be synonymous and signify some quality annexed to a real estate by virtue of which it may be defeated, enlarged or created upon an uncertain event.

Proviso for cesser. *See* CESSER.

Trial by proviso. Where the plaintiff, after issue joined, did not proceed to trial where he ought to have done so, the defendant might, under the old practice, have the action tried by proviso; he might give the plaintiff notice of trial, make up the record, carry it down and enter it, and proceed to the trial as if he were proceeding as plaintiff.—*Wharton.* So called by reason of the clause formerly inserted in the sheriff's *venire facias*, *viz.*, "provided (*proviso*) if two writs come to your hands" (one from the plaintiff and another from the defendant), "you shall execute only one of them."—*Mozley.*

Provisor. A purveyor. Also one who sued to the court of Rome for a provision. *See* PROVISION.

Provocation. Provocation can never render homicide either justifiable or excusable; at the most it may reduce murder to manslaughter. But if there be evidence of express malice, or if the provocation was at an end, the homicide would be murder and not manslaughter.—*Brown.* Culpable homicide not amounting to murder is when a man kills another, being deprived of self control by reason of grave and sudden provocation. But when the act is done after the first excitement had passed away, and there was time to cool, it is murder (*Queen* v. *Yasin Sheikh*, 4 B. L. R., A. Cr., 6; *Queen* v. *Hari Giri*, 1 B. L. R., A. Cr., 11). *See* CULPABLE HOMICIDE.

Provost. The head of a college or collegiate church. The principal magistrate of a Scotch borough.

Provost court. The local court of civil jurisdiction for the city of Exeter.

Provost-Marshal. An officer of the royal navy having charge of prisoners taken at sea, and sometimes also on land. An officer appointed in time of martial law to arrest and punish offenders.

Proxies. Annual payments by the parochial clergy to the bishop, &c., for the charges of his visitation. *See* PROCURATION.

Proxy. A person deputed to vote in the place or stead of the party so deputing him;

as in the House of Lords, at meetings of creditors of a bankrupt, at meetings of the shareholders of a company, and on various other occasions. Also the writing by which the appointment is made. *See* POWER-OF-ATTORNEY. PROXIES.

Pryk. A spur. Hence a kind of tenure *in capite* by service of finding a spur for the king.

Pseudograph. A false writing.

Puberty (*pubertas*). The age of fourteen in men and twelve in women; when they are held fit for and capable of contracting marriage.—*Tomlins.*

Public. Of or belonging to the people, to the community, or to the multitude. Pertaining to a nation, state or community.

Public Act of Parliament. An Act to be judicially noticed, which is now the case with all Acts of Parliament, except the very few in which a declaration is inserted to the contrary. Public Acts which have been passed as public bills have in general been ranked among the "Public General Acts." *Public Local Acts* is a phrase applied to local Acts of Parliament of a public nature which, though they have been passed as public bills, are nevertheless, for the ease of the volume of Public General Acts, placed among the "Local and Personal Acts." The public Acts which have been passed as private bills form the main body of the "Local and Personal Acts."—*Mozley.*

Public chapels. Chapels founded at some period later than the church itself; they were designed for the accommodation of such of the parishioners as in the course of time had begun to fix their residence at a distance from its site; they were described as *chapels of ease*, because built in aid of the original church. *See* PRIVATE CHAPELS.

Public documents. The following documents are public documents:—(1) Documents forming the acts, or records of the acts (I) of the Sovereign authority, (II) of official bodies and tribunals, and (III) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of His Majesty's dominions, or of a foreign country. (2) Public records kept in British India of private documents.—*Act I of* 1872 (*Evi.*), *s.* 74. All other documents are private.—*Ibid.*, *s.* 75. *See* CERTIFIED COPIES.

Public funds. *See* FUND.

Public grant. The distinction between a grant for services of a public nature and one for services private and personal to the grantor, is well understood. In the former case the zamindar is not entitled to resume, while in the latter case he may do so when the services are not required or when the grantee refuses to perform the services (*Radha Prasad* v. *Budhu*, 22 Cal. p. 941).

Public house. *See* PUBLICANS.

Public minister. In international law, this term signifies all the higher grades of the representatives of foreign countries; but it does not extend to include a consul, or even a consul general, when acting in the place of an absent minister.—*Brown.*

Public nuisance. *See* NUISANCE.

Public officer. A person appointed by joint-stock banking companies to sue and be sued on behalf of the company. Abbrev. P.O.

For the classes of persons who are to be deemed public officers within the meaning of the Civ. Pro. Code, see s. 2 (17) of the Code V of 1908.

Public policy. The principles under which the freedom of contract or private dealings is restricted by law for the good of the community. *See* VOID CONTRACT.

Public prosecutor. The king, in whose name criminals are prosecuted, because all offences are said to be against the king's peace, his Crown and dignity. An officer of government whose duty it is in all important cases to undertake a prosecution where there is no private person willing to do so, or where owing to the magnitude of the offence it is desirable that the prosecution should be officially conducted.

Public servant. For the classes of persons who are to be deemed public servants within the meaning of the Indian Penal Code, see s. 21 of the Code.

Public, true and notorious. The old form of words in which the charges in the allegations in the ecclesiastical courts were described at the end of each particular.

Public verdict. *See* PRIVY VERDICT.

Public ways. High ways. *See* HIGHWAY, WAY.

Publicans. Persons authorised by license to keep a public house and retail therein for consumption on or off the premises where sold, all intoxicating liquors.

Publication. Divulgation; proclamation; a making public.

Publication of evidence in Chancery. This is used of depositions of witnesses in a cause in Chancery, in order to the hearing; it signifies the showing the depositions openly and giving out copies of them. This is no longer practised, as all parties attend the examination of witnesses.

Publication of an invention, prior to taking out a patent, is ground for an objection for want of novelty. *See* PATENT RIGHTS.

Publication of libel. *See* LIBEL.

Publication of a will, meant a declaration or acknowledgment by a testator that a given writing is intended to operate as his last will and testament. This was formerly necessary to give legal effect to a will. No publication is now necessary beyond the execution attested by two witnesses. *See* WILL.

Publication of a work. *See* COPYRIGHT.

Publicist. A writer on the law of nations.

Publisher. The word, as used in Act XXV of 1867 (Printing Press and Newspapers), is

used in a restricted sense, and does not include a person who merely sells a book or paper (*Queen-Empress* v. *Banka Patni*, 23 Cal. 414). A man who causes a book to be printed, and offers it to the public for sale, is a publisher within the meaning of ss. 3 and 12, Act XXV of 1867 (*Empress* v. *Joti Prasad*, 7 All. W. N. 95).

Publishing a libel *See* LIBEL.

Pudzeld. To be free from the payment of money for taking wood in a forest. *See* WOODGILD.

Puffer. A person employed to bid at a sale by auction, on behalf of the owner of the goods sold, for the purpose of raising the price and exciting the eagerness of the bidders. The employment of a puffer is illegal, unless a right to bid is reserved to the owner by the conditions or particulars of sale. *See* WITHOUT RESERVE.

Pulsator. The plaintiff or actor.

Punctuations. Punctuations have no place in deeds, or weight in Acts of Parliament.

Pund-breach. Pound-breach.

Pupil. (*Sc. L.*) A ward; one under the age of puberty. During this period, which is called *pupillarity*, infants are under the care of *tutors*; afterwards, until majority, of *curators*. Tutors and curators are alike called *guardians* in the English law.

Pupillarity. (*Sc. L.*) The age of infants preceding puberty. *See* PUPIL.

Purakudis. (*Ind.*) Tenants who provide themselves with seeds and ploughing cattle, cultivate the land by personal or hired labour, receiving a share of the produce in return. The word does not signify any permanent tenancy (*Mayandi Chettiar* v. *Chokkalingam Pillay*, 8 Cal. W. N. 545, 14 M. L. J. R. 200; 27 Mad. 291; 31 I. A. 87, P. C.)

Purchase (*perquisitio*; *conquæstus*). In its popular sense, an acquisition of land, obtained by way of bargain and sale, for money or some other valuable consideration. In its legal acceptation, an acquisition of land in any lawful manner, either by buying with money, gift, deed or agreement, other than by descent or the mere operation of law. Purchase signifies any lawful mode of coming to an estate by the act of the *party* as opposed to the act of *law*, that is to say, in any manner except by descent, escheat, curtesy, and dower. Purchase, in opposition to descent, is taken largely; if an estate comes to a man from his ancestors without writing, that is a *descent*; but where a person takes any thing from an ancestor or others by deed, will or gift, and not as heir at law, that is a *purchase*.

The difference between the acquisition of an estate by descent and purchase consists principally in two points:—(1) That by purchase the estate acquires a new inheritable quality and is descendible to the owner's blood in general; (2) That an estate taken by purchase does not always make the person who acquires it answerable for the acts of his ancestors, whereas an estate taken by descent invariably does so.—*Brown*.

Purchaser. One who acquires real or personal estate by the payment of money; a buyer; a vendee. One who acquires real estate by his own act and not by act of law. One who acquires real estate otherwise than by descent. Also the root or stock of descent from whom, as the *terminus a quo*, it is in every case to be traced.

The word *purchaser* shall mean the person who last acquired the land otherwise than by descent, or than by escheat, partition, or enclosure, by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent.—*Act XXX of* 1839 (*Inheritance*), *s.* 1.

The word purchaser will, in its widest sense, include mortgagees, lessees, assignees of leases (and, *semble*, sub-lessees who covenant for performance of lessee's obligations; *secus*, where there is no such covenant), also children of a widow, *qua* marriage settlement.—*Stroud*. *See* LIMITATION.

The words 'purchase' and 'purchaser' can be used with reference to intending purchasers even though the purchase may not be complete (*Bombay Tramway Co.* v. *Bombay Municipal Corporation*, 4 Bom. L. R. 384).

Purdah. (*Ind.*) A veil. A curtain. Applied to females, it signifies such as may not lawfully be exposed to the gaze of strange men.

Purdah nashin. Sitting behind the curtain, a lady who observes the rules of seclusion.

In the case of deeds executed by *purdanashin* ladies it is requisite that those who rely on them should satisfy the court that they had been explained to and understood by those who executed them (*Sumsuddin* v. *Abdul Hoosein*, 31 Bom. 165; 8 Bom. L. R. 781; *Shambati Kooari* v. *Jago Bibi*, 4 Bom. L. R. 444; 6 Cal. W. N. 682; 29 Cal. 749; 29 I. A. 127, P. C., following 8 I. A. 43; *Khas Mehal* v. *Administrator-General of Bengal*, 5 Cal. W. N. 505, *Amir Bibi* v. *Abdul*, 3 Bom. L. R. 658; *Annoda* v. *Bhuban*, 3 Bom. L. R. 386; 5 Cal. W. N. 489; 28 Cal. 546; 28 I. A. 71, P. C.; *Nawab Sarurjigar Begam* v. *Baroda Kant*, 5 Ind. Cas. 539; *Kubra* v. *Ajodhia*, 7 All. L. J. 445, *Bindu Bashini* v. *Girdhari*, 12 Cal. L. J. 115; *Mirza Sajjad Hussain* v. *Nawab Wazir Ali*, 16 Cal. W. N. 889, P. C.; 23 M. L. J. R. 210; 12 M. L. T. 361; 34 Mad. 455; 14 Bom. L. R. 1055; 10 All L. J. 364; *Kali Bakhsh Singh* v. *Ram Gopal Singh*, 16 Bom. L. R. 147, P. C.). Mere reading out to them without explaining is not sufficient (*Shambati Kooari* v. *Jago Bibi* (*supra*)

Frivolous pleas that a *purdanashin* did not understand the nature of the transaction are raised almost as a matter of course in any case in which a Hindu lady is concerned

(*Purnachandra* v. *Nobin Chandra*, 8 Cal. W. N. 362).

Before the law applicable to a *purdanashin* lady is applied, a court must find expressly that the lady is a *purdanashin* lady. It is not enough to entitle a woman to the special care with which the courts regard the disposition of a *purdanashin* woman that she lives in some degree of seclusion. Hence, where it was found that a lady appeared before a Registrar for registration of certain documents, that she stood as a witness in the box in a suit, that she put in tenants and fixed and recovered rents from them in respect of her house, that she paid municipal rates and taxes, the court held that she could not be treated as a *purdanashin* lady (*Shaik Ismail* v. *Amirbibi*, 4 Bom. L. R. 146).

A *quasi-purdanashin* woman, *i. e.*, a woman who, not being of the *purdanashin* class, is yet close to them in kinship and habits and secluded from ordinary social intercourse, is not entitled to the same amount of protection which the law gives to *purdanashins*. Outside the latter class it must depend in each case on the character and position of the individual woman whether those who deal with her are or are not bound to take special precaution that her action shall be intelligent and voluntary and to prove that it was so in case of dispute (*Hodges* v. *The Delhi and London Bank, Ld.*, 5 Cal. W. N. 1; 23 All. 137; 27 I. A. 168, P. C.).

Pure villenage. Villenage in which the service was base in its nature and uncertain. *See* VILLENAGE.

Purgation (*purgatio*). The method by which, in former times, a man cleared himself of a crime of which he was publicly suspected and accused before a judge. This was either *canonical* (*i. e.*, prescribed by the canon law), by the oaths of twelve neighbours that they believed in his innocence; or *vulgar*, by fire or water ordeal, or by combat. It is entirely abolished. *See* COMPURGATOR, ORDEAL.

Purging. Atoning for an offence.

Purging contempt. Atoning for, or clearing oneself from contempt of court. It is generally done by apologising and paying fees. The party then ceases to be "in contempt."

Purging an irritancy. (*Sc. L.*) Atoning for an act of irritancy or forfeiture, so that the court allows the forfeiture to be remitted. *See* IRRITANCY.

Purging a tort. This is like the ratification of a wrongful act by a person who has power of himself to lawfully do the act. But unlike ratification, the purging of the tort may take place even after commencement of the action (*Hull* v. *Pickersgill*, 1 B. & B. 282). —*Brown.*

Purlieu. Land formerly added to an ancient forest by unlawful encroachments, and dis-afforested by the *Charta de Foresta*, so as to remit to the former owners their rights.

Purparty. *See* POURPARTY.

Purpresture. *See* POURPRESTURE.

Purprise (*Fr. pourpris*). A close or enclosure, also the whole compass of a manor. *See* POURPRESTURE.

Pursuance. Prosecution; process.

Pursuer. (*Sc. L.*) A plaintiff or prosecutor.

Pursuivant. *See* POURSUIVANT.

Purveyance. *See* POURVEYANCE.

Prerogative of purveyance and pre-emption. *See* PRE-EMPTION.

Purview. That part of an Act of Parliament which begins with the words, *Be it enacted, &c.*; the body of a statute, as distinguished from the preamble. The general scope and object of a statute.

Put. Putt. An option which a party has of delivering stock at a certain time, in pursuance of a contract, the other party to the contract being bound to take the stock at the price and time therein specified.

Putts and refusals. Time bargains, or contracts for the sale of supposed stock on a future day.

Put to a right. *See* TURNED TO A RIGHT.

Putage. Putagium. Incontinence; fornication.

Putative (*putativus*). Supposed; reputed; or commonly esteemed; in opposition to notorious or unquestionable.

Putative father. The man who is supposed to be the father of a bastard child, and especially one who is adjudged to be so by an order of justices under the Bastardy Acts. When a single woman, with child, swears that such a man is the father, he is called the putative father.

Putnee. *See* PATTANI.

Puttee. (*Ind.*) A part or portion; a division of a village. A division of land into separate portions or stripes. It is sometimes applied to a measure of land about eight acres.

Many joint villages are found in a state of division or severalty as regards the cultivation and enjoyment of the land. Ordinarily, when the family is descended from some single-village-founder, the shares will be mainly those of the ancestral tree and follow the law of inheritance; A sharer here and there may be holding some acres more or less than his share, but the general scheme is easily traced and is acknowledged by the co-sharers. When this is the case, the village is said to be *Putteedari*, because the primary divisions, representing the main branches of the family, are called *Puttee*.

Puttee of a Mahal, as used is s. 188 of the N.-W. P. Land Revenue Act XIX of 1873, means the division of a mahal distinct from the share of an individual co-sharer (*Bajnath* v. *Sital Singh*, 13 All. 224).

Putteedar. The holder of a share of lands, who generally realises the rent or proceeds

of his own separate holding and pays his own quota of revenue separately.

Putteedari tenure. A tenure of a coparcenary nature, but in which the lands are divided and held in severalty by the different proprietors, each person managing his own lands and paying his fixed share of the Government revenue, through an accredited representative of the whole, being jointly responsible in the event of any one sharer being unable to fulfil his engagements. See *Ram Autar* v. *Sheo Dutt* (6 N.-W. P. 243).

Putting in suit. As applied to a bond or any other legal instrument, it signifies bringing an action, or making it the subject matter of an action.—*Brown.*

Putting in ure. Putting in practice.

Putting oneself upon the country. Offering to be tried by a jury of one's countrymen. *See* COUNTRY.

Putra poutrade krame. (*Ind.*) Son, grandson, and so on, in succession. These words have acquired a technical force, and are used as meaning an estate of inheritance (*Lalit Mohun* v. *Chukkun Lal*, 24 Cal. 834).

The words *putra poutradi* used in the will of a Hindu mean heirs generally (*Hari Dasi* v. *Secretary of State*, 5 Cal. p. 240). They apply also to the female heirs of a female, when by law the estate will descend to such heirs (*Ram Lal Mukerji* v. *Secretary of State*, 8 I. A. 46).

The expression 'from son to grandson' imports an absolute grant of property under the Hindu law (*Ethirajulu* v. *Mukunthoo*, 15 M. L. J. R. 299 ; 28 Mad. 363).

Putrika putra. (*Hin. L.*) The son of an appointed daughter. The daughter was lawfully married to her husband, yet her son became the son of her father, if he had no male issue ; and he became so, not only by agreement with her husband, but by a mere act of intention on the part of her father without any consent asked for or obtained.

Puture (*putura*). A custom claimed by keepers in forests, and sometimes by bailiffs of hundreds, to take man's meat, horse's meat, and dog's meat of the tenants, *gratis*, within the perambulation of the forest, liberty, or hundred.—*Moxley.*

Pyke. Paik. (*Ind.*) A foot passenger ; a person employed as a night-watch in a village, and as a runner or messenger on the business of the revenue ; a subordinate collector of rents.

Pyne. (*Ind.*) A watercourse.

Pyx. An ancient mode of inquisition before a jury of the Goldsmiths' Company, to try whether coin was of the proper standard.

Pyx jury. *See* PIXING THE COIN.

Q

Quadrans. The fourth part of a whole; the fourth part of a penny.

Quadripartite. Having four parties ; divided into four parts.

Quadrivium. The centre of four ways, where four roads meet and cross each other.

Quadruplatores. Informers among the Romans, who, if their information were followed by conviction, had the fourth part of the confiscated goods for their trouble.

Qualification. That which makes any person fit to do a certain act. Also an abatement, diminution, condition.

Qualified. The word is applied to a person enabled to hold two benefices. *See* PLURALITY. Conditional ; not absolute.

Qualified acceptance of a bill. An acceptance is qualified—(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ; (*b*) where it undertakes the payment of part only of the sum ordered to be paid ; (*c*) where no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere ; or where, a place of payment being specified in the order, it undertakes the payment at some other place, and not otherwise or elsewhere ; (*d*) where it undertakes the payment at a time other than that at which, under the order, it would be legally due.—*Act XXVI of* 1881 (*Nego. Instru.*), *s.* 86, *Explanation.* *See* ACCEPTANCE.

Qualified fee. Such a one as has a qualification subjoined thereto, and which must be determined or put an end to, whenever the qualification annexed to it is at an end. *See* BASE FEE.

Qualified indorsement. *See* INDORSEMENT

Qualified oath. An oath where the party swears not simply, but circumstantially.

Qualified property. An ownership of a special and limited kind. It may arise either from the peculiar circumstances of the subject matter, which render it incapable of being under the absolute dominion of the proprietor, as in the case of animals *feræ naturæ* (*see* ANIMALS), or from the peculiar circumstances of the owner, the thing itself being capable of absolute ownership, as in the case of a bailment, where the bailee has a qualified property in the chattel transferred to him by the bailment. *See* PROPERTY.

Quality of estate. The period when and the manner in which, the right of enjoying an estate is exercised. It is of two kinds: (1) the *period* when the enjoyment is conferred on the owner, whether at present or in future; (2) the *manner* in which the enjoyment is to be exercised whether solely, jointly, in common, or in coparcenary.

Quantity of estate. Its time of continuance, or degree of interest, as in fee, during life, or for years.

Quarantine. Quarentine. Quarentaine (*quarantina*). By Magna Charta, the widow shall not be distrained to marry afresh, if she

choose to live without a husband, but she shall not, however, marry against the consent of the lord, and nothing shall be taken for assignment of her dower, but she shall remain in her husband's capital mansion-house for forty days after his death, during which time her dower shall be assigned (*see* ASSIGNMENT OF DOWER). These forty days are called the widow's *quarantine*. Marriage during these forty days forfeits the quarantine.—*Wharton*. Also the period of forty days (or such other period as may be directed by order) during which the persons or ships, coming from foreign parts infected with the plague, are not permitted to land or come on shore. It also means a quantity of land containing forty perches, a furlong. The term is derived from the Italian *quaranta*, forty.

Quarrel (*querela*). A dispute, contest. Also an action, real or personal.

Quarter-days. The days which begin the four quarters of the year. In England they are—The 25th of March, or Lay Day, the 24th of June or Midsummer Day, the 29th of September, or Michaelmas Day, and the 25th of December, or Christmas Day. In Scotland, they are—The 2nd of February, or Candlemas Day; and the 15th of May, or Whitsunday, the 1st of August, or Lammas Day, and the 11th of November, or St. Martin's Day or Martinmas.

Quarterization. Quartering traitors. The part of the punishment and execution of a traitor, by dividing his body into four quarters. The head of the traitor, after death by hanging, was severed from his body, and the body divided into four quarters.

Quarter rating. The rating on only one fourth part of the net annual value—a privilege enjoyed by owners of railways and other kinds of property.

Quarter seal. The seal kept by the director of the Chancery in Scotland. It is in the shape and impression of the fourthpart of the Great Seal, and is in the Scotch statutes called the Testimonial of the Great Seal. Gifts of land from the Crown pass this seal in certain cases.

Quarter Sessions. The General Sessions of the peace held quarterly before the whole body of the justices of the peace in counties, and before the Recorder in boroughs. It was held four times in each year, or oftener, to try certain indictable offences, and hear appeals from petty sessions.

Quash (*cassum facere*). To make void or annul, as when we say that an order of justices or a conviction in an inferior court is *quashed* by the judgment of a superior court.

Quashing the array. *See* ARRAY.

Quasi. This word prefixed to a noun means that although the thing signified by the combination of *quasi* with the noun does not comply in strictness with the definition of the noun, it shares its qualities.

Quasi-contract. An act which has not the strict form of a contract but yet has the effect of it; one which arises without express agreement between the parties, an implied contract. An act or event from which, though not a consensual contract, an obligation arises *as if* from a contract (*quasi ex contractu*). For instance, an executor or administrator is bound to satisfy the liabilities of the deceased to the extent of his assets received, *as if* he had contracted to do so.

Quasi crime Quasi-delict. Quasi tort. The action of one doing damage or evil involuntarily. A tort indirectly and not directly occasioned by the party liable. A tort committed by one's agents in the course of their employment The wrong for which a person is responsible, though it is not committed by himself, *e g.*, a master is liable for anything done by a servant in the course of his employment.

Quasi-easement. A right which, though not strictly an easement, is very like an easement, and is grown up and attached by customary enjoyment, as the right of free men and citizens of a town to have horse races on some individual's land on a particular day or days of the year, the right of victuallers of a manor to erect booths on the waste during fair-days, the right of the inhabitants of a village to dance or have other games on a particular close at certain seasons. No such rights belong to the public —*Brown*.

Quasi entail. An estate *pur autre vie* granted to a man and the heirs of his body, is termed a *quasi* entail, the interest so granted not being properly an estate tail (which applies only where the subject of the entail is an estate of inheritance), but yet so far in the nature of an estate tail, that it will go to the heir of the body as special occupant during the life of the *cestui que vie*, in the same manner as an estate of inheritance would descend, if limited to the grantee and the heirs of his body. Such estate may also be granted with a remainder thereon during the life of the *cestui que vie* —*Wharton*.

Quasi fee simple. This is where an estate for life is granted to the tenant *pur autre vie* and his heirs. In such case he takes an estate in fee simple during the life of the *cestui que vie*. *See* QUASI-ENTAIL.

Quasi personalty. Things which are moveable in point of law, though fixed to things real, either actually, as emblements, fixtures, &c., or fictitiously, as chattels real, leases for years, &c.

Quasi-possession. Enjoyment of a right, as opposed to possession of a thing.

Quasi-realty. Things which are fixed in contemplation of law to realty, but moveable in themselves, as heir looms.

Quasi-tenant at sufferance An undertenant who is in possession at the termination of an original lease, and is permitted by the reversioner to hold over.

Quasi-trustee. A person who reaps a benefit from a breach of trust, and so becomes answerable as a trustee. A person who has incurred an obligation in the nature of a trust, though not strictly a trustee. For examples of *qausi*-trusts, see Act II of 1882 (Trusts), Chapter IX.

Queen (*regina*). A woman who is sovereign of a kingdom. The Queen of England is either queen regent, queen consort, or queen dowager. The *queen regent*, regnant, or sovereign is she who holds the Crown in her own right, as Queen Mary, Queen Elizabeth, Queen Anne, Queen Victoria, who had the same powers, prerogatives, rights, dignities, and duties, as if they had been kings. But the *queen consort* is the wife of the reigning king; and she, by virtue of her marriage, is participant of divers prerogatives above other women. *Queen dowager* is the widow of the king, and as such enjoys most of the privileges belonging to her as queen consort. —*Tomlins.*

Queen Anne's Bounty. A royal charter, confirmed by Queen Anne (2 Anne, c. 11), whereby all revenues of first fruits and tenths (*see* those titles) is vested in trustees for ever, to form a perpetual fund for the augmentation of poor livings, and for advancing money to incumbents for rebuilding parsonage houses.

Queen's Advocate. *See* ADVOCATE.

Queen's Bench. *See* COURT OF KING'S BENCH.

Queen's Counsel. *See* KING'S COUNSEL.

Queen's enemies. *See* ENEMY.

Queen's gold (*aurum reginæ*). A royal revenue which belonged to every queen consort during her marriage with the king.

Queen's taxes. *See* ASSESSED TAXES.

For other titles beginning with "Queen," *see* KING.

Querent. A plaintiff; complainant; inquirer.

Quest (*questa*). Inquest, inquisition, or inquiry.

Questman. Questmonger. A starter of law suits or prosecutions. A person chosen to inquire into abuses, especially such as relate to weights or measures. Also a church warden. *See* SIDESMEN.

Question. Interrogatory. An issue to be decided by a court of law. It may be *of law*, or *of fact*. *See* MIXED QUESTIONS. It is sometimes used to indicate the rack or torture.

Quick with child. The term "quick with child" is properly applied to that time after conception when the mother first perceives the movements of the fœtus, under the erroneous belief that it is its first movement, and that it then becomes alive or quick. The fœtus is, however, alive from the moment of conception, and there is little doubt but that movements take place at a much earlier period, though unnoticed by the mother. This term refers to the time when the woman first feels the movements of the child within her, and not to any time after conception previous thereto.—*Starling's Criminal Law.* *See* ABORTION.

Quiet enjoyment. A phrase applied especially to the undisturbed enjoyment by a purchaser of landed property, of the estate or interest so purchased. A general covenant by a vendor or lessor, for quiet enjoyment by the purchaser or lessee, extends only to secure the covenantee against the acts of persons claiming under a *lawful* title, for the law will not adjudge that a lessor (or vendor) covenants against the wrongful acts of strangers, unless his covenant is express to that purpose. The construction, however, is different where an individual is named; for there the covenantor is presumed to know the person against whose acts he is content to covenant, and may therefore be reasonably expected to stipulate against any disturbance from him, whether by lawful title or otherwise.—*Moxley.*

Quinquepartite. Consisting of five parts.

Quint-exact (*quinto exactus*). The fifth and last call of a defendant sued for outlawry, when, if he appeared not, he was declared outlawed. A person so called or summoned.

Quit claim (*quieta clamantia*). A quitting of one's action, claim, or title. A release, or acquitting of a man of any action or claim which might be had against him.

Quit rent (*quietus redditus*). A certain small rent paid by the freeholders or copyholders of a manor to the lord. So called because it was originally paid by the tenants in substitution of, or in discharge or acquittance of, and to free them from, military and other services. In ancient records it is called *white rent*, because paid in silver money, to distinguish it from rent-corn.

Quittance. An abbreviation of acquittance; a release.

Quot. One-twelfth part of the moveable estate of a person dying in Scotland, anciently due to the bishop of the diocese where he resided.

Quota. A tax to be levied in an equal manner.

R

Rachet (*rachetum*). The compensation or redemption of a thief. The same as theftbote.

Rack. An engine of torture. Torture for the purpose of extorting confession from an accused person. Also called *question.*

Rack-rent. The full yearly value of the land let by lease payable by tenant for life or years. Rent raised to the uttermost; the full annual value of the property.

"Annual value" primarily means *net* annual value; whereas "rack-rent" or "annual rack-rent" means gross rental as distin-

guished from net annual value (*Stevens* v. *Barnet W. Co.*, 57 L. J. M. C. 82; 36 W. R. 924).—*Stroud.*

Rack vintage. Wines drawn from the lees.

Radd. The *return*, in the Mehomedan Law of inheritance. The residue. *See* RETURN.

Rad knights. *See* REDMANS.

Rafanamah. (*Ind.*) A deed of relinquishment. An agreement.

Rageman. A rule, form or precedent. Corrupted from *regimen.*

Raglorius. A steward.

Ragman's roll. Ragimund's roll. An old record of the true value of the benefices in Scotland; so called from Regimund, a papal legatee in Scotland, who prepared it.

Rahan. (*Ind.*) This is a generic term denoting a mortgage whatever the nature of the mortgage may be (*Jafar Husain* v. *Ranji*, 21 All. p. 10; *Sheoratan* v. *Mahipal*, 7 All. 258).

Rahdari. (*Ind.*) A passport; a permit; also transit duties; tolls.

Raising. The word imports the idea of calling or bringing any thing into existence, or of inferring the existence of any thing from the proper construction of a legal document. It is used in various ways.

Fire raising. (*Sc. L.*) The setting fire to any house or building.

Raising an action. (*Sc. L.*) The institution of an action or suit.

Raising money. To realise a sum of money, either by subscription or by loan.

Raising portions. When a landed estate is settled on an eldest son, it is generally burdened with the payment of specific sums of money in favour of his brothers and sisters. A direction to this effect is called a direction for "raising portion for younger children," and for this purpose it is usual to demise or lease the estate to trustees for a term of years, upon trust to raise the required portions by a sale or mortgage of the same.—*Mozley.* *See* PORTION.

Raising a promise. When it is said that the law "raises a promise" or "raises an assumpsit" upon any given transaction, it is meant that a promise, for breach of which an action may be brought, is legally involved in, or to be inferred from, the transaction in question.

Raising a use. When it is said that the law "raises a use," it is meant that the existence of a "use" is to be inferred by proper legal construction from the words of a written instrument. *See* USE.

Raiyat. (*Ind.*) *See* RYOT.

Raj. (*Ind.*) Government. Sovereignty. A kingdom.

Raja. Rajah. A king or prince. A title given by the native Indian Governments, and in later times by the British Government, to Hindus of rank; it is also assumed by petty chiefs, and not uncommonly by zemindars.

Rajgi. Sovereignty.

Rakshasa. (*Hin. L.*) One of the disapproved forms of marriage. The seizure of a maiden by force from her house, while she weeps and calls for assistance, after her kinsmen and friends have been slain in battle or wounded, and their houses broken open, is the marriage styled *Rakshasa.* Now obsolete.

Ran. (*Sax.*) Open or public theft.

Ranger. A sworn officer of the forest and parks, whose duties were to walk daily through his charge, and see, hear, and inquire of trespasses in his jurisdiction; to drive beasts of the forest out of the disafforested into the forested lands; and to present all trespasses of the forest at the next court holden for the forest.

Rank modus. Every *modus* of tithes (manner of tithing) is presumably based on a composition in fairly equitable terms by which the *modus* is substituted for the payment of tithe. If, then, a *modus* is too large or excessive, that is, exceeds the value of the tithes, the *modus* is called a *rank modus.*

Ranking of creditors. (*Sc. L.*) The arrangement of the property of a debtor according to the claims of the creditors, and in consequence of the nature of their respective securities. The corresponding process in England is the marshalling of assets or securities.

Ranking and sale. (*Sc. L.*) The proceeds of selling the heritable estate of an insolvent for the benefit of creditors.

Ransom. The sum paid for redeeming a captive or prisoner of war. A fine in the king's court for the redemption of corporal punishment due by law for any offence. It differs from amerciament, because it excuses from corporal punishment; a ransom was the redemption of corporal punishment, whereas an amerciament was the penalty or fine paid for an offence committed.

Ransom bill. A security given by the master of a captured vessel to the captor for the ransom of the vessel, or any goods therein.

Rape (*raptus* : *rapa*). A man is said to commit 'rape,' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions:—(1) Against her will. (2) Without her consent. (3) With her consent, when her consent has been obtained by putting her in fear of death or of hurt. (4) With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married. (5) With or without her consent, when she is under *twelve* years of age. *Explanation.*—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. *Exception.*—Sexual intercourse by a man with his own wife, the wife not being under *twelve* years of age, is not rape.—*Act XLV*

of 1860 (*Penal Code*), *s.* 375, *as amended by Act X of* 1891, *s.* 1. A boy under 14 years of age is conclusively presumed to be incapable of committing rape. Rape is also a part of a county, being in a manner the same with a hundred.

Rape of the forest (*raptus forestæ*). Trespass committed in the forest by violence.

Rape reeve. An officer of the rape, acting in subordination to the shire-reeve or sheriff.

Rapine (*rapina*). Robbery; the unlawful taking of property from the owner by violence or putting him in fear.

Rasure. An erasure or obliteration in a deed or other instrument. *See* ALTERATION, INTERLINEATION.

Rate. The generic name for local taxes; as county rate, borough rate, poor rate. A charge made by a railway, water, gas, or other public company for services rendered. A contribution levied by some public body for a public purpose, such as poor rate, highway rate, sewers' rate.

Rate-tithe. Tithe paid *pro rata*, according to the custom of the place, for sheep or other cattle kept in a parish for less time than a year

Ratification. Ratihabition (*ratificatio*, *ratihabitio*). Confirmation. Authorizing subsequently what has been already done previously without authority. In contract law, it is equivalent to a prior request to make the contract; and in the law of torts, it renders the principal liable, unless it should have the effect of purging the tort. To any ratification it is necessary that the act when originally done should be for the person who subsequently ratifies it; and usually such ratification must be given at a time when the principal himself might have done the act, and not afterwards.—*Brown.* The confirmation of a clerk in a prebend, &c., by the bishop, where the right of patronage was doubtful.

Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority. Ratification may be express or may be implied in the conduct of the person on whose behalf the acts are done. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. A person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act formed a part. An act done by one person on behalf of another without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of determining any right or interest of a third person, cannot, by ratification, be made to have such effect.—*Act IX of* 1872 (*Contract*), *ss.* 196 *to* 200.

Rating. The levying of money or taxes by local authorities. The valuation of every man's estate, or the appointing or setting down how much every one shall pay, or be charged with, to any tax.

Rattening. The offence of depriving a workman of his tools, &c., in order to force him to join a trades union against the employers. This is done by those workmen who have already joined the trades union.

Ravishment. Forcible violation. An unlawful taking away either a woman, or an heir in ward. Sometimes it is used in the same sense with rape. *See* RAPE.

Ravishment of ward (*ravishment de gard*). An abolished writ which lay for a guardian by knight's service, or in socage, against him that took from him the body of his ward.

Rawana Rawanagi-chithi. (*Ind.*) A passport; a pass; a certificate from a Collector of customs authorizing goods to pass without payment of further duty; a port clearance.

Razi-namah. (*Ind.*) A deed or paper of consent; an acquittance; a resignation; the settlement of a dispute or suit by mutual agreement.

Sodi razinamah. A document whereby a party relinquishes his right of occupancy of land in his possession to his landlord, and requests the latter to register the land in the name of another party to whom it has been sold (*Venkatesa* v. *Sengoda*, 2 Mad. 117).

Readers. Lecturers in law in the Inns of Court. The clerks in holy orders who read prayers and assist in the performance of divine service in the chapels of the several Inns of Court, are also called *readers*.

Reading in. Within two months after actual possession, a person admitted to a benefice must (1) publicly read, in the church of the benefice, the morning and evening services, and declare his assent thereto; (2) publicly read the thirty-nine articles, and declare his assent thereto; (3) within three months, publicly read a declaration by him of conformity to the Liturgy. The observance of the above forms by the new incumbent constitutes what is termed "reading in."

Ready and willing. The phrase implies not only the disposition, but the capacity to do the act (*per* Abinger, C. B., *De Medina* v. *Norman*, 11 L. J. Ex. 322; 9 M. & W. 827). "I cannot conceive any circumstances more indicative of want of readiness than incapacity" (*per* Bosanquet, J., *Lawrence* v. *Knowles*, 5 Bing. N. C. 399; 8 L. J. C. P. 210).—*Stroud.*

Re afforested. This is where a forest has been disafforested, and made a forest.

Real. Appertaining to land, as opposed to *personal*.

Real action. One brought for the specific recovery of lands, tenements and hereditaments. *See* ACTIONS REAL.

Real burden. (*Sc. L.*) Where a right to lands is expressly granted under the burden of a specific sum, which is declared a burden on the lands themselves, or where the right declared null if the sum be not paid, and

where the amount of the sum and the name of the creditor in it can be discovered from the records, the burden is said to be *real*.

Real chattels. *See* CHATTELS.

Real covenants. *See* COVENANT.

Real estate. The term is generally applied to landed property (with houses, &c., built thereon), and includes all estates and interests in lands which are held for life (*not* for years, however many), or for some greater estate, and whether such lands be of freehold or copyhold tenure.

The words 'real estate' shall extend to messuages, lands, rents, and hereditaments, whether corporeal, incorporeal or personal, and to any undivided share thereof, and to any estate, right or interest (other than a chattel interest) therein.—*Act XXV of* 1838 (*Wills*), *s.* 1.

See REAL AND PERSONAL PROPERTY.

Real laws. Laws purely real directly and indirectly regulate property and the rights of property, without intermeddling with or changing the state of the person. They govern all real property within the territory, but have no extension beyond it.—*Wharton*.

Real and personal property. By real property, or real estate, we understand such interests in land as, on the death of their owner intestate, descend to his heir-at-law; or, if the land be copyhold, to the heir or heirs pointed out by the custom. By personal property, or personal estate, we understand such property as, on the owner's death, devolves on the executor or administrator, to be distributed (in so far as the owner has not made any disposition thereof by will) among his next of kin according to the Statutes of Distribution. Real property is not, however, precisely synonymous with property in land, nor is personal property synonymous with moveable property. Thus, a title of honour, though annexed to the person of its owner, is real property, because in ancient times such titles were annexed to the ownership of various lands. On the other hand, shares in canals and railways are in general considered as personal property. A lease for years is personal property.—*Mozley*. *See* PERSONAL PROPERTY, REAL ESTATE.

Real representatives. The representatives (whether heir or devisees) of a deceased person in respect of his real property. *See* PERSONAL REPRESENTATIVES.

Real right. (*Sc. L.*) The right of property in a thing (*jus in re*) enabling the owner to an action for possession; the person having such right may sue for the subject itself. A *personal right* (*jus ad rem*) entitles the party only to an action against the person for performance of the obligation.

Real things. Things substantial and immoveable, and the rights and profits annexed to or issuing out of them.

Real warrandice. (*Sc. L.*) An enfeoffment of one tenement given in security of another. *See* WARRANDICE.

Reality of laws. *See* PERSONALITY OF LAWS.

Realm. Kingdom or country.

Realty. *See* REAL ESTATE.

Reasonable aid. A duty claimed by the lord of the fee, of his tenants holding by knight service, to marry his daughter, &c.

Reasonable and probable cause. Such grounds as justify any one in suspecting another of a crime and giving him in custody thereon. It is a defence to an action of false imprisonment. *See* MALICIOUS PROSECUTION.

Reasonable part (*rationabili parte*). By the common law, as it stood in the reign of Henry II, a man's goods were to be divided into three equal parts, of which one went to his heirs or lineal descendants, another went to his wife, and a third was at his own disposal. After the husband's death, a writ lay for a wife against the executors of her husband, for her third, or *reasonable part* of his goods, after debts and funeral charges paid.

Reason to believe. A person is said to have reason to belive a thing, if he has sufficient cause to belive that thing, but not otherwise.—*Act XLV of* 1860 (*Penal Code*,) *s.* 26.

Re-assurance policy. A contract whereby an insurer seeks to relieve himself from a risk which he may have uncautiously undertaken, by throwing it upon some other underwriter, called the re-insurer or re-assurer. Re assurance is not to be confounded with double insurance. A re-assurance is a contract between two underwriters; whereas a double insurance is a contract by the assured with two separate underwriters.

Re-attachment (*reattachiamentum*). A second attachment of him that was formerly attached and dismissed the court without a day being fixed, as by the not coming of the justices, or some such casualty.

Rebate. Discount; reducing the interest of money in consideration of prompt payment.

Rebellion (*rebellio*). The taking up of arms traitorously against the king, whether by natural subjects, or others when once subdued. The wilful breach of any law. Disobedience to the process of courts; where a defendant was summoned, upon his allegiance, personally to appear and answer, and he neglected to do so, a *commission of rebellion* was awarded against him, for not obeying the king's proclamation according to his allegiance. Disobedience to letters of horning in Scotland. *See* HORNING, LETTERS OF.

There is a difference between enemies and rebels; enemies are those who are out of the king's allegiance; therefore, subjects of the king, either in open war or rebellion, are not the king's enemies, but traitors.—*Tomlins*.

Rebellious assembly. A gathering together of twelve persons or more, going about of their own authority to change any laws or statutes of the realm, or to destroy any park or ground enclosed, or the banks of any fish-

pond, pool, or conduit, or to destroy any deer, or burn stacks of corn, or to abate rents, or prices of victuals, &c.—*Mozley*.

Rebut. To bar, reply, or contradict.

Rebutter. The pleading by the defendant in answer to the plaintiff's surrejoinder. The rebutter is thus the sixth stage of pleading in the action, and the third pleading by the defendant. *See* PLEADING.

Rebutting evidence. Evidence adduced to *rebut* a presumption of fact or law, that is, to avoid its effect. But in a wider sense, it includes evidence given by one party in a cause, to explain, repel, counteract, or disprove evidence procured by the other party.

Recall. The Scotch term for reversing a judgment.

Recaption (*recaptio*). A second distress of one formerly distrained for the same cause. A writ that lay for the party thus distrained twice over for the same thing. A reprisal taken by one man against another, who hath deprived him of his property, or wrongfully detained his wife, child or servant.

Racaption is a remedy in certain cases given to a man when he has been wrongfully deprived of his goods by another. For example, if a man takes my goods and carries them into his own land, I may justify my entry into the said land to take my goods again; for they came there by his own act. But if it cannot be shown that my own goods so came there, the mere fact of their being on another man's land will not justify my entering thereon and possessing myself of my goods. If, however, they are found on a common, in a fair, or at a public inn, it is laid down that they may be lawfully reseized by the rightful owner. Parties may similarly right themselves, without resorting to law, under some other circumstances; for example, in the case of fruit dropping from one man's tree on to the land of another, or of tees themselves falling thereon. In such case the owner of the fruit or of the trees may justify entering his neighbour's land to recover his property on the ground of accident. This natural right of recaption, as it has been called, may justify an assault by the owner of goods to repossess himself of them when wrongfully in possession of another, who, by tortiously taking, does not acquire any property in them.—*Broom's Com. Law*.

Receipt. Receit. That branch of the Exchequer in which the royal revenue is managed. A written acknowledgment of the payment of money.

For the purpose of the Stamp Act *receipt* includes any note, memorandum, or writing (*a*) whereby any money, or any bill of exchange, cheque, or promissory note is acknowledged to have been received, or (*b*) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or (*c*) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or (*d*) which signifies or imports any such consideration, and whether the same is or is not signed with the name of any person.—*Act II of* 1899 (*Stamp*), *s.* 2 (23).

See ACCOUNTABLE RECEIPT.

Receiver (*receptor*). A person appointed, usually by an order of a court, to receive the rents and profits of property, where it is desirable that these should come into the hands of a responsible and impartial person, *e. g.*, in actions for dissolution of partnership, &c. He is, when appointed by the court, its officer, and is required, as a rule, to give security for the due performance of his duties.

Receiver of the Fines. An officer who receives the money of all such as compound with the king on original writs sued out of Chancery. *See* FINE.

Receiver of stolen property. One who receives stolen property, knowing it to be stolen. *See* STOLEN PROPERTY.

Receivers and triers of petitions. Officers appointed to examine petitions presented to parliament.

Receivers of the Wreck (or *droit*). Officers appointed by the Treasury in different districts to summon as many men as may be necessary, to demand help from any ship near at hand, or to press into their service any waggons, carts or horses for the purpose of preserving or assisting any stranded or distressed vessel, or her cargo, or for the saving of human life.—*Mozley*.

Recession. A re-grant.

Reciprocal promises. *See* PROPOSAL.

Reciprocity. Mutuality.

Recital (*recitatio*). The rehearsal or making mention, in a deed or writing, of something which has been done before. That part of a deed which recites the deeds, arguments, and other matters of fact, which may be necessary to explain the reasons upon which it is founded. The recitals are situated in the premises of a deed; that is, in the part of a deed that is intermediate between the date and the habendum; and they usually commence with the formal word "whereas." They are a history of the previous facts and circumstances affecting the property. Receitals are not essential to the validity of a deed, and are often dispensed with.

Reclaimed animals. Wild animals that are made tame by art, industry, or education, whereby a qualified property may be acquired in them. *See* ANIMALS.

Reclaiming. The action of a lord pursuing, prosecuting, and recalling his vassal, who had gone to live in another place without his permission. Also the demanding of a thing or person to be delivered up or surrendered to the prince or state it property belongs to, when by an irregular means it has come into the possession of another.—*Wharton*. In Scotch law it means appealing.

Reclaiming bill, Reclaiming note, Repon-

ing note. (*Sc. L.*) A petition of appeal against the judgment of any Lord Ordinary, or the court of session, praying for the alteration of the judgment reclaimed against.

Reclaiming days. (*Sc. L.*) The days allowed to a party dissatisfied with a judgment of the Lord Ordinary, to appeal therefrom to the Inner House.

Reclaiming of land, Reclamation means, in the case of submerged or overflowed land, the rescuing of it from being submerged. The rendering it fit for cultivation is not the original meaning in regard to *submerged* land, that would be its meaning in regard to the reclamation of *unarable* land (*Sham Rao Pandurang* v, *Secretary of State*, 2 Bom. L. R. 499; 25 Bom. 32).

Recognition (*recognitio*). An acknowledgment. In Scotch law, the reverter or return of a feu to a superior or grantor.

Recognitors (*recognitores*). The jury impannelled in an assize, so called because they acknowledge, *i. e.*, notify, cognise, or find, *e. g.*, a disseisin, by their verdict.

Recognizance. Recognisance (*recognitio*; *obligatio*). An obligation of record, which a man enters into before some court of record or magistrate, duly authorized, binding himself under a penalty to do some particular act; as to appear at the assizes, to keep the peace, to pay a debt due to the Crown, or the like. *See* CONTRACT.

A recognizance differs from a bond, the difference being that a bond is the creation of a new debt, whereas a recoginzance is merely an acknowledgment upon record of a debt which was previously due. A recognizance is certified to and witnessed by an officer of the court, and not by the seal of the party, as in the case of deeds.

The word was also formerly used for the verdict of twelve men impannelled upon an assize or real action.

Recognizee. He to whom another is bound in a recognizance.

Recognizor. A person bound in a recognizance.

Re-compensation. (*Sc. L.*) Where a party sues for a debt, and the defendant pleads compensation, *i. e.*, set off, the plaintiff may allege a compensation on his part *i. e.*, a set off against the defendant's set off; and this is called a re-compensation.

Re-conduction. (*Civ. L.*) A relocation; a renewal of a lease.

Reconvention. (*Civ. L.*) An action by a defendant against a plaintiff in a former action; a cross bill or litigation.

Reconversion. The return, in contemplation of law, of property which has been constructively converted, to its original condition. That notional or imaginary process by which a prior notional conversion is annulled and taken away, and the notionally converted property restored in contemplation of a court of Equity to its original actual unconverted quality.—*Brown.* *See* CONVERSION.

Re-conveyance. The conveyance by the mortgagee to the mortgagor, or to such person and for such uses as the mortgagor may direct, of the mortgaged property, upon payment of money owing on the mortgage,

Record (*recordum*). A memorial or rememberance. An authentic testimony in writing, contained in rolls of parchment, and preserved in a court of record. *See* COURT OF RECORD, ENROLMENT,

Record and Writ Clerks. Officers of the Court of Chancery whose duty it was to file bills brought to them for that purpose.

Record of rights. *See* WAJIB-UL-ARZ.

Conveyances by record. Conveyances evidenced by the authority of a court of record. The principal conveyances by matter of record are conveynnces by private Act of Parliament, and royal grants. The now abolished assurances by fine and recovery were also by matter of record. *See* FINE, RECOVERY.

Debt or record. A sum of money which appears to be due by the evidence of a court of record, such as a judgment, recognizance, &c. *See* CONTRACT.

Trial by record. Where a matter of record was alleged by one party, and the opposite party denied its existence, then the party pleading the record had a day given him to bring in the record, which if he failed to do, judgment was given for his antagonist.

Recorder (*recordator*). The principal legal officer of a city or borough. A person appointed by various corporations, *e. g.*, the City of London, by prescriptive right, to assist the mayor and other magistrates in legal matters, In other cities and boroughs, the Recorder is appointed by the Crown, under the Municipal Corporations Act; he is the judge of the Court of Quarter Sessions and of the Borough Court of Record; he may appoint a deputy and an assistant recorder.

Recoup. Recoupe. To keep back or stop something due; to discount, set off or compensate.

Recover. The word recover has a technical meaning in law, whereby it signifies to recover by action and by the judgment of the Court (*Fergusson* v. *Devison*, 51 L. J. Q. B. 266).

Recoveree. A person from whom lands are recovered.

Recoveror. A person who recovers lands; especially the demandant in a common recovery after judgment. *See* RECOVERY.

Recovery (*recuperatio*). This is a well known legal term in the English law of real property. It means the obtaining by judgment on trial. Recovery is either *true* or *feigned* recovery.

A *true* recovery is an actual or real recovery of a thing, or the value thereof, by judgment; as if a man sue for any land or other

thing moveable or immoveable, and gain a verdict or judgment.

A *feigned* recovery, otherwise called a *common recovery*, is an abolished common assurance by matter of record, in fraud of the statute *De Donis*, whereby a tenant in tail enlarged his estate tail into a fee simple and so barred the entail, and all remainders and reversions expectant thereon, and made a conveyance in fee simple of the lands held in tail. The common recovery was a supposed real action carried on through every state of the proceeding, and was as follows:—Suppose D E, tenant in tail in possession of land, to be desirous of suffering a common recovery for the purpose of conveying the land to F G in fee simple. F G (here called the *demandant*) then sued out a writ against him called a *præcipe quod reddat* (command that he restore), alleging that D E (here called the *tenant*) had no legal title to the land, but that he came into possession of it after one H H had turned the demandant out of it. The tenant D E then appeared, and called on one J M, whe was supposed to have warranted the title to the tenant, and thereupon he prayed that J M might be called in to defend the title which he had so warranted. This was called *vouching to warranty*, and J M was called the *vouchee*. Upon this J M, the vouchee, appeared and defended the title. Whereupon F G, the demandant, desired leave of the court to *imparl* or confer with the vouchee in private, which was (as usual) allowed him; and soon afterwards the demandant F G returned to court, but J M, the vouchee, disappeared and made default. Whereupon judgment was given for the demandant F G (then called the *recoveror*) to recover the lands in question against the tenant D E (who was then the *recoveree*); and D E had judgment to recover of J M lands of equal value, in recompense for the lands so warranted by him, and lost by his default; which was called the recompense or *recovery in value*, and which was agreeable to the ancient doctrine of warranty. But J M having no lands of his own, being usually the crier of the Court (who, from being frequently thus vouched, was called the *common vouchee*), it is plain that D E had only a nominal recompense for the lands so recovered against him by F G; which lands were now absolutely vested in the said recoveror by judgment of law; and seisin thereof was delivered by the sheriff of the county. So that this collusive recovery operated merely in the nature of a conveyance in fee simple from D E, the tenant in tail, to F G, the purchaser. The supposed recompense in value was the reason why the issue in tail were held to be barred by a common recovery. For, if the recoveree should obtain a recompense in lands from the common vouchee (which was very improbable), these lands would supply the place of those so recovered from him by collusion, and would descend to the issue in tail.—*Tomlins*

In later times it was usual to have a recovery with *double voucher*, by first conveying an estate of freehold to any indifferent person against whom the *præcipe* was brought (which was called making a tenant to the *præcipe*); and then the tenant in præcipe vouched the tenant in tail, who vouched over the common vouchee.

Thus, the parties to a recovery action were:—(1) The *Demandant*, or Recoveror; (2) the *Tenant*, or Recoveree; and (3) the *Vouchee*.

This cumbrous fiction of recovery was abolished in 1833 by st. 3 & 4 Wm. IV, c. 74.

Recovery of land. The title of the action of ejectment to transfer the possession of land from the wrongful to the rightful owner. This does not include an action for declaration of title (*Gledhill* v. *Hunter*, 49 L. J. Ch, 933; 14 Ch. D. 492; 28 W. R. 530).

Recreant. Yielding; cowardly; faint-hearted. A champion in wager of battel was said to prove recreant when he yielded to his adversary by pronouncing the word *craven*.

Recrimination. A charge made by an accused person against the accuser; as a counter-charge of adultery or cruelty made by one charged with the same offence in the Matrimonial Court against the person who had made such a charge.

Rectification. The correction of an instrument so as to make it express the true intention of the parties. The ascertainment of boundaries.

Rectification of documents. Rectification in equity. When through fraud or mutual mistake of the parties, a contract or other instrument in writing, does not truly express their intention, either party or his representative in interest may institute a suit to have the instrument rectified; and if the court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the court may, in its discretion, rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value. For the purpose of rectifying a contract in writing, the court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.—*Act I of* 1877 (*Specific Relief*), *ss.* 31-2.

Rector. A governor. He who has the charge and cure of a parish church.

Rector sinecure. A rector without cure of souls.

Rectory (*rectoria*). A parish church, with its rights, glebes, tithes, and other profits. The rector's mansion or parsonage house.

Recusants. Those who wilfully absented themselves from their parish church. Those who separate from the church established by law.

Red. (*Sax.*) Advice. *Redbana*, one who advised the death of another. *See* DEDBANA.

Red-book of the Exchequer (*liber rubeus Scaccarii*). An ancient record, kept in an

office in the Exchequer, wherein are registered the names of those who held lands *per baroniam* in the time of Henry II.

Red-handed. With the marks of crime fresh on him.

Reddition (*redditio*) A surrendering or restoring, being also a judicial acknowledgment that the thing in demand belongs to the demandant and not to the person so surrendering.

Redeem. *See* REDEMPTION.

Redeemable rights. Such rights as return to the grantor of lands, &c, on repayment of the sum as security for which they were granted

Re-delivery. A yielding and delivering back of a thing.

Re-demise. A re granting of lands demised or leased. The old way of granting a rent-charge was by *demise* and *re demise*. That is, A demised land to B, and B re-demised it to A, reserving the sum agreed upon by way of rent. *See* DEMISE.

Redemption (*redemptio*). A ransom, paying off a loan,

Redemption of an annuity. Commutation, or the substitution of one lump payment for a succession of annual ones.

Redemption of land tax. The payment by the land-owner of such a lump sum as shall exempt his land from the land tax.

Redemption of a loan. Paying off the same

Redemption of mortgages. The buying back a mortgaged estate by payment of the sum due on the mortgage. *See* EQUITY OF REDEMPTION

At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (*a*) to deliver the mortgage deed, if any, to the mortgagor, (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortagagor, and (*c*) at the cost of the mortnagor, either to transfer the mortgaged property to him, or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished: Provided that the right conferred by this section has not been extinguished by act of the parties, or by order of a Court. The right conferred by this section is called a *right to redeem*, and a suit to enforce it is called a *suit for redemption*.—*Act IV* of 1882 (*Trans of Pro.*), s. 60.

Redeem up, foreclose down. When there is more than one mortgage upon a property, then the rule is, redeem up and foreclose down, which, in fact, means that the first mortgagee suing for foreclosure must make all subsequent mortgagees parties to the suit and so afford each in turn the chance of redeeming before being foreclosed. The first mortgagee can neither foreclose nor be redeemed by the original mortgaor without taking into account intermediate encumbrances. If the intermediate encumbrancers, who are parties to the suit, do not choose to exercise their rights to redeem, each in turn would be foreclossd before the first mortgagee could come into touch with the mortgagor (*The Hope Mills, Ld.* v. *Sir Cowasji*, 13 Bom. L R. 162). If an intermediate mortgagee sues for foreclosure, he must offer to redeem all previous mortgagees,

Redemption of offence. A party is said to redeem his offence for a sum of money, which makes an end of his transgression and of his imprisonment for it.—*Stroud.*

Redhibition (*redhibitio*) (*Civ. L.*) An action allowed to a buyer by which to annul the sale of some moveable, and oblige the seller to take it back again upon the buyer finding it damaged, or that there was some deceit.

Re-disseisin (*re disseisina*) A disseisin made by him who once before was found and adjudged to have disseised the same man of his lands and tenements. In such case the offender (*i. e*, the re-disseisor) was liable to fine and imprisonment, and to pay double damages to the party aggrieved. *See* DISSEISIN.

Redmans. Radmans. Those who, by the tenure or custom of their lands, were to ride with or for the lord of their manor about his business or affairs. Possibly the same as *Radknights*.

Re draft. A second bill of exchange. *See* PETH.

Redubbers Redubbors Those who bought stolen cloth, and turned it into some other colour or fashion, that it might not be known again.

Reduction. (*Sc. L.*) An action for the purpose of setting aside or rendering null and void some deed, will, right, or claim against the party. This action has a certification (*see* CERTIFICATION) by which a deed called for and not produced is declared incapable of receiving effect until it be produced. But as this keeps the party in a state of uncertainty, liable to have his peace disturbed by the production of the deed, the conclusions of the action of *improbation* have been joined with the action of *reduction*. The action of improbation is founded on an allegation of actual forgery, and the certification thereof has the effect of rendering the deed called for and not produced for ever null and void. The junction of the two actions, which forms what is called the *reduction improbation*, confers on the simple reduction all the efficacy of the improbation, and secures the person who uses it from all future trouble from the deed called for, if it be not produced in the action.—*Tomlins*

Reduction, in French Law, is when a parent gives away, whether by gift *inter vivos* or by legacy, more than his portion disposible,

in which case the donee or legatee is required to submit to have his gift *reduced* to the legal proportion.—*Brown.*

Reduction into possession. The turning of a *chose in action* into a *chose in possession.* As where a man takes money out of a bank at which he has a balance, or procures the payment of a debt due. The phrase is used especially with reference to a husband taking lawful possession of his wife's *choses in action*, as he thereupon makes them his own property to all intents and purposes.—*Mozley.* And the wife surviving her husband takes back to herself absolutely all her leasehold property (whether in possession or in reversion) not disposed of by him by act *inter vivos*; and also all her freehold, fee tail, and fee simple estates; and also all her choses in action which have not been reduced by her husband into possession; and also all her pure personal estates in reversion which have not fallen into possession during the coverture.—*Snell's Equity.* A trustee is bound to reduce into possession, *i. e.*, to realize all the outstanding personal property of the deceased testator, unless the latter has expressly authorized him to continue it outstanding.—*Brown.*

Reduction of capital. A company may, by special resolution confirmed by the Court, reduce its capital on adding "and reduced" to its title.

Redundancy. Impertinent or foreign matter inserted in a pleading.

Re-entry. The resuming or retaking that possession which any one has lately foregone.

Proviso for re-entry. A clause usually inserted in leases, that upon non-payment of rent, or breach of covenant, the term shall cease, and the lessor may re-enter.

Reeve. A termination signifying an executive officer; as *shire-reeve*, a sheriff; *church-reeve*, a churchwarden. A steward or bailiff.

Re-examination. *See* EXAMINATION.

Re-exchange. The difference in the value of a bill occasioned by its being dishonoured in a foreign country in which it was payable. The existence and amount of it depend on the rate of exchange between the two countries. Re-exchange is the measure of damage sustained by the holder of a dishonoured bill of exchange drawn in one country on a person in another country, and is payable in addition to the amount of the bill (*Willans* v. *Ayers*, 47 L. J. P. C. 1; 3 App. Cas. 133).—*Stroud.*

Re extent. A second extent (or valuation) made upon lands and tenements, upon complaint that the former exent was but partially performed. *See* EXTENT.

Refaction. (*Civ. L.*) Reparation of a building.

Refare. To bereave, take away, or rob.

Referee. One to whose judgment anything is referred; an arbitrator.

Reference. Referring a matter to an arbitrator, or to a master, or other officer of a court of justice, for his report or decision thereon.

Referendary. An officer among the old Saxons, who exhibited the petitions of the people to the king, and acquainted the judges with his commands.

Reformatory Schools. Schools to which convicted juvenile offenders (under sixteen years of age) may be sent by order of the court before which they are tried.

Refresher. Refresher fee. A fee paid to counsel for refreshing his memory as to the facts of a case before him, in the interval of business, especially where a case is adjourned from one term or sitting to another. A further or additional fee to counsel in a long case, which may be, but is not necessarily, allowed on taxation.

Refusal. Where one has, by law, a right and power of having or doing something of advantage, and he declines it.

Regal fish. Royal fish, *i. e.*, whales and sturgeons. Some add porpoises. *See* FISH ROYAL.

Regality. A territorial jurisdiction in Scotland, granted with land from the Crown. The lands were said to be given *in liberam regalitatem*; and the persons receiving the right were termed lords of regality.—*Tomlins.*

Regard (*regardum*). The word signifies generally any care or diligent respect. Yet it has also a special acceptation, wherein it is only used in matters of the forest, either for the office ot the *regarder*, or for the compass of the ground belonging to that office. The regarder is to go through the whole forest to see and inquire of the trespasses therein. The compass of the regarder's charge is the whole forest, *i. e.*, all the ground which is parcel of the forest,

Court of regard. There was, among the Courts of the Forest, a *court of regard*, or survey of dogs, holden every third year, for the lawing or expeditation of mastiffs, *i. e.*, cutting off the claws and balls of the forefeet, to prevent them from running after the deer. *See* FOREST COURTS.

Regardant. A villein *regardant to the manor* was a villein annexed to the manor, having charge to do all base services within the same, and to see the same freed from all things that might annoy his lord; as opposed to a villein *in gross*, who was transferable by deed from one owner to another. *See* VILLEIN.

Regarder (*regardator*). An officer of the forest appointed to supervise all other officers; to inquire of all offences and defaults of the foresters, and of all other officers of the king's forest, concerning the execution of their offices, and to inquire of all trespasses committed within the forest.—*Manley.* *See* REGARD.

Regency. A temporary monarchy.

Regent. A person appointed to conduct the affairs of State in lieu of the reigning sovereign, in the absence, disability, or minority of the latter.

Regicide. A slayer of a king; or the murderer of a king.

Register. A public book serving to enter and record memories, acts and minutes, to be had recourse to for the establishing matters of fact; as the register of a parish church, wherein baptisms, marriages and burials are registered; register of writs, an old book in which are mentioned most of the forms of writs used at common law; the register of titles to land, kept in the registry offices; the register of patents; the register of joint stock companies. And, generally, a register signifies an authentic catalogue of names or events.

Registered. 'Registered' used with reference to a document means registered in British India under the law for the time being in force for the registration of documents.—*Act X of* 1897 (*General Clauses*), *s.* 3 (45).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (37). *See* REGISTRATION OF DOCUMENTS.

Registered occupant. See OCCUPANT.

Registration of documents. The object of the law of registration of documents is to provide a conclusive guarantee of the genuineness of documents, and to provide a record from which persons desiring to enter into dealings with respect to the property affected by the instruments may be able to obtain information as to the title; to give certainty to titles, and to prevent the operation of fraudulent and secret transactions, by which a man's right might be defeated. The following documents are compulsorily registrable in India, if the property to which they relate is situate in a district in which the Registration Act (XVI of 1908) is in force:—(*a*) Instruments of gift of immoveable property; (*b*) other *non*-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property; (*c*) *non*-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title, or interest; and (*d*) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent; and authorities to adopt a son.—*Act XVI of* 1908 (*Registration*), *s.* 17.

Registrar (*registrarius*). An officer whose business is to write and keep a register of names and events. A notary.

Registry. A place where any thing is laid up; a place where a register is kept.

Regnant. Reigning; having real authority.

Re-grant. A mode of barring estate-tail in copyhold lands prior to the stat. 3 & 4 Wm. IV, c. 74. This was by forfeiture and regrant, *i. e.*, the tenant in tail (in collusion with the lord or his steward) forfeited his lands, and the lord granted them out anew to the same tenant in fee simple, according to the custom.—*Brown.*

Regrating. Buying wares, corn, victuals, &c., in any market, and selling them again in or near the same place, so as to enhance their price.

Regrator (*regratarius*). One who bought provisions, &c., in order to sell them again for gain; such person was anciently considered an enemy to the community.

Regress, letters of. (*Sc. L.*) These were granted by the superior of lands mortgaged to the wadsettor or mortgagor. Their object was this:—By the wadset or mortgage, the mortgagor was completely divested, and when he redeemed, he appeared to claim an entry from the superior as a stranger, and the superior was no more bound to receive the mortgagor than he would have been forced to receive any third party; to remedy this, letters of regress were granted by the superior under which he became bound to re-admit the wadsettor at any time when he should demand entry.—*Tomlins.*

Regular clergy. Regulors (*regulares*). Such as professed to live under some certain rules (*secundum regulus*) belonging to a religious order, as monks, or canons regular, who ought always to be under some rule of obedience.

Regulation. Formerly, the legislative power had been to make "Rules, Regulations and Ordinances." The term Regulation was consequently adopted as most properly describing the enactments issued. Under 3 & 4 Wm. IV, c. 85 (passed on the 28th Aug. 1833), the power was given to make laws as well as Regulations; and it thenceforward became the custom to call the enactments of the Governor-General in Council *Acts*. There is but little specific difference in the nature of a *Regulation* and an *Act*, except that the former was less concisely and technically drafted and was usually preceded by the detailed exposition of the motives and purpose of the enactments previously alluded to. This in *Acts* have been replaced by the brief preamble.

Regulation Provinces. See NON-REGULATION PROVINCES.

Rehabilitate. To restore a delinquent to a former rank, privilege or right; to qualify again; to restore a forfeited right.

Rehabilitation (*rehabilitatio*). A restoring to former ability. The re-enabling a spiritual person to exercise his function who had been disabled; this was done by the Pope.

Re-hearing. This is where an action is tried a second time after judgment has been pronounced.

Reif. (*Sax.*) Rapine; robbery.

Re-insurance. *See* RE-ASSURANCE.

Re-issuable notes. Notes payable to the bearer on demand, which may be re-issued after payment as often as may be thought necessary, without a new stamp. For this an annual licence is required.

Rejoinder (*rejunctio*). The defendant's answer to the plaintiff's replication, and therefore the fourth stage in pleading in an action at law, in cases where the pleadings reach this stage. *See* PLEADING.

Rejoining gratis. This signifies rejoining without a notice from the opposite party to do so. *See* REJOINDER.

Relation. Relation back (*relatio*). Relation is where in consideration of law, two different times or other things are considered as if they were one; and by this the thing subsequent is said to take its effect *by relation* at the time preceding; as if one deliver a writing to another to be delivered to a third person when such third person has paid a sum of money; now, when the money is paid, and the writing delivered, this shall be taken as the deed of him who made and delivered it, at the time of its first delivery to which it has relation. Sale of goods of a bankrupt by commissioners shall have relation to the first act of bankruptcy, and be good, notwithstanding the bankrupt sells them afterwards. If an infant or *feme covert* disagree to a feoffment to them made, when they are of age, or discovert, it shall relate, as to this purpose, to discharge them of damages from the time. Probate of a will, when granted, establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such; and letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death (Act V of 1881, Pro. and Admin., ss. 12 and 14). So, under the Hindu law, an adoption by a widow has a retrospective effect, and, relating back to the death of her deceased husband, entitles the adopted son to succeed to his estate (*Raje Vyankatrav* v. *Jayawantrav*, 4 Bom. H. C., A. C., 191). This doctrine of relation is most commonly to help acts in law, and make a thing take effect; it shall never do a wrong. Relation also means the act of the *relator* at whose instance an information is filed.

Relative powers. Those relating to realty.

Relative rights. Relative rights, as opposed to those rights which are called absolute, are rights correlating (*i. e.*, corresponding) with duties lying on assignable individuals, and not (primarily at least) on the world at large. Rights of property are usually *relative*; and rights to one's person (whether life, limb, or reputation) are absolute.—*Brown.*

Relator. A rehearser, teller, or informer. A private person at whose instance the Attorney-General allows an information to be filed in chancery, where the rights of the Crown were not immediately concerned, who was responsible for costs. A person who brings an information in the nature of a *quo warranto*, or a criminal information. In strictly criminal cases such person is generally called the *prosecutor* or the *private prosecutor*; but he might be called a *relator*. *See* INFORMATION.

Release (*relaxatio*). A gift, discharge, or renunciation of a right of action which any one claims against another. Also a common law conveyance, the operative verb in which is 'release,' whereby estates or other things are extinguished, transferred, abridged or enlarged, and whereby a man quits and renounces that which he before had. A discharge or conveyance by one (called the *releasor* or *releaser*) who has a right or interest in lands, but not the possession, whereby he extinguishes his right for the benefit of the the person in possession (called the *releasee*). A conveyance of an ulterior interest in lands or tenements to a particular tenant, or of an undivided share therein to a co-tenant (the *releasee* being in either case in *privity of estate* with the *releasor*), or of the right to such lands and tenements to a person wrongfully in possession thereof. Also an instrument granted by a *cestui que trust* to his trustee, whereby he discharges the trustee from any further claim or liability in respect of the trust property.—*Mozley*. *See* DISCHARGE.

Release of obligations. An acquittance or discharge of obligations.

Release to uses. The conveyance by a deed of release to one party to the use of another. Thus, when a conveyance of lands was effected by lease and release from A to B and his heirs, to the use of C and his heirs, in such a case C at once took the whole fee simple in such lands, B, by the operation of the Statute of Uses, being made a mere conduit pipe for conveying the estate to C; and B was called the *releasee to uses*.—*Brown.*

See LEASE AND RELEASE.

Relegation (*relegatio*). A banishing or sending away; exile. Abjuration is forswearing the realm for ever; relegation is banishment for a time only. Also the adjournment of any matter under consideration.

Relevancy. The degree of connection between a fact tendered in evidence, and the issue to be proved. An *irrelevant* fact is one which has no such connection, and is therefore inadmissible in evidence. In Scotch law, it means the justice or sufficiency in law of the allegations of a party. A plea to the relevancy is therefore analogous to the demurrer of the English Courts. *See* RELEVANT.

Relevant. Applying to the matter in question; affording something to the purpose. So relevancy of proof is the effect of it as applied to the action or suit. *See* RELEVANCY.

Relict. A widow.

Reliction The sudden recession of the sea from land. *See* DERELICTION.

Relief (*relevamen*; *relevatio*; *relevium*). Legal remedy for wrongs; redress prayed for

by a party. The specific assistance prayed for by a party who institutes a suit in Chancery, called specific relief.

The term relief is not a term of exact or precise technicality, but simply means the remedy which a Court of justice may afford in regard to some actual or apprehended wrong or injury, such remedy being large or small, as the case may be. It is not synonymous with cause of action (*per* Stewart, C. J., *Saraswati* v. *Kunj Behari*, 5 All. p. 359).

Consequential relief means a relief prayed for by a party *in consequence* of a declaratory relief prayed for in the same suit; the rule being that no court shall make any declaratory decree where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. For example, a suit for a mere declaration of title to property in the hands of the defendant, without praying for the possession of the same (the plaintiff being entitled to possession of it) is not maintainable (*Norayana* v. *Shankunni*, 15 Mad. 255, *Srinivasa* v. *Srinivasa*, 16 Mad. 31; *Kunhamma* v. *Kunhunni*, 16 Mad. 140). *See* DECLARATORY DECREE.

Feudal relief, or *Casualty of relief* means, in the feudal law, a payment made to the lord by the tenant coming into possession of an estate held under him, it was in horses, arms, money or the like, and was called a *relief*, because it raised up and re-established the inheritance.

Specific relief is given (*a*) by taking possession of certain property, and delivering it to a claimant; (*b*) by ordering a party to do the very act which he is under an obligation to do (*see* INJUNCTION); (*c*) by preventing a party from doing that which he is under an obligation not to do (*see* INJUNCTION), (*d*) by determining and declaring the rights of parties otherwise than by an award of compensation (called *declaratory relief*; *see* DECLARATORY DECREE), or (*e*) by appointing a Receiver. Specific relief granted under cl. (*c*) is called *preventive relief*, which is granted at the discretion of the Court by injunction, temporary or perpetual.—*Act I of* 1877 (*Specific Relief*), ss. 5, 6 *and* 52.

Relief of cautioners. The right of contribution between co-sureties.

Relief betwixt heir and executor. This is a marshalling of assets in favour of an heir who has paid a personal debt (that is, a debt payable out of the personal property), or of an executor who has paid an heritable debt (that is, a debt primarily chargeable on the assets descended to the heir).—*Mozley.*

Relief to the poor. An assistance given by workhouse authorities to paupers in distress, generally by supplying articles of absolute necessity and sometimes in medical attendance; the person charged with such relief is called the *relieving officer.*

See ALTERNATIVE RELIEF.

Religious houses (*religiosæ domus*). Houses set apart for pious uses, such as monasteries, churches, hospitals, and all other places where charity was extended to the relief of the poor and orphans, or for the use or exercise of religion.

Relinquishment. A forsaking, abandoning, or giving over. The act of a priest or deacon divesting himself of holy orders.

Relocation. A reletting or renewal of a lease. Where a landlord, instead of warning a tenant to remove, has allowed him to continue without making any new agreement, this is termed, in the law of Scotland, *tacit relocation.*

Remainder (*remanentia*). An estate limited in lands, tenements, or rents, to be enjoyed after the expiration of another particular estate. Where any estate or interest in land is granted out of a larger one, and an ulterior estate expectant on that which is so granted is at the same time conveyed away by the original owner, the first estate is called *particular estate*, and the ulterior one the *remainder* or the *estate in remainder.* Thus, if land be conveyed to A for life, and after his death to B, A's interest is called a *particular estate*, and B's a *remainder.*—*Mozley.* A remainder may be either for a certain term, or in fee simple, or fee tail. The difference between a remainder and a *reversion* is this, that by a reversion, after the appointed term, the estate returns to the donor himself or his heirs, as the proper fountain; whereas by remainder it goes to some third person or a stranger.—*Tomlins.* The word, though properly applied to estates in land, is also applicable to personalty.

A *remainder* is that part of the grantor's own original estate which remains to him after he has granted thereout one or more *particular* estate or estates, and which he afterwards (by the same instrument whereby he creates the particular estate or estates which precede it) grants out also, so as to take effect (if at all) subsequently to, and upon the determination of, the last mentioned particular estate or estates.—*Brown. See* CONTINGENT REMAINDER, CROSS REMAINDER, VESTED REMAINDER.

Remainderman. A person entitled to an estate in remainder.

Remand. To re-commit or send back an accused person to prison in the first instance for the sake of allowing further evidence to be collected and adduced at a further hearing. To adjourn a hearing. To send back a case to the lower court for taking further evidence on additional issues, which it has omitted to do. *See* REMOVER.

Remedial statutes. Those which supply some defect in the existing law, and redress some abuse or inconvenience with which it is found to be attended, without introducing any provision of a penal character. Those which are made to supply the defects, and abridge the superfluities in the Common Law. This being effected either by enlarging the Com-

mon Law where it is too narrow and circumscribed, or by restraining it where it is too lax and luxuriant, has occasioned a division of remedial Acts of Parliament into *enlarging* and *restraining* statutes.

Remedy (*remedium*). The legal means to recover a right, or compensation for the infringement thereof. And it is a maxim of law that whenever the law giveth anything it gives a remedy for the same.

Remedy also means a certain allowance to the master of the mint to deviate from the standard weight and fineness of a coin.—*Act III of* 1906 (*Coinage*), *s.* 2 (*d*).

Legal and equitable remedies. The principal legal remedies were:—(1) Trespass; (2) Trover; (3) Case; (4) Ejectment; (5) Covenant and assumpsit; and (6) Action for use and occupation. The principal equitable remedies were:—(1) Injunction with or without damages; (2) Action for account; (3) Specific enforcement of covenant; (4) Specific performance of contract (whether of sale or of lease); (5) Appointment of receiver or manager; (6) Foreclosure; and (7) Declaration of rights.—*Brown.*

Remedies by act of parties and by operation of law. Remedies by act of parties are, *e. g.*, self-defence, entry, abatement of nuisances, distress, seizure of heriots, &c.; and in a less appropriate sense, arbitration, accord and satisfiction, and such like. Remedies by operation of law are principally two, *viz.*,—(1) Retainer, by an executor or administrator of his own debt out of the assets, in priority to other creditors of equal degree; and (2) Remitter. —*Brown.*

Remembrancer (*rememorator*). An officer of the Exchequer whose duty was to put the Lord Treasurer and the justices of that court in remembrance of such things as were to be called on and dealt with for the king's benefits.

Remise. One of the usual words in a release; as "remise, release and quit (*i. e.*, quiet) claim."

Remission. A pardon from the king for an offence. Such remission does not prevent a private party from pursuing for damages.

Remit. To send back an action to an inferior court for the purpose of taking the steps necessary to carry out the decision of the superior court. To send back to custody. *See* REMAND.

Remitter. Where he who hath the true property or *jus proprietatis* in lands, but is out of possession thereof, and hath no right to enter without recovering possession in an action, hath afterwards the freehold cast upon him by some subsequent, and of course defective, title; in this case he is *remitted* or sent back *by the operation of law* to his ancient and more certain title.—*Broom's Com. Law.*

The possession which he has gained by a bad title is *ipso facto* annexed to his own inherent good one; and his defeasible estate is utterly defeated and annulled by the instantaneous act of law, without his participation or consent. As if A disseise B, *i. e.*, turn him out of possession, and afterwards demise the land to B (without deed) for a term of years, by which B enters, this entry is a remitter to B, who is *in* of his former and surer estate. But if A had demised by deed indented or by matter of record, there B would not have been remitted, because the deed shall bind him to the rents and covenants, and he cannot be allowed to affirm that his own deed is ineffectual.—*Wharton.* Or, if a man dies intestate, leaving two sons A and B, and B (the younger) wrongfully enters into possession and dies childless, leaving A his heir-at-law, then A will be *in* as of his former estate and so will take the land free of any incumbrances created by B.—*Mozley.*

The reason of this invention of the law is in favour of right; and that title which is first and most ancient, is always preferred. A remitter must be to a precedent right, for regularly to every remitter there are two incidents, *viz.*, an ancient right, and a defeasible estate of freehold coming together.—*Tomlins.*

It was necessary in order to the principle of remitter taking effect, that the latter title should have come to the party by *act of law*; for if it came to him by his own act, he was taken to have waived his former or more ancient title (Co. Litt. 358). At the present day, real actions having been abolised, and the fact of possession acquired by whatever title being actively protected by the courts, the doctrine of remitter has lost its importance, at least in regard to the ownership of land.—*Brown.*

Remoteness of damage. Want of close or direct connection between a wrong complained of, and the injury alleged to have been sustained thereby, as cause and effect, whereby the party injured cannot claim compensation from the wrong-doer.

Remoteness of estate. This is where an attempt is made to tie up, or to dictate, the devolution of property, or to keep the same in suspense without a beneficial owner, beyond the period allowed by law. Such estates are said to be void for remoteness. Limitations are void for remoteness which infringe the rule against perpetuity. *See* PERPETUITY, RULE AGAINST PERPETUITY, LIMITATION OF ESTATES.

Remoteness of evidence. Evidence, whether direct or circumstantial, which is nearly conjectural, that is, which does not present an open and visible connection between the fact tendered in evidence and the fact or issue to be proved, is rejected for remoteness. *See* RELEVANCY.

Remover. This is where a suit or cause is removed out of one court into another. *Remanding* of a cause is sending it back into the same court out of which it was called and sent for.

Renant. Renlant (*negans*). Denying.

Rencounter. A sudden meeting; as opposed to a duel, which is deliberate.

Render. (Fr. *rendre*; Lat. *reddere*). To yield, give again, or return; to assign; to surrender (*per* Mahmood, J., *Warts Ali* v. *Muhammad*, 6 All. W. N. p. 223). There are certain things in a manor which *lie in prender*, that is, which may be taken by the lord or his officers when they happen, without any offer made by the tenant, such as escheats, &c., and certain which *lie in render*, that is, must be rendered or answered by the tenant, as rents, heriots, and other services.

Renewal of lease. A regrant of an expiring lease for a further term.

Renewal of stamps. In cases in which allowance is made for spoiled or misused stamps, the Collector may renew such stamps by giving to the party producing them other stamps of the same description and value.—*Act II of* 1899 (*Stamps*), *s.* 53.

Renounce. To give up a right.

Renouncing probate. Where a person appointed executor of a will refuses to accept the office, or declines to take probate of the will, he is said to *renounce* probate.

Rent (*redditus*). A compensation, or return; that is, a profit issuing periodically out of lands or tenements. It does not necessarily consist in the payment of money; for spurs, capons, horses, corn, and other matters may be, and occasionally are, rendered by way of rent; it may also consist in services or manual operations, as to plough so many acres of ground, to attend the king or the lord to the wars and the like, which services, in the eye of the law, are profits.

Rent means whatever is paid, delivered or rendered in money, kind, or services, by a tenant to his lord, on account of the use or occupation of land let to him. *See* LEASE, REVENUE.

Where land was granted by a taluqdar to a person for the purpose of digging a tank subject to the right of taking water from the tank when dug, *held*, that the right to take water was of the nature of reservation of rent in kind, Norman, Offg. C.J., observing—"Water may be treated as produce of the land, a portion of which the zemindar and those authorised by him are entitled to take. And the right to take it may be considered as of the nature of a reservation of rent in kind." (*Ziruddin* v. *Madhu Sudan Pal*, 2 W. R. 15, 17; B. L. R., Sup. Vol., 75).

Rents are of various kinds:—

Rent-seck (*redditus seccus*) or *dry* or *barren* rent is where there is merely a rent reserved by deed or will but without any clause for distress at the common law. But the stat. 4 Geo. II, c. 28, has given to the owner of a rent-seck the right of distraining for the arrears.

Rents of assize are certain established rents payable by freeholders and ancient copyholders of a manor which cannot be departed from. Those of the freeholders are called *chief rents* (*redditus capitales*); and both sorts are indifferently denominated *quit rents* (*quieti redditus*), because thereby the tenant goes quit and free of other services. When these rents were reserved in silver or white money, they were anciently called *white rents* or *blanch farms* (*redditus albi*); in contradistinction to rents reserved in work, grain or baser money, which were called *redditus nigri* or black-mail.

Fee farm rent or *chief rent*, a rent arising out of, or payable by the owner of, an estate in fee, of at least one fourth the value of the lands at the time of its reservation. *See* FEE FARM RENT.

Rent charge, where owner of the rent had no future interest or reversion in the land, but is enabled to distrain by virtue of a clause in the grant or lease reserving the rent. It is usually created by deed or will, accompanied with powers of distress and entry. *See* ANNUITY.

Rent-seck, rents of assize, and chief rents are recoverable by distress; and any annual sum charged on land by way of rent-charge or otherwise, not being rent incident to a reversion, by distress and entry.—*Wharton.*—*Moxley.*

Rent-service, which has some corporeal service incident to it, as at least, fealty; for the non-performance of which the lord may distrain. It was originally entire and indivisible, but modern statutes have made it divisible and apportionable.

Rack rent is a rent of the full value of a tenement, or near it. *See* RACK RENT.

Fore-hand-rent, rent payable in advance; as a premium for a lease.

Dead rent, a fixed minimum rent paid by the lessee of a mine, &c. *See* SLEEPING RENT.

Rents resolute. These are accounted among fee farm rents, being such rents or tenths as were anciently payable to the Crown from the lands of abbeys and religious houses; and after their dissolution, notwithstanding the lands were demised to others, yet the rents were still reserved, and made payable again to the Crown.—*Tomlins.*

Rents and royalties. *See* ROYALTY.

Rent-roll. *See* RENTAL.

See ABATEMENT OF RENT, APPORTIONMENT, DRY RENT, GROUND RENT, PEPPERCORN RENT.

Rental. Corrupted from *rent-roll.* It signifies a roll wherein the rents of a manor are written and set down, by which the lord's bailiff collects the same; it contains the lands and tenements let to each tenant, and the names of the tenants, the several rents arising, and for what time, usually a year. The average value of rent payable on a lease.

Rental right. (*Sc. L.*) A lease at nominal rent. A species of lease given usually at a low rent, for life; the tenants under such leases were called *rentalers*, or *kindly-tenants.*

Rental'd teind bolls. Rental bolls. (*Sc. L.*) This is where the teinds (or tithes) have been liquidated and settled for so many *bolls* of corn yearly.

Repair. The general principle for determining a tenant's liability to "repair," simply, is that diminution in value, resulting from the natural operation of time and the elements, falls on the landlord; but the tenant must take care that the premises do not suffer more damage than the operation of these causes would effect; and he is bound by reasonable application of labour, to keep the house as nearly as possible in the same condition as when it was demised (*per* Tindal, C. J., *Gutteridge* v. *Munyard*, 1 Moo. & R. 336). By an agreement to "repair" and keep in repair, there is no obligation to substitute new building for old (*Belcher* v. *McIntosh*, 8 C & P. 720; 2 Moo. & R. 186); but an agreement to keep in repair a house out of repair, means that the contracting party is first of all to put it in good repair having regard to its age and its class.—*Stroud.* *See* TENANTABLE REPAIR.

Repatriation. The recovery of the rights of a natural born subject by one who has expatriated himself or become a statutory alien. *See* EXPATRIATION.

Repeal (*revocatio*). A calling back; revocation or aborgation. The revocation of one statute, or a part of it, by another. Also recall from exile.

Repertory. A classified inventory.

Repetition. (*Civ. L.*) A recovery of money paid under mistake.

Repleader (*replacitare*). To plead again. An order of the court that the parties replead Repleader is granted when the pleading has not brought the issue in question which was to be tried, that is, when the parties in the course of pleading have raised an issue which is immaterial or insufficient to determine the true question in the case.

Repledging (*replegiare*). To redeem a thing detained or taken by another, by putting in legal sureties. In Scotch Law it is applied to the power of reclaiming a criminal, and trying him under a different jurisdiction from that of the court before which he is accused.

Repleviable. Replevisable. Capable of being taken back or replevied. *See* REPLEVIN.

Property is said to be repleviable or replevisable when proceedings in replevin may be resorted to for the purpose of trying the right to such property. Thus goods taken under a distress are repleviable, for the validity of the taking may be tried in an action of replevin; but goods delivered to a carrier and unjustly detained are not repleviable, for the unjust detention of the goods delivered on a contract is not injury to which the action of replevin applies, but forms the ground of an action of detinue or trover.—*Brown.*

Replevin (*plevina*, from *replegiare*, to redeliver to the owner on pledges). Replevin is defined as a re-delivery to the owner of his cattle or goods distrained upon any cause, upon surety that he will prosecute the action against him that distrained; which action is then denominated an action of replevin. The action is a personal action *ex delicto*, and its object is to contest the validity of the unlawful taking by distress. Replevin is brought if the party from whom the goods were taken wishes to have them back in specie. But if he prefer to have damages instead, the validity of the distress may be contested by an action of trespass or unlawful distress. The *replevisor*, or party who is said to replevy, is not (as might be generally inferred) the party who *delivers* back, but the party who *takes* back his goods. Pledges were put in by the party replevying to prosecute his action, and to return the goods if the action were decided against him. In the action of replevin the plaintiff's declaration states in general terms the taking of the goods. If the defendrnt insists that the goods were lawfully taken by him in his own right, the pleading is called an *avowry* (*see* AVOWRY); if in the right of another, it is called a *cognizance* (*see* COGNISANCE). The defendant also may claim a return of goods, so that both parties are regarded as *actors* or claimants seeking redress. The plaintiff's next pleading is called a *plea in bar*, and that of the defendant a *replication*. If the judgment is for the plaintiff, it awards damages for the unlawful taking; if the defendant, it is that he have a return of the goods taken. *See* REPLICATION, TORT.

Replevish. To let one to mainprize on surety. *See* MAINPRIZE.

Replevisor. *See* REPLEVIN.

Replevy. To re-deliver goods which have been distrained to their owner, upon his giving pledges to prosecute an action of replevin.

Repliant. Replicant. A litigant who replies, or files or delivers a replication.

Replication (*replicatio*). An exception, answer, or reply made by a plaintiff to a defendant's plea. *See* PLEADING. In the action of replevin, the *replication* was the defendant's second pleading, the plaintiff's second pleading being called his *plea in bar*. *See* REPLEVIN.

Reply. The pleading of the plaintiff which follows the defendant's statement of his defence or counterclaim; the reply of the plaintiff whereby he *replies* to the defence. Also the speech of counsel for the plaintiff in a civil case, or for the prosecution in a criminal case, in answer (in either case) to the points raised by the defence, is generally called the *reply*.

Reponing note. *See* RECLAIMING BILL.

Reports. A public relation of cases judicially argued, debated, resolved, or adjudged in any of the courts of justice, together with such causes and reasons as were delivered by the judges. Histories of legal cases, with the arguments used by counsel and the reasons given for the decision of the Court. The Reports of

the Chief Justice Coke are especially styled *The Reports*, and are in general cited without the author's name. *See* LAW REPORTS. Also, certificates from the Masters of the courts, when the courts make reference to them concerning matters of account, &c., or from Committees of either House of Parliament.

Reposition. Retrocession (*Sc. L.*) The returning back of a right assigned from the assignee to the person granting the right.

Reposition of the Forest (*repositio forestæ*). A reputting; a re-afforesting; a re including, in the forest, of lands which had been disafforested; or the statute whereby the same was effected.

Representation (*representatio*). The personating another, standing in the place of another for certain purposes, as heirs, executors, or administrators. An executor or administrator is called the *legal personal representative* of the deceased, and an heir or devisee is called the *real representative* of the deceased.

Representation also means the relation of a member of parliament to his constituents, or of an ambassador or other public minister to the sovereign who has deputed him. In Scotch law, it means a written pleading presented to the Lord Ordinary of the Court of Session, when his judgment is brought under review.

Heir by representation. Where a father dies in the life-time of the grandfather, leaving a son, the son shall inherit his grandfather's estate by right of representation before the father's brothers, &c.

Representative. Bearing the character or power of another. *See* LEGAL REPRESENTATIVE, REPRESENTATION.

For the purposes of the Registration Act 'representative' includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.—*Act XVI of* 1908 (*Registration*), s. 2 (10).

Representative peers. Those who sit in the House of Lords as representing the peerage of Scotland and Ireland.

Reprieve. A temporary suspension of the execution of a criminal sentence. In this sense it is contrasted with *pardon*; but we often use the word to signify a permanent remission of a capital sentence. In this latter sense, it is contrasted with *respite*.—*Mozley.* A reprieve may take place at the mere pleasure of the Crown; or either before or after judgment, when the judge is not satisfied with the verdict, or any favourable circumstances appear in the criminal's character; or where a woman is capitally convicted and she pleads pregnancy; or if the criminal becomes *non compos mentis*.—*Wharton.*

Reprisal (*reprisale*; *reprisalia*). The taking one thing in satisfaction of another, a taking in return. Taking the goods of a wrong-doer to make compensation for the wrong he has done, or as a pledge for amends being made. If a nation has taken possession of what belongs to another, or if she refuses to pay a debt, or repair an injury, or to give adequate satisfaction for it, the latter seizes something belonging to the former, and applies it to her own advantage, unless she obtains payment of what is due to her, together with interest and damages, or may keep it as a pledge until she has received ample satisfaction. *See* LETTERS OF MARQUE AND REPRISAL.

Reprises. Deductions and payments out of a manor or lands, as rent-charges, annuities, &c. So, when we speak of the clear yearly value of a manor, or estate, or land, we say it is so much per annum, *ultra reprises*, besides all reprises.

Reprobate. *See* APPROBATE.

Reprobator, action of. An action in the law of Scotland instituted for the purpose of convicting a witness of perjury.

Republication of wills. A second publication after cancelling or revoking. The revival of a will revoked, either by re-execution, or by a codicil executed in the same manner as a will. See Act X of 1865 (Succession), s. 60. *See* PUBLICATION.

Repudiation. A rejection or disclaimer; disclaiming a share in a transaction to which one might otherwise be bound by tacit acquiescence, a renunciation of a right or obligation. A refusal to accept a benefice. The putting away of a wife, or of a woman betrothed.

Repugnancy. *See* REPUGNANT.

Repugnant (*repugnans*). What is contrary to anything stated before. A repugnant condition is void. Generally used of a clause in a written instrument inconsistent with some other clause or with the general object of the instrument. Where contrarieties are in several parts of a deed, the first part shall stand, in wills the last, if the several clauses are not reconcileable.—*Tomlins.*—*Advocate-General* v. *Hormasji* (7 Bom. L. R. 236, 29 Bom. 375); *Somasundara* v. *Ganga Bissen* (28 Mad. 386).

Reputation (*reputatio*). A person's good name, credit, honour or character. That which generally has been and many men have said and thought.

Injuries to reputation. See DEFAMATION, LIBEL, SLANDER.

Marriage by reputation. See HABIT AND REPUTE

Reputed. Accepted by general, vulgar, or public opinion. Thus land may be reputed part of a manor, though not really so.

Reputed manor. Whenever the demesne lands and the services become absolutely separated, the manor ceases to be a manor in reality, although it may (and usually does) continue to be a manor in reputation, and is sometimes called a seigniory in gross.—*Brown.*

Reputed owner. One who has, to all ap-

pearances, the right and actual possession of property. A bankrupt, in reference to goods and chattels in his apparent possession with the consent of the true owner, is called the *reputed owner* of such goods. *See* ORDER AND DISPOSITION.

Request, Court of. *See* COURT OF REQUEST.

Request, letters of. *See* LETTERS OF REQUEST.

Request notes. Applications to obtain a permit for removing excisable articles.

Requisition. (*Sc. L.*) The demand made by a creditor that a debt be paid or an obligation fulfilled.

Requisition on title. Written inquiries made by the solicitor of an intending purchaser of land, or of any estate or interest therein, and addressed to the vendor's solicitor, in respect of some apparant insufficiency in the abstract of title. *See* ABSTRACT OF TITLE.

Rere county (*retro comitatus*). Close county, in opposition to full and open county. This was some public place appointed by the sheriff for receiving the king's money after his county court was done.

Rere fief. An inferior or non-military feud.

Re-sale. A second sale.

Rescission of contract. Annulment or revocation of a contract. See Act I of 1877 (Specific Relief), s. 35. *See* VOIDABLE CONTRACT.

Rescissory action. (*Sc. L.*) One to rescind or annul a deed or contract. *See* ACTIONS RESCISSORY, REDUCTION.

Resceit. Receit (*receptio*). An admission or receiving of a third person to plead his right in a cause already commenced between two other persons; as where any action is brought against a tenant for life or term of years, and the person in remainder or reversion comes in and prays to be *received* to defend the land and plead with the demandant. The civilians call this the admission of a third party to plead *pro interesse suo* (for his own interest). Now obsolete.

Rescet of homage (*receptio homagii*). The lord's receiving homage from his tenant on his admission to land.

Rescous. Rescue. A resistance against lawful authority, in taking a person or thing out of the custody of the law.

Rescue of distress. The taking away and setting at liberty, against law, a distress effected. Rescue lies where a person distrains for rent or services, or for damage feasant, and is desirous of impounding the distress, and another person rescues the distress from him. The person distraining must be in possession of the distress. This is *rescous in fact.* But if one distrains beasts for damage feasant in his ground, and as he drives them, they enter the owner's house, and he will not deliver them up on demand; this is a *rescous in law.*

Rescue of a prisoner. The taking a person out of the custody of law; as when a bailiff or other officer, upon a writ, does arrest a man, and others by violence take him away, or procure his escape; this is a *rescous in fact.*

Rescussor. The person committing or making a *rescous* or *rescue.*

Reseiser. Resseiser (*reseisire*). A taking again of lands into the hands of the king, whereof a general livery, or *ouster-le-main*, was formerly misused, contrary to the form and order of law.

Reservation. A keeping aside or providing. A keeping back, as when a man lets his land, *reserving* a rent. Sometimes it signifies an exception, as when a man lets a house, and *reserves* to himself one room. An *exception*, however, is of part of the thing granted, and of a thing in being, but a *reservation* is of a thing not in being, but newly created and reserved out of the land or tenement demised; though exception and reservation have been used promiscuously.

Reservation clause. In conveyancing, a clause of reservation is a clause whereby the grantor or lessor reserves either to himself or to the lord of the fee some money, chattel, or service, not being part of the thing granted or demised or an appurtenant thereto. A reservation, strictly so called, cannot be made in favour of a stranger, though such an attempted reservation might be good as a condition for payment of an annual sum in gross. —*Brown.*

Reserving points of law. This is where, on a trial, a judge reserves a point or points of law for the consideration of the full court, or a superior court.

Reset. Resetter. The receiving or harbouring of a proscribed or outlawed person.

Reset of theft. (*Sc. L.*) The feloneously receiving and keeping of stolen property, with knowledge of the theft; or harbouring the thief.

Resiance (*resiantia*). Residence, abode, or continuance; whence comes the participle *resiant*, that is, continually residing, dwelling or abiding in any place.—*Tomlins.*

Resiant rolls. Rolls containing the *resiants* in a tithing, &c., which were called over by the steward on holding cour leet.

Residence (*residentia*). Abode. The word is peculiarly used for the continuance of a person or vicar on his benefice; one of the great duties incumbent on clergymen being that they be resident on their livings. And it is upon the supposition of residence that the law styles every parochial minister an *incumbent.* *See* INCUMBENT. The word is now used generally for any person's continuance in a place, and defined for various purposes by different Acts.

Residence means the place where a man lives with his family where he may be expected te be when his business does not call

him away—where he passes the night, and in respect of which he pays rates (*Greenham* v. *Child*, 24 Q. B. p. 30). *See* DWELLING, DWELLING-PLACE.

The meaning to be given to the word "residence" in Legislative enactments depends upon the intention of the Legislature in framing the particular provision in which the word is used (*per* Sargent, C. J., *Mahomed Shuffi* v. *Laldin*, 3 Bom. 227).

Resident. A person residing in a place. A public minister appointed to reside at the court of a foreign sovereign; he is inferior to an ambassador, but is, like the latter, under the protection of the law of nations. Especially, a person appointed by the Indian Government to reside at the court of any rajah or other native prince in a state of feudal dependence upon the British Crown.—*Mozley.* Also, a tenant who was obliged to live on his lord's land, and not to depart from the same; called also, *homme levant et couchant.*

The word "resident" must be construed according to the intention of the Legislature. It is not necessary that the word has the same meaning in different enactments, nor even in different sections of the same enactment (*per* Melvill, J., *Ramchandra* v. *Keshav*, 6 Bom. p. 101).

Residual. *See* RESIDUARY.

Residuaries. Under the Mehomedan Law, there are certain persons who are entitled to the property of the deceased after the shares of the *legal sharers*, if any, have been paid. They are called *residuaries.*

Residuaries are of two kinds, those by relationship, and those by special cause.

Residuaries by relationship may be divided into three classes:—(1) Those in their own right, *i. e.*, every *male* in whose line of relationship to the deceased, no female enters; these are descendants, ascendants and collaterals. (2) Those together with another. These are certain females who, though entitled to *legal shares* in the absence of males of the same degree, become *residuaries* with them, such as daughters, son's daughters, full sisters, and half sisters on the father's side. (3) Those in another's right. This class comprises sisters with one or more daughters.—*Elberling.*

Residuary. Relating to the residue; relating to the part remaining. *See* RESIDUARIES.

Residuary account. The account which an executor or administrator, after paying the debts and particular legacies of the deceased, and before paying over the *residuum*, presents before the Board of Inland Revenue, for the payment of duty on the balance found.—*Mozley.*

Residuary devisee. The person named in a will who is entitled under it to the residue of the testator's lands or real property, remaining over and above other devises, that is, to such as are not specifically devised by the testator's will.

Residuary estate. (1) A testator's property not specifically devised or bequeathed. (2) Such part of the personal estate as is primarily liable to the payment of debts. (3) That which remains after debts and legacies have been paid.—*Mozley.*

Residuary legatee. The person to whom the residue, or a proportionate share in the residue, of a testator's personal property is left by the testator's will, after debts, funeral exnenses, and particular legacies have been satisfied.

Residue (*residuum*). The surplus of a testator's or intestate's estate after discharging all his liabilities. *See* SURPLUS.

Resignation (*resignatio*). The giving up a claim, office or possession. The giving up of a benefice into the hands of the ordinary, called by the canonists, *renunciation.* Returning a fee by the vassal into the hands of a superior. *See* ABDICATION.

Resignation bond. A bond or other engagement in writing taken by a patron from the clergyman presented by him to a living, to resign the benefice at a future period.

Resignee. One in whose favour a resignation is made.

Res judicata. A matter or thing which has been adjudicated upon. No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the *same* parties, or between parties under whom they or any of them claim, litigating under the *same* title, in a Court of jurisdiction *competent* to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been *heard* and *finally decided* by such Court.—*Act V of* 1908 (*Civ. Pro.*), *s.* 11. A plea of *res judicata* is also called a *plea of judgment.*

Resolution. A solemn judgment. Any matter resolved upon especially at a public meeting. A revocation of a contract.

Resolutive clause. *See* CLAUSE IRRITANT.

Resolutory condition. A condition, by the performance of which, a prior obligation is revoked.

Resort (*resortum*). The authority or jurisdiction of a court. A court whose decision is for the particular case before it final and without appeal, is, in reference to that case, said to be a court of last resort (*dernier resort*). The House of Lords is the *dernier resort* in case of appeal. A place of *public resort* is a place to which the public have access.

Respite (*respectus*). A delay, forbearance, or continuation of time; postponement.

To *enter and respite* an appeal is to enter the same and postpone the hearing to a future day.

Respite of homage (*respectus homagii*). The forbearance, delay, excusing, or dispensing with the performance of homage, which ought to be performed by tenants holding their lands

in consideration of performing homage to their lords.

Respite of a jury. The adjournment of the sittings of the jury for defect of jurors.

Respite of a sentence A delay, suspension, or putting off of the execution of a sentence, especially a capital sentence.

Respondent. A party called upon to *answer* a petition or an appeal; the defendant in an appeal; the defendant in a suit in the Court of Divorce. *See* APPELLANT, APPELLATE JURISDICTION.

Respondentia. A loan, not upon the vessel, as in bottomry, but upon the goods and merchandise contained in it, or upon the mere hazard of a voyage. *See* BOTTOMRY.

Resseiser. *See* RESEISER.

Restitution (*restitutio*). The restoring anything unjustly taken from another. It signifies also the putting him in possession of lands or tenements, who had been unlawfully disseised of them.

Restitution of conjugal rights. A suit for restitution of conjugal rights is a suit which may be brought when either husband or wife is guilty of the injury of subtraction, that is, withdraws from the society of the other, or lives separate from the other, without any sufficient reason, to compel the party so living separate, to return to the other.

Restitution of minors. (*Sc. L.*) A relief to minors on their attaining full age, by restoring them to rights lost by deeds executed during minority.

Writ of restitution. A writ issued in favour of a successful party, where judgment is reversed in error, to restore him all that he has lost by the judgment that is reversed.

Restraining order. An order restraining the Bank of England, or some public company, from allowing any dealing with some stock or shares specified in the order.

Restraining statutes. Those which restrict previous rights and powers. *See* REMEDIAL STATUTES.

Restriction against alienation Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him; provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Mehomedan, or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 10.

Where a will contained a provision that property should never be sold, *Held* that the provision against sale was void as being repugnant to the devise, and notwithstanding such prohibition, the trustees had power to sell, or otherwise alienate the property for the purposes of the will (*Broughton* v. *Mercer*, 14 B. L. R., O. C., 442).

Restrictive Indorsement. An indorsement on a bill or note which restricts the negotiability of the bill to a particular person, or a particular purpose; as "pay to A. B. only," or "pay A. B. for my use," or "pay A. B. for the account of C. D," or "pay A. B. or order for collection." It is to be distinguished from a *blank indorsement*, which consists merely of the signature of the indorser; from a *full indorsement*, which makes the bill or note payable to a given person or his order; and from a *qualified indorsement*, which qualifies the liability of the indorser. *See* INDORSEMENT.

Rests. Rests are periodical balancings of account (as six monthly or annual rests) made for the purpose of adding interest to the principal, or converting interest into principal, and charging the party liable thereon with compound interest. The word signifies the making a pause in the accounts by striking a balance therein. The account which is taken against a mortgagee in possession is commonly directed to be taken with *rests* that is to say, when the mortgagee's receipts are more than sufficient to cover the interest, the annual surplus is applied in reduction of the principal money.

Resulting trust A trust that arises from the operation or construction of equity, and in pursuance of the rule that trusts result to the person from whom the consideration moves, of which the following are instances. —(1) Upon a contract to purchase a real estate, a trust immediately results to the vendee, since equity looks upon things agreed to be done as actually performed, (2) Where a purchase is made in the name of one, and the consideration is given by another, a trust results in favour of the latter, though there be no express declaration for the purpose; (3) A purchase by a trustee with the trust money will raise a resulting trust to the person entitled to such money, (4) A conveyance to a man without consideration raises a resulting trust for the original owner; (5) When the trusts created cannot take effect, a trust will result to the original owner or his heir; (6) If a trustee renews a lease in his own name, such lease will be subject to the trust affecting the old lease; (7) Where there is fraud in obtaining a conveyance, the grantee will be held, in equity, a trustee for the person defrauded.—*Wharton.* See ADVANCEMENT, BENAMI.

Resulting use. A use resulting by way of implication to the grantor himself. *See* RESULTING TRUST, USE.

Re-summons (*resummonitio*). A second summons calling upon a man to answer an action, where the first summons is defeated by any occasion.

Resumption (*resumptio*). The taking again into the king's hands such lands or tenements,

&c., which he had been induced to grant by false suggestion or other error.

Retainer. (1) A servant, but not menial or familiar, that is, not continually dwelling in the house of his master, but only wearing his livery, and attending sometimes upon special occasions. (2) The contract between client and solicitor, or between solicitor and counsel, for their professional services, whereby such services shall not be given to the opposite party. (3) A document given by a solicitor to counsel, engaging the counsel to appear for a party, either in some particular suit or action in prospect (which is called a *special* retainer), or in all matters of litigation in which such party may at any time be involved (which is called a *general* retainer). (4) A counsel's retaining fee. *See* RETAINING FEE.

Retainer of debt. The right which an executor, who is a creditor of his testator, has to *retain* so much of the testator's assets as will pay his own debt. When a creditor is made executor or administrator to his debtor, he may retain out of the assets of the deceased the debt due to himself, in preference to paying other creditors whose debts are of equal degree with his own.—*Broom's Com. Law.* But the right of retainer does not exist in India. See Act V of 1881 (Prob. and Admin.), s. 104, which directs the executor or administrator to pay all the debts (with the exception of some) including *his own*, equally and rateably, as far as the assets of the deceased will extend. To the same effect is s. 282 of the Indian Succession Act (X of 1865).

Retaining a cause. This is where a cause brought in a wrong division of the High Court is *retained* therein.

Retaining fee (*merces retinens*). A preliminary fee given to a counsel, along with the retainer, in order to insure his advocacy, or at least to make sure that he shall not be on the other side. The fee by which a barrister's services are secured.

Retaliation (*lex talionis*). The law of retaliation (stat. 37 Edw. III, c. 18), whereby it was enacted that such as preferred malicious accusations against others in the king's great council should be put in sureties of taliation, that is, should, if the suggestion were found untrue, incur the same pain that the other should have had if it had been true.

Retention. (*Sc. L.*) The right of withholding a debt, or retaining property until a debt due to the person claiming the right of retention shall be paid. It corresponds to the *lien* of the English law.

Retiring a bill. The phrase is used of an indorser who takes up a bill of exchange by handing the amount to a transferee, and thereupon holds the instrument with all his remedies intact. It is sometimes used of an acceptor who pays a bill at maturity, and thereby extinguishes all remedies upon it.

Retorsion. Retaliation by one sovereign state against another. *See* RETALIATION.

Retour. (*Sc. L.*) An extract from the Chancery of the service of an heir to his ancestor. A return. *See* SERVICE OF AN HEIR.

Retrocession. (*Civ. L.*) A re-assignment of inheritable rights to the cedent or original assignor.

Return (*returna*; *retorna*). (1) The return of a writ by a sheriff or bailiff, or other party to whom a writ is directed, is a certificate made to the court of that which he has done touching the execution of the writ directed to him; and where a writ is executed, or the defendant cannot be found, &c., then this matter is endorsed on the back of the writ by the officer, and delivered into the court whence the writ issued, at the day of the return thereof, in order to be filed. (2) The return of a member or members to serve in parliament for a given constituency. This is the return of the writ which directed the sheriff or other officer to proceed to election. (3) A certificate or report by commissioners on a matter on which they have been directed to inquire. (4) The return of goods replevied.—*Mozley.* *See* REPLEVIN.

Return book. The book containing the list of members returned to the House of Commons.

Return day. The day appointed for the return of a writ.

Return irreplevisable or *irreplegiable.* A judicial writ addressed to the sheriff for the final restitution or return of cattle to the owner when unjustly taken or distrained, and so found by verdict, it is granted after a nonsuit in a second deliverance. *See* SECOND DELIVERANCE.

Return toll. *See* TOLL.

Return. According to Mahomedan Law, *return* (*Radd*) is where there being no residuaries, the surplus, after the distribution of the shares, returns to the sharers.—*MacN. Meh. Law.*

When, on distributing the estat among the legal sharers, there is a surplus, such surplus goes to the residuaries, if there be no legal sharers, the whole estate goes to the residuaries, but if, in the first case, there be no residuaries to receive the surplus, that surplus reverts to those legal sharers who *are connected with the deceased by consanguinity.* This is called the *return.* The husband and widow get no share of the return as long as there are any heirs by blood alive; but when the deceased leaves no relative at all, the husband or wife takes the whole estate.—*Elberling.*

Returned note. A note which has been dishonoured (*Hedger* v. *Steavenson*, 2 M. & W. 808, L. J. Ex. 192).

Returning officer. The officer to whom a writ is directed, requiring him to proceed to the election of a member or members to serve in parliament. He is generally the sheriff in the case of a county, and the mayor in the case of a borough.

Re-union (*Hin. L*). The joining together of members of a Hindu family who had become separate. To constitute a re-union, as contemplated by Hindu Law, it is not enough that the parties who separated should again become joint in residence; what is further necessary is that they should again become associated in estate and be in joint possession of the property held by them (*Parbhu* v. *Jwala*, 2 All. L. J. 467; 25 All. W. N. 183). Accordingly, a brother who has separated from, but again re-united with, his father, is entitled to succeed to his father's property by survivorship to the exclusion of his own brothers who separated and did not re-unite (*Ganesh* v. *Bhagirath*, 26 All. W. N. 181). *See* SEPARATION-DEED.

The re-union must be made by the parties, or some of them, who made the separation. If any of their descendants think fit to unite, they may do so; but such a union is not a re-union in the sense of the Hindu law, and does not affect the inheritance (*Vishwanath* v. *Krishnaji*, 3 Bom. H. C., A. C., 69). A re-union in estate properly so called can only take place between persons who were parties to the original partition (*Balabbux* v. *Rakhmabai*, 5 Bom. L. R. 469; 7 Cal. W. N. 642; 30 Cal. 729; 30 I. A 130, P. C.).

A re-union after partition can only be held established by clear proof of an intention of the parties to re-unite in estate and interest (*Balkishen* v. *Ram Narain*, 5 Bom. L. R. 461).

Reve. Greve. Greeve. The bailiff of a franchise or manor. Hence *shire-reve*, now called sheriff. An officer in parishes within forests, who marks the commonable cattle.

Revelach. Rebellion.

Reveland (*terra regis*). Lands of the king not granted out to any, but resting in charge of the *reve* or bailiff of the manor.

Revendication. The right of revendication is the right (allowed by some countries) of the vendors of goods to take back the goods from the purchaser as being his (the vendor's) property so long as the price remains unpaid.

Revenue. The yearly rent that accrues to every man from his lands and possessions. The general income received by the state in taxes, &c. The income which the British constitution has vested in the royal person in order to support the regal dignity.

That portion of the produce of land, or sums of money, which is paid by zamindars to the Government or the ruling power, is called *revenue*; that paid by the ryots to the zamindars or intermediate holders of different grade, is called *rent* (*per* Shumbhunath, J., *Fizuruddin* v. *Madhu Sudan Pal*, 2 W. R. 15; B. L. R., Sup. Vol., 75).

Revenue agent means a person duly qualified to practise in revenue offices.—*Act XVIII of* 1879 (*Legal Practitioners*), *s.* 18.

Revenue side of the Exchequer. The jurisdiction of the Court of Exchequer, or of the Exchequer Division of the High Court of Justice, by which it ascertains and enforces the proprietary right of the Crown against the subjects of the realm. Revenue cases are within the exclusive competence of the Exchequer Division of the High Court of Justice as a Court of Revenue.

Revenue year. *See* YEAR.

Reversal of judgment. The annulling of a judgment, on appeal therefrom, by the court to which the appeal is brought.

Reversal of outlawry. The annulling or making void an outlawry.

Reverser. (*Sc. L.*) A mortgagor of land; a reversioner. *See* REVERSION.

Reversion (*reversio*, from *revertor*) A returning again. A reversion signifies properly the residue of an estate *left in the grantor* to commence in possession after the determination of some particular estate or estates granted out by him. But it is frequently, though improperly, used, so as to indicate any future estate, whether in reversion or remainder. *See* ESTATE, PARTICULAR ESTATE, REMAINDER. In Scotch law, reversion is a right of redeeming landed property which has been either mortgaged or adjudicated to secure the payment of a debt (*see* ADJUDICATION). In the former case the reversion is called *conventional*, in the latter, *legal* (*see* EXPIRY OF THE LEGAL, LEGAL).—*Mozley.*

Reversionary interest. An interest in real or personal property in remainder or reversion; that which is to be enjoyed in reversion.

Reversionary lease. A lease to take effect *in future*. A second lease to commence after the expiration of the former lease.

Reversioner. One entitled to a reversion; but the word is used generally to signify any person entitled to any future estate in real or personal property.

Reverter. Returning or reversion.

Revest. To replace one in the possession of anything of which he has been divested or put out of possession. It is opposed to *divest*. The words *revest* and *divest* are also applicable to the mere right or title, as opposed to the possession.—*brown.*

Review. The power which a superior court has of reviewing the judgment of an inferior court. See Act V of 1908 (Civ. Pro.), s. 114 and Sch. I, O. XLVII, R. 1, and Act V of 1898 (Crim. Pro.), s. 434.

Bill of review. A bill sometimes brought in Chancery for the purpose of reviewing a cause already heard, on the ground of error in law, or of new evidence discovered after decree. See Act V of 1908 (Civ. Pro.), s. 114 and Sch. I, O. XLVII, R. 1.

Commission of review. A commission sometimes granted in former times to revise the sentence of the Court of Delegates in extra ordinary cases. *See* COMMISSION OF DELEGATES.

Review of taxation. The re-consideration

by the taxing master. or by a judge in chambers, of the items allowed or disallowed in the taxation of costs, or any of them. *See* TAXATION OF COSTS.

Revising barristers. The barristers appointed every year to revise the register of parliamentary electors in each district. They hold open courts for the purpose.

Reviving. Renewing; calling to life again. A word metaphorically applied to rents and actions, signifying a renewal of them after they are extinguished. Making oneself liable for a debt barred by the statute of limitation, by acknowledging it; or for a matrimonial offence once condoned, by committing another. *See* CONDONATION.

Revivor, bill of. A bill filed to revive and continue a suit or action, whenever there was an abatement of the suit before its final consummation, either by death of one of the parties, the marriage of a female party, or some other cause. And the order of the court for continuance of the action by the personal representative, or the husband, &c., by being made a party thereto, is called the order of revivor.

Revivor of judgment. Writ of revivor. Writ of revivor was a writ to revive a judgment in an action at common law, which could not be enforced directly by writ of execution, in consequence of lapse of time or change of parties.

An order to issue execution after notice to the judgment-debtor has the effect of reviving a judgment or decree (*Desoo* v. *Srinivasa*, 7 M. L. T. 32). The object of the notice is to prevent undue surprise to a judgment-debtor where more than one year has passed between the date of the decree and the application for execution, or when the decree is sought to be enforced against the legal representatives of the party against whom the decree was originally made (Civ. Pro. Code V of 1908, O. XXI, R. 22); the statute of limitation to which the judgment is subject, ceases to run upon a revivor of judgment, and time runs afresh from the date of the revivor; Limit. Act IX of 1908, Sch. I, Art. 183 (*Jogendra* v. *Sham Das*, 36 Cal. 543; 9 Cal. L. J. 271).

Revocation (*revocatio*). The calling back of a thing granted; or a destroying or making void of some deed that had existence till the act of revocation made it void. The reversal by any one of a thing done by himself; as, revocation of a contract, revocation of agency, &c.

Revocation of probate is where probate of a will, having been granted, is afterwards recalled by the Court of Probate, on proof of a subsequent will, or other sufficient cause.

Revocation of proposal or acceptance. A proposal for a contract may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. An acceptance of a contract may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.—*Act IX of* 1872 (*Contract*), *s.* 5.

Revocation of will. There are four modes in which a will may be revoked:—(1) By marriage; (2) By the execution of another will, or codicil, or by some writing of revocation executed as a will; (3) By the burning, tearing, or other destruction of the original will, or by other act done *animo revocandi* by the testator; (4) By the disposition of the property by the testator in his lifetime.

The irrevocability of a document is perfectly inconsistent with its being a will. A document cannot operate as a family arrangement if it was revocable. The fact that such a document is registered as a non-testamentary one and was stamped, showed that the parties did not regard it as a will (*Sita Koer* v. *Deo Nath*, 3 Cal. L. J. 370).

Power of revocation. The power to revoke or call back something granted. As if any one makes a conveyance of any lands, with a clause of revocation, at his will and pleasure, of such conveyance; here the clause by which such person reserves to himself the power of revoking such conveyance is termed a power of revocation.—*Brown.*

Rhodian law. A code of maritime law made by the people of Rhodes. The Rhodian law concerning jettisons (*lex Rhodia de jectu*) provided that goods thrown overboard during a storm, for the purpose of lightening the ship, should be paid for by those whose goods were saved.—*Moxley.*

Ribaud. A rogue, vagrant, whoremonger, or person given to all manner of wickedness.

Rider. An inserted leaf or clause; a new or additional clause added to a bill passing through parliament, which was done by tacking a separate piece of parchment on the bill, which was called a rider.

Rider-roll. A schedule or small piece of parchment often added to some part of a roll, record, or Act of Parliament.

Riding clerk. One of the six clerks in Chancery, who, in his turn, for one year, kept the controlment books of all grants that passed under the Great Seal.

Ridings. The three great divisions of the County of York, called the North, West, and East Ridings. The word *riding* is said to be a corruption of trithing, meaning the third part of a county.—*Brown.*

Rier (reer) county. *See* RERE COUNTY.

Right (*jus*; *rectum*). A liberty of doing or possessing something consistently with law. A lawful title or claim to anything. It is also used to denote a claim to a thing of which one is not in possession.

Right heirs. *See* HEIR.

Right in court (*rectus in curia*). This is said of a man who, having been outlawed, had obtained a reversal of the outlawry, so as

to be again able to participate in the benefit of the law.

Right of action. The right to bring an action in any given case. But it is frequently used in a more extended sense, as identical with *chose in action*, to mean all rights which are not rights of possession, and to include large class of rights over things in the possession of others, which must be asserted by action in cases where the qualified or temporary possessor refuses to deliver them up. —*Mozley.* *See* CAUSE OF ACTION, CHOSE IN ACTION.

Right of search. The right of a belligerent to examine and inspect the papers of a neutral vessel on the high seas, and the goods therein contained.

Right of way. A right enjoyed by one (either in his specific character, or as one of the public), of passing over another's land, subject to such conditions and restrictions as are specified in the grant, or sanctioned by the custom, by virtue of which the right exists. *See* WAY.

Right to begin. The right to commence the argument on a trial, which belongs to that side on whom the burden of proof rests

Rights and credits. A bequest of "rights and credits" will pass the general personal estate (*Hutchinson* v. *Hutchinson*, 13 Ir. Eq. Rep. 322).

See BILL OF RIGHTS, MERE RIGHT, PETITION OF RIGHT, TURNED TO A RIGHT, WRIT OF RIGHT.

Rihn. (*Ind.*) A pledge. A pawn.

Rijat. (*Ind.*) Restitution; return. In Mehomedan Law, the receiving back of a divorced wife, and restoring to her her legal rights according to the circumstances of her repudiation.

Ring dropping. A species of larceny by which a number of accomplices pretend to find a ring wrapt in paper, appearing to be a jeweller's receipt for a valuable ring. They offer to leave the ring with the victim if he will deposit some money and his watch as a security. He lays his watch and money and before he has time to examine the contents of the paper, they take away the money and watch (*Patch's Case*, Feb. 1782, Leach, 238; *Moore's Case*, April, 1784, Leach, 314; *Watson's Case*, Dec. 1794, Leach, 640).

Ringing the changes. A trick by which a person, on receiving a piece of money in payment of an article, pretends that it is not good, and, changing it in such a manner as not to be seen by the buyer, returns to the latter a spurious coin. This is held to be an uttering of false money (*Frank's Case*, Dec. 1794, Leach, 644).

Rings giving. A ceremony anciently observed by newly created serjeants-at-law in the presentation of gold rings to the judges and other persons of rank. These rings bore the inscription of some motto selected by the serjeant about to take the new degree.

Riot. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.—*Act XLV of* 1860 (*Penal Code*), *s.* 146. *See* UNLAWFUL ASSEMBLY.

Riparian nations. Those who possess opposite banks or different parts of banks of one and the same river.

Riparian proprietors. Owners of lands bounded by a river or watercourse. If a riparian owner grants away a part of his land which does not abut on the stream, the character of riparian land is as to that part destroyed, and the grantee does not become entitled to riparian rights. But if he divides his estate in such a manner that a part of the stream bank belongs to each part of the estate, each part will retain its character of riparian land, and be clothed with riparian rights (*Stockport W. W. Co.* v. *Potter*, 3 H. & C. 300).

Riptowel. Reaptowel. A gratuity or reward given to customary tenants, when they had reaped their lord's corn or done other customary duties.

Risk. The danger insured against. The liability of the insurer.

Risk-note. A contract whereby in consideration of goods being carried by a railway company at a reduced rate, the consignor agrees that the company shall be free of all responsibility for any loss or damage to the goods (*East India R. Co.* v. *Bunyad Ali*, 18 All. 42).

Rivage. Riverage (*rivagium*). A duty paid to the king on some rivers for the passage of boats or vessels.

Riveare. To have the liberty of a river for fishing and fowling.

Robbery (*robaria*). In all robbery there is either theft or extortion.

Theft is 'robbery', if, in order to the committing of the theft, or in committing the theft, or in carrying away, or attempting to carry away, property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause, to any person death or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion is 'robbery,' if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted. The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.—*Act XLV of* 1860 (*Penal Code*), *s.* 390.

See DACOITY, EXTORTION, THEFT.

Roberdsman. Robertsman. The followers of Robert or Robin Hood, the famous robber, who lived in the time of Richard I.

Rod knights. Certain servitors who held their land by serving their lords on horseback. Otherwise called *rad knights*. *See* RAD KNIGHTS.

Roe, Richard. A fictitious personage who often appeared as the casual ejector in an action of ejectment. He was also called "*Troublesome.*" *See* EJECTMENT.

Rogation. (*Civ. L.*) The demand by the consul or tribunes of law to be passed by the people. *See* ABROGATION.

Rogatory letters. A commission from a judge in one country to a judge in another, requesting him to examine witnesses residing in the latter country on a suit pending in the former.—*Bouvier.*

Rogue. An idle sturdy beggar; vagrant; vagabond.

Roll (*rotulus*). A schedule of parchment that may be turned up with the hand in the form of a pipe. A list.

Roll of Court (*rotulus curiæ*). The court roll of a manor, wherein the business of the court, the admissions, surrenders, names, rents, and services of the tenants are copied and enrolled.

Rolls Court. The office appointed for the custody of the rolls and records of the Chancery, the master whereof is called the Master of the Rolls. The phrase is especially used to signify the court room in which the Master of the Rolls sits as judge. Also called *Rolls Office of the Chancery.*—*Moxley.* *See* MASTER OF THE ROLLS.

Rolls of Parliament. The manuscript registers of the proceedings of the old Parliament.

Roman Civil Law. *See* CIVIL LAW.

Rome-scot. Rome-penny. *See* PETER-PENCE.

Root of title. The document with which an abstract of title properly commences is called the root of the title.

Ros. A kind of rushes, which some tenants were obliged by their tenures to furnish their lords withal.

Rother-beasts. Under this name are comprehended oxen, cows, steers, heifers, and such like horned beasts.

Roup. (*Sc. L.*) Auction.

Rout. A disturbance of the peace committed by an assembly of persons going forcibly to commit an unlawful act, though they do not do it. The actual doing of the act will make them rioters. Rout is a lesser form of riot.

Royal. Regal; kingly; relating to, or emanating from, the Crown.

Royal assent (*Regius assensus*). The assent given by the sovereign to a thing formally done by others, as to the election of a bishop by dean and chapter, or to a bill passed in both Houses of Parliament.

Royal burghs. Incorporations in Scotland created by royal charter, giving jurisdiction to the Magistrates within certain bounds, and vesting certain privileges in the inhabitants and burgesses. A burgh is called a royal burgh if it holds of his majesty; if it holds of a subject, it is termed a burgh of barony.—*Tomlins.*

Royal fish. *See* FISH ROYAL.

Royal grants. Grants by letters patent from the Crown. These are always matters of record.

Royal mines. Gold and siver mines. By the old common law, if gold or silver were found in mines of base metal, the whole, according to the opinion of some, was a royal mine, and belonged to the king; though others held that it did so only if the quantity of gold or silver was greater than the quantity of base metal. But now no such mines are looked upon as royal mines.

Royal rights. *See* COUNTY PALATINE.

Royalty. The royal dignity and prerogatives. The *pro rata* payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised. —*Wharton.*

Rubric of a statute. The title of a statute which was anciently printed in red letters, It serves to show the object of the legislature, and thence affords the means of interpreting the body of the Act.

Ruffanamah. (*Ind.*) An agreement. A deed of relinquishment.

Rukah. (*Ind.*) A short letter or note. A note of hand.

Rule. A regulation for the government of a society agreed to by the members thereof. A point of law settled by authority, as when we speak "the court ruled that," &c., "the Rule in Shelley's Case." An order of court.

Rule of Court. An order made between parties to an action or suit. It is made upon motion in some matter over which the court has jurisdiction. A rule is not in general granted absolutely in the first instance, but is a *rule nisi*, or a *rule to show cause*, that is, a rule that the thing applied for be granted, *unless* the opposite party show sufficient reason against it on a day assigned for that purpose. The rule is *served* upon the opposite party, and when it comes on for argument, the court, having heard counsel, *discharges* the rule, or makes it *absolute*, as the case may be. *See* ABSOLUTE, DISCHARGE. The court cannot grant a rule to show cause, unless it is satisfied that the rule should be made absolute, if no cause be shown (*In re Comptoir D' Escompte de Paris* v. *Currie*, 3 B. L. R., Ap., 153). *See* SHOW CAUSE. A submission to arbitration, or the award of an arbitrator, is

said to be made a *rule of court*, when a court of law or equity makes a rule that such submission or award shall be conclusive.—*Mozley.*

Side-bar rule. A rule obtained at chambers without counsel's signature to a motion paper, or a note of instructions from an attorney.

Rule to plead. A rule or order of court requiring a defendant to plead within a given time.

Rules and orders of Court. Rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court. *See* GENERAL RULES AND ORDERS.

Rule against perpetuity. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period and to whom, if he attains full age, the thing bequeathed is to belong.—*Act X of* 1865 (*Succession*), *s.* 101.—*Act XXI of* 1870 (*Hindu Wills*), *s.* 2.

No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 14.

But this restriction shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.—*Ibid.*, *s.* 17.

Perpetuity (save in cases of religious and charitable endowments) is not sanctioned by Hindu Law.—*Kumara Asima* v. *Kumara Krishna* (2 B. L. R., O. C., 11); *Krishnaramani* v. *Ananda* (4 B. L. R., O. C., 231), *Promotho* v. *Radhika* (14 B. L. R., O.C., 175).

Semble.—The grounds of the rule against perpetuities are applicable to the property of Hindus, and the Court will be very reluctant to construe a Hindu will so as to tie up property for an indefinite period (*Arumugam* v. *Ammi*, 1 Mad. H. C. R. 400).

See ACCUMULATION, PERPETUITY.

Rule in Shelley's Case. So called from having been quoted and insisted on in Shelley's Case (1 Rep. 93 b). The rule was not first laid down or established in that case, but then was simply admitted in argument as a well founded and settled rule of law, and has always since been quoted as the Rule in *Shelley's* Case. The rule may be stated thus:—That wherever a man by any gift or conveyance takes an estate of freehold, and in the same gift or conveyance an estate is limited by way of remainder, either mediately or immediately (*i. e.*, with or without the interposition of any other estate), to his *heirs*, or the *heirs of his body*, such remainder is immediately executed in possession in the person so taking the life freehold, the word "heirs" being treated as a word of *limitation*, and not of *purchase*. In other words, it is to be understood as expressing the quantity of estate which the party is to take, and not as conferring any distinct estate on his heirs, or the heirs of his body, as the case may be. So that the life tenant takes the inheritance, which is neither contingent nor in abeyance; that is to say, where the inheritance is to his *heirs*, he takes the fee simple, and where it is to the *heirs of his body*, an estate-tail general. For example, land is limited to A for life, remainder to his right heirs; the rule does not treat this remainder as contingent, but confers it upon A at once, whereupon the life estate merges in the remainder, and he takes the entire interest, *i. e.*, the fee simple. Again: Land is limited to A for life, remainder to B for life, remainder to the heirs male of A's body; the second remainder vests in A as a remainder in tail male general, and is not in contingency or abeyance, nevertheless waiting for, and continuing expectant on, the determination of B's life estate, which is expectant on A's death; but after A's death, and the determination of the mesne remainder to B, A's heir in tail male general shall enjoy the land as heir, and not as purchaser. In Coke's Reports in verse the rule has been rhymed thus:—"When ancestors a freehold take, The words 'his heirs' a limitation make."—*Wharton.*—*Mozley.* *See* LIMITATION, PURCHASE.

Rule of the road. The sailing and steering rules which prescribe the course to be taken by sailing vessels and steam ships upon meeting each other, especially when there is any risk of collision between them, prescribe what is called the Rule of the Road.—*Brown.*

Run. To take effect in point of place, as to the King's writ in given localities; or in point of time, as of the statute of limitations.—*Wharton.*

Running days. *See* LAY DAYS.

Running down case. An action against the driver of one vehicle for running down another, or of a ship or boat for damaging another by a collision.—*Mozley.*

Running with the land (or reversion). A covenant is said to *run with the land* or *reversion*, when each successive owner of the land or reversion is entitled to the benefit of the covenant, or liable (as the case may be) to its obligation; in other words, when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that land or reversion. *See* COVENANT.

Ruptura. Arable land, or ground broken up.

Rural deanery. *See* DIOCESE.

Rural servitudes. *See* SERVITUDE.

Rustici. Churls, clowns, or inferior country tenants, who held cottages and lands by

the services of ploughing and other labours of agriculture for the lord.—*Tomlins.*

Rusum. (*Ind.*) Customs. Customary commissions, gratuities, fees, or perquisites, either in kind or money.

Ryder. *See* RIDER.

Ryot. Raiyat. (*Ind.*) A cultivator of the soil; a peasant; subject; tenant of house or land. A person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.—*Act VIII of* 1885 (*Bengal Tenancy*), *s.* 5 (2).

Ryotwar. The revenue settlement which is made by the Government officers with each actual cultivator of the soil for a given term, usually a twelve-month, at a stipulated money rent, without the intervention of a third party; it is the mode of assessment which prevails chiefly in the Madras Presidency.

Ryotwaree. Relating to ryots; the revenue settlement and assessment made directly with the cultivator of the soil.

S

Sac. The privilege enjoyed by a lord of a manor of holding pleas (*i. e.*, assuming jurisdiction), trying causes, and imposing mulcts, fines and forfeitures upon transgressors. *See* LIBERTY, SOKE.

Sacaburth. Sacabere. Sakabere He that is robbed, or by theft deprived of his money or goods, and puts in surety to prosecute the felon.

Sacrilege (*sacrilegium*). Larceny from a church; church-robbery, or a taking of things out of a holy place. Stealing things dedicated to the offices of religion. Also the alienation to laymen of property given to pious uses.

Sadar kistbandi. (*Ind.*) The engagement for revenue instalments payable to Government by the principal revenue payer, as distinguished from those entered into with him by his underpayers.

Sæmand. An umpire, arbitrator.

Safe conduct (*salvus conductus*). A security given by the prince, under the great seal, to a stranger, for his safe coming into, and passing out of, the realm. A convoy; guard through an enemy's country. A document allowing such a journey. It is a prerogative of the Crown to grant safe-conducts. *See* LETTERS OF SAFE CONDUCT.

Safeenamah. (*Ind.*) A release or acquittance; a testimonial given by the defendant upon the final settlement of a cause, that the matter in dispute has been cleared up or settled. A deed of acquaittance, release, or acquiesence in the terms of a *razinamah* of which it is the counterpart; the latter, or deed of consent, being executed by the plaintiff, the *safeenamah* or deed of acquiesence by the defendant.

Safe guard (*salva guardia*). A protection of the Crown to one who is a stranger, that fears violence from some of his subjects, for seeking his right by course of law. An old writ in the form of a circular letter, addressed by the king to all stewards, constables, &c., within his dominion, committing to their special protection certain persons therein mentioned.

Safe pledge (*salvus plegius*). A surety given for a man's appearance at a day assigned.

Sagibaro. A judge.

Sahodha. (*Hin. L.*) If a pregnant young woman married, whether her pregnancy was known or unknown, the male child in her womb belonged to the bridegroom, and was called *sahodha*, a son received with his bride.

Saint Martin le Grand, Court of. A court, where justices sat, appointed by the king's commission, to hear appeals from the Sheriffs' Courts and the Court of Hustings in London. From the judgment of those justices, a writ of error lay immediately to the House of Lords.

Saisine. The French word for *seisin* or *sasine*. The word is also applied to the taking possession by executors of the property of the deceased.

Sakulya. *See* SAPINDA.

Salami. (*Ind.*) A free gift made by way of compliment or in return for a favour.

Salary (*salarium*). A recompense or consideration made to a person for his pains and industry in another man's business. Wages, stipend or annual allowance. *See* WAGES, PRIVILEGED DEBTS.

Sale (*venditio*). Sale is the exchange of property for a price. It involves the transfer of ownership of the thing sold from the seller to the buyer.—*Act IX of* 1872 (*Contract*), *s.* 77.

Sale is effected by offer and acceptance of ascertained goods for a price, or of a price for ascertained goods, together with payment of the price or delivery of the goods; or with tender, part-payment, earnest, or part delivery; or with an agreement, express or implied, that the payment or delivery or both, shall be postponed. Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnsst, is paid, or when the whole or part of the goods is delivered. If the parties agree expressly, or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal of sale is accepted.—*Ibid.*, *s.* 78.

Sale is a transfer of ownership in exchange for a price paid or promised. Such tranfer, in the case of tangible immoveable property of the value of one *hundred rupees and upwards*, or in the case of a reversion or other *intangible* thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value *less* than one hundred rupees, such transfer may be made

either by a *registered* instrument or by *delivery* of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 54.

Contract for sale. A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in, or charge on, such property.—*Ibid.*

Sale notes. *See* BOUGHT AND SOLD NOTES.

Sale on approval. This phrase and the corresponding phrases "sale on trial" and "sale or return," denote a sale depending upon a condition precedent, *viz.*, the condition of the purchaser being satisfied with or approving the goods. The approval may be implied from keeping the goods beyond a reasonable time.—*Brown.*

Sale with all faults. In this case, unless the seller fraudulently and inconsistently represents the article sold to be faultless or contrives to conceal any fault from the purchaser, the latter must take the article for better or worse (*Baglehole* v. *Walters*, 3 Camp. 154).—*Brown.*

See BILL OF SALE, DELIVERY OF GOODS.

Salic (*or* **Salique**) **Law** (*Lex Salica*). An ancient law of Pharamund, king of the Franks, excluding women from inheritance, and under which males only were allowed to inherit.

Salt silver. One penny paid on St. Martin's day by the tenants of some manors as a commutation for the service of carrying their lord's salt from market to his larder.

Salvage. Salvage money. A reasonable reward payable by owners of ships or goods saved at sea from pirates, enemies, or the perils of the sea, to those by whose exertions they are saved. This is allowed by all modern maritime States. At Common Law, the person who saves goods from loss or imminent peril, has a lien upon them, and may retain them till payment of salvage.

A claim to salvage is founded on a principle of equity which the courts of British India are bound to recognize. It accrues irrespectively of the circumstance that the rescue is from a danger incurred on inland waters or of the circumstance that a portion of the service may be rendered from the shore. Persons in these provinces, to whom a right of salvage has accrued, are entitled to retain the property saved until a reasonable sum has been paid or tendered to them in satisfaction of their claim (*Gilmore* v. *Rose*, 6 N.-W. P. 311).

In estimating the value of salvage service, the court is bound to consider the time, labour, skill, enterprise, and risk of the salvors, as well as the value of the property engaged in the service, and also the degree of danger from which the property is rescued, and the value of the property so rescued. The rule no longer obtains which made the salvage reward proportionate to the value of the saved ship (*The "Lady Jocelyn,"* 2 Mad. H. C. R. 355; *Francis John Raffin* v. *S. S. Chilka*, 7 Bom. 196).

See LIEN.

Salvor. A person who saves goods at sea. *See* SALVAGE.

Samadaskat. (*Ind.*) An acknowledgment of debt signed by the debtor; an admission of a debt due given by the debtor.

Samanodaka. *See* SAPINDA.

San mortgage. (*Ind.*) In Gujarat, a mortgage unaccompanied with possession. It is the established and judicially recognized custom of Gujarat, that possession is not necessary in the case of a san mortgage to validate it as against subsequent mortgagees or purchasers, whether or not such mortgagees or purchasers have notice of the san mortgage. To hold otherwise would be tantamount to depriving the san mortgage of the benefit of the custom that possession is unnecessary (*Sobhagchand* v. *Bhaichand*, 6 Bom. 193).

Sankhat. An instrument creating a san mortgage.

Sanad. (*Ind.*) A patent, a charter, or written authority from the ruling power for holding either land or office.

Sanad-i-Malkiyat-i-Istimrar. A written authority for the permanent possession of lands or office.

Sanction. Sanctions have been described as *civil* (*i. e.*, private) and *criminal* (*i. e.*, public)—the difference between them according to Austin being that the civil sanction may be remitted or enforced at the option of the individual, but that the criminal sanction cannot be so remitted or so enforced, but that only the public (*i. e.*, the Crown) may remit or at its option enforce the sanction. A criminal sanction is in fact merely a punishment; and a civil sanction is simply a right or right of action with its consequences to the unsuccessful parties. In a more general sense a sanction has been defined as a conditional evil annexed to a law to produce obedience to that law; and in a still wider sense, a sanction means simply an authorization of anything. Occasionally, sanction is used (*e. g.*, in Roman Law) to denote a statute, the part (penal clause) being used to denote the whole. —*Brown.*

Sanctuary (*sanctuarium*). A place privileged for the safeguard of offenders lives, being founded on the law of mercy and the great reverence and devotion which the prince bears to the place whereunto he grants such privilge. The sanctuary was allowed to shelter such as had committed both felonies and treasons, if within forty days the accused acknowledged his fault and submitted himself to banishment.—*Tomlins.* The privilege of sanctuary, and abjuration consequent thereon, is now utterly abolished.

Sanctum of a law. The provision for enforcing or promoting its observance. *See* SANCTION.

Sand-gavel. A payment made by the tenants of the manor of Rodley in Gloucestershire, for liberty granted to them to dig up sand for their common use.

Sane memory. Perfect and sound mind, memory and understanding to do any lawful act. *See* CONTRACT, LUNATIC.

Sanity. Sound understanding.

Sankalp. (*Ind.*) A religious grant made for no consideration but the prayers and services of the Brahmins, and is irrevocable and made with the form of giving a blade of sacred *kusha* grass. *Beshenprit* is another religious grant of this nature, meaning a grant for the love of God.

Santan. (*Ind.*) Child or children. The term bears the wider and more general meaning of *issue* and not confined to male progeny (*Harish Chander* v. *Chander Monee*, 24 W. R. 268).

Sapinda. (*Hin. L.*) A Hindu may present three distinct sorts of offerings to his deceased ancestors; either the entire funeral cake, which is called an undivided oblation, or the fragments of that cake which remain on his hands, and are wiped off it, which is called a divided oblation, or a mere libation of water. The entire cake is offered to three immediate paternal ancestors, *i. e.*, father, grandfater, and great-grandfather. The wipings, or *lepa*, are offered to the three paternal ancestors next above those who receive the cake, *i. e.*, the persons who stand to him in the fourth, fifth and sixth degree of remoteness. The libations of water are offered to paternal ancestors ranging seven degrees beyond those who receive the *lepa*, or fourteen degrees in all from the offerer; some say as far as the family name can be traced. The generic name of *sapinda* is sometimes applied the offerer and his six immediate ancestors, as he and all of these are connected by the same cake or *pinda*. But it is more usual to limit the term *sapinda* to the offerer and the three who receive the entire cake. He is called the *sakulya* of those to whom he offers the fragments, and the *samanodaka* of those to whom he presents mere libations of water. A *sapinda* connected through the male line is called *gotraja sapinda*; one connected through a female is called *bhinna-gotra sapinda* or *bandhu*.

Sapratibandha. (*Hin. L.*) An obstructed, indirect or contingent inheritance. *See* DAYA. *Sapratibandha* (liable to obstruction) property vests in the heirs in existence at the time the inheritance opens, and is not subject to variation by the subsequent birth of any co-heir (*Narasimha* v. *Veerabhadra*, 17 Mad. 287).

Saptapadi. (*Hin. L.*) The essential or operative part of the marriage ceremony, consisting in the seven steps taken by the bridal pair. On the completion of the last step, the actual marriage takes place. Till then it is imperfect and revocable.

Sarai. (*Ind.*) A house. A place. A seraglio. A building erected for the accommodation of travellers.

Sarai means any building used for the shelter and accommodation of travellers, and includes, in any case in which only a part of a building is used as a sarai, the part so used of such building. It also includes a purao.—*Act XXII of* 1867 (*Public Sarais and Puraos*), *s.* 2.

Saranjam. (*Ind.*) An assignment of lands or their revenue by the State for the support of troops (*Sheikh Sultan Soni* v. *Sheikh Ajmodin*, 20 I. A. p. 50).

Sardin (Sarclin) time. The time or seasons when husbandmen weed their corn.

Sarkhat. (*Ind.*) A written agreement; a receipt; a bill of sale; a deed of lease; a note of acknowledgment from Government to payers of revenue, bearing upon it the successive instalments paid into the treasury.

Sart. A piece of woodland turned into arable. *See* ASSART.

Sasine. The Scotch term for *seisin*, signifying feudal possession. *See* SEISIN.

Instrument of sasine. An instrument in Scotland by which delivery of *sasine* is attested. It is subscribed by a notary in the presence of witnesses, and is executed in pursuance of a precept of sasine, whereby the grantor desires the notary to give sasine to the intended grantee. The formality has been substituted for that of infeftment.

Sasun birt. (*Ind.*) A grant of revenue or any perquisite conveyed by deed for the maintenance of a person.

Sata. Satakhat. (*Ind.*) A preparatory instrument in the nature of articles of agreement intended to be followed by the execution of a more formal contract.

Satisdare. (*Civ. L.*) To guarantee the obligation of a principal.

Satisdation. (*Civ. L.*) Satisfaction; suretyship.

Satisfaction. Legal compensation; the recompense for an injury; the payment of money due and owing. The making of a donation with the express or implied intention that it shall be taken as an extinguishment of some claim which the donee has upon the doner. This generally happens under one of the two following circumstances:—(1) When a father, or person *in loco parentis*, makes a double provision for a child, or person standing towards him in a filial relation, in which the question arises whether the latter provision is *in satisfaction* of the former or intended to be added to it; (2) When a debtor confers, by will or otherwise, a pecuniary benefit on his creditor, in which the question is whether the benefit conferred is intended *in satisfaction* of the debt, or whether the creditor is to be allowed to take advantage of it, and nevertheless claim independently against the

assets of the debtor.—*Moxley.* Generally such legacy is to be taken *in satisfaction* of the debt, so that the creditor cannot have the debt and also the legacy, this doctrine being founded upon the maxim, *Debitor non præsumitur donare*, a debtor is not presumed to give. But this is not so under Act X of 1865 (Succession), where the creditor takes both the legacy as well as the debt. See ss. 164 to 166 of the Act, which also apply to the Hindu Wills Act (XXI of 1870) under s. 2 of the latter Act. *See* SATISFACTORY.

S. 164 of the Succession Act abolishes the doctrine of satisfaction. Although the Act does not apply to Hindus, Mehomedans and Buddhists, it cannot be doubted that it was the intention of the Legislature to anounce what they considered to be a generally correct principle of interpretation universally applicable unless overriden by some special provision of local law or usage (*Hasanalli* v. *Popatlal*, 14 Bom. L. R. 782).

Satisfaction differs from *performance*, in that satisfaction implies the substitution of something different from that agreed to be given, while in cases of *performance*, the thing agreed to be done is in truth wholly or in part performed.—*Moxley.*

"In satisfaction" is the same as "in full satisfaction." (*Co. Litt.* 213 *a*).

Satisfaction on the Roll. The entry on the roll or record of a court that a judgment is satisfied, whether by the voluntarily payment of the judgment-debtor, or the compulsory process of law.

Satisfaction piece. A memorandum to the effect that satisfaction is acknowledged between plaintifl and defendant in an action. It is filed by the proper officer among the records of the court, who *enters satisfaction* in the judgment book against the entry of the judgment.

Satisfactory. Where one party has to perform a contractual obligation to the "satisfaction" of the other—*i. e.*, furnish "proof satisfactory" of death or accident—this does not give that other the power to act capriciously—he can only ask for a reasonable fulfilment of the obligation (*Braunstein* v. *Accidental Insurance*, 31 L. J. Q. B. 17; 1 B. & S. 782). So a condition to furnish a title "satisfactory" to the purchaser, only entitles him to make usual objections (*Lord* v. *Stephens*, 1 Y. & C. Ex, 222).—*Stroud.*

Satisfied term. *See* OUTSTANDING TERM, TERM.

Saudayika. (*Hin. L.*) A kind of woman's property received by her after marriage in the house of her husband, or while unmarried in the house of her father. Property derived from kindred as an affectionate gift.

Saunkefin. The end of the blood, *i. e.*, the extinction of a family. The determination of the lineal race.

Saver default. To excuse a default. This was when a man, having made a default in any legal proceeding, came afterwards and alleged a good reason why he did so.

Saving the Statute of Limitations. The keeping a right of action alive notwithstanding the Statute of Limitations. This may be done by commencing an action within time and getting the writ of summons from time to time renewed.—*Moxley.*

Savings Banks. Institutions for the safe custody and increase of the small savings of the industrious poor, their object being to encourage economy through the labouring class of people, by providing for the investiture of their savings in government securities, &c.

Savour. To partake of the nature of; to bear affinity to.

Saxon-lage. The law of the West Saxons. *See* DANE-LAGE.

Sayer. (*Ind.*) That which moves; variable imposts consisting of customs, tolls, licenses, duties on goods; also taxes on houses, shops, bazaars, and miscellaneous revenue, which were not actually land revenue.

Scandal. A report or rumour, or an action whereby one is affronted in public.

Scandal and impertinence in pleadings. An irrelevant and abusive statement introduced in a pleading. This is injurious, by making the records of the court the means of perpetuating libellous and malignant slanders, and the other side may refuse to answer the pleading till such scandal or impertinence is expunged, which is done by the order of the court. But the statement of a scandalous fact that is *material* to the issue is not a scandalous pleading.

Scandal is anything alleged in a bill, answer, or other pleading, in such language as is unbecoming to the Court to hear, or as was contrary to good manners; or anything set forth which charged some person with a crime not necessary to be shown in the cause. *Impertinence* is the encumbering the records of the courts with long recitals, or with long digressions of matters of fact, which are altogether unnecessary and totally immaterial to the point in question.—*Brown.*

Scavage. Scevage. Schevage. Schewage. Shewage. A kind of toll or custom formerly exacted by mayors, sheriffs, &c., of merchant strangers, for wares showed, exposed or offered for sale within their liberties or precincts. The officer who collected the scavage money was called *scavaidus* or *schavaldus.*

Scelthman. (*Sax.*) A pirate or thief.

Scharpenny. Schornpenny A small duty or compensation. Some customary tenants were obliged to pen up their cattle at night in the pound or yard of the lord for the benefit of their dung; if they did not do so, they paid a small compensation called sharpenny or shornpenny, *i. e.*, dung-penny, or money in lieu of dung.—*Tomlins.*

Schedule. A little roll or long piece of paper or parchment in which are contained particulars of goods in a house let by lease.—*Tomlins.* An appendix to an Act of Parliament or instrument in writing, for the purpose of facilitating reference in the Act or instrument itself. A writing additional or appendant. An inventory. The schedule filed in Court by an insolvent containing the particulars of his assets and liabilities.

Scheduled Districts. These are districts and territories mentioned in the first Schedule to Act XIV of 1874. They include also any other territory to which the Secretary of State for India, by resolution in Council, may declare the provisions of 33 Vict. c. 3, s. 1 to be applicable.—*Act XIV of* 1874 (*Scheduled Districts*), *s.* 1. These are portions of the older Regulation Provinces, and also portions of the newer Non-Regulation Provinces. *See* NON-REGULATION PROVINCES.

Schetes. An ancient term for usury

Schireman. A sheriff. The ancient name for an earl.

Schirrensgeld. Shiregeld. A tax anciently paid to sheriffs for keeping the shire or county court.

Scirewyte. The annual tax or prestation formerly paid to the sheriff for holding the assizes or county courts.

Scold (*communis rixatrix*). A troublesome and angry woman, who, by her brawling and wrangling amongst her neighbours, breaks the public peace, increases discord, and becomes a public nuisance to the neighbourhood. Usually called a common scold. *See* CASTIGATORY.

Sconce. A mulct or fine.

Scot. A contribution formerly paid to the use of the sheriff or his bailiffs. Also to be quit of such custom.

Scot and Lot. A customary contribution laid upon all subjects according to their ability. And whoever are assessed to any contribution, though not by equal proportion, are generally said to pay scot and lot. Those who pay "scot and lot" are those who pay to Church and Poor, *i. e.*, pay the poor rate as inhabitants, and hence are called *scot and lot inhabitants.*

Scot and Lot voters. Voters in certain boroughs who were allowed to vote in parliamentary elections for the borough, in virtue of their paying scot and lot.

Scotal. Scotale. Payment for ale. An extortionate practice, whereby officers of the forest kept ale-houses within the forest by colour of their office, and compelled people to come to their houses and spend money in drinking, for fear of their displeasure, and on the understanding that the officers were to wink at their offences against the forest. Also called *aleshot.*

Scotch Peers. The ancient peers of Scotland. Of these sixteen are elected by the rest to represent the peerage of Scotland in the House of Lords. They are elected for one parliament only and are called representative peers.

Scots. The name given to the rates assessed by the Commissioners of Sewers.

Scottare. To hold lands subject to pay scot; to pay scot, tax, or customary dues.

Scrip. A certificate or schedule. A document evidencing the right to obtain shares in a public company, called *scrip-certificate*, to distinguish it from the real share certificate. *See* SHARE-CERTIFICATE.

Script. A writing; the original or principal document. In testamentary causes, a testamentary document of any kind, whether a will, codicil, draft of a will or codicil, or written instructions for the same.

Scrivener. One who receives money to place it out at interest, and supplies those who want to raise money on security, thus rendering himself useful to, and receiving a profit or commission from, both parties.—*Tomlins.* One who draws contracts. When a solicitor receives money as a solicitor and money agent, to invest the same on securities at his discretion, and he receives procuration fees for any sum thus invested, as well as a fee for preparing the deeds in the transaction, such a course of dealing is substantially the business of a scrivener (1 Holt, 507; 3 Camp. 539).—*Wharton.*

Scroll. A mark which supplies the place of a seal.

Scroop's Inn. An obsolete law society, called the *Serjeants' Place.* This Inn was one of those formerly occupied by Serjeants-at-law.

Scutage (*scutagium*). A tax or contribution paid by those that held lands in chivalry, *i. e.*, by knight's service, towards furnishing the king's army, in lieu of personal service. *See* ESCUTAGE.

Scyldwit. A mulct for any fault.

Scyra. A fine imposed upon such as neglected to attend the *scyre-gemot* courts, which all tenants were bound to do.

Scyre-gemot. Sciremote (Sax. *shiremote*). A court held by the Saxons twice a year, by the bishop of the diocese and the ealdorman in shires that had ealdorman; and in others by the bishop and sheriffs; wherein both the ecclesiastical and temporal laws were given in charge of the country.—*Tomlins.*

Sea (*mare*). The territorial jurisdiction of every State on the sea extends to three miles of the low-water mark, and no farther. *See* HIGH SEAS.

Agistments of sea banks. *See* AGIST.

Sea batteries. Assaults by masters in the merchant service upon seamen at sea.

See greens. Grounds overflowed by the sea in spring-tides.

Sea letter. Sea brief. A document expected to be found on board of every neutral ship.

It specifies the nature and quantity of the cargo, the place whence it comes, and its destination.—*Wharton.*

Sea marks. Light houses, buoys, and beacons.

Seamen. Persons engaged in navigating ships, barges, &c., upon the high seas. Those employed for this purpose upon rivers, lakes, or canals are denominated *watermen.*

Seamen's wills. See WILL.

Sea reeve. An officer in maritime towns and places who took care of the maritime rights of the lord of the manor, and watched the shore and collected wrecks for the lord.

Sea rovers. Pirates and robbers at sea.

Sea shore. The space of land between high and low water mark.

Seaworthy. A ship is said to be seaworthy when it is in every respect in a fit condition to perform the voyage on which it is sent. *See* WARRANTY.

Beyond seas. The phrase, at common law, means not being in Great Britain.

See FOUR SEAS, PERILS OF THE SEA.

Seal (*sigillum*). Wax or wafer with an impression or device, attached to deeds, &c. Also the instrument with which the wax is impressed. In law, the former is the most usual sense. Seal is impressed and attached as a mark of authenticity to letters and other instruments in writing. A contract under seal is called a *specialty contract*, or *covenant. See* CONTRACT, DEED, GREAT SEAL, PRIVY SEAL.

An impression made with ink by means of a wooden block, is a sufficient sealing (*R.* v. *Paul's Covent Garden*, 14 L. J. M. C. 109; *Sprange* v. *Barnard*, 2 Bro. C. C. 585). And if the party seal the deed with any seal besides his own, or with a stick, or any such like thing which makes a print, it is good. (Touch. 57).—*Stroud.*

Seal days. Motion days in the Court of Chancery; so called because every motion had to be stamped with the seal, which did not lie in Court in the ordinary sittings out of term, and was therefore specially brought in on days when motions were taken.—*Wharton.*

Sealer (*sigillator*). An officer in Chancery who sealed writs and instruments.

Sealing and delivery. See CONTRACT, DELIVERY.

Seal paper. A document issued by the Lord Chancellor, previously to the commencement of the sittings, detailing the business to be done for each day in his Court and in the Courts of the Lords Justices and Vice-Chancellors. The Master of the Rolls also issued a seal paper in respect of the business to be heard before him.—*Wharton.*

Searcher. An officer of the customs whose business it is to search and examine ships outward bound, in order to ascertain if they have any prohibited or uncustomed goods on board, &c. There were formerly searchers concerned in alnage duties, of leather, and in divers other cases. *See* ALNAGER.

Searches. Seekings in registers for entries.

Search warrant. A warrant granted by a judge or magistrate to search a house, shop, or other place therein specified, for the purpose of searching for stolen goods or other property in respect of which an offence has been committed.

Sebait. *See* SHEBAIT.

Seck. A warrant of remedy by distress. Also dry, barren, or profitless. *See* RENT-SECK.

Secondary (*secondarius*). An officer who is second or next to the chief officer. Also an officer of the Corporation of London before whom inquiries to assess damages are held, as before sheriffs in counties.

"Secondary" is the technical medical word for a disease which is not the primary cause of death. If a man falls through the ice and is drowned, that is death by accident; but if he walks home in his wet clothes, and catches a cold which settles on his lungs, and he dies, that is death from a *secondary cause* (*per* Mellish, arg. *Smith* v. *Accident Insurance*, 39 L. J. Ex. 214; L. R. 5 Ex. 302).—*Stroud.*

Secondary conveyances. The same as derivative conveyances, which *see.* These are:—(*a*) Releases; (*b*) Confirmations; (*c*) Surrenders; (*d*) Assignments; and (*e*) Defeasances.

Secondary evidence. Evidence not of the best and most direct character, which is admissible in certain cases where the circumstances are such as to excuse a party from giving the proper or primary proof. That species of proof which is admitted on the loss of primary evidence.

Secondary evidence of a document means and includes (1) certified copies given under s. 76 of the Evidence Act; (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies; (3) copies made from or compared with the original, (4) counterparts of documents as against the parties who did not execute them; (5) oral accounts of the contents of a document given by some person who has himself seen it.—*Act I of* 1872 (*Evi.*), s. 63.

Secondary use. A use limited to take effect in derogation of a preceding estate. A use, though executed, may change from one to another by circumstances *ex post facto*; as if A makes a feoffment to the use of his intended wife and her eldest son for their lives; upon the marriage the wife takes the whole use in severalty; and upon the birth of a son, the use is executed jointly in them both Or, a conveyance to the use of A and his heirs, with a proviso that when B returns from India, then to the use of C and his heirs. These are also called *shifting uses.*

Second deliverance (*seconda deliberatione*). A judicial writ that lay for a plaintiff when nonsuited in an action of replevin, issuing out of the original record, in order to have

the same distress delivered to him a second time on his giving the like security as before.

Second distress. A second distress by the party to whom arrears were due, in cases where the value of the cattle first distrained was not sufficient for the full arrears distrained for.

Secondhand evidence. The same as hearsay evidence, *i. e.*, the oral or written statement of a person who is not produced in court, conveyed to the court either by a witness or by the instrumentality of a document. *See* HEARSAY EVIDENCE.

Second surcharge. A writ directed to the sheriff to inquire whether a defendant surcharged a common contrary to a previous admeasurement of pasture. If after admeasurement of common, upon a writ of admeasurement of pasture, the same defendant surcharges the common again, the plaintiff may have this writ of second surcharge (*de secunda superoneratione*). *See* ADMEASUREMENT, SURCHARGE.

Seconds. Assistants at a duel.

Secretary (*secretarius*). One intrusted with the management of business; one who writes for another; an officer attached to a public establishment.

Secretary of Decrees and Injunctions. This was an officer in the Court of Chancery. The office is now abolished.

Secretary of State. The Secretaries of State have an extraordinary trust which renders them very considerable in the eyes of the king, and of the subjects also, whose requests and petitions are for the most part lodged in their hands to be represented to his majesty, and to make despatches thereupon pursuant to his majesty's directions. There are now five principal Secretaries of State; the Secretary for the Home Department, for Foreign Affairs, for the Colonies, for the War Department, and for India. There are also several under-secretaries.

Secret ownership, equitable doctrine of. It is a rule of universal equity, and not one peculiar to English Courts, that in order to enable the real owner of property to recover from a purchaser for value from a person allowed by the real owner to hold himself out as the owner, he must prove either direct or constructive notice of the real title, or that there existed circumstances which ought to have put the purchaser on an enquiry which, if prosecuted, would have led to a discovery of the real title (*Ramcoomar v. John*, 11 B. L. R., P. C., 46). *See* BENAMI.

Secret trust. A gift by a testator upon a trust not committed to writing. If the trust be contrary to law, the gift fails altogether.

Sectatores. Suitors of court who, amongst the Saxons, gave their judgment or verdict in civil suits upon the matter of fact and law.

Secular. Not spiritual; relating to the affairs of the present word.

Secular clergy. Parochial clergy who performed their ministry *in seculo*; as contradistinguished from the regular clergy. *See* REGULAR CLERGY.

Secured creditor. A creditor who holds some special security for his debt, as a mortgage or lien.

Security. A security, generally speaking, is anything that makes the money more assured in its payment or more readily recoverable; as distinguished from a mere I. O. U. which is only evidence of a debt.—*Stroud.* A word specially applied to a claim upon any property created for the purpose of securing the repayment of a debt or the discharge of any other liability. The word is also applied to any document by which any claim may be enforced, or by which a person's title may be evidenced.—*Mozley.* The general name for all mortgages, charges, debentures, &c., whereby the repayment or payment of money is secured otherwise than by the mere personal undertaking of the debtor.—*Brown.* The obligation may be on a *specific* property, or on property of a certain *general* description, which is called a *shifting* or *floating* security.—*Rawson.*

Security means (*a*) any promissory note, debenture, stock, or other security of the Government of India; (*b*) any bond, debenture, or annuity charged by the Imperial Parliament on the revenues of India; (*c*) any stock or debenture of, or share in, a company or other incorporated institution; (*d*) any debenture or other security for money issued by, or on behalf of, a local authority; (*e*) any other security which the Governor-General in Council may, by notification in the Gozette of India, declare to be a security.—*Act VII of* 1889 (*Succession Certificate*), *s.* 3 (2).

Security for costs. In cases where the plaintiff resides out of the jurisdiction of the court, or, being himself in a state of insolvency or extreme poverty, has sued as a nominal plaintiff for the benefit of some other person, or where the plaintiff's address as given in the bill is false or shows that the plaintiff resides out of the kingdom, the court, upon application, may stay the proceedings until the plaintiff gives security for the payment of all such costs as may in the event become due to defendant in respect of the cause.

Security for good behaviour (or *abearance*). See Act V of 1898 (Crim. Pro.), ss. 108-19.

Security for keeping the peace. See KEEPING THE PEACE, PEACE, ARTICLES OF THE.

See VALUABLE SECURITY.

Sederunt, Acts of. Ordinances of the Court of Session in Scotland for the ordering of processes and expediting of justice. They correspond to General Rules and Orders in England and Ireland.

Sedition. Sedition consists in attempts made, by meeting or speeches, or by publications, to disturb the tranquility of the State, which do not amount to treason.—*Mozley.*

Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, His Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine. The expression disaffection includes disloyalty and all feelings of enmity. Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section. Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.—*Act XLV of* 1860 (*Penal Code*), *s.* 124 *A* (*as substituted by Act IV of* 1898, *s.* 4).

In the Scotch law, sedition is distinguished from *leasing making*, in that leasing making consists of libellous attacks upon the private character of the sovereign, while sedition is directed against the government and constitution.

Seduction. By the English law, a man may have an action against another who has seduced his daughter, or other female relation, or even servant, provided she in consequence became pregnant, or otherwise incapacitated by illness, and was residing with, and rendering some service, however slight, to the plaintiff at the time; the foundation of the action being, not the wrong to the woman, but the absurd notion of a loss of service and damage to the plaintiff. In form the action is as if by a master for the loss of services of his servant, and it is sufficient as against such wrong-doer, to show a subsisting service in fact, though not founded upon a valid contract of service; and in the case of parent and child, a subsisting service will be implied from that relation. But if, in point of fact, the daughter was not residing with her parent at the time of such seduction, but in the service of another, or living apart, the parent will have no cause of action. Assuming such subsisting service, it is immaterial whether the daughter was a minor or of full age when so seduced.—*Collett on Torts.*

See. The diocese of a bishop; the circuit of a bishop's jurisdiction; his office or dignity as being bishop of a given diocese.

Seignior. Seignor. Seigneur (*dominus*). The lord of a fee or of a manor; and the manor is thence termed a *seigniory*, *i. e.*, lordship.

Seignior in gross. A lord whose seigniory has been severed from the demense lands of the manor to which it was anciently appendant, and exists as a separate subject of property. A lord without a manor, who simply enjoys superiority and services, and therefore can keep no court.

Seigniorage. A royalty or prerogative of the king, whereby he claimed an allowance of gold and silver brought in the mass to be exchanged for coin.

Seigniory (*dominium*). A manor or lordship.

Seised. Feudally possessed of a freehold.

Seised in his demesne as of fee. This technical expression describes a tenant in fee simple in possession of a corporeal hereditament. The expression means that the land to which it refers is a man's *dominicum*, or property, since it belongs to him and his heirs for ever; yet this *dominicum*, property, or demesne is strictly not absolute or allodial, but qualified or feudal; it is his demesne *as of fee*, that is, it is not purely and simply his own, since it is held of a superior lord, in whom the ultimate property resides.—*Moxley.*

Seisin (*seisina*). The feudal possession of a freehold estate in land. To seise is to take possession of a thing. Seisin is of two kinds, —seisin in deed, and seisin in law,

Seisn in deed or *in fact* is when an actual possession is taken-

Seisin in law is where lands descend and one has not actually entered on them. Seisin in law is a right to lands and tenements, though the owner is by wrong disseised of them. And he who has an hour's actual possession quietly taken, has seisin *de droit et de claime*, whereof no man may disseise him, but must be driven to his action.—*Tomlins.*

Livery of seisin. The delivery of feudal possession, called by the Feudists investiture. *See* LIVERY OF SEISIN.

Seisin ox. A perquisite formerly due to the sheriff in Scotland when he gave possession to an heir holding Crown lands. Now converted into a payment in money, proportioned to the value of the estate.

Seizing of heriots. This is when the lord of a manor, on the death of a tenant, seizes the beast or other chattel due by way of heriot. It is a species of self remedy, not much unlike that of taking of cattle or goods in distress; only in the latter case they are seized as a pledge, in the former as the property of the person for whom seized. *See* HERIOT.

Seizure. The ordinary and natural meaning of "seizure" is a forcible taking possession (*per* Cave, J., *Johnson* v. *Hogg.* 52 L. J. Q. B. 343; 10 Q. B. D. 432).—*Stroud.*

Select committee. A parliamentary committee, composed of certain members appointed by the House to consider or inquire into any matters, and to report their opinion for the information of the House. Select Committees are also appointed by the Imperial and Local Legislative Councils to report on Bills submitted to them for consideration.

Self bane. (Sax. *self-bana*). Self-murder.

Self defence. *See* HOMICIDE, PRIVATE DEFENCE.

Self-regarding evidence. Evidence which either serves or dis-serves the party is so called. This species of evidence is either self-serving (which is not in general receivable), or self dis-serving (which is invariably receivable, as being an admission against himself, and that either in Court or out of Court).—*Brown.*

Seller's lien. Unless a contrary intention appears by the contract, a seller has a lien, for the amount of the purchase-money, on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods, without payment. But, if the buyer becomes insolvent before the delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price. A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.—*Act IX of* 1872 (*Contract*), *ss.* 95-8. *See* VENDOR'S LIEN.

Senage (*senagium*). Money paid for synodals.

Senator. A member of parliament. The judges of the Court of Session in Scotland are called Senators of the College of Justice.

Seneschal. A steward; one who has the dispensing of justice in some particular cases.

Seney-days. Play days or times of pleasure and diversion.

Sentence of a Court. A definitive judgment pronounced in a civil or criminal proceeding.

Sentence of death recorded. The recording of a sentence of death not actually pronounced, on the understanding that it will not be executed. It was competent for the judge to do this in capital felonies other than murder, and it had the same effect as if the judgment had been pronounced, and the offender reprieved by the court. It is now disused.

Separate estate. Such estate (if any) as is enjoyed by a married woman to her *separate use*, independently of her husband, so that she may dispose of it by will, and bind it by her contracts in writing, as if she were unmarried, provided she be not, by any instrument under which she takes it, restrained from anticipating the income thereof. *See* ANTICIPATION. The Common Law did not allow a married woman to possess any property independently of her husband. But a wife's separate property may arise—(1) By custom; (2) By a deed or instrument in writing whereby property is settled to her sole and separate use, or by other sufficient words to that effect; (3) By the Married Women's Property Act.—*Mozley.*

Separate maintenance. Maintenance provided by a husband for his wife on the understanding that she is to live separate from him.

Separation (*separatio*). The living assunder of man and wife, as when they cannot agree so as to carry out the purposes of their union—mutual love and respect.

Separation deed. A deed of separation between husband and wife, whereby each covenants not to molest the other and the husband agrees to pay so much to trustees for her separate maintenance, the trustees covenanting to indemnify him against any debts which the wife may incur during the separation. Though the law allows provision to be made for a separation already determined on (*i. e.*, an *actual* or *immediate* separation), yet it will not sanction any agreement to provide for the *contingency* of a *future* separation: such provision will be void, as opposed to the policy of marriage, and the well being of the community.

An agreement between husband and wife, providing for an immediate reunion, coupled with a provision for *subsequent* separation, is bad under English law, as also under Mehomedan law (*Meherally* v. *Sakerkhanoobai*, 7 Bom. L. R. 602).

Separatists. A sect of dissenters; seceders from the church. They, like Quakers, solemnly affirm, instead of taking the usual oath, before they give evidence. *See* AFFIRMATION.

Sequels. Small allowances of meal or manufactured victual, made to the servants at a mill where corn was ground, by tenure, in Scotland, for their work. *See* THIRLAGE.

Sequester (*sequestrare*). In Roman Law, to renounce or disclaim; as when a widow came into Court and disclaimed having any thing to do with her deceased husband's estate, she was said to sequester. Also to set aside a man's property, or a portion thereof, for the benefit of his creditors.

Sequestration (*sequestratio*). (1) The separating or setting aside of a thing in controversy, from the possession of both the parties that contend for it; it is two-fold—*voluntary*, that which is done by consent of all parties, *necessary*, when a judge orders it, whether the party will or not. (2) The act of the ordinary, under his (now abolished) testamentary jurisdiction, disposing of or setting apart the goods and chattels of a deceased person to whom no one was willing to take out administration. (3) The gathering of the fruits of a vacant benefice for the use of the next incumbent. (4) The order

sent out by a bishop in execution of the writ of *sequestri facias*, whereby the bishop directs the churchwardens to collect the profits of the defendant's benefice, and pay the same to the plaintiff, until the full sum be raised. (5) A writ directed by the Court of Chancery to commissioners (called *sequestrators*), commanding them to enter upon real estates and sequester the rents, and upon the goods, chattels, and personal estate of a person in contempt for disobedience of a decree or order, and keep the same until the defendant clear his contempt. (6) An order of the Court of Session in Scotland, entrusting the management of a bankrupt's estate to an interim factor, until a trustee can be elected by the creditors.—*Mozley.*

Sequestrators. *See* SEQUESTRATION.

Serf. A slave, in feudalism.

Serishtadar. (*Ind.*) The head native officer of the Hoozoor cutcherry or court; also, a native taluk officer under the Tahsildar.

Serjeant. Sergeant (Lat. *serviens*). A word used in several senses:—

Serjeant at-law or *serjeant of the coif* (*serviens ad legem*) Otherwise called *serjeant counter.* This is the highest degree in the Common Law, as a "Doctor" is in the civil law. Prior to the year 1846, the serjeants at-law had the exclusive right to practise in the Court of Common Pleas where the Common Law of England was most strictly observed. This privilege was abolished by stat. 9 & 10 Vic. c. 54, by which the Court of Common Pleas was thrown open to all barristers. Prior to the Judicature Act, 1873, every judge of a Common Law Court, must have taken this degree previous to his elevation to the bench. A serjeant at-law is so made by the royal mandate or writ, commanding him to take that degree on a certain day. He is addressed by the judges as "brother." Of the serjeants at law one or more are styled the King's Serjeants, being commonly chosen out of the rest, in respect of their great learning, to plead for the king in all his causes, especially upon indictments for treason, &c. A serjeant at-law, on being so created, retires from the Inn of Court by which he was called to the bar, and becomes a member of the Serjeants' Inn. The order is gradually becoming extinct. *See* RINGS GIVING.

Serjeants-at arms. Officers attending the person of the sovereign, to arrest traitors and persons of quality offending, and give attendance on the Lord High Steward of England sitting in judgment on any traitor, &c. Two of them, by allowance of the Sovereign, attend the two Houses of Parliament, their duties being to execute the commands of the House in arresting offenders. Another attends the Court of Chancery for a similar purpose.

Serjeants of the mace. Inferior serjeants attending upon the Mayor or other chief officer in London and other towns.

Serjeants of the household. Officers who executed several functions within the king's household.

Serjeants of police are inferior officers of police.

Serjeants in the army are the highest non-commissioned officers.

The common serjeant. A judicial officer in the city of London, who attends the Lord Mayor and Court of Aldermen on court days, and is in council with them. He acts as one of the judges of the Central Criminal Court.

Serjeants' Inn. A society consisting of the entire body of serjeants-at-law, which includes all the Common Law Judges appointed before the commencement of the Judicature Acts. Formerly called Faryndon Inn. The property of the society was sold up in 1877.

Serjeanty. Sergeanty. Seargeanty (*serjeantia*). A service anciently due to the king only, for lands held of him; and which could not be due to any other lord. It is divided into *grand* serjeanty and *petit* serjeanty. Under the first, the tenant holds of the king under such services as he ought to do in person to the king at his coronation, and it may also concern matters military, or services of honour in peace, as to be the king's butler, champion, carver, &c.; or to carry his banner, his sword, or the like. The second is where a tenant holds of the king, to furnish him yearly with some small things towards his wars—as a bow, a sword, a lance, an arrow, or the like—and in effect payable as rent. *Tomlins.*

Servage. This was when a tenant, besides payment of certain rent, found one or more workmen for his lord's service.

Servants. *See* MASTER AND SERVANT.

Service (*servitium*). That duty which the tenant, by reason of his fee or estate owes to his lord. The ancient law books make many divisions of it; as into personal and real, free and base, continual or annual, casual and accidental, intrinsic and extrinsic, certain and uncertain, &c. Personal service is where something is to be done by the person of the tenant, as homage and fealty; and real was subject to wards and marriages, when in use. Annual and certain service is rent, suit of court to the lord, &c. Accidental services are heriots, reliefs and the like, Some services are only for the lord's benefit, and some *pro bono publico.* Also services are said to be entire; of chattels valuable, such as an ox; or things pleasurable, as a hawk, &c.—*Tomlins.*

Service of process. The delivery of a notice of any action or suit being instituted, or of any step or process therein, to the party to be affected thereby, or his solicitor, or other party having an interest in the subject matter of the suit. When the notice is served on the party *personally*, it is called *personal service.* If the party cannot be found, or keeps himself out of the way to avoid service of the process,

the court may order the service to be effected by affixing a copy of the notice in some conspicuous place in the court-house, and also upon some conspicuous part of the house where the defendant is known to have last resided; also, if the defendant cannot be found, and has no agent empowered to accept the service, the service may be made on any adult male member of the family of the defendant who is residing with him. This is called *substituted service*. See Act V of 1908 (Civ. Pro.), Sch. I, O. V, RR. 15 and 20).

Address for service. An address at which a notice may be served so as to bind the party whom it is thereby intended to serve.

Service under Articles. The employment in which an articled clerk is engaged for a solicitor to whom he is articled. *See* ARTICLED CLERK.

Service of an Heir. By the law of Scotland, before an heir can regularly acquire a right to the estate of his ancestor, he ought to be served heir, *i. e.*, he must prove his title which is one of the old forms of the law of Scotland proceeding upon a writ, and including in it the decision of a jury fixing the right and character of the heir to the estate of the ancestor.—*Tomlins*.

Secular service. Worldly service as contrasted with spiritual or ecclesiastical.

Servient heritage (or **tenement**). **Servient owner**. *See* EASEMENT.

Servitor (*servulus*). A servant. Particularly applied to certain scholars in the University of Oxford, as *sizars* at Cambridge.

Servitors of bills. These were process servers in the King's Bench who were sent abroad with writs to summon persons to the court. Now more ordinarily called tipstaffs.

Servitude A state of slavery. Apprenticeship. A burden affecting property, in Scotland, resembling easements in England. It was also the name in the Roman Law for an easement. *See* EASEMENT, PENAL SERVITUDE.

Servitudes, in Roman Law, were the easements and the *profits a prendre* of the English Law. They were either *prædial* or *personal*. The *prædial* were subdivided into *rural* (*i. e.*, easements over land simply as land), and *urban* (*i. e.*, easements over houses, &c., or land built upon). The rural servitudes were rights of way, water, &c.; the urban servitudes were ancient lights, lateral support to houses from houses, protection from rain spouts of neighbouring houses, &c. Personal servitudes were attached to the *person* only as apart from his property, in other words, they existed *in gross*. *See* GROSS.

Sess. Assess. Rate or tax.

Sesseur. The assessing or rating of wages.

Session. The sitting of parliament from its meeting to its prorogation. The sitting of justices in court upon commission, as the Sessions of Oyer and Terminer, the Quarter Sessions, the Petty Sessions, special Sessions, &c. See those titles.

Court of Session in Scotland. The highest court of civil jurisdiction in Scotland, first established in the year 1425. The judges are styled lords of council and session. It formerly consisted of fifteen judges. In 1830 that number was reduced to thirteen, *viz.*, the Lord President, the Lord Justice-Clerk, and eleven ordinary lords. The court sits in two divisions. The Lord President, with three ordinary lords, forms the First Division; and the Lord Justice-Clerk, and three other ordinary lords, form the Second Division. The chambers of the Parliament House in which the First and Second Divisions of the Cour of Sessions hold their sittings are called the Inner House; those in which the Lords Ordinary sit, as single judges, to hear motions and causes, are collectively called the Outer House.

Great Session of Wales. A Court first established by Henry VIII and now abolished by 1 Wm. IV, c. 70. Its jurisdiction was similar to that of Judges of Assize in England. The proceedings now issue out of the Courts at Westminster.

Sessions of the Peace. The name given to sessions held by justices of the peace, whether general, quarter, special or petty sessions.

Set. A lease. A lease of mines is frequently termed a "mining set."

Set aside. To annul; as to set aside a judgment.

Set off. A mode of defence, whereby the defendant acknowledges the justice of the plaintiff's demand on the one hand, but on the other sets up a demand of his own to counterbalance it, either in whole or in part.

Where, in a suit for the recovery of *money*, the defendant claims to set off against the plaintiff's demand, any *ascertained* sum of money *legally* recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the *same* character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards, unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set off. The written statement shall have the same effect as a plaint in a cross suit, so as to enable the court to pronounce a final judgment in respect both of the original claim and of the set off; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.—*Act V of* 1908 (*Civ. Pro.*), *Sch. I, O VIII, R.* 6.

The right of set off exists not only in cases of mutual debts and credits, but also where there are cross-demands arising out of one and the same transaction, or where they are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be

driven to a cross-suit (*T. Kistnasamy Pillai* v. *Municipal Commrs. of Madras*, 4 Mad. H. C. R. 120; *Ramdhari Singh* v. *Parmanund Singh*, 21 Ind. Cas. 716; *Prag Lal* v. *Maxwell*, 5 All. W. N. 40).

S. 11 of the Code of Civ. Pro. 1882 (see now Act V of 1908, Sch. I, O. VIII, R. 6) is not exhaustive of the descriptions of cross-claim which may be allowed by way of set off (*Niaz Gul* v. *Durga Prasad*, 12 All. W. N. 115). The section is one regulating procedure, and is not intended to take away any right of set off, whether legal or equitable, which parties would have had independently of its provisions (*Prag Lal* v. *Maxwell*, 5 All. W. N. 40, following *Gauri Sahai* v. *Ram Sahai*, N.-W. P. H. C., 1875, p. 157, *Kistnasami* v. *Muni. Commrs. of Madras*, 4 Mad. H. C. R. 120, and *Kishor Chand* v. *Madhowji*, 4 Bom. 407).

Set off, compensation, and counter-claim distinguished. A frequent defence to an action of debt is a plea of set off. This right of a defendant to prove the amount of a debt due to himself, in reduction of his liability for the debt sued for, is known as the right of set off, and is regulated by express law; but it is a universal right recognised by all laws, and is termed by the Roman Law, compensation. But the doctrine of compensation differs from that of set off; by the former one debt proportionately extinguishes the other debt, by mere operation of law, from the moment that the reciprocal obligations co-exist; but by the latter, there is no exsinction till the right of set off is exercised as a defence in an action. Hence, by compensation, an originally large debt may be reduced within an inferior jurisdiction, as that of a court of small causes; a debt carrying interest may be in part extinguished by a debt not carrying interest, so that interest would be recoverable on the balance only; or one debt may be, wholly or in part, extinguished by another which at the time of action might be barred by the law of limitation, and to which, if pleaded as a set off, the law of limitations might be applied. The courts in India are limited to the right of set off. The defence of set off is a matter of procedure relating to the remedy, and therefore governed by the *lex fori* (*Macfarlane* v. *Norris*, 9 Jur. N. S. 74). The modern English procedure of counter-claim, though analogous to, is quite distinct from, set off; and though the Code of Civ. Pro., s. 111, speaks of set off as a "cross-claim," (see now O. VIII, R. 6 of the new Code, above given) yet this procedure coincides with English set off and not with counter claim. The essential difference is that in set off the claim being for liquidated damages, its existence and its amount must be taken to be known to the plaintiff, who should have given credit for it in his action against the defendant. But this is not so in counter-claim which is not confined to debts or liquidated damages, but is to all intents and purposes an action by the defendant against the plaintiff; and hence a claim founded on tort may be opposed to one founded on contract, and *vice versa*. It is not merely a defence, but is altogether an independent action, which the original plaintiff could not have prevented being brought against him, as he might in set off, by anticipating the claim and giving the defendant credit for it in his own plaint; and hence not only does this affect the question of the rights of the parties respectively to costs, but a counter-claim may lie in respect to a cause of action that accrued subsequently to the commencement of the action; and though the claim to set off necessarily drops with the action in which it was made a defence, any sesser of the original action does not involve a sesser of the counter-claim, which will still go on to judgment. From the peculiar wording of the third clause in s. 111 of the Code of Civ. Pro., it is probable that this last is true also of set off in Indian procedure (*Stooke* v. *Taylor*, 5 Q. B. D. 576; *Beddall* v. *Maitland*, 17 Ch. D. 182).—*Collett on Torts.*

Sets of exchange (or bills). *See* BILL OF EXCHANGE.

Sett, action of. (*Sc. L.*) An action by a part-owner of a ship against his co-owners to obtain a sale of his share or of the whole ship.

Sett of a burgh. (*Sc. L.*) Its constitution.

Setter. A lessor.

Setting down. *Setting down a cause for hearing* means entering the name of the cause at the bottom of a list of matters ready to come on for hearing, together with the stage at which it is ready to come on for hearing. *Setting down a plea for hearing* indicates, in Chancery practice, that a plaintiff considers a defendant's plea insufficient in point of law; as in this case it has been the proper course for the plaintiff to set down the plea for hearing; a course answering to a demurrer in an action at law.—*Mozley.*

Settled land. Settled estate. Land limited by way of *succession*, to a person other than the one for the time being entitled to the beneficial enjoyment thereof, who is called a limited owner. Prior to 1856, settled estates could not be sold or leased except under the authority of the instrument by which they were settled, called the *settlement*, or of a private Act. But by subsequent Acts various powers are given to limited owners, emancipating them from the control of their trustees, and enabling them to deal with the settled property for purpose of improving, or benefitting the parties interested therein.—*Rawson.*

The meaning of a *settled* estate, whether in legal or popular language, as contradistinguished from an estate in fee simple, is understood to be one in which the powers of alienation, of devising, and of transmission according to the ordinary rules of descent, are restrained by the limitations of the settlement; it would be a perversion of language to apply the term "settled" to an estate taken out of settlement, and brought back to the condition

of an estate in fee simple (*per* Cockburn, C. J., in *Micklethwait* v. *Micklethwait*, 28 L. J. C. P. 127; 4 C. B. N. S. 790; affirmed, 29 L. J. C. P. 75).—*Stroud.*

Settlement. The act of giving possession by legal sanction; a jointure granted to a wife; a family arrangement of property. A deed whereby property is *settled*, that is subjected to a string of limitations. A deed whereby a joint stock company is associated, which is often called a *deed of settlement*, but more frequently *articles of association*. The termination of a disputed matter by the adoption of terms agreeable to the parties thereto. A colony or plantation. Such residence of any person in a parish, as would enable him, if in need of parochial relief, to apply for it in that parish rather than in any other; in the case of a married woman, her settlement follows that of her husband, assuming the marriage to have been legal (*Chinham* v. *Preston*, 1 Wm. Bl. 192); but if her husband has no settlement, she retains her maiden settlement (*Rex* v. *St. Botolph*, Burr. S. C. 367); with reference to children, if legitimate, the place of their birth is *prima facie* the place of their settlement, such settlement continuing so long as the child remains a member of the family (*Rex* v. *Bleasby*, 3 B & A. 377); if illegitimate, the mother's settlement is that of the child (4 & 5 Wm. IV, c. 76, s. 71). Being an apprentice and inhabiting in any town or place makes that place the settlement of the child (3 W. & M. c. 11, s. 8).

Settlement means any instrument (other than a will or codicil as defined in the Indian Succession Act) whereby the destination of or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of.—*Act I of* 1877 (*Specific Relief*), *s.* 3.

Settlement means any non-testamentary disposition in writing, of moveable or immoveable property, made (*a*) in consideration of marriage, (*b*) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or (*c*) for any religious or charitable purpose, and includes an agreement in writing to make such a disposition.—*Act II of* 1899 (*Stamp*), *s.* 2 (24).

Also the process by which the Government Officials determine the rates and amount of land-revenue payable is called settlement.

Act of Settlement. The name of the 12 & 13 Wm. III, c. 2, by which the Crown is limited to his Majesty's House, being Protestants, and various provisions made for securing religion, laws, and liberties, which are declared to be the birthright of the people.

See MARRIAGE SETTLEMENT, PROTECTOR OF THE SETTLEMENT, STRICT SETTLEMENT.

Settling days. In Stock Exchange, days appointed for settlement of accounts arising from speculative purchases and sales of stock.

Settling issues. The deciding the forms of the issues to be determined in a trial.

Settlor. The person who makes a settlement of his land or personal property.

Sever. *See* SERVERANCE.

Several actions. Separate actions brought against different defendants in respect of the same subject matter; as in the case where the different partners of a firm are sued separately in respect of a partnership debt.—*Moxley.*

Several covenant. A covenant by two or more separately. Several covenants are covenants entered into with several persons in such a manner or under such circumstances that they are construed as separate; and the parties are severally or separately bound by it.

Several fishery. A fishery of which the owner is also the owner of the soil, or derives his right from the owner of the soil. *See* FISHERY.

Several inheritance. Any inheritance conveyed so as to descend to two persons severally, by moieties, &c.

Several issues This is where there is more than one issue involved in a case. Thus, if a plaintiff sues on a contract, which the defendant alleges he has performed, but, even if he had not, the contract is void by the Statute of Frauds, and further, that the plaintiff's claim is barred by limitation; here we have three several issues raised by the defendant.—*Moxley.*

Several pleas. Different pleas disclosing independent grounds of defence to an action.

Several tail. This is where land is given and entailed severally to two; as where land is given to two men and their wives, and the heirs of their bodies begotten; the donees have a joint estate for their two lives, and yet they have several inheritances, because the issue of the one shall have his moiety, and the issue of the other, his moiety.—*Moxley.*

Several tenancy (*tenura separalis*). A tenancy which is separate, and not held jointly with another person. A plea or exception taken to a writ that is laid against two persons as joint tenants, who are several.

Severalty, estates in. Holding of lands or tenements by a person in severalty, that is, in his own right only, without any other person being joined or connected with him in point of interest, during his estate therein. It is thus opposed to holding in joint tenancy, in coparcenary, and in common.

Severance. The singling, separating, or severing of two or more that are joined in one writ or action. Defendants are said to *sever* their defences when they plead independently, that is, adopt independent defences. Also the dissolution or termination of a joint tenancy, or a tenancy in coparcenary or in common; which may be effected by any of the tenants disposing of his share.

Severance of corn. The cutting and carry-

ing it from off the ground. Also the setting out the tithes from the rest of the corn.

Seward. Seaward. (*Sax*) He who guards the sea-coasts; it signifies *custos maris*. *See* SEA REEVE.

Sewers. Drains or gutters to carry water into the sea or a river.

Sextery lands. Lands given to a church or religious house for the maintenance of the sexton or sacristan.

Sexton. The keeper of things belonging to divine worship. His particular duties are to cleanse the church, to open the pews, to fill up the graves, to provide candles and other necessaries, and to prevent disturbance in the church. Parish clerks and sextons are regarded by the common law as persons who have freeholds in their offices. *See* FREEHOLD.

Sexual relation. The relation of husband and wife, or of persons otherwise co-habiting together as such.

Shack. A liberty of winter pasturage in Norfolk.

Common of shack is the right of persons occupying lands lying together in the same common field to turn nut their cattle after harvest till seed time, to feed promiscuously in such field. Hence in Norfolk *to go at shack* is as much as to go at large.

Shadee. Shadee, under the Mehomedan Law, means marriage. It is commonly supposed that a difference exists between a *shadee* and a *nikka* wife. The former designation is generally applied to a first marriage attended with the usual music, processions, &c., and the latter to second marriage, and chiefly to second marriages contracted by Mehomedan females. The latter term is also applied to a second Hindu marriage, probably between parties of a low caste among whom second marriages occur.—*MacN. Meh. Law.*

There is no difference as to the legal effect of a *nikka* and *shadee* marriage. The offspring of both inherit alike.—*Sadagopah's Meh. Law.*

A free man cannot legally have more than four wifes at the same time, but a slave can have two only. Christians, Jews, and persons of other religions, believing in one God, may be espoused by Mehomedans.—*MacN. Meh. Law.*

Shadid. (*Meh. L.*) Strong, vehement. Violent presumption.

Shafia (shafia, shufia or shafi) khalit. (*Ind.*) Neighbours by common tenancy. Partners. Co-partners in the thing sold (*Kunjabehari Lal* v. *Giridhari*, 1 B. L. R., S N., 1). Sharers in common appurtenances (*Nazir-uddin* v. *Kadir*, 14 All. W. N. 193).

The word *khalit* is not improperly used in a plaint in a pre-emption suit to designate a *sharik* or partner in the substance of a thing (*Lala Prag Dutt* v. *Sheikh Bandi*, 7 B. L. R., A. C., 42). *See* SHOOFAA.

By the term *shafi-khalit*, according to the *Hidaya*, is understood a partner in the immunities and appendages of the property, such as a right to water and roads (*Baldeo* v. *Badri Nath*, 6 All. L. J. 690; 31 All. 519; *Musharraf Ali* v. *Shaukat Ali*, 5 All. L. J. 509; 28 All. W. N. 239; *Karim Bakhsh* v. *Khuda Bakhsh*, 14 All W. N 70). See also *Ranchoddas* v. *Jugaldas*, 24 Bom. 414, 417).

Under the Mehomedan law of pre emption, the owner of the dominant tenement has, in respect of a sale of the servient tenement, a right of pre-emption as a *shafi-i-khalit*, which is preferable to the right of one who is merely a neighbour as regards the property sold (*Karim* v. *Priyo Lal*, 25 All. W. N. 217; 2 All. L. J. 619; 28 All. 127).

Shafia-i jar. A person having a right of pre emption from occupying property in the neighbourhood of that which is for sale.

Shahidi. (*Ind.*) Evidence; testimony; deposition.

Shahjog hundi. (*Ind.*) Hundi payable to a *shah*, *i. e.*, a respectable person. In *Balmukand Lal* v. *The Collector of Jaunpur* (4 All. W. N. 3) it was held that the phrase "a respectable person" meant the same thing as the phrase 'the bearer.' But *held*, in *Bhupatram* v. *Hari Preo Coach* (5 Cal. W. N. 313, following *Thrkurdas* v. *Futtehmull*, 7 B. L. R. 275), that a hundi payable *shahjoge* is only payable to the respectable holder, and is not the same as a hundi payable to bearer.

Where a hundi "payable to holder" (*shahjogi*) is paid at maturity by the drawee to the *shah* or holder of the hundi, and such hundi afterwards turns out to be forged, the *shah*, though a *bonafide* holder for value, is bound to repay to the drawee the amount of such hundi with interest (*Davlatram* v. *Bulakhidas*, 6 Bom. H. C., O. C., 24) *See* DHANIJOG HUNDI.

Shall. In construing statutes, the word "shall" is taken in its ordinary import as obligatory or imperative, unless there is any thing in other parts of the statute to show that such construction is at variance with the intention of the Legislature (*Edalji* v. *Tulsidas*, 2 Bom. H. C., O. C., 270). *See* MAY.

The use of the word shall in s. 145, Crim. Pro. Code is not mandatory. In matters of procedure the word is generally construed as directory (*Imperator* v. *Lakhano*, 2 Sind. L. R. 18, Cr., following *King* v. *Justice of Leicester*, 7 B. & C. 12 and *Krishnasami* v. *Muthukrishna*, 24 Mad. 364).

The word 'shall' used in s. 12 of Act XLVIII of 1860 (Bom. City Police) is imperative. And the Commissioner of Police has, therefore, no absolute discretion to refuse to grant licenses for eating houses within the town of Bombay under s. 11 of that Act. (*Rustom* v. *Kennedy*, 4 Bom. L. R. 1; 26 Bom. 396).

It shall be lawful. *See* LAWFUL.

Shall be liable. The term does not signify

an absolute obligation (*Omrita Nath* v. *Administrator-General of Bengal*, 25 Cal. 63, 64).

Shall not. While in cases of affirmative words, even the word *shall* might be taken to be only *directory* as distinguished from *imperative*, in cases of negative words as the words *shall not*, the proper rule is to take them as prohibitory, and as such, rendering illegal that which is done in contravention of such prohibition (*Rameshar Singh* v. *Sheo Din*, 12 All. p. 521, F. B.).

Shall presume. *See* PRESUME.

Shall think fit. Where a trustee was directed to invest proceeds of trust property upon such stocks, funds and securities as 'he shall think fit,' *held*, that the words meant *shall honestly think fit* (*per* Kekewich, J., *Smith* v. *Thompson*, 1896, 1 Ch. p. 76).

Shamilat land. Land recorded common land of all the co-parcenary body (*Hira Lal* v. *Bhairon*, 5 All. p. 605).

Sham plea. A plea manifestly frivolous and absurd. A vexatious and false defence resorted to for the purpose of delay and annoyance.

Share. *See* JOINT STOCK COMPANY.

Share-certificate. Upon an application for shares, stock or debentures, upon payment of the amount due on allotment, a provisional certificate is in general issued to the applicant allottee, and this certificate (which is called a scrip-certificate) is afterwards, upon completion of the payments, exchanged for a definitive certificate that the holder is the owner of the therein specified shares, stock or debentures.—*Brown.*

Shareholder. This only means the person who holds the shares by having his name on the register (*per* Chitty, J., *Re Wala Wynaad Mining Co.*, 52 L. J. Ch. 88; 21 Ch. D. 489; 30 W. R. 915).—*Stroud.*

Share warrant to bearer. A company limited by shares, if so authorised by its articles, may, with respect to any fully paid up shares or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant. The share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.—*Act VII of* 1913 (*Companies*), *ss.* 43, 44.

Share and share alike. The phrase has the same meaning as "equally to be divided."—*Stroud.*

Sharers. *See* LEGAL SHARERS.

Sharik. (*Ind.*) A partner or co-sharer in the substance of a thing (*Mahesh* v. *Gokul*, 7 All. L. J. 415; *Lala Prag Dutt* v. *Sheikh Bandi*, 7 B. L. R., A. C., 42). *See* SHIKMI SHARIK.

Sharping corn. A customary gift of corn which, at every Christmas, the farmers in some parts of England give to their smith for sharpening their plough-irons, harrow-tines, &c.

Shaw. A grove of trees or a wood.

Shawatores. Shawaldres. Soldiers.

Sheading A riding, tithing or division in the Isle of Man, of which there are six in the island.

Shebait. (*Ind.*) The worshipper of an idol; the person who has the right of worshipping and performing the service of an idol and receiving the customary remuneration. Such a right is not transferable, and cannot be sold in satisfaction of a decree against the shebait (*Dubo Misser* v. *Srinibas Misser*, 5 B L. R., A. C., 617). *See* IDOL.

An idol may be regarded as a juridical person capable of holding property, but it is only in an ideal sense that property is so held; the possession and management of the dedicated property belong to the *shebait* or high priest, in whom is vested the right to bring suits for the protection of the property. The *shebait* has, consequently, though not the legal property, yet title as manager of the endowment subject strictly to the liabilities of a trustee (*Mabatulla Nasya* v. *Nalini Sundari*, 2 Cal. L. J. 377; 10 Cal. W. N. 42; *Shailajananda* v. *Umeshammda*, 2 Cal. L. J. 460; *Prosunno Kumari* v. *Golabchand*, 14 B. L. R., P.C. 450; *Maharaja Jagadindra* v. *Rani Hemanta*, 6 Bom. L. R. 765; 32 Cal. 129, P. C.).

A shebait has no more power to deal with *debutter* property than has the manager of an infant's estate, and *prima facie*, any permanent alienation made by him is bad in law and a breach of trust; but where necessity is established, a shebait can make such disposition or alienation as a prudent manager may for the benefit of the estate (*Ram Churn* v. *Protab Chandra*, 2 Cal. L. J. 448).

Sheep-silver. Money paid by tenants in lieu of the service of washing the lord's sheep.

Sheep-skin. A deed; so called from the parchment it was written on.

Shelley's Case. *See* RULE IN SHELLEY'S CASE.

Shepway, Court of. A Court held before the Lord Warden of the Cinque Ports from whence a writ of error lay to the Court of King's Bench.

Sheriff. Shire-reeve. Shiriff. The reeve, bailiff or officer of the shire. He is called in Latin *vice-comes*, as being the deputy of the earl, or *comes*, to whom the custody of the shire is said to have been committed at the first division of the kingdom into counties. But the earls gradually withdrew from the county administration, and now the sheriff is the chief officer under the king in every county or shire, who does all the king's business in the county, the king by letters patent committing the custody of the county to him alone.

The Scotch sheriff differs considerably from the English sheriff. The Scotch sheriff is properly a Judge, and must be a lawyer of three years' standing. He is called *Sheriff Depute*, as being deputed by the Crown, in contradistinction to the *Sheriff Principal* or high sheriff, who formerly enjoyed jurisdiction as attached to patrimony. The sheriff depute has a general civil and criminal jurisdiction, and has a power of appointing substitutes, and both receive salaries for performing the duties of their office.

Sheriff clerk. The clerk of the Sheriff's Court in Scotland.

Sheriff Depute. The judge of a Scotch county.

Sheriff-geld. A rent formerly paid by the sheriff.

Sheriff Substitutes. In Scotland, persons appointed by a Sheriff Depute, to assist him in performing the duties of his office.

Sheriff-tooth. A tenure by the service of providing entertainment for the sheriff at his county courts. A common tax levied for the sheriff's diet.

Sheriff in that part or behalf. In Scotland a person appointed by the Crown to supply the place of the sheriff for executing processes.

Pricking for sheriffs. The custom for appointing sheriffs is that all the judges, together with the other great officers, meet in the Court of Exchequer on the morrow of St. Martin (12th November), and then and there the judges propose three persons for each county, to be reported (if approved of) to the king, who afterwards appoints one of them for sheriff. This appointment is made by marking each name with the prick of a pin and therefore called "pricking for sheriffs." —*Mozley.*

Sheriff's Court. The ancient name of the City of London Court, which is now the county court for the City of London.

Sheriff's officers. Bailiffs, who are either baliffs of hundreds or bound bailiffs.

Sheriff's poundage. *See* POUNDAGE.

Sheriff's tourn or rotation. This was a court of record, appointed to be held twice in every year before the sheriff, in different parts of the county; being, indeed, only the *turn* of the sheriff to keep a court leet in each respective hundred. This was the great court leet of the county; and out of it, for the ease of the sheriff, was taken the court leet, or view of frank pledge. It has now fallen into desuetude.—*Mozley.*

Sheriffalty. Sheriffdom. Shrievalty (vicecomitatus). The sheriffship or time of a man's being sheriff.

Sheriffwick. The extent of a sheriff's authority. The jurisdiction of a sheriff.

Shew cause. *See* SHOW CAUSE.

Shibeh-i-kawly. (*Ind.*) Violent presumption.

Shifting clause. A clause which *shifts* or takes away property from one person, to give it to another, on the happening of a certain contingency or non-fulfilment of a condition.

Shifting use. A use in land, limited in derogation of a preceding estate or iterest, as when land is limitted 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, in derogation of the use previously vested in B.—*Mozley.*

Shikast-Piwust. (*Ind.*) Literally "broken and joined." Alluvial land properly so called.

Shikmee-asami. (*Ind.*) A sub-tenant; a subordinate cultivator; one who pays the revenue through a superior shareholder, and whose name is not entered in the original assessment. The determination of the tenure of the tenant whether by forfeiture or relinquishment, will put an end to the tenure of the *shikmee* holding under the tenant (*Hoolassee Ram* v. *Pursotum Lall*, 3 N.-W. P. 63).

Shikmi sharik. The phrase by its etymological sense, means a partner whose name is not disclosed, that is, a dormant partner (*Hashmat Ali* v. *Lachmi Narain*, Punj. Rec., No. 75 of 1908; Punj. W. R., No. 122 of 1908). *See* SHARIK.

Shilwit. *See* CHILDWIT.

Ship. This shall include every description of vessel used in navigation not exclusively propelled by oars.—*Act X of* 1907 (*General Clauses*), *s.* 3 (51).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (43).

Ship broker. A middleman between the mercantile and shipping communities, to procure freights and negotiate the sale of ships.

Ship-master. *See* MASTER OF A SHIP.

Ship-money. An imposition formerly levied on port towns and other places, for providing and fitting out ships of war for the king's service.

Ship-owner. The owner of a merchant vessel, who usually appoints a master to navigate it.

Shipper. A consignor of goods to be sent by sea. Also the master of a ship; any common seaman.

Shipping bill. A memorandum of goods intended to be shipped, delivered by the exporter of goods to the officer of customs.

Ship's husband. The general agent of the owners of a vessel in its use and employment. His duty is in general to look after the repairs, equipment, management, and other concerns of the ship; to procure freights and charterparties; to preserve the ship's papers, make the necessary entries, adjust freight and averages, disburse and receive moneys, and keep and make up the accounts as between all parties interested.

Ship's papers. The papers or documents required for the manifestation of the ship and cargo, &c. They are of two sorts—(1) Those required by the law of a particular country, as the certificate of registry, license, charter-

party, bills of lading, bill of health, &c., required by the law of England to be on board all British ships; (2) Those required by the law of nations to be on board neutral ships, to vindicate their title to that character; they are the passport, sea-brief or sea-letter, proofs of property, the munster roll, the charterparty, the bills of lading and invoices, the log-book or ship's journal, and the bill of health.—*Tomlins.*

Shirakat namah. (*Ind.*) A deed of partnership.

Shire. A portion of land called a county.

Shire-clerk. The under-sheriff. A clerk in the old county court, who kept the county court.

Shire-man. Scyre-man. This was, before the Conquest, the judge of the county, by whom trials for land, &c., were determined.

Shiremote. An assembly of the county or shire at the assizes. The assizes of the shire in Saxon times.

Shire reeve. See SHERIFF.

Shoofaa. (*Meh. L.*) Shoofaa or the right of pre-emption is a power of possessing property which has been sold, by paying a sum equal to that paid by the purchaser. The right of pre-emption takes effects with regard to property, whether divisible or indivisible, but it does not apply to moveable property, and it cannot take effect until after the sale is complete, as far as the interest of the seller is concerned. The right of pre-emption may be claimed by all descriptions of persons (whether a male, a female, a reprobate, a freeman, or a slave, being either a *mookatib* or a *mazoon*). All rights and privileges which belong to an ordinary purchaser belong equally to a purchaser under the right of pre-emption. The following persons may claim the right of pre-emption in the order enmerated:—A partner in the property sold, a participator in its appendages, and a neighbour (*Ranchoddas* v. *Jugaldas*, 24 Bom. 414).—*MacN. Meh. Law.*

The right of pre-emption is not merely a right of re-purchase, but a right of complete substitution in the place of the vendee; the pre-emptor is entitled not merely to have the sale transferred to him, but also to be vested with all benefits which legally flow from the sale (*Ahmad Shah* v. *Walidad Khan*, Punj. L. R., No. 83 of 1906; Punj. Rec., No. 98 of 1906).

A Hindu can claim a right of pre-emption as against a Mehomedan.—*MacN. Meh. Law.* But a claim for pre-emption under the Mehomedan Law cannot be maintained against a Hindu purchaser (*Motichand* v. *Mahomed Hossein Khan*, 7 N.-W. P. 147).

The existence of a local custom as to the right of pre-emption among the Hindus of Gujarat is recognised. Such a custom where it exists, is regulated by the rules and restrictions of the Mehomedan Law (*Gordhandas Girdharbhai* v. *Prankor*, 6 Bom. H.C., A.C., 263; *Fakir* v. *Sheikh Emam*, B. L. R., Sup. Vol. 35).

The right of pre-emption exists among Hindus in Behar and some other provinces of Western India (*Ramdular* v. *Jhumack*, 8 B. L. R., A. C., 455; *Fakir* v. *Sheikh Emam*, B. L. R., Sup. Vol. 35).

The owner of land is not entitled by Mehomedan law to pre-emption of a house standing thereon. The plaintiff's property in the land is wholly separate and distinct from the defendant's property in the house, and they have nothing in common between them (*Pershadi Lal* v. *Syud Irshad Ali*, 1 N.-W. P. 100).

When both the neighbours (on each side of the property) claim the right of pre-emption, their claims deserve equal consideration. After they shall both have contributed in equal proportions to pay the value of the property, they are each entitled to one half.—*Misr Khem Kurun* v. *Misr Seeta Ram* (2 N.-W. P. 257).—*MacN. Meh. Law.*

Where there is a plurality of persons entitled to the privilege of *shoofaa*, the right of all is equal and no regard is paid to the extent of their several preperties.—*MacN. Meh. Law.*—*Hidaya.*

A claim in right of pre-emption to property the possession of which has been transferred by a deed of *Hiba-bil-iwaz*, or gift for consideration (such consideration being expressly stipulated), is good under the Mehomedan Law; and this, notwithstanding that the consideration stipulated in the deed of gift be considerably below the real value of the property.—*MacN. Meh. Law.*

Under the Mehomedan Law, pre-emption cannot be claimed in a case of *Bay taljiah*, or fictitious sale made to serve a temporary purpose.—*Ibid.*

A right to pre-emption cannot be claimed previous to actual sale.—*Ibid.* As the right to sue for pre-emption accrues *after* the sale, plaintiff's refusal to purchase *prior* to the transaction cannot defeat his right (*Ramdial* v. *Budh Sen*, 4 All. W. N. 123).

Held, that a Mehomedan of the Shia sect could not maintain a claim for pre-emption based on the ground of vicinage under the Mehomedan Law, when both the vendors and vendee were Sunnis (*Qurban Husain* v. *Chote*, 22 All. 102).

See SHAFIA KHALIT, TALUB-I-MOWASIBUT.

Shootings. The right of shooting on or over lands, commonly called the shootings, is a hereditament which may be excepted (*e. g.*, to the lord of the manor upon an inclosure of commons), and may be demised apart from the land and from the copse or timber thereon.—*Brown.*

Shoplifters. Those who steal goods privately out of shops.

Short bill. A bill of exchange deposited with a banker on the understanding that it is

not to be considered as cash. *See* ENTERING SHORT.

Short cause. A suit in the Chancery Division of the High Court of Justice, where there is a simple point for discussion.

Short entry. *See* ENTERING SHORT.

Short lord. An ancient custom in the city of Exeter, by which a lord of a tenement was entitled, when unable to obtain rent or distrain for the same, to claim the tenement for a year and a day; and subsequently, if the rent was not paid, to claim it in fee. There was a like custom in London, under the title of *gavelet*. *See* GAVELET.

Show cause. To appear in obedience to a rule of court, and argue that the rule should not be made absolute. The term "to show cause" does not mean merely to object or to allege causes, nor even to make out that there is room for argument, but both to allege sufficient cause and to prove it to the satisfaction of the court (*Rung Lall* v. *Hem Narain*, 11 Cal. 166; *Rajmal* v. *Krishna*, 20 Bom 208; *Amrit Ram* v. *Dasrat Ram*, 17 All. p. 26, F. B.; *Dandekar* v. *Dandekar*, 6 Bom. 663; *Petition of Dutto Singh*, 9 Cal. 575; *Jones* v. *Ledgard*, 8 All. 340; *Surgan Raoot* v. *Bhikhari Raoot*, 21 Cal. 213; *Jagan Nath* v. *Mannu*, 16 All. 231). *See* RULE OF COURT.

Where a party has to 'show cause', that, by necessary implication, allows the other side to answer (*Davis* v. *Spence*, 1 C. P. D. 721; *Girvin* v. *Grepe*, 49 L. J. Ch. 63; 13 Ch. D. 174).—*Stroud.*

Showers. *See* VIEW.

Shrievalty. The office of a sheriff; the period during which a person was sheriff.

Shroff. (*Ind.*) A banker or money-changer.

Shrotriem. (*Ind.*) A village or certain extent of land granted on easy rent in perpetuity, or for so many lives; generally as a reward for public service.

Shrotriemdar. The holder of a *shrotriem*.

Side bar rule. *See* RULE.

Sidesmen. Synodsmen. Questmen. Persons yearly chosen, according to the custom of every parish, to assist churchwardens in inquiring into offences, and presenting to the ordinary such offenders as were punishable in the Ecclesiastical Court.

Siens. Scions or descendants.

Sight *See* AT SIGHT.

Sigil (*sigillum*). Seal; signature.

Sign. Signature. This is the usual mode, or part of the usual mode, of signifying a party's being bound by a written instrument.

Sign or signature includes a mark when the person making the mark is unable to write his name.—*Act X of* 1897 (*General Clauses*), *s.* 3 (52).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (44),

Affixing a thumb impression to a confession is not signing within the meaning of s. 164, Crim. Pro. Code, or s. 3 (52), General Clauses Act, when the accused is able to write his name (*Sadananda Pal* v. *The Emperor*, 32 Cal. 550).

Signed, save in the case of a judgment or decree, includes *stamped.—Act V of* 1908 (*Civ. Pro.*), *s.* 2 (20).

Sign manual. The signature of the sovereign; the royal signature.

Signing judgment. The act of entering judgment in an action. This is done by a party in whose favour judgment has been given in an action. It consists in the party's obtaining the certificate of the proper officer of the court that judgment is given in his favour.—*Mozley.* Signing judgment stands in the place of the actual delivery thereof by the judges themselves; and sometimes the officer only grants his permission to sign; for it has been stated the signing of the judgment is but the leave of the master of the office for the solicitor to enter the judgment for his client.—*Brown.*

Clerks (or *Writers*) *to the Signet.* (*Sc. L.*) A body, the members of which perform much the same functions as attorneys and solicitors in England.

Signet. One of the king's seals with which his private letters are sealed; a seal commonly used for the sign-manual of the sovereign. In Scotland, it is the seal by which the king's letters or writs, for the purpose of private justice, are now authenticated.

Silk gown. A phrase used especially of the silk gown worn by King's Counsel; hence "to take silk" means to attain the rank of King's Counsel.

Simony (*simonia*; *venditio rei sacræ*). The corrupt presentation of, or the corrupt agreement to present, any person to an ecclesiastical benefice for money, gift or reward.

Simple contract. A contract expressed or implied, which is created by verbal promise, or by writing not under seal. As opposed to a contract *under seal*.

Simple contract debt. A debt arising out of a simple contract. Before 1870, simple contracts were, in the administration of the assets of a deceased person, postponed to debts secured by instruments under seal called *specialty debts*, but in 1869, all such priority was abolished by 32 & 33 Vic. c. 46, s. 1. *See* CONTRACT.

Simple larceny. *See* LARCENY.

Simple mortgage. *See* MORTGAGE.

Simple trust. A trust which requires no act to be done by the trustee except conveyance or transfer to his *cestui que trust* on request by the latter.

Simple warrandice. (*Sc. L.*) An obligation to warrant or secure from all subsequent and future deeds of the grantor. *See* WARRANDICE.

Sinecure. Without cure of soles; a word formerly used of a rector who by custom was relieved from residence, and had no spiritual

duties, these being performed by the vicar. Hence a *sinecure office* is generally understood to mean a nominal office, which has revenue without any employment, *i. e.*, with no duties attaching to it.

Single adultery. *See* ADULTERY.

Single avail of marriage. The single sum payable by a ward for refusing a suitable marriage offered him by his lord. *See* AVAIL OF MARRIAGE.

Single bond (*simplex obligatio*). *See* BOND.

Single combat. A species of trial. *See* BATTEL, DUEL.

Single demise in ejectment. A declaration in ejectment might have contained either one or several demises; when it contained only one, it was said to be a declaration with a single demise.—*Brown.*

Single escheat. This is when all a man's moveables fall to the king as a casualty, because of his being declared a rebel.

Single woman (*feme sole*). An unmarried woman. For the purpose of the Bastardy Act, it includes a widow, and also a married woman living apart from her husband.—*Stroud.*

Singular. Each; individual; various things or objects regarded individually.

Singular successor. (*Sc. L.*) A purchaser or transferee of a specific chattel or specific land, as opposed to a universal successor, such as the trustee of a bankrupt's estate, or the executor or administrator of a deceased person.

Singular title. The title by which a party acquires property as a *singular successor.*

Sinking fund. A fund formed for the redemption of a debt by the periodical accumulation of fixed amounts by the borrower. A fund for the reduction of the National Debt.

Sircar. (*Ind.*) Government. A man of business. A merchant or banker. A money lender.

Sise. Assize.

Sist on a suspension. (*Sc. L.*) An order of the Lord Ordinary staying proceedings in an action.—*Mozley.*

Sist parties. (*Sc. L.*) To join parties in a suit or action, and to serve them with process.—*Ibid.*

Sithcundman. The high constable of a hundred.

Sittings. By the Judicature Act the division of the legal year into terms is abolished, and *sittings* are substituted, *viz.*, the Michaelmas, Hilary, Easter, and Trinity Sittings *See* TERM. Sittings also mean the place where the court sits, *e. g.*, *in chemira*, in chamber.

Six Acts. These are 60 Geo. III, and 1 Geo. IV, cc. 1, 2, 4, 6, 8 and 9, passed in 1819 to put down seditious meetings and for the pacification of the country.

Six Articles, Law of. This is 31 Hen. VIII, c. 14, styled "An Act for abolishing Diversity of Opinions." It enjoined conformity to six of the chief points in the Romish religion. Repealed by 1 Eliz. c. 1.

Six Clerks. These were officers in the Court of Chancery who did the duties of the Records and Writs Clerks and the Clerk of Enrolments.

Sixhindi. Servants of the same nature as *rad-knights*, being bound to attend their lord wherever he went.

Skeleton bill. One drawn, endorsed, or accepted in blank.

Skilled witnesses. Also called *experts* or *professional witnesses.* Persons called to give evidence in a matter relating to their own trade or profession, such as medicine, surgery, handwriting, mechanics, chemistry, foreign law, &c.; but not moral philosophy or political economy. *See* EXPERT.

Slains, letters of. Letters subscribed by the relations of a person who had been slain, declaring that they had received an "assythment" (*i. e.*, an indemnity), and concurring in an application for the pardon of the murderer.—*Mozley.*

Slander. *See* LIBEL.

Slander of title. This signifies a statement of something tending to cut down the extent of title to some estate vested in the plaintiff; and this is actionable only when it is false and malicious, *i. e.*, done with intent to injure the plaintiff. Suppose, for instance, that one having an infirm title to property is about to sell it, or to make it the subject of a settlement, and that another, moved by spite and malice, discloses what he believes to be a defect in the title, which information afterwards turns out to be untrue; suppose, further, the damage thence results to the proposed vendor; in such a case an action will lie at suit of this latter party, the statement being false and malicious, and injurious to him; but under the circumstances just supposed, both the falsehood of the statement made and express malice on the part of the defendant must be shown, or there will be no case for the jury.—*Broom's Com. Law.*

The slander may be of title in lands or chattels. Strictly, it applies to title to real estate, but by analogy is applied to personalty or personal rights and privileges, as the validity of a patent.—*Collett on Torts.*

But an assertion of title made by way of self defence or warning in any of these matters is not actionable though the claim be mistaken, if it is made in good faith.—*Pollock on Torts.*

Slave, abandonment of. *See* ABANDONMENT.

Slavery. That civil relation in which one man has absolute power over the life, fortune, and liberty of another. It cannot subsist in the British Empire. *See* MOOKATIB SLAVE, ISTEELA.

Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent or guardian, or a jailor (*Queen* v. *Mirza Sikundur*, 3 N.-W. P. 146).

Sleeping rent. A phrase used, especially in leases of coal mines, to denote a fixed or dead, *i. e.*, certain rent, as distinguished from a rent or royalty varying with the profits or the amount of coal gotton. It is payable although the mine should not be worked at all, but should be sleeping or dead, whence the rent is called a sleeping or dead or certain rent.—*Brown.*

Slip. An unstamped memorandum of an intended marine insurance policy. Also that part of a police-court which is divided off from the other parts of the court for the prisoner, or party charged with any offence, to stand in; also called the dock.

Sluice (*exclusa*). A frame to keep or let water out of a ground.

Small Debts Courts. Courts of Requests or Conscience for the recovery of debts. *See* COURT OF CONSCIENCE.

Small tithes. All personal and mixed tithes, *i.e.*, tithes of wool, milk, pigs, hops, flax, saffrons, potatoes, and sometimes, wood; also of manual occupations, trades and fisheries, and other fruits of the personal industry of the inhabitants. *See* MINUTE TITHES.

Smoke-farthings. The customary oblations by dispersed inhabitants of a diocese, when they made their procession to the mother cathedral church, came by degrees into a standing annual rent, called "smoke-farthings."—*Tomlins.* A duty formerly payable upon chimneys, otherwise called *fumage* or *fuage*. *See* CHIMNEY-MONEY.

Smoke silver. Lands were holden in some places by the payment of the sum of 6d. yearly to the sheriff, called smoke-silver.

Smuggling. The offence of importing or exporting prohibited goods or articles, or goods or articles not prohibited without paying the duties imposed thereon by the laws of the customs and excise.

Soc. Soca. Socna. Sok. Soka. Jurisdiction; a power or privilege to administer justice and execute laws; hence *soca*, a seigniory enfranchised by the king, with liberty of holding a court of his *socmen*, or *socagers*, that is, of his tenants, whose tenure is hence called *socage*. It also signifies liberty or privilege in the sense of immunity from punishment.

Socage. Soccage (*socagium*). A tenure of land by a certain and determinate service, as opposed to chivalry or knight-service, where the render was precarious and uncertain. It was of two kinds—*free socage*, where the services were not only certain but honourable; and *villein socage* or *privileged villenage*, where the services, though certain, were of a baser nature.—*Mozley.* By 12 Car. II, c. 24, all tenures (with a few exceptions, such as borough-English, gavelkind, &c.) were turned into free and common socage.

Socagers. Soccagers. Socmans. Sokemans. Socmen (*socmanii*). Tenents in socage. *See* CHURLE.

Socialism. Absolute equality in the distribution of the physical means of life and enjoyment. It is applied to any system which requires that the land and the instruments of production should be the property, not of individuals, but of communities, or associations, or of the government.—*Wharton.*

Socida. (*Civ. L.*) A contract or hiring upon condition that the bailee take upon himself the risk of the loss of the thing hired.

Socmanry. A free tenure by socage.

Socome. A custom of grinding corn at the lord's mill. *Bond-socome* is where the tenants are bound to it. *Love-socome*, where they do it freely out of love to their lord. *See* MULTURES.

Sodhapattra. (*Ind.*) A written agreement or acknowledgment; a receipt; a deed of acquittance.

Sodomy or **Buggery.** This is defined to be a criminal copulation against nature; and this is either by the confusion of species, that is to say a man or a woman with any animal; or of sexes, as a man with a man, or man unnaturally with a woman. It is felony both in the agent and patient consenting, except the person on whom it is committed be a boy under the age of discretion.—*Tomlins.* *See* BESTIALITY, UNNATURAL OFFENCE.

Soil. Soil in law denotes the land, together with whatever is in it, or upon or above it. In a narrower sense, the soil is the land without the minerals. And again the soil is sometimes distinguished from the herbage or vesture of the land. *See* LAND.

Soke-reeve. The lord's rent-gatherer in his soca or jurisdiction.

Sold notes. *See* BOUGHT AND SOLD NOTES.

Sole. Single; as a *feme sole*, a corporation sole.

Sole corporation. One person and his successors, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had; as the sovereign, bishop, parson, &c. *See* CORPORATION.

Sole tenant (*solus tenens*). One that holds lands in severalty, *i.e.*, in his own right only, without any other person being joined with him.

Sole use. Separate use. In the phrase "own sole use" used for the purpose of giving a married woman a separate use, "own" does not seem to give any additional force to "sole" (*Re Tarsey*, 35 L. J. Ch. 452; L. R. 1 Eq. 561).—*Stroud.*

Solemn affirmation. *See* AFFIRMATION.

Solemn form. There are two kinds of probate, *viz.*, probate in *common form*, and probate in *solemn form*. The former is granted without any formal procedure in court, upon an *ex parte* application made by the executor. The latter is in the nature of a final decree pronounced in open court, all parties interested having been duly cited.—*Mozley*. *See* COMMON FORM.

Solicitation. Incitement or inducement to commit an offence. *See* ABETMENT.

Solicitor. A man employed to take care of and follow suits depending in courts of law or equity. Prior to the Judicature Act, 1873, attorneys conducted business in the Common Law Courts, solicitors in the Court of Chancery, and proctors in Ecclesiastical and Admiralty Courts. But it was a general practice, that so soon as any one was admitted an attorney, he applied to be admitted a solicitor, which was done by the Master of the Rolls as a matter of course. But now by s. 87 of the above Act, all solicitors, attorneys and proctors are to be called Solicitors of the Supreme Court. *See* PLEADER.

Solicitor-General. The second law officer of the Crown, next to Attorney-General. He is appointed by patent and holds his office during the continuance of the ministry of which he is a subordinate member. He is usually knighted.

Solicitor's lien. This is either at Common Law upon the papers and documents of the client which are in the possession of the solicitor, and in that case is a passive lien only: or by statute (23 & 24 Vic. c. 127) upon a fund or other property recovered through his instrumentality in an action, and in that case, is an active lien; but the last mentioned lien arises only upon the court declaring same, which declaration is to be applied for by petition. The lien of the solicitor in either case is commensurate with the client's interests, and just as the solicitor's lien willl not prejudice any prior existing equity, so it will not be prejudiced by any equity arising subsequently to the inchoation of the lien.—*Brown*. *See* BANKER'S GENERAL LIEN.

Sors. Principal, as distinguished from interest.

Sough. A subterraneous drain or watercourse.

Soul-scot. A mortuary. An ecclesiastical heriot. On the death of a parishioner, after the lord's heriot or best chattel was taken, the second best chattel was reserved to the church as a mortuary. This was, in the laws of Canute, called *soul-scot*.—*Mozley*.

Sound mind. *See* CONTRACT, INTOXICATION, LUNATIC.

Sounding in damages. An action is said to sound in damages when it is brought, in point of form, not for the specific recovery of lands or goods, but for the recovery of (unascertained) damages only, as in the ordinary case of an action at law.

Sovereign. Soveraign. A chief or supreme person; one highest of all; as a king, &c. As *ultimus hæres*, or ultimate heir, he is entitled to all lands or chattels of persons dying intestate without heirs or next of kin. As *parens patriæ*, or father of his country, he is invested with certain rights of guardianship over infants, idiots, and lunatics, which he delegates to the Lord Chancellor. Of him it is said that the *King can do no wrong*, which means that he cannot personally be sued either in a criminal or civil court.—*Rawson*. Also a piece of money of the value of 20s.

Sovereign power. That power in a state to which none is superior. By this is truly meant the power of making laws, for wherever that power resides, all others must conform to and be directed by it.

Sovereign states. States whose subjects are in the habit of obedience to them and which are not themselves subject to any other (or paramount) state in any respect. The state is said to be semi-sovereign, only, and not sovereign, when in any respect or respects it is liable to be controlled (like certain of the states in India) by a paramount government (*e. g.*, by the British Empire).—*Brown*.

Sowming and Rowming. Sooming and Rooming. (*Sc. L.*) The apportionment or placing of cattle on a common, or goods in a house, according to the respective rights of various parties interested.

Sowne. A word formerly used in the Exchequer. Estreats that *sowne not* were such as the sheriff by his industry could not get or levy; and estreats that *sowne* were such as he could gather or as were leviable.

Spadarius. A sword-bearer.

Speaking demurrer. A demurrer to a bill in Chancery which is not so framed as to rely solely on the facts stated in the bill, but alleges new matter as a ground for demurrer. Such a demurrer would be overruled. *See* DEMURRER.

Speaking with prosecutor. This is in the nature of an imparlance by a defendant convicted of a misdemeanour immediately affecting an individual, as a battery, imprisonment, or the like; in which case the court may permit the defendant to speak with the prosecutor, before any judgment is pronounced; and, if the prosecutor declares himself satisfied, may inflict but a trivial punishment. —*Mozley*. *See* IMPARLANCE.

Special. Particular; peculiar; designed for a particular purpose; extraordinary; uncommon.

Special acceptance of a bill. The acceptance of a bill of exchange, as payable at some specified place, *and not elsewhere*. This is also sometimes termed a restrictive special acceptance, as distinguished from one payable generally or at a particular place only,

without the addition of the words "and not elsewhere."—*Brown*. *See* ACCEPTANCE OF A BILL.

Special administration. The administration of certain specific effects of a deceased person; otherwise called a *limited* administration. *See* LIMITED ADMINISTRATION.

Special agent. An agent empowered to act as such in some particular matter and not generally. *See* AGENT.

Special bail. The phrase used to denote substantial sureties, as opposed to the imaginary beings John Doe and Richard Roe, who did duty as common bail, both for the plaintiff's prosecution of the suit, and for the defendant's attendance and obedience. *See* BAIL.

Special bailiffs. Persons named by a party in a civil suit for the purpose of executing some particular process therein, and appointed by the sheriff on the application of such party. For the conduct of such officers the sheriff is not responsible. *See* BAILIFF.

Special bastard. One born of parents who afterwards intermarry.

Special case. A statement of facts agreed to on behalf of two or more litigant parties, and submitted for the opinion of a court of justice as to the law bearing upon the facts stated. See Act V of 1908 (Civ. Pro.), s. 90, and Sch. I, O. XXXVI, R. 1 and Sch. II, R. 11. *See* CASE STATED.

Special commission. An extraordinary commission of oyer and terminer and gaol delivery, confined to certain offences which stand in need of immediate inquiry and punishment.

Special constables. Persons appointed by the magistrates to execute warrants on particular occasions, or to assist in keeping the peace when the ordinary constables are insufficient for the purpose.

Special contract. *See* SPECIALTY

Special counts. Counts in a plaintiff's declaration specially framed to meet the particular case, as opposed to common counts which express the ordinary cause of action.

Special damage. A particular loss flowing from the act complained of, in addition to the wrongful nature of the act itself. *General* damage is such as the law implies or presumes to have resulted from the wrong complained of. *Special* damage is such as really and in fact results, but is not implied by law. In some cases, as for instance, in the cases of assault and false imprisonment, an action will lie without showing special damage; in others it is necessary to show special damage in order to maintain an action.

Special defence. A defence of set off or counter claim, infancy, coverture, statute of limitation, bankruptcy or equitable defence.

Special demurrer. A demurrer showing special grounds on which the party demurs to the pleading of his adversary. If a party excepted to the *form* and *manner* of his adversary's pleading, he set forth the specific fault of which he complained; in other words, he did so by special demurrer. *See* DEMURRER.

Special examiner. One appointed to take examinations in suits in Chancery, &c., appointed, by agreement of the parties, instead of the officer of the court, for the greater despatch of the suit.

Special finding. This is where a jury find specially a particular fact which, though presumably material to the question submitted to them, does not involve the whole of the question. *See* SPECIAL VERDICT.

Special indorsement. An indorsement on a bill of exchange or other negotiable instrument, which specifies the person in whose favour the indorsement is made, *i. e.*, the person who is to have the benefit of the indorsement; otherwise called an indorsement *in full*, as opposed to an indorsement *in blank*. *See* INDORSEMENT. A special indorsement on a writ of summons is one which may be made where the plaintiff seeks merely to recover a debt or liquidated demand in money; it may be made in all cases where a *definite* sum of money is claimed as on a bill, bond, contract for the payment of a liquidated amount, &c.

Special injunction. An injunction to restrain injuries about to be inflicted upon the property of another; prohibitory writs or interdicts against acts of parties, such as waste, nuisance, &c.; as opposed to an injunction to restrain a defendant who was in contempt for not appearing or not answering to a bill, from proceeding at law in respect of the same matter; all other injunctions were called special injunctions.

Special issue. A plea to an action which denies some particular material allegation upon which the right of action depends or is alleged to depend; as opposed to the *general issue*, which traverses or denies generally the declaration or indictment.—*Mozley*. *See* GENERAL ISSUE, SPECIAL PLEA.

Special jury. A jury consisting of persons who, being on the jurors' book, are of a certain station in society, *viz.*, esquires or persons of higher degree, or bankers, or merchants, or persons who occupy a house or premises of a certain rateable value. Such jury is summoned to try questions of greater importance than those usually submitted to common jurors.

Special law. A special law is a law applicable to a particular subject.—*Act XLV of 1860 (Penal Code)*, *s.* 41.

Special license. One granted by the Archbishop of Canterbury to authorise a marriage at any time or place whatever.

Special matter in evidence. A special ground of defence not specially pleaded, but given in evidence under plea of the general issue.

Special occupant. *See* OCCUPANCY.

Special paper. A list kept in court, of the causes to be argued on particular days specially set apart for arguments on points of law.

Special plea. A plea in bar, such as infancy, coverture, statute of limitations, &c., not being the plea of the general issue. It is either by way of justification or excuse, to show that there was never any right of action; or by way of discharge, which, admitting that the cause of action once existed, alleges that it has been barred by matter subsequent. Special pleas in criminal matters are of four kinds, *viz.*, a former acquittal, a former conviction, a former attainder, or a pardon. See BAR, GENERAL ISSUE, PLEA.

Special pleader. A lawyer who devotes himself mainly to give verbal or written opinions upon statements submitted to him, and to draw pleadings, civil and criminal, and to attend at judge's chambers. Special pleaders are not necessarily at the bar; if not called to the bar, they are required to take out annual certificates.

Special pleading. The science of pleading, which until the passing of the C. L. P. Act (15 & 16 Vic. c. 76) constituted a distinct branch of the law, with treatises and professors of its own. It had the merit of developing the points in controversy with the severest precision. But its strictness and subtlety has been relaxed and simplified by the above Act.

Special property. A limited or qualified right in any subject of property. Thus, one who hires a horse to ride has special property in the horse.

Special sessions. Sessions held by justices acting for a division of a county or riding, or for a borough, for the transaction of special business, such as licensing ale-houses, or appointing overseers of the poor, or surveyors of highways.

Special tail. This is where an estate is limited to the children of two given parents, as to A and the heirs of his body by B, his wife. *See* TAIL.

Special travers. A form of travers formerly used in an action by which a party sought to explain or qualify his denial of his opponent's pleading, instead of putting his denial in a direct form. Every special travers consisted:—*first*, of an affirmative part, alleging some new matter, called an *inducement*; *secondly*, of a negative part, denying certain parts of the opponent's pleading, called an *absque hoc* (without this); and *lastly*, of a "conclusion to the country."—*Mozley.* A special travers is also called a formal traverse, or a traverse with an *absque hoc*. *See* TRAVERSE.

Special trust. A trust imposing active duties on the trustee; otherwise called an *active* trust.

Special verdict. A verdict in which the jury state the facts of the case, as they find them to be proved, leaving it to the court to draw the proper legal inferences therefrom, and to apply the law to the facts thus found.

Under the direction of the Judge, the jury may return a special verdict, in which the facts of the case are found, and may leave the Court subsequently to pronounce as to the legal effect and signification of such verdict. —*Broom's Com. Law.*

Special vert. A species of "vert" in a forest, protected against injury by laws of special severity. *See* VERT.

Specialty (*specialitas*). A contract by deed.

Specialty debts. These are bonds, mortgages, debts, secured by writing *under seal*. They formerly ranked next to those of record, and above simple contract debts. But this distinction is now abolished. *See* CONTRACT, SIMPLE CONTRACT.

Specie. A word applied to metallic money or genuine coin, as opposed to paper money or debased coinage. It is also used to denote the identity of a particular chattel or the subject matter of a particular contract; anything *in specie* is anything in its own form, not any equivalent, substitute, or reparation. As applied to contracts, it signifies specifically, strictly, or according to the specific terms.

A return of deposit made in current coin is a return in specie, the term specie meaning, when applied to money, current coin of the realm as opposed to bullion (*Lala Govind Prasad* v. *Chairman of Patna Municipality*, 6 Cal. L. J. 535).

Specification. A particular and detailed account of a thing. The particular description of an invention in respect of which a patent is sought. See Act II of 1911 (Patents and Designs), s. 4. *See* PATENT RIGHTS. Specification, in Scotch law, signifies the making a new property from materials belonging to another; as wine from grapes, or other instances in which the thing converted can by no means be reduced to its original state.

Specific devise. A devise of specific land particularly described; as opposed to a general and residuary devise of land, in which the local or other particular descriptions are not expressed.

Specific legacy. *See* LEGACY.

Specific performance. Equity, in obedience to the cardinal rule of natural justice that a person should perform his agreement, enforces, pursuant to a regulated and judicial discretion, the actual accomplishment of a thing stipulated for, on the ground that what is lawfully agreed to be done ought to be done, and indeed is, in its contemplation, considered as now done. The Common Law has not recognised this principle; it has only given damages to a suffering party for the non-performance of an executory agreement.—*Wharton.* The specific performance of a contract has in general been decreed in Equity, where the contract is not a positive contract of a *personal* nature (as to sing at a theatre), nor one for the non-performance of which damages

would be a sufficient compensation (as to pay a liquidated sum of money).—*Mozley.*

Specific property. Whatever else 'specific' means, it must mean something segregated or distinguished from the generality (*per* Kekewich J., *Huddleston* v. *Eyston*, 1894, 3 Ch. 601). Webster's Dictionary defines it 'as tending to specify, or make particular, definite, limited, precise.' All property in possession of an owner is in this sense specific, as well the corn in his barn as the horse in his stable. Lawyers use the words 'specific property' in a different sense, *viz.*, as equivalent to property of which you may demand the delivery *in specie* (*per* Farran, J., *Esso Bhayaji* v. *The S. S. Savitri*, 11 Bom. p. 137). *See* SPECIE.

Specific relief. *See* RELIEF.

Speedy execution. A plaintiff, having obtained a verdict in a cause, is not entitled to issue execution till after a fixed time, unless a judge should order execution to issue at an earlier period, which is called speedy execution.

Spigurnel (*spigurnellus*). The sealer of the king's writs.

Spinster. An addition in law proceedings usually given to all unmarried women. An unmarried woman, so called because she was supposed to be occupied in spinning. In Scotland, the wife's or cognate side of the family is termed the *spindle-side*, in contradistinction to the agnate or husband's side, which is denominated the *spear* or *sword-side*.

Spiritual Corporations. *See* ECCLESIASTICAL CORPORATIONS.

Spiritual Courts. *See* ECCLESIATICAL COURTS.

Spiritual Lords. *See* LORDS SPIRITUAL.

Spiritualism. The pretending to hold communication with spirits.

Spirituality. That which belongs to one as an ecclesiastic.

Spirituality of benefices. The tithes of land, &c.

Spiritualities of a bishop. Those profits which he receives as a bishop in his ecclesiastical character, as the dues arising from his ordaining and instituting priests, the duties of his visitation, and such like, and not those profits which he acquires in his temporal capacity, as a baron and lord of parliament.

Spital. Spittle. Spittle-house. A charitable foundation; a hospital for diseased people; an alms-house.

Splitting a cause of action. Suing for only a part of a claim or demand, with a view to sue for the rest in another action. Bringing separate actions for the different parts of a claim. Bringing several actions where one would suffice.

Spoil. Spoil bank. Refuge from an underground working.

Spoliation (*spoliatio*). An injury done by one clerk or incumbent to another, in taking the fruits of his benefice without any right thereunto, but under a pretended title; which, when the right of advowson does not come into debate, is cognizable in the spiritual court. Also the writ that lies in such case for the one incumbent against the other.—*Mozley.* A suit to determine the right of two incumbents claiming under the same patron.

Sponsor. A surety; one who makes a promise or gives security for another; particularly, a godfather in baptism.

Spousal. Marriage-nuptials; espousal.

Spouse-breach. Adultery, as opposed to simple fornication.

Springing use. A use limited to commence *in future*, independently of any preceding estate; as if land be conveyed to A and his heirs, to the use of B and his heirs, on the death of C. In this case while C lives, the use limited to A and his heirs is still *in future*. Such a use is called an *executory use* or *executory interest*.—*Mozley.* A contingent use.

Spulzie (*spolatio*). (*Sc. L.*) The taking away or meddling with moveables in another's possession without the consent of the owner or authority of law.

Spunging-houses. Houses for the temporary reception of insolvent debtors, where bailiffs *sponge* upon them, or riot at their cost.

Stable stand (*in stabili statione*). *See* BACKBERINDE.

Staff-herding. The following of cattle within a forest.

Stag. In Stock Exchange, a person who is not a member of that body but deals outside of it. Otherwise called an outsider.

Stage-carriage. Every carriage drawn by one or more horses, which shall ordinarily be used for the purpose of conveying passengers for hire to or from any place in British India, shall, without regard to the form or construction of such carriage, be deemed to be a stage-carriage within the meaning of the Stage Carriages Act. The Stage Carriages Act does not apply to carriages not ordinarily used for journeys of a greater distance than 20 miles. —*Act XVI of* 1861 (*Stage Carriages*), *s.* 1. The expression 'horses' shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India.—*Ibid.*, *s.* 21.

Stagnes (*stagna*). Ponds, pools, or standing waters. A pool consists of water and land; and therefore, by the name of *stagnum* the water and land shall pass also.

Stake. A deposit made to answer an event.

Stake-holder. One with whom a stake is deposited.

Stale affidavit. An affidavit which has been sworn above a year.

Stale demand. One which has not been

made for so long that it must be taken to be waived.

Stallage and pickage. Stallage is the right of pitching or erecting stalls in fairs or markets. Also the money, toll or duty paid for so doing. Pickage is the right of picking up the soil for that purpose, and the money paid to the owner of the soil for so doing.

Stamp duties. A branch of the perpetual revenue of the kingdom. They are a tax imposed upon all parchments and paper whereon any legal proceedings or private instruments are written.

Stamped. Duly stamped, as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in British India.—*Act II of* 1899 (*Stamp*), *s.* 2 (11).

Standing by. Sanctioning by silence and inaction. Acquiescence. *See* LYING BY.

Standing mute. *See* MUTE.

Standing orders. Orders and regulations framed by each House of Parliament for the permanent guidance and order of its proceedings.

Standing timber. *See* TIMBER.

Stannary. A tin mine; mines and works where tin metal is dug and purified.

Stannary Courts. Courts in Devonshire and Cornwall for the administration of justice among the tinners therein, held before the Lord Warden of the Stannaries or his substitutes.

Staple. (*stapulum.*) A public mart which was anciently appointed by law to be held in Westminster, Newcastle, Bristol, and other places, where the merchants of England were to carry their *staple commodities* for the purpose of disposing of them wholesale. A court was held there before the mayor of the staple, which court was governed by the law merchant in a summary way, which was the law of the staple. *See* STATUTE-STAPLE.

Staple commodities. Wool, wool fells (or skins), leather, lead, tin, cloth, butter, cheese, &c., were called the staple commodities of the kingdom, because they were obliged to be brought to those ports where the king's staple was established, in order to be there first rated, and then exported. Sometimes by *stapple goods* is meant goods vendible, and not subject to perish.

Staple Inn. One of the Inns of Chancery. *See* INNS OF CHANCERY.

Star. Starr. Starrum. The deeds, contracts, obligations, &c., among the Jews. By an ordinance of Richard I no starr was allowed to be valid, unless deposited in one of certain repositories established by law, the most considerable of which was in the King's Exchequer at Westminster. And Blackstone conjectures that the room in which these chests were kept was thence called the *starr-chamber.—Mozley.* A schedule or inventory.

Star Chamber (*camera stellata*). A Court of very ancient origin, but new-modelled by stat. 3 Hen. VII, c. 1, and 21 Hen. VIII, c. 2. It consisted of divers lords spiritual and temporal, being privy counsellors, together with the Common Law Judges, without the intervention of any jury. Their jurisdiction extended over riots, perjury, forgeries, maintenances, embraceries, misbehaviour of sheriffs and other notorious misdemeanours as were not sufficiently provided for by the Common Law, and for which the inferior judges were not so proper to give correction. The court was abolished in 1641 by stat. 16 Car. I, c. 10.

Statement of claim. The mode in which, under the Judicature Acts, a plaintiff begins his pleading, substituted for the former Bill in Chancery, or Declaration at Common Law. It is the statement by the plaintiff, in an action brought in the High Court of Justice, of the ground of his complaint and of the relief or remedy to which he claims to be entitled. Otherwise called a *statement of complaint.*

Statement of defence. The statement delivered by a defendant in answer of the plaintiff's statement of claim. This form of pleading is substituted, under the Judicature Acts, for the former Pleas at Common Law, and Answers in Chancery.

Statesman. A freeholder and farmer in Cumberland.

State trial. Any trial in which the prosecution is conducted by the Government or by the Attorney-General *ex officio.* It is, however, only the most important of such trials which are generally called by that name. The most celebrated collection of state trials is that known as Howell's State Trials, 34 volumes, from 1163 to 1820.

Stating part of a Bill. The statement of the plaintiff's case in a bill in Chancery, so far as it related to the facts *known* by him to be true, was formerly called *stating part of the bill*; as opposed to *charges* which the plaintiff merely suspected to be true; and also to *pretences* which were used for the purpose of negativing an anticipated defence.—*Mozley.* Stating part of a bill was that part of the bill in which the plaintiff stated simply the facts of his case; as distinguished from the *charging* part of the bill and from the *prayer.—Brown.*

Stationers' Hall. The Hall of the Stationers' Company, at which every person claiming copyright in a book must register his title in order to be able to bring actions against persons infringing it, though an omission to register is not otherwise to affect the copyright itself.

Statutable. According to statute.

Statute (*statutum*). A law; an edict of the legislature; an Act of Parliament; a statute in the ancient sense of the word means the legislation of a session, the various Acts of

Parliament passed in it being so many *chapters* of the entire statute. *See* ACT OF PARLIAMENT. Statute also means a *statute-merchant* or *statute-staple*, which are so called because made according to the forms expressly provided by statutes which direct both for what persons, and in what manner, they ought to be made.

Statute-barred. Debts barred by the Statute of Limitations are so called; also called *time-barred.*

Statute fair. A fair at which labourers of both sexes stood and offered themselves for hire.

Statute-merchant. A bond of record under the hand and seal of the debtor, authenticated by the sovereign's seal before the chief magistrate of some trading town pursuant to stat. 13 Edw. I, which rendered it of so high a nature that on failure of payment on the day assigned, execution might be awarded, without any mesne process to summon the debtor, or the trouble or charges of bringing in proofs to commit him, and thus, it is presumed, it obtained the name of a "*pocket-judgment.*"—*Wharton.* Now obsolete.

Statute-staple. A bond of record acknowledged, pursuant to stat. 27 Edw. III, c. 9, before the mayor of the staple, in the presence of the constables of the staple or one of them The only seal required for its validity was the seal of the staple. Now obsolete.

Both a *statute merchant* and a *statute-staple* are securities for debts acknowledged to be due, and were originally permitted among traders, for the benefit of commerce, whereby not only the body and the goods, but also the lands of the debtor might be taken by the creditor, till out of the rents and profits of them the debt was satisfied; and, during such time as the creditor so held the lands, he was called *tenant by statute-merchant* or *statute-staple*, and such creditor's estate or interest in the lands during that period was termed an *estate by statute-merchant* or *statute-staple.* In 1522, by 13 Hen. VIII, c. 16, the benefit of this mercantile transaction was extended to all the king's subjects, whether traders or not. Estates by statute-merchant and statute-staple were chattel interests and passed to the personal representatives of those who held them.—*Mozley.*

Statute of Frauds. The 29 Car. II, c. 3 passed in 1677, for the prevention of frauds and perjuries. This is attempted to be done by enactments providing that various transactions therein specified shall be in writing, or evidenced by some memorandum in writing, signed by the party who is sought to be made liable thereon; else they shall, for most or all purposes, be deemed invalid.

Statute running. A statute of limitation is said to *run* from the time at which the period to which it refers as barring the right of action, commences.

Statutes at large. This denotes an edition of the statutes printed *verbatim.* An authentic collection of various statutes which have been passed by the British Parliament from very early times to the present day.

Statutory. Statutable. By statute, as opposed to the rules of equity or common law.

Statutory declaration. *See* DECLARATION.

Statutory exposition. When a subsequent enactment involves a particular interpretation of some ambiguous language contained in a previous enactment, such subsequent enactment is said to contain a *statutory* exposition of the previous enactment.

Statutory mortgage. This is where a charge is created, as in the case of ships, by mere registration, without conveyance.

Statutory obligation. An obligation arising under statute either to pay money, or to perform certain acts.

Statutory references. Arbitrations directed by statute.

Statutory release. A conveyance which superseded the old compound assurance by lease and release. *See* LEASE AND RELEASE.

Statutory stapulæ. The ancient writ that lay to take the body to prison and seize upon the lands and goods of one who had forfeited the bond called statute-staple.

Staying proceedings. The putting an end to the proceedings in an action by a summary order of the court. It differs from an injunction and from a prohibition, as follows:—Staying proceedings is effected by the court in which the action is brought or by some other court on appeal therefrom. An injunction to restrain proceedings is an order of an independent court restraining the plaintiff from proceeding in the action. Prohibition is an order of a superior court, prohibiting the court in which the action is brought from taking cognizance thereof.—*Mozley.*

Stealing. The fraudulent taking away of another man's goods with intent to deprive the owner thereof. *See* LARCENY, THEFT.

Stealing an heiress. Taking away or detaining from motives of lucre a woman who is or expects to be an heir, against her will, with intent to marry or carnally know her, or with like intent fraudulently alluring, taking away, or detaining any such woman, *under the age of twenty-one*, out of the possession and against the will of her lawful guardians.

Stealing children. *See* KIDNAPPING.

Steel-bow goods. (*Sc. L.*) These consist in corn, cattle, straw, and implements of husbandry, let or delivered by a landlord to a tenant, by which the tenant is enabled to stock and work a farm; in consideration of which he becomes bound to return articles equal in quantity and quality, at the expiration of the lease.

Steering and sailing rules. Certain regulations for preventing collision at sea. *See* RULE OF THE ROAD.

Stellionate (*stellionatus*). In Scotch Law a serious injury to the person. The word is

also applicable to any crime which goes under no general denomination, as also to any civil delinquency in which fraud is an ingredient. The crime of conveying the same thing or right to different persons; the deceitful selling of a thing, as if a man should sell as his own estate that which is another's; a fraudulent bankruptcy. In Roman Law, the making a second mortgage without giving notice of the first was punished as a crime called *stellionatus*; but the crime was not committed if the land was equal in value to all the sums charged on it

Stent. (*Sc. L.*) A tax or duty.

Sterbreche. Strebrich. The breaking, obstructing or straitening of a way; street-breach.

Sterling (*sterlingum*). Genuine; having passed the test; money; standard rate. It was originally used for silver money current within the realm, and took its name from this, that there was a pure coin stamped first in England by the Esterlings, or merchants of East Germany, by the command of King John.

Stevedore. A person employed to stow packages and goods in a ship's hold.

Steward (*seneschallus*). A ward or keeper; one appointed in the stead of another. A superior servant.

Steward of the household. *See* COURT OF MARSHALSEA.

Steward of a manor. An officer or deputy of the lord of a manor, who holds his courts, admits tenants, accepts surrenders, and transacts all the leagal and other business connected with the estate, and takes care of the Court rolls.

Steward of Scotland. An officer of the highest dignity and trust; he administered to the Crown revenues, superintended the affairs of the household, and held the first place in the army, next to the king, in the day of battle. Now obsolete. *See* HIGH STEWARD.

Stewartry. A Scotch district, which is for some purposes a county of itself. An overseer or superintendent.

Stews. Brothels anciently permitted in England to women of professed incontinency.

Sthavaram. (*Ind.*) Immoveable property; lands, houses, tanks, rivers, and whatsoever cannot be removed.

Stickler. An inferior officer who cuts wood within the king's parks at Clarendon. An arbitrator. An obstinate contender about anything.

Stillicide (*stillicidium*). (*Rom. L.*; *Sc. L.*) A species of easement or servitude, by which the owner of one house was entitled to compel the owner of a neighbouring house to receive the rain water from the former house on to the latter.

Stint. Limit. A common without stint (*sans nombre*) means without number, *i. e.*, without any limit to the nubmer of beasts which may be turned on it to feed there, which can only happen if it be a common *in gross*.

Stipend. Any periodical payment for service; a salary; settled pay; especially the income of an ecclesiastical living or curacy; a provision made for the support of the clergy.

Stipendiary. A feudatory who owed services to his lord.

Stipendiary estates. Feuds, estates granted in return of services, generally of a military kind.

Stipendiary magistrates. Paid magistrates acting for the metropolis and other populous districts.

Stipulation. A bargian; proviso; condition. A recognizance of certain fidejussors in the nature of a bail, taken in the admiralty courts; in case of default, both the fidejussors and their principal might be imprisoned. In Roman Law, it is the highest and most authentic contract, in a solemn form giving validity to the same. The form consisted of a question and answer before a magistrate or public officer. "Do [you promise to do such a thing?" "I do." The maker of the promise thereupon became bound to its performance. It could not be impeached except for fraud or deceit, and could not be released or discharged except by an equally solemn proceeding, called an acceptilation.

Stock. A race, lineage or family. Also the public funds redeemable at the pleasure of the Government. The capital of a public company.

Stock shall mean any fund, annuity or security transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein. It shall also include shares in ships registered under the Merchant Shipping Act, 1854, or at any port in British India.—*Act XXVII of* 1866 (*Indian Trustees*), *s.* 2.

Stock-broker. One who buys and sells stock as the agent of others, for a commission. The members of the Stock Exchange are called *jobbers* and *brokers*. The jobber is the dealer who buys and sells at the market prices, and acts as the intermediary between the broker who buys and the broker who sells. The broker, on behalf of his principal, deals with the jobber.

Stock certificate. A certificate of title to stock or any part thereof, with coupons annexed, entitling the bearer of the coupons to the dividends on the stock.

Stock Exchange. The association of stock jobbers and stock brokers. In the transaction of business they are governed by certain usages and by rules framed by the committee of the Stock Exchange. Also the place where they meet to transact business.

Stock-in-trade. This comprises all such chattels as are acquired for the purpose of being sold or let to hire in a person's trade. On a dissolution of partnership, "the stock-in-trade, property, and effects of the business"

had to be valued, and a proportion thereof paid for to the retiring partner,—*held*, that *goodwill* was not to be included as within the phrase (*Chapman* v. *Hayman*, 1 Times Rep. 397).—*Stroud.*

Stock jobber. *See* STOCK BROKER.

Stockland and Bondland. These are two sorts of copyhold estates in the manor of Wadhurst in Sussex.

Stocks (*cippus*). A wooden engine to put the legs of offenders in; it consisted of two boards each with semicircular holes, fitting together within posts, so as to confine the legs of a person just above the feet. Now disused.

Stolen property. Property the possession whereof has been transferred by theft or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which criminal breach of trust has been committed, is designated as stolen property, whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India. But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.—*Act XLV of* 1860 (*Penal Code*), *s.* 410, *as amended by Act VIII of* 1882. *s.* 9.]

Stop order. An order in Chancery to restrain dealings with any money or stock standing in the name of the Paymaster-General (formerly the Accountant-General) to the credit of any cause or matter. If any person entitled in expectancy or otherwise to such stock assign his interest in such stock, the assignee may present a petition for a stop order to prevent transfer or payment of such stock or funds without notice to him. A person having a lien on a fund in court may obtain a stop order.

Stoppage. (*Civ. L.*) Compensation or set off.

Stoppage in transit. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.—*Act IX of* 1872 (*Contract*), *s.* 99. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.—*Ibid.*, *s.* 100.

The seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's re-selling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.—*Ibid.*, *s.* 101.

The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods, assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.—*Ibid.*, *s.* 102.

Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.—*Ibid.*, *s.* 103.

The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depository in whose possession they are.—*Ibid.*, *s.* 104.

Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.—*Ibid.*, *s.* 105.

Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.—*Ibid.*, *s.* 106.

Stork's law. (*Lex ciconiaria*; *antipelargia*). An ancient and righteous law whereby children were obliged to furnish necessaries to their aged parents. The *ciconia*, or stork, is a bird famous for the care it takes of its parents, when grown old. Hence the phrase *lex ciconiaria.*

Stowage. Money paid for a room where goods are laid; housage. The place where goods are laid. The act of stowing cargo in a vessel.

Strand. Strond. A shore or bank of a sea or great river.

Stranding. A ship is said to be stranded when by tempest, bad steering, or by violence, it is forced or driven on shore. Within the meaning of an ordinary policy of marine insurance, stranding must be by some *accidental* occurrence.

Stranger. Born out of the realm; alien. A person not party or privy to an act, whether tort, contract, conveyance or judgment; that is, one who has taken no part therein, nor is bound or affected thereby.

A *stranger in blood* is a person not within the consideration of natural love and affection arising from relationship.

Stratocracy. A military government.

Straw. *See* MEN OF STRAW.

Stray. Estray. A beast gone astray, of which the owner is not known.

Stream. The word necessarily means flowing water, and not water which oozes from a piece of marshy ground, and that unless water flows more or less in a channel and continuously, it cannot be described as water that

flows in streams (*per* Lord Shand, *Mc Neal* v. *Robertson*, 1897, App. Cas. p. 138). The root idea is water in motion from one place to another as distinguished from stagnant water (*Ibid.*, p. 143). *See* WATERCOURSE.

A stream of water is water which runs in a defined course (*Taylor* v. *St. Helens Corporation*, 6 Ch. D. 27), nor is an intermittent flow a necessary condition to the legal conception of a stream, provided the source, though irregular, be one of constant recurrence, and not merely fortuitous or temporary (*per* Jenkins, C. J., *Secretary of State* v. *Balwant*, 5 Bom. L. R. 790, 797).

Strict entail. Where lands are directed to be settled on A and his heirs "in strict entail," there seems little doubt that A ought to be made tenant for life only (*Graves* v. *Hicks*, 11 Sim. 536; 5 L. J. K. B 142; 5 A & E. 38; *Woolmore* v. *Burrows*, 1 Sim. 526); and, as it should seem, with remainder to his first and other sons successively in tail general, with remainder to his daughters as tenants in common in tail general, &c. (*Sealey* v. *Stawell*, L. R. 9 Eq. 499).—*Stroud*. *See* STRICT SETTLEMENT.

Strict settlement. A settlement whereby land is limited to the husband for life remainder to the wife for life, remainder to the first and other sons in tail-male, remainder to the daughters as tenants in common, remainder to the husband in fee, with trustees interposed to preserve contingent remainders. The object of a strict settlement is to put out of the power of parents to deal with the corpus of an estate to the prejudice of their issue.

Stridhana. (*Hin. L.*) A woman's wealth; the peculiar property of a woman, over which, under ordinary circumstances, she has independent control, and which descends to her daughter or next of kin, her power to dispose of it during her husband's life is subject to his will, and he has a right to use it in cases of distress or necessity, the rights of both husband and wife to this description of property depend, however, very much upon the customs that prevail in different places.

Strike. An organised refusal of workmen; the work.

Striking a jury. *See* NOMINATING AND REDUCING.

Striking off the roll. The removal of a solicitor from the roll of solicitors, and thereby disentitling him to practise. This is done ordinarily for gross misconduct, but sometimes at the solicitor's own request.

Striking-out defence. This may be done as a punishment for default in making discovery or allowing inspection after an order to do so.

Strip. Waste; mutilation. *See* ESTREPEMENT.

Strong hand. The phrase denotes force and violence, and especially such force and violence as constitutes the offence of forcible entry. The words imply a degree of criminal force, whereas the words "with force and arms" (*vi et armis*) are mere formal words in the action of trespass, and the plaintiff is not bound to prove any force. *See* FORCIBLE ENTRY.

Struck off. This ordinarily means nothing more than struck off the file of the business pending in the court (*Gopal Das* v. *Mt. Golab Devi*, Punj. Rec., No. 70 of 1897).

Strumpet (*meretrix*). A whore, harlot or courtesan. The word was heretofore used for an addition.

Stuff gown. The gown of a member of the junior bar. Hence the phrase is used of junior barristers, as opposed to King's Counsel, who put on silk gowns. *See* SILK GOWN.

Stupration. Rape; violation.

Sturgeon. A royal fish, which, when thrown ashore or caught near the coast, is the property of the sovereign, except in certain places privileged by the King. *See* FISH ROYAL.

Style (*appello*). To call, name, or entitle one. An appellation, title, or official name. *See* NEW STYLE, OLD STYLE, YEAR.

Suable. That may be sued.

Sub-agent. A sub-agent is a person employed by, and acting under the authority of, the original agent in the business of the agency.—*Act IX of* 1872 (*Contract*), *s.* 191.

Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by, and responsible for, his acts, as if he were an agent originally appointed by the principal. The agent is responsible to the principal for the acts of the sub-agent. The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.—*Ibid.*, *s.* 192.

Subduct. To withdraw; as a probate.

Subee. *See* MINOR.

Subinfeudation. A feudal sub-letting. This was where inferior lords or other persons, holding estate under the king or other superior lord, in imitation of their superiors, began to carve out and grant to others in turn, portions of such estates, or minuter estates than their own, to be held of themselves as *tenants paravail* or inferior tenants, and were so proceeding downward *in infinitum* till they were stopped by legislative provisions, *i. e.*, by the thirty-second chapter of Magna Charta, 9 Hen. III, and by the statute of *Quia Emptores*, 18 Edw. I (Statute of Westminster the Third), c. 1.

Subjects (*subditi*). The members of the commonwealth under the king their head.

Sub-lease. An under-lease, which *see*.

Sublegerius. One who is guilty of incestuous whoredom.

Submission bond. A bond by which a

party undertakes to abide by the award of an arbitrator.

Submission to arbitration. *See* ARBITRATION.

Submit. To propound, as an advocate, a proposition for the approval of the court.

Sub-mortgage. When a mortgagee borrows money upon the security (or any part of the security) held by himself to secure the loan made by himself, he effects what is called a sub-mortgage. For example, an equitable mortgagee by deposit may deposit with any third person by way of securing an advance made by the latter to himself all or any of the title-deeds deposited with him by the original mortgagor.—*Brown.*

Subordinate clause. *See* CO-ORDINATE.

Subornation (*subornatio*). The crime of procuring another to do a bad action. A secret underhand preparing, instructing or bringing in a false witness.

Subornation of perjury. The offence of instructing or procuring another to commit perjury.

Subreption. (*Sc. L.*) The obtaining of a gift from the king by concealing what is true.

Subrogation. Substitution. In French Law, the putting a third person who has paid a debt in the place of the creditor to whom he has paid it, so as that he may exercise against the debtor all the rights which the creditor if unpaid might have done. He is then said to be subrogated to the other's rights. *See* ABROGATION.

Subrogation in its wider signification has been defined as a substitution, ordinarily the substitution of another person in the place of one creditor, so that the person in whose favour it is exercised succeeds to the rights of the creditor in relation to the debt. More broadly, it is the substitution of one person in the place of another, whether as creditor or as the possessor of any other rightful claim. The substitute is put in all respects in the place of the party to whose rights he is subrogated (*Karuppan* v. *Muhammad*, 14 M. L. T. 478).

The right of subrogation is founded on equitable principles, and the extent to which subrogation would be carried in any particular case must be determined on equitable considerations (*Digambar* v. *Harendra*, 11 Cal. L. J. 226; 14 Cal. W. N. 617).

Subrogation is a substitution by the operation of law to the rights and interests of the mortgagee in the mortgaged property by virtue of redemption. It may be as of right, such as is referred to in ss. 74 and 95 of the Trans. of Pro. Act, or equitable or conventional, such as where payment is made by a surety of a debtor or is made by another, under an agreement, express or implied, with a debtor or creditor, or in order to protect a subsisting interest which could not otherwise be protected (*Sohan Lal* v. *Jet Singh*, 16 O. C. 148).

To entitle one to invoke the equitable right of subrogation, he must either occupy the position of a surety of the debt, or must have made the payment under an agreement with the debtor or creditor that he should receive and hold an assignment of the debt, or he must stand in such a relation to the mortgaged premises that his interest cannot otherwise be adequately protected. It is only in the case of *legal* subrogation or subrogation as a matter of right, as distinguished from *conventional* subrogation, or subrogation by reason of agreement, that the question of intention to keep the mortgage alive arises. The doctrine of subrogation is not applied for a mere stranger or volunteer who has paid the debt of another, without any assignment or agreement for subrogation, being under no obligation to make the payment and not being compelled to do so for the preservation of any rights or property of his own (*Gurdeo Singh* v. *Chandrika*; *Chandrika* v. *Rash Behary*, 5 Cal. L. J. 611; *Narayana* v. *Pechiamal*, 22 M. L. J. R. 364; 11 M. L. T. 174; Mad. W. N. 1912, p. 353). *Cf.* s. 69 of the Ind. Con. Act (IX of 1872) and s. 80 of the Trans. of Pro. Act (IV of 1882).

Where one of several mortgagors redeems the whole mortgage, he acquires a charge on the share of each of his co-mortgagors for the proportion of the expenses properly incurred in redeeming the property (*Digambar* v *Harendra*, 11 Cal. L. J. 226; 14 Cal. W. N. 617).

The doctrine of subrogation does not apply when a person simply performs his own obligation or covenant, and pays off a charge which he has undertaken and is bound to satisfy. The question whether a mortgage which has been paid off is considered to be extinguished or as kept alive for the benefit of the person who makes the payment, is one of intention to be determined with reference to the surrounding circumstances as they exist at the time when the mortgage is discharged (*Surjiram* v. *Barhamdeo*, 2 Cal. L. J. 288; *Govindasami* v. T. M. *Doraisami*, 20 M. L. J. R. 380; 8 M. L. T. 132).

The principle of subrogation is one based on a presumption of intention, which may be supported by circumstances or evidence of assignment or agreement or both. Subrogation by intention confers an equitable right and subrogation by agreement a legal claim. It is therefore open to a party to base his claim on both intention and agreement (*Tara Sundari* v. *Khedan Lal*, 14 Cal. W. N. 1089). But it is not necessary to prove any intention or agreement to subrogate; the presumption from the circumstances would be sufficient (*Prayag Narain* v. *Chedi Rai*, 14 Cal. W. N. 1093).

In the absence of evidence to the contrary the presumption is that the plaintiff intended to keep the earlier mortgages alive for his benefit (*Tara Prosad* v. *Kristo Prosad*, 7 Ind. Cas. 478).

Subscribe. To write under. To make oneself liable for something. *See* UNDERWRITER.

Subscribing witness. A person who puts or subscribes his name to an instrument as attesting witness. *See* ATTESTATION.

Subsequent condition. *See* CONDITION.

Subsidy (*subsidium*). An aid, tax, or tribute granted to the king for the urgent occasions of the kingdom, to be levied on every subject of ability, according to the value of his lands or goods. A species of custom payable upon exports and imports of staple commodities. *See* STAPLE.

Subsoil. This includes, *prima facie*, all that is below the actual surface down to the centre of the earth (*Cox* v. *Glue*, 17 L. J. C. P. 162; 5 C. B. 549). It is therefore a wider term than 'mines,' 'quarries,' or even than 'minerals.' (*Atkinson* v. *King*, 2 L. R. Ir. 339).—*Stroud.*

Substantial damages. *See* DAMAGE.

Substitute (*substitutus*). One placed under another person to transact some business, &c. *See* SUBSTITUTION.

Substituted executor. One appointed to act in the place of another executor, *e. g.*, if the latter should refuse the office.

Substituted service. A service of a writ of summons on some person representing the defendant, instead of on the defendant personally. As opposed to *personal* service. *See* SERVICE OF PROCESS.

Substitution. In Civil Law, a conditional appointment of a *hæres*. In Scotch Law, the enumeration or designation of the heirs in a settlement of property. Substitutes in an entail are those heirs who are appointed in succession on failure of others.—*Wharton.*

Substitutional legacy. A legacy which is to take effect as a *substitute* for some other disposition. In the construction of wills, it is frequently a matter of difficulty to decide whether a legacy or devise is substitutional or is original. *See* CUMULATIVE LEGACY.

Subsumption of libel. (*Sc. L.*) A statement of the crime alleged.

Subtraction. The offence of withholding (or withdrawing) from another what by law he is entitled to.

Subtraction of church rates. Refusal to pay the same.

Subtraction of conjugal rights. The withdrawing or withholding by a husband or wife of those rights and privileges which the law allows to either party, in respect of the personal society of the other. The neglect or refusal by a husband or wife to live with the other.

Subtraction of legacies. The withholding or detaining of legacies by an executor to the prejudice of the legatee.

Subtraction of suit and service. This is when any person who owes any suit, duty, custom, service, or rent, or toll, &c., to another, withdraws it or neglects to perform it; as the neglect of a tenant to attend his lord's court, or to perform the duties of his tenancy.

Subtraction of tithes. The neglect by a landowner to pay tithes or ecclesiastical dues.

Succession. The power or right of coming to the inheritance of ancestors. The coming to property previously enjoyed by another. It is either *singular* or *universal.*

Singular succession is where the purchaser, donee, or legatee of a specific chattle, or other specific property, succeeds to the right of the vendor, donor, or testator.

Universal succession is the succession to an indefinite series of rights, as the succession by the trustee of a bankrupt to the estate and effects of the bankrupt, or by an executor or administrator to the estate of the deceased. —*Moxley.*

See LUCRATIVE SUCCESSION.

A devise to A "and his children *in succession*," gives A an estate tail (*Tyrone* v. *Waterford*, 29 L. J. Ch. 486; 1 De G. F. & J. 613).

Succession duty. A duty payable on succession, which varies from one to ten percent on the value of the succession according as the successor be the lineal issue or ancestor of the predecessor, or a more distant relative, or a stranger in blood.

Successor. He who follows or comes in another's place. The correlative of *predecessor.* The technical word in the case of a corporation, answering to "heirs, executors or administrators" in the case of a person proper.

Sucken. (*Sc. L.*) The whole lands astricted to a mill, *i. e.*, lands whose tenants are bound by their tenure to have their corn ground at the particular mill. The possessors of such lands are called *suckeners.* *See* MULTURE.

Sudder. (*Ind.*) The best; the fore court of a house; the chief seat of Government, contradistinguished from *mofussil*, or interior of the country, the presidency.

Sudder Ameen. A chief commissioner or arbitrator; the title of a class of native civil judges under the British Government.

Sudder Adawlut. The chief court of justice both civil and criminal; the Company's Supreme Court, and Court of Final Appeal in India; and now the High Court.

Sudder Dewany Adawlut. The chief civil court of justice held at the presidency.

Sudder Nizamut Adawlut. The chief criminal court of justice.

Sudra. (*Hin. L.*) The last of the four classes of Hindus, *i. e.*, servants and labourers.

Sue. To take legal proceedings against any one. It is applied most exclusively to prosecuting a civil action against one.

"To sue" in s. 43 of the Civ. Pro. Code

1882 (see now Act V of 1908, Sch. I, O. II, R. 2) means to make a legal claim or to take legal proceedings against any person; it does not necessarily mean to file a suit by means of a plaint such as is referred to in the Code. Taking any legal proceedings in matters of any kind would be "to sue" (*Vajeram Sakerram* v. *Purshotumdas*, 7 Bom. L. R. 138).

Sue and labour clause. A clause, in a maritime policy, entitling the assured, in case of accident to the subject of assurance, to take steps for its recovery or protection without prejudice to the policy.—*Rawson.*

Sufee shurikh. (*Ind.*) A partner in the thing sold, who has a pre-emptive right (*Tufani Singh* v. *Mt. Durgaban*, 4 B. L. R., Ap., 21).

Sufferance. An *estate at sufferance* is where one comes into possession of land under a lawful title, and, after the title has come to an end, keeps it without any title at all by the sufferance (*i. e.*, without the agreement or disagreement) of the rightful owner. The party continuing in possession is called a *tenant at sufferance.* This is the least and lowest estate which can subsist in realty. *See* ESTATE, HOLDING OVER.

A tenant who holds over (*see* HOLDING OVER) after the expiration of the term mentioned in his rent note or *Kirayanamah*, is a tenant by sufferance; there is no privity between such a tenant and the landlord. The so-called tenant on sufferance is one, who wrongfully continues in possession after the expiration of a lawful title (*Pusa Mal* v. *Makdum Bakhsh*, 6 All. L. J. 584).

A tenant holding over is indeed a tenant on sufferance; but it is not competent for the landlord to *suo motu* dispossess such a tenant without his consent. And such a dispossession is not one "in due course of law" within the meaning of s. 9 of the Specific Relief Act, 1877 (*Rudrappa* v. *Narsing Rao*, 7 Bom. L. R. 12; 29 Bom. 213).

Sufferance wharves. Wharves on which goods may be landed before duty is paid. *See* WHARF.

Suffering a recovery. The tenant in tail, who procured a common recovery of his land to be effected, to the intent that a conveyance might be made of the land in fee simple, was said to *suffer a recovery. See* RECOVERY.

Suffragan. A deputy. A suffragan bishop is a titular bishop appointed to aid and assist the bishop of the diocese in his spiritual function. Bishops are also called *suffragan* in respect of their relation to the archbishops of their province.

Suffrage. Vote; elective franchise. Aid.

Suggestion (*sggestio*). A surmise or representing of a thing; an entry of a fact on the record; an information drawn in writing, showing cause to have a prohibition, and left in court.

Suicide. Self-murder. A self-murderer.

Suit (*secta*). A following another. The following one in chase, as *fresh suit*, which *see.* A petition made to the king or any great personage. The witnesses or followers of the plaintiff in an action at law. The legal proceeding itself; hence, any litigation. In legal documents and treatises, it is usual to speak of *an action at law* and *a suit in equity.*

Suit and service. When the tenant had professed himself to be the man of his superior lord, the next consideration was concerning the service which, as such, he was bound to render for the land he held. This, in pure, proper, and original feuds, was only two-fold: —to follow or do suit to the lord in his court in time of peace; and in his armies or warlike retinue, when necessity called him to the field.—*Tomlins.*

Suit covenant. This is where one has covenanted to do suit and service in his lord's court.

Suit custom. This is where service is owed time out of mind.

Suithold. A tenure in consideration of certain services to the superior lord.

Suit of court. The attendance which a tenant owes to the court of his lord. Service to the lord. In common with fealty, this was and is one of the incidents of a feudal holding.

Suit of the king's peace. Pursuing a man for having broken the king's peace by treasons, insurrections, or trespasses.

Suit regal. This is when men come to the sheriff's tourn or leet.

Suit silver. Suter silver. A small rent or sum of money paid in some manors to excuse the appearance of the freeholders at the court of their lords, that is, in lieu of attendance at the Court Baron.

Suitor. Suiter. One that sues; a party to a suit or litigation; petitioner; a suppliant; a wooer.

Suitors' Fee Fund. A fund in the Court of Chancery into which the fees of suitors in that court were paid, and out of which were defrayed the salaries of various officers of that court.

Suleh namah. (*Ind.*) A writing of concord. A deed of compromise of a law suit; a deed or contract by means of which litigation is prevented or stopped.

Sulka. (*Hin. L.*) A kind of woman's property. Whatever is received by a woman as the value of household utensils, for beasts of burden, for milch cattle, or for ornaments to decorate herself with is called her fee or perquisite, *sulka.* It also means the price for which a girl is given in marriage; the value of household utensils and the like taken by the parents from the bridegroom and the rest for the giving of the bride in the shape of ornaments for the girl; bribe given by the artisans and the like to the woman; what is given to the bride to induce her to go cheerfully to her husband.

Sumage. Toll for carriage on horseback.

Summary (*summarium*). An abridgment, brief, compendium. Short, speedy, as opposed to plenary or regular.

Summary actions. (*Sc. L.*) Such as are brought into court, not by writ of summons but by petition: they either relate to practitioners, or parties already in court. They correspond to summary proceedings in English courts, whether by motion or petition in the superior courts, or by complaint before justices of the peace.

Summary conviction. A conviction before magistrates without the intervention of a jury. The committal of an offender by a judge for contempt of court.

Summary jurisdiction. The jurisdiction of a court to give a judgment or make an order itself forthwith without further preliminaries, such as committing for trial, *e. g.*, to commit to prison for contempt, to punish malpractice in a solicitor; or, in the case of justices of the peace, a jurisdiction to convict an offender themselves instead of committing him for trial by a jury.—*Wharton.* See Act V of 1898 (Crim. Pro.), Chap. XXII.

Summary proceedings in an action. The formal procedure is the regular *de cursu* procedure in an action properly so called. It rarely happens, however, that the formal procedure alone is used in an action; more often and in fact, almost always, many incidental proceedings intervene in the progress of every action from its commencement to its conclusion, such incidental proceedings being necessitated by various occasions arising in the action, and being disposed of in an expeditious and less formal or informal manner, whence these latter proceedings are commonly designated and classified together as the summary procedure in the action. Each of the Divisions of the High Court exercises also a large summary jurisdiction upon petition, motion, and summons, independently of the pendency of any action.—*Brown.*

Summary procedure on bills of exchange. A procedure for the purpose of facilitating the remedies on bills and notes by the prevention of fictitious or frivolous defences. See Act V of 1908 (Civ. Pro.), Sch. I, O. XXXVII.

Summing up. A judge's exposition of evidence to a jury. This is, in trials before a judge and jury, a charge of the judge to the jury, recapitulating in greater or less detail the statements of the witnesses, and the contents of the documents adduced on either side, commenting upon the manner in which they severally bear upon the issue, and giving his direction upon any matter of law that may arise upon them.—*Mozley.* The summing up by a counsel of his own case at the close of the evidence which he has adduced.

Summoner (*summonitor*). A petty officer that calls and cites a man to any court.

Summons (*summonitio*). A call of authority; admonition to appear in court; a citation to appear before a judge or magistrate. An application to a judge at chambers, whether at law or in equity.

Summons, or *motion*, or *petition.* These are the three modes of obtaining interlocutory orders or judgments—the summons being at Chambers, the motion being (usually) in Court, and the petition also being (usually) in Court.—*Brown.*

Summons and order. In this phrase, the summons is the application to a common law judge at chambers in reference to a pending action, and the order is the order made thereon by the judge or master. The summons operates as a stay of proceedings until the time when it is disposed of.—*Mozley.*

Summons and severance. The proper name of this title is severance, for the summons is only a process, which must, in certain cases, issue before judgment of severance can be given. Severance is a judgment by which, where two or more are joined in an action, one or more of these is enabled to proceed in such action without the other or others.—*Tomlins.* It was the only mode by which one of several plaintiffs in error, having been defendants in court below, was enabled to prosecute a writ of error against the consent of the rest, though the latter had a joint interest with him.

Summons case. *See* WARRANT CASE.

Summons to warrant (*summoneas ad warrantizandum*). The name of the process whereby the vouchee in a common recovery was called to warranty. *See* RECOVERY.

Writ of summons. The writ or process used for the commencement of an action.

An *originating summons* is one by which a matter is initiated and is analogous to the writ of summons.

Summonses in judge's or master's chambers are the means by which one party brings the other before a judge (or master) to settle matters of detail in the procedure of a suit; as, for time to plead, to modify pleadings when inconvenient, to require security for costs, to change the venue, &c.—*Wharton.*

Sumptuary laws (*sumptuaria lex*). Laws made to restrain luxury and excess in apparel, and prohibit costly apparel, of which there were many in England, but all were repealed in the reign of James I.

Supercargo. An officer in a ship whose business is to manage the trade. An agent employed by a merchant to take charge of the cargo exported, and to dispose of the same abroad to the best advantage, and to purchase proper commodities to re-lade the ship homewards. He goes out and returns home with the ship, thus differing from factors, who have a fixed residence.

Superficies. The surface of the soil let for building on the surface, a yearly rent being generally reserved. A building or erection. Superficies, in Roman Law, was a right

to the perpetual enjoyment of any thing built upon land, on payment of an annual rent (*pensio*). The *superficiarius* had (subject to such payment) the enjoyment and use of the subject matter (*utendi fruendi*); also the right of alienating, pledging, or burdening it with servitudes.

Superfluous lands. This is when lands are taken by compulsion by a public company, under authority, and any portions thereof prove to be or become superfluous, *i. e.*, not required for the purposes of the company's undertaking.

Superinstitution (*superinstitutio*). One institution upon another. A church being full by institution, if a second institution is granted to another person claiming under an adverse title to the same church, this is a superinstitution. *See* INSTITUTION.

Superintendent Registrar. An officer whose business it is to supervise the registrars of births, deaths and marriages.

Superintending constables. Those who have the charge of lock-up houses, &c.

Superior. (*Sc. L.*) The grantor of a feudal right to be held of himself. By such a grant he creates a vassalage, and the grantee stands in the relation of a vassal to the grantor. The interest of the grantor is termed *dominium directum*, and that of the vassal, *dominium utile*.

Superior Courts. The Courts of Chancery, King's Bench, Common Pleas, and Exchequer, at Westminster, were so called. *See* HIGH COURT OF JUSTICE, SUPREME COURT OF JUDICATURE.

Superior holder. *See* HOLDER.

Supersede. To stop; to put an end to; generally by substituting something else in place of the thing so abolished.

Superstitious uses. Uses which have for their object the propagation of the rites of a religion not tolerated by the law. Uses for religious purposes not tolerated by law; as opposed to charitable uses. The law relating to superstitious uses depends partly upon the common law, and partly upon statutes. The statutes relative to superstitious uses are 23 Hen. VIII, c. 10, 1 Edw. VI, c. 14 and 1 Geo. I, c. 50.

The English statute as to superstitious usages is not applicable to the courts in India, and those courts have jurisdiction to entertain suits for the establishment and administration of native religious institutions (*Advocate-General* v. *Vishvanath*, 1 Bom. H. C., App. 9.) The English law relating to superstitious uses does not apply in the case of Hindu religious endowments (*Khushalchand* v. *Mahadevgiri*, 12 Bom. H. C., A. C., 214). *Semble.*—The English rule of law which prohibits the bequest of money to superstitious uses has no application in India (*Joseph Ezekiel Judah* v. *Aaron Hye*, 5 B. L. R., O. C., 433). *See* DHARM.

Supervisor. A surveyor or overseer.

Supplement, letters of. (*Sc. L.*) When a party is to be sued before an inferior court and does not reside within its jurisdiction, *letters of supplement* may be obtained on a warrant from the court of session by which he may be cited to appear before the inferior judge.

Supplemental answer. An answer filed in a Chancery suit to supply defects in one originally filed, *i. e.*, for the purpose of correcting, adding to, and explaining the answer already filed.

Supplemental bill. A bill filed in equity by way of supplement to one previously filed, in order to supply some defect in the former, or when new matter arose which did not exist when the first bill was filed.

Suppletory oath. The oath of a litigant party in the spiritual and civil-law courts in order to turn the *semi-plena probatio*, which consists in the testimony of but *one witness*, into a *plena probatio* (full proof) afforded by the testimony of two witnesses. So called because it supplies the necessary *quantum* of proof on which to found the sentence.

Suppliant. The claimant in a petition of right. The party preferring a petition of right. *See* PETITION OF RIGHT.

Supplies. Grants made by parliament to meet the expenses of Government. *See* COMMITTEE OF SUPPLY.

Supply, Commissioners of. (*Sc. L.*) Persons appointed to levy the land-tax in Scotland and to cause a valuation roll to be annually made, and to perform other duties within their respective counties.

Support. *To support a rule or order* is to argue in answer to the arguments of the party who has shown cause against a rule or order *nisi*; to argue in support of the rule.

Right to support. The right of support is the right of a person to have his buildings or other l. nded property supported by his neighbour's house or land Every proprietor of land is entitled of common right to such an amount of lateral support from the adjoining land of his neighbour as is necessary to sustain his own land in its *natural* state *not weighted by walls or buildings*. One may not dig in his own land so near that of another that the other's land falls into his pit. If the owner of land grants the subsoil, reserving the surface to himself, the owner of the subsoil may maintain an action against the owner of the surface, if he digs holes into the subsoil to a greater extent than is reasonably necessary for the proper and fair use, cultivation and enjoyment of the surface, or if he removes so much of the surface that mines below are flooded (*Cox* v. *Glue*, 5 C. B. 551). So the owner of the surface is entitled of common right to the support of the subjacent strata, so that the owner of the subsoil and minerals cannot lawfully remove them without leaving support sufficient to maintain the surface in its *natural* state. *Easements* of

support are rights to have support additional to, or different from, the support to which *natural* right entitles, such as a right of support to a *building* from land, a right of the owner of a surface stratum of land which has been altered by quarrying or otherwise, to a *greater* degree of support than such stratum would have required in its *natural* state; a right of support to a *building* from another building. Such rights in extension of the natural right may be acquired by uninterrupted user for the prescriptive period. *See* EASEMENT.

Supremacy. Sovereign dominion, authority and pre-eminence; the highest estate. King Henry VIII was the first prince that shook off the yoke of Rome in England and settled the supremacy in himself after it had been long held by the Pope.

Act of Supremacy. The statute 1 Eliz. c. 1, whereby all foreign jurisdictions, whether spiritual or temporal, within the realm were excluded, and all spiritual jurisdiction was annexed to the Crown, which might exercise the jurisdiction by commissioners.

Oath of Supremacy. This is for upholding the supreme power of the kingdom in the person of the reigning sovereign. *See* PROMISSORY OATH.

Supreme Court ot Judicature. By the Supreme Court of Judicature Act (36 & 37 Vic. c. 66), s. 3, it is enacted that from the commencement that Act (1st Nov. 1875), the Court of the Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, and the Court for Divorce and Matrimonial Causes (and the London Court of Bankruptcy) should be united and consolidated together, and should constitute one Supreme Court of Judicature in England. By s. 4, the said Supreme Court is to consist of two permanent divisions, the one to be called Her (His) Majesty's High Court of Justice, and the other Her (His) Majesty's Court of Appeal. To the High Court of Justice, under s. 16, is transferred the jurisdiction exercised by the Courts of Chancery, Queen's Bench, Common Pleas, Exchequer, Admiralty, Probate, Divorce (Bankruptcy), the Court of Common Pleas at Lancaster, the Court of Pleas at Durham, and the Assize Courts, with certain exceptions mentioned in s. 17. To Her (His) Majesty's Court of Appeal is transferred the jurisdiction exercised by the Lord Chancellor and Lords Justices of the Court of Appeal in Chancery, also the jurisdiction of the Court of Exchequer Chamber, and the jurisdiction exercised by the Judicial Committee of the Privy Council on appeal from the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy. *See* HIGH COURT OF JUSTICE, PRIVY COUNCIL.

Supreme power. The highest authority in a state, all other powers in it being inferior thereto.

Surcharge. An overcharge, beyond what is just and right.

Surcharge of common. This is when a commoner puts more beasts in a forest, or in pasture, than he has a right to do. *See* ADMEASUREMENT, Common, SECOND SURCHARGE.

Surcharge and falsify. A mode of taking accounts in Chancery. If, in an account stated, there is any mistake, omission, accident, or fraud, by which the account stated is vitiated, a court of Equity would interfere; in some cases, by directing the whole account to be opened and taken *de novo*; in others, by allowing it to stand, with liberty to the plaintiff to surcharge and falsify. To *surcharge* is to show an omission of something for which credit ought to have been given, that is, to show credits to have been omitted; and to *falsify* is to prove an item to have been wrongly inserted, that is, to prove a wrong charge in debits.

Surety. Hostage; bondsman; one who contracts to be answerable for another in case of the latter's default. If he discharges the obligation, he is entitled to be repaid by his principal (*i. e.*, the person for whom he was surety), and, meanwhile, to an assignment of all securities held by the creditor or obligee. *See* CONTACT OF GUARANTEE.

Surety for good behaviour. *See* SECURITY.

Surety of the peace (*securitas pacis*). *See* KEEPING THE PEACE, PEACE, ARTICLES OF THE.

Surmise. The word commonly denotes to suspect, conjecture, or suggest. An allegation in a libel.

Surplice fee. Fees payable on burials, marriages, baptisms, &c.

Surplus. What remains when everything is satisfied.

The words *surplus* and *residue* have identical meanings, one meaning 'that which is over,' the other 'that which is left.' (*per* Pontifex, J., *Dwarkanath* v. *Baroda Prasad*, 4 Cal. p. 449). *See* RESIDUE.

Surplûsage (*surplusagium*). A superfluity or addition of something unnecessary, in any legal document. In pleading, the allegation of unnecessary matter. The remainder or overplus of money left.

Unnecessary allegations in a charge may be rejected as surplusage (*Reg.* v. *Francis Cassidy*, 4 Bom. H. C., Cr. Ca., 17).

Surplusage of accounts. This signifies a greater disbursement than the charge of the accountant amounts to.

Surprise. This is where the evidence produced by one side is such as from the nature of the circumstances could not have been reasonably expected by the other side, and there is reason to believe that this evidence, if foreseen, might have been rebutted, contradicted or explained.

Surrebutter. The plaintiff's answer to

the defendant's rebutter. This was the plaintiff's fourth or last pleading at common law. *See* PLEADING.

Surrejoinder. The answer by the plaintiff to the defendant's rejoinder. *See* PLEADING.

Surrender (*sursum redditio*). A deed or instrument testifying that a particular tenant for life or years of lands and tenements, doth yield up his estate to him that hath the immediate estate in remainder or reversion, that he may have present possession thereof; and wherein the estate for life or years may merge or drown by the mutual agreement of the parties. The operative words in a surrender are "surrender, grant and yield up." The term is usually applied to the giving up of a lease before the expiration of it. A surrender is of a nature directly opposite to a release; for as the latter operates by the greater estate descending upon the less, a surrender is the falling of a less estate into a greater, the two estates being in privity in each case. Of surrenders there are three kinds—(1) a surrender properly taken at common law which is of two sorts, a surrender *in deed*, and a surrender *in law*; (2) a surrender of copyhold or customary estates; and (3) a surrender improperly taken, as of a deed, a patent, rent newly created, &c.

Surrender in deed. A valid express surrender in writing, by yielding up an estate for life or years to him that has the immediate reversion or remainder; for this it is essential that it should be made to, and accepted by, the owner (in his own right) of the reversion or remainder.

Surrender in law. A surrender which is wrought by operation of law, and not actual or express; as if a lessee for life of years takes a new lease of the same land during the term, this will be a surrender in law of the first lease, for the acceptance of a new lease amounts in law to a surrender of the former one.

Surrender of copyholds. The yielding up by a copyholder of his interest to his lord, according to the custom of the manor, generally in order that the same may be granted out again to such person or persons and for such use or uses, as are named or expressed in the surrender. This method of conveyance is so essential to the nature of a copyhold estate, that it cannot properly be transferred by any other common law assurance; and the lord is compellable by *mandamus* to admit the surrenderee, that is, the person to whose use the surrender is made.

Surrender to uses of will. Formerly a copyhold estate would not pass by will unless it had been surrendered to the use of the will. This formality is no longer necessary.

Surrender of Letters Patent and Offices. A surrender may be made of letters patent to the king, to the end that he may grant the estate to whom he pleases, &c.; and a second patent for years to the same person for the same thing, is a surrender in law of the first patent. If an officer for life accepts of another grant of the same office, it is in law a surrender of the first grant; but if such an officer takes another grant of the same office to himself and another, it may be otherwise.

Surrender of fugitives. Giving up fugitives to the authorities from whose jurisdiction they have fled. This takes place between two different States.

Surrenderee. The person to whom a surrender is made. Also the person to whose use a copyhold is surrendered.

Surrenderor. The person by whom a surrender is made.

Surreptitious. Fraudulent; stealthy.

Surrogate (*surrogatus*). One that is substituted or appointed in the room of another; as by a bishop for granting marriage licenses; or by a chancellor, judge, &c.

Sursise (*supersisa*). A word specially used in the Castle of Dover for such penalties and forfeitures as are laid upon those that pay not their duties or rent for castleward at the appointed time. *See* CASTLEWARD.

Survey number. A portion of land of which the area and other particulars are separately entered under an indicative number in the survey records of the village, town or city in which it is situated, and includes a recognized share of a survey number.—*Bom. Act V of* 1879 (*Bom. Land Revenue*), *s.* 3 (6).

Recognized share of a survey number means a sub-division of a survey number separately assessed and registered.—*Ibid, s.* 3 (7).

Surveyor. One who has the overseeing or care of another person's land or works.

Surveyor of Highways. A person elected by the inhabitants of a parish to survey the highways therein.

Survivor (*supervivo*). The longer liver of two joint tenants, or of any two persons joined in the right of a thing. He that remains alive after others are dead. The longest liver (*In re Packworth*; *Snaith* v. *Parkinson*, 1899, 1 Ch. D. p. 652).

Survivorship. The living of one of two or more persons after the death of the other or others. The word is used not merely of the fact of survivorship, but of the rights arising therefrom, *i. e.*, of the rights of the survivor or survivors of joint tenants to the estate held in joint tenancy, in exclusion of the representatives of the deceased.—*Mozley.* *See* PRESUMPTION OF SURVIVORSHIP.

Survivorship upon survivorship. One of the incidents of joint estates is what is termed the doctrine of survivorship, by which, when two or more persons are seised of a joint estate, or are jointly possessed of a chattle interest, the entire tenancy, upon the decease of any one of them, remains to the survivors, and at length to the last survivor. The incident does not attach to estates held by tenancy in common; but in the case of these latter tenancies it is not unusual to insert an

express clause of survivorship or accrual (*jus accrescendi*), as it is called. There is this difference between the accrual in joint tenancies which is *implied* by law, and the accrual in tenancies in common which is *expressed* in the words of the deed, that whereas the former takes place repeatedly, as often as the event arises, the latter is confined to the original shares only of the tenants, and does not extend also, unless particularly so expressed, to the shares accured by accrual, it being a maxim of law that (in the absence of express words) there is "no survivorship upon survivorship" (*Pain* v. *Benson*, 3 Atk. 80). Usually, also, there is no survivorship implied at law as between *partners*; moreover, the court of Chancery will defeat survivorship upon very slight distinctions.—*Brown*. *See* ACCRUER.

Wife's rights of survivorship. *See* REDUCTION INTO POSSESSION.

Suspense. Suspension (*suspensio*). A temporal stop, or hanging up, of a man's right for a time, or his exercise of an office. A temporary revocation of any law by proper authority. A stay of proceedings in a Scotch action, which is effected by what are called "letters of suspension." *See* SIST ON A SUSPENSION. Suspension is also used for a censure, whereby ecclesiastical persons are forbidden to exercise their office, or take the profits of their benefices.

Pleas in suspension. Those pleas which show some matter of temporary incapacity to proceed with the action or suit. *See* PLEA.

Suspension of payment. The expression 'suspending payment' is a well known commercial expression, and a merchant suspends payment when he ceases to discharge his mercantile obligations in due course. In ordinary parlance the terms 'insolvent' and 'suspending payment' have practically the same meaning (*Champsey* v. *Gill & Co.*, 7 Bom. L. R. 154).

Suspension of rent. This is where a rent or other profit out of lands, by reason of the unity of possession of the rent, &c., and the land out of which it issues, is not *in esse* for a certain time, as where the rent or land is so conveyed, not absolutely and finally, but for a time, after which the rent will be revived again. If a lessor does anything which amounts to an entry on the land, though he presently depart, yet the possession is in him sufficient to suspend the rent, until the lessee do some act which amounts to a re-entry.

Sutta. (*Ind.*) A wager.

Svayamdattaka. (*Hin. L.*) A son self-given.

Svoparjita. (*Hin. L.*) Self-acquired property.

Swami bhogum. (*Ind.*) The lord's enjoyment; the landlord's share of the produce of inam land cultivated by a tenant (*Thesikam* v. *Ganapatty*, 4 Mad. H. C. R. 320).

Swarf-money. Warth-money or guard-money, paid in lieu of the services of castle-ward. *See* CASTLEWARD.

Swear. To put an oath; to administer an oath.

Swear includes affirming and declaring, in case of persons by law allowed to affirm or declare instead of swearing.—*Act X of* 1897 (*General Clauses*), *s.* 3 (55).—*Bom Act I of* 1904 (*General Clauses*), *s.* 3 (47).

Swearing. The act of declaring upon oath. An imprecation.

Swearing the peace. Showing to a judge that one has a just cause to be afraid of another in consequence of his menaces, in order to get him bound to keep the peace. *See* KEEPING THE PEACE, PEACE, ARTICLES OF THE.

Sweinmote (swainmote or swanimote) Court. One of the forest courts, anciently held before the verderors as judges, by the steward, thrice in every year, the sweins or freeholders of the forest composing the jury. It enquired into the oppression and grievances committed by the officers of the forest, and received and tried presentments certified from the court of attachments, against offenders in vert and vension. *See* FOREST COURTS.

Swoling of land (*swolinga terræ*). So much land as one plough can till in a year. A hide of land.

Sworn brothers (*fratres jurati*). Persons who, by mutual oaths, covenanted to share each other's fortunes. Formerly, in any notable expedition, or invasion of the enemy's country, it was the custom for the more eminent soldiers to engage themselves by reciprocal oaths, to share the rewards of their service.—*Tomlins*. The phrase has been turned into a bad meaning, as brothers in inequity, because of their dividing plunder and spoil.

Sworn clerks in Chancery. Officers who had the custody of records, and made copies of pleadings, and performed other duties in connection with the Court of Chancery. The office was treated as a subject of sale and succession. Now abolished.

Syb and som. Peace and safety; an old form of greeting.

Symbolic delivery. A delivery of any thing in token of a transfer of something else. Thus, among Saxons, the delivery of a turf was a necessary solemnity to establish the conveyance of lands. And conveyance of copyhold lands is usually made by the delivery, on the part of the vendor, of a rod or verge to the lord or his steward, and then by the re-delivery of the same from the lord to the purchaser.—*Mosley*. *See* FEOFFMENT, SURRENDER OF COPYHOLDS.

Symbolœography. The art of rightly forming and making written instruments, either judicial or extra-judicial, *i. e.*, private, as agreements, contracts, wills, &c.—*Wharton*.

Symond's Inn. Formerly an Inn of Chancery. *See* INNS OF CHANCERY.

Synallagmatical. That which involves mutual and reciprocal obligations and duties. —*Wharton.*

Synchronize. To concur in time.

Syndic. Sindicos. An advocate or patron; a burgess or recorder; an agent or attorney who acts for a corporation or university; an actor or procurator; an assignee.

Syndicate. A university committee. A combination of persons or firms united for the purpose of enterprises too large for individuals to undertake.

Syngraph (*synographus*). A name given by the canonists to deeds of which both parts (*i. e.*, the copies corresponding to each party) were written on the same pice of parchment with some word or letters written between them, through which the parchment was cut, so as to leave half the word on one part, and half on the other. Hence a deed or writing under the hand and seal of all the parties. *See* DEED.

Synod (*synodus*). A meeting or assembly of ecclesiastical persons concerning religion. A convocation.

Synodal (*synodale.*) A tribute or payment in money paid by the inferior clergy to the bishop or archdeacon at his Easter visitation.

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T. This was the letter branded on the hand of those who were admitted to the benefit of clergy. *See* BENEFIT OF CLERGY.

Tabellion (*tabellio*). A notary public. An officer who reduced contracts and wills into proper form and attested their execution.

Table-rents (*redditus ad mensam*). Rents paid to bishops, &c., reserved and appropriated to their table or housekeeping.

Tabling of fines. This consisted in making a table for every county, giving the contents of each fine passed in any one term together with the names of the towns and places wherein the lands lay, the names of the parties, &c. This was done by the chirographer of fines of the Common Pleas. *See* FINE.

Tacfree. Exempt from rent, payments, &c.

Tacite relocation. (*Sc. L.*) Where the lessor suffers the lessee to continue after the lease has expired, paying as formerly during the lease, this is termed a tacite relocation, that is, a silent or understood re-letting of the premises, and continues till the landlord warns the tenant to remove, or the tenant renounces his tack to the landlord. The tenancy thus arising corresponds very nearly to the English tenancy at sufferance.

Taciturnity. (*Sc. L.*) The word signifies laches in not prosecuting a legal claim, or in acquiescing in an adverse claim.

Tack. (*Sc. L.*) A lease.

Tack duty. The rent reserved on a lease.

Tacksman. A lessee.

Tacking mortgages. The word tacking denotes annexing, and, as applied to mortgages, it signifies the annexation of a subsequent to some prior charge, so as to squeeze out a mesne charge. This happens when a third or subsequent mortgagee of land, by getting a conveyance to himself of the legal estate of the first mortgagee, is enabled to obtain, for his own security, priority over the second mortgagee; or where a first legal mortgagee, by taking a further mortgage for a further advance upon the same property, defeats the equitable claims of a mesne encumbrancer, *i.e.*, a person who has lent money on the property after the first but before the further mortgage. The party is then said to *tack* his mortgage to the first mortgage. This is permitted if the person who claims to *tack* has originally advanced his money without notice of the incumbrance or incumbrances over which he claims priority, notwithstanding that he might have had notice of the same before getting in the legal estate. For the person so claiming to tack is held to have an *equity* equal to that of the mesne incumbrancer over whom he claims priority; and having got in the *legal* estate, he obtains priority on the principle that where equities are equal, the law shall prevail; and mere priority of time is not regarded where there is any other ground of difference.

The law of tacking is expressed in the following rules which are principally taken from the celebrated case of *Brace* v. *Duchess of Marlborough* (2 P. Wms. 491):—(1) A third mortgagee buying in a first mortgage, *being a legal mortgage*, may annex his third mortgage to the first, so as to squeeze out, *i. e.*, get paid before, the second or mesne mortgage; (2) one who is a legal mortgagee to begin with, and who afterwards advances a further sum upon a judgment, may in like manner annex his judgment to his mortgage; but one who is a judgment-creditor to begin with cannot annex his judgment to the first legal mortgage which he may afterwards obtain a transfer of, *scil.*, so as to squeeze out a mesne mortgage, because otherwise he may (after actual delivery in execution under the judgment) tack the judgment to the mortgage (*Ex parte Evans, In re Watkins*, 11 Ch. D. 691); (3) Tacking is excluded when all the mortgages are *equitable*; also where the third mortgage or the subsequent judgment is made or obtained with notice of the second or mesne mortgage.—*Brown.*

Tacking was abolished by the Vendor and Purchaser Act, 1874 (37 & 38 Vic. c. 78), s. 7, as from the 7th Aug. 1874. But that section has been repealed, and the doctrine of tacking restored in its entirety by the Land Titles and Transfer Act, 1875 (38 & 39 Vic. c. 87), s. 129, as from the 7th Aug. 1874, excepting as to anything done in the interval between the 7th Aug. 1874 (inclusive) and 1st Jan. 1876 (exclusive).

Tacking abolished in India. No mortgagee paying off a prior mortgage, whether with or

without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance. *Exception.*—If a mortgage, made to secure future advances, the performance of an engagement, or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.—*Act IV of* 1882 (*Trans. of Pro.*), *ss.* 79 *and* 80.

The English doctrine of tacking is not recognized in the courts of this country (*Udaya Chandra* v. *Bhajahari*, 2 B. L. R., Ap., 45; *Gaur Narayan* v. *Braja Nath*, 5 B. L. R., A. C., 468).

Tacking is not to be confounded with *consolidation*. *See* CONSOLIDATION.

Tahanama. (*Ind.*) An award.

Tahsildar. (*Ind.*) A native collector in charge of a *taluk*. A collector of rent or revenue, under a European or Zemindar.

Tail. (*Fr. tailler*, to cut; either because the heirs general are by this means cut off; or because this estate is a part cut out of the whole). The term is used to signify an estate tail or fee tail, *i. e.*, an estate of inheritance, descending to some particular heirs only of the person to whom it is granted, in contradistinction to an estate in fee simple, which is an estate discendible to the heirs general (without distinction) of the person to whom it is granted.—*Brown*. An estate in fee-tail is a limited fee as opposed to a fee-simple. It is that inheritance of which a man is seised to him and the *heirs of his body*, begotten or to be begotten, limited at the will of the donor, to the heirs of the body *general* or *special*, *male* or *female*. He that gives lands in tail is called the *donor*, and he to whom the gift is made, the *donee*. An estate tail is the creature of the statute *De Donis*. The estate, if the entail be not barred, reverts to the donor or reversioner, if the donee die without leaving descendants answering to the condition annexed to the estate upon its creation.

Two things seem essential to an entail under the statute *De Donis*—(1) the subject must be land, or some other thing of real nature; (2) the estate in it must be an inheritance. Therefore neither estates *pur antre vie* in lands, though limited to the grantee and his heirs during the life of the *cestui que vie*, nor terms for years, are entailable any more than personal chattels; because, as the latter, not being either interests in things real, or of inheritance, want both requisites; so the two former, though interests in things real, yet, not being also of inheritance, are deficient in one requisite.—*Tomlins*.

Before the Statute *De Donis*, if lands were given to a man and the heirs of his body, it was interpreted to be a fee-simple presently by gift, upon condition that he had issue; and if he had issue, the condition was supposed to be performed; so that, after issue born, he could have alienated the land, whereby the issue would have been disinherited, and the donor deprived of his right of reversion. This being the case, the Statute *De Donis* declared that the will of the donor should be observed; and that an estate granted to a man and the heirs of his body should descend to the issue (he not having power to alienate the estate), and that in default of issue, the land should revert to the donor and his heirs. So that, whereas the donee had a fee simple before, now he had but an estate tail, and the donor a reversion in fee expectant upon that estate-tail. Estates-tail were thus made inalienable, and neither the issue nor the remainderman could be barred. And many other inconvenient consequences were produced, which quickened the ingenuity of the judicature, until it produced, at length (in its efforts to recover the liberty of alienation), the complicated machinery of fines and recoveries. (*See* FINE, RECOVERY). Lastly, the 3 & 4 Wm. IV, c. 74, entitled "An Act for the abolition of Fines and Recoveries, and for the substitution of more Simple Modes of Assurance," abolished all the fictions, together with their cumbrous technicality, which had been invented by legal artifice and judical contrivance in contravention of the Statute *De Donis*, and what the legislature could not do in the reign of Edward II, by reason of the mighty power of the barons—the great proprietors of the soil—it effected in the reign of William IV, namely, the virtual repeal of the Statute or Westminster the Second, and the recognition of the right of barring estates-tail, prescribing and simplifying the mode of disposition.—*Wharton*.—*Tomlins*. *See* ESTATE.

In order to create an estate tail by deed, the word *heir* or *heirs* must be used; and in addition to this term the deed must contain, either in direct terms or by reference, words of procreation, to describe the *body* from which the heirs are to proceed, or the person by whom they are to be begotten. In a will technical words of limitation are not necessary; thus, a devise to A and his issue, or his seed, or his children, or his sons, or his heirs lawfully begotten, will give estate-tail.—*Wharton*. The distinction between heirs *of* the body, and heirs *on* the body, must be attended to. "Heirs *of* the body of the husband begotten by him *on* the body of the wife," mean heirs of the body of the husband that he has by her. "Heirs begotten by the husband *of* the body of the wife," means heirs of the body of the wife that are begotten by the

husband. "Heirs begotten by the husband *on* the body of the wife," mean the heirs of their two bodies, because the word "heirs" is not applicable to the one more than the other.—*Stroud.*

An estate-tail is of two kinds, *general* and *special*:—

Tail general. This is when lands are given to a man and the heirs of his body, without any further restriction at all; because how often soever such donee in tail be married, his issue by every such marriage is capable of inheriting the estate tail. According to some authorities, a tail general is not affected by a restriction in relation to sex. Thus *tail male general* is the same thing as *tail male*; the word *general* in such case implying that there is no other restriction upon the descent of the estate than that it must go in the *male* line. So, an estate in *tail female general*, is an estate in *tail female*.

Tail special. This is where the gift is restrained or limited to certain heirs of the donee's body, exclusively of others, so that it does not go to all of them in general. Thus, where lands are given to a man and the heirs of his body on Mary, his present wife, to be begotten, this is an *estate tail special*, because the issue of the donee by any other wife is excluded.

Estates tail are also distinguished into estates tail *male*, and estates tail *female*:—

Tail male. This is where an estate is limited to a person and the heirs male of his or her body, and to which the female heirs are not capable of inheriting; that is, so far as regards the first generation, to males, and, so far as regards subsequent generations, to males claiming exclusively through males. *See* MALE.

Tail female. This is where lands are given to a person and the heirs female of his or her body. Under such words of limitation, females alone can succeed, and would inherit together; nor could any female claim except through females. *See* MALE.

Tail after possibilty of issue extinct. This estate arises out of a special entail as to the parentage of the issue, when the express condition has become impossible by reason of death. Thus, if an estate be granted to a man and his wife and to the heirs of their two bodies engendered, and if one of them outlives the other without issue between them begotten, he or she shall hold the estate for term of his or her own life as *tenant in tail after possibility of issue extinct*, and notwithstanding that he or she do waste, he or she shall not be impeached for it. And, even if there have been issue, yet if the issue die without issue, the surviving parent is also such a tenant; and also if an estate be entailed upon a man and his issue from a particular wife, if she die without issue, the interest of the husband becomes reduced to such a tenancy. Only a donee in tail *special* can become such a tenant, for if the entail be *general*, such a tenancy can never arise; for, whilst he lives he may have issue. As an estate tail is originally carved out of a fee simple, so this estate is carved out of a *special* entail.—*Wharton.*

Tail ex provisione viri. Where an owner of lands upon or previously to marrying a wife settled lands upon himself and his wife, and the heirs of their two bodies begotten, and then died, the wife being the survivor became tenant in tail of the husband's lands "in consequence of the husband's provision (*ex provisione viri*). Originally she should bar the estate tail like any other tenant in tail, but the husband's intention having been merely to provide for her during her widowhood, and not to enable her to bar his children of their inheritance, she was restrained by 32 Hen. VIII, c. 36 from barring the entail.—*Brown.*

Tenant in tail. The person who holds an estate tail.

Tallage. Tallage (*tallagium*; from Fr. *tailler*, to cut). A piece cut out of the whole; a share of one's substance paid by way of tribute; hence, a toll or tax.

Tallie. *See* TAIL.

Tailzie. (*Sc. L.*) A deed of entail by which legal line of succession is cut off, and an arbitary one is substituted in its place.

Taint. A conviction for felony; a person convicted. *See* ATTAINDER, CORRUPTION OF BLOOD.

Takeed. (*Ind*). Injunction; warning; direction; an order from a superior.

Taking to. Taking up. This signifies the voluntary acceptance of anything. Thus, *taking up a lease* signifies accepting a lease; *taking up a bill* signifies payment by the party liable on a bill of exchange, of the amount for which he is liable, and receiving the bill back; it is thus synonymous with *retiring a bill* (which *see*) in the largest sense of that expression. *Taking to a share* in a partnership signifies the acceptance of that particular share.

Taksim-namah. (*Ind.*) A deed of partition amongst joint proprietors, when they cease to hold their estate in common.

Talabana. (*Ind.*) A deposit or sum required to defray the cost of issuing a notice or process by the court (*Kalikrishna* v. *Harihar*, 1 B. L. R., A. C., 155).

Talak. (*Meh. L.*) A form of divorce. A husband may divorce his wife without any misbehaviour on her part or without assigning any cause; but before the divorce becomes irreversible, according to the more approved doctrine, it must be repeated three times, and between each time the period of one month must have intervened; and in the interval he may take her back either in an express or implied manner. If a husband divorce his wife on his death bed, the divorce is valid. She is nevertheless entitled to inherit if he die before the expiration of the

term (four months and ten days) of probation which she is bound to undergo before contracting a second marriage. A vow of abstinence made by a husband, and maintained inviolate for a period of four monts amounts to an irreversible divorce.—*MacN. Meh. Law.*

A wife is at liberty, with her husband's consent, to purchase from him her freedom from the bonds of marriage. This divorce is called *khula*, and is at once complete and irrevocable.—*Ibid.*

Another mode of separation is by the husband's making oath (*laan*) accompanied by an imprecation as to his wife's infidelity, and if he in the same manner deny the parentage of the child of which she is then pregnant, it will be bastardized.—*Ibid.*

There is recognized a species of reversible divorce, which is effected by the husband comparing his wife to any member of his mother, or some other relation prohibited to him, which must be expiated by emancipating a slave, by alms, or by fasting. This divorce is technically termed *zihar*.—*Ibid.*—*Hidaya, Book V, Chap. IX.*

By the Mahomedan Law divorce may be made in either of two forms; *Talak* or *Khula*.

A divorce by *talak* is the mere arbitrary act of the husband, who may repudiate his wife at his own pleasure, with or without cause; but, if he adopt that course, he is liable to repay her dowry or *din mohr* and, as it seems, to give up any jewels and paraphernalia belonging to her.

The absence of the wife does not make the pronouncement of *talak* void and inefficacious (*Ful Chand* v. *Nawab Ali*, 13 Cal. W. N. 134).

A divorce by *khula* is a divorce with the consent, and at the instance, of the wife, in which she gives or agrees to give a consideration to her husband for her release from the marriage tie. In such a case the terms of the bargain are matters of arrangement between the husband and wife, and the wife may, as the consideration, release her *din mohr* and other rights, or make any other agreement for the benefit of the husband.

According to existing usage a divorce by *talak* is not complete and irrevocable by a single declaration of the husband; but a divorce by *khula* is at once complete and irrevocable from the moment when the husband repudiates the wife, and the separation takes place. In these particulars the two modes of divorce differ.

There is one condition which attends every divorce, in whichever way it takes place, viz, that the wife is to remain in seclusion for a period of some months (*iddat*) after the divorce, in order that it may be seen whether she is pregnant by her husband, and she is entitled to a sum of money, called her *iddit*, for her maintenance during this period. *See* IDDAT, IDDIT.

By the Mehomedan Law, divorce is not demandable *as a right* by the wife on payment of a consideration.—*MacN. Meh. Law.*

The divorce is the sole act of the husband, though granted at the instance of the wife, and purchased by her.

The *khulanamah* is a deed securing to the husband the stipulated consideration, but it does not constitute the diverce. It assumes it, and is founded upon it. The divorce is created by the husband's repudiation of the wife and the consequent separation. The law might have provided that non-payment of the consideration should invalidate the divorce, but the law is otherwise. The non-payment by the wife of the consideration for the divorce no more invalidates the divorce, than in England the non-payment of the wife's marriage portion invalidates the marriage. A *khulanamah* obtained by force and duress cannot be supported (*Moonshee Buz-ul-ul-Raheem* v. *Lutteefut-oon-nissa*, 8 Moore's I. A. 379).

According to Mehomedan Law, the divorce of one acting under compulsion from threat is effective.—*Ibrahim* v. *Enayetur* (4 B. L. R., A. C., 13).

Talak-i-bain. An irrevocable divorce. Held that a *bain talak* reduced to manifest and customary writing took effect immediately on the mere writing (*Sarabai* v. *Rabiabai*, 8 Bom. L. R. 35; 30 Bom. 537).

Talak-ul-Bidat. A sort of irregular divorce. (*Mt. Barkat Bibi* v. *Jalal Din*, Punj. W. R., No. 84 of 1908; Punj, Rec., No. 97 of 1908).

After divorce, and completion of the *iddat*, when necessary, the divorced couple cannot *validly* be re-married unless and until the woman was married to another man and divorced by him after consummation, or left a widow at his death (*Mt. Barkat Bibi* v. *Jalal Din*, Punj. W. R., No. 84 of 1908; Punj. Rec., No. 97 of 1908). *See* AMR-BA-YAD.

Talati. (*Ind.*) A native collector of government revenue in charge of a village.

Tale. The old name for the declaration in an action, in which the plaintiff set forth his cause of complaint at length. *See* DACLARATION.

Tales. A supply of jurymen to make up a deficiency.

Talesmen. Members of the tales; persons summoned to act as jurors.

Praying a tales. If a sufficient number of jurors do not appear, or, if by means of challenges or exemptions, a sufficient number of unexceptionable ones do not remain, either party may *pray a tales*, *i. e.*, a supply of such men as are summoned on the first panel in order to make up the deficiency.

Tales-book. The name of the book in the King's Bench Office, of such persons as are admitted of the tales.

Talion. Law of retaliation. *See* RETALIATION.

Taljiah. *See* BAY TALJIAH.

Tallagers. Tax or toll gatherers.

Talley. Tally. A stick cut into two parts, on each whereof is marked, with notches or otherwise, what is due between debtors and creditors. This was the ancient way of keeping accounts, one part being kept by the creditor, the other by the debtor. Hence the *tallier* of the Exchequer, also called the teller. *See* TELLERS.

Cutter of the tallies. An officer in the Exchequer to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, &c.

Tally trade. A system of dealing by which dealers furnish articles on credit, the price to be paid by certain weekly or monthly instalments.

Talliage. A tax laid upon cities and burghs. *See* TAILAGE.

Taluk (*Ind.*) A dependency; a division of a district under the management of a *Tahsildar*. A tract of land usually smaller than a *zemindari*, sometimes including several villages, held on a perpetual lease at a fixed revenue, payable either (1) directly to the Government, or else (2) to a mesne lord or *zemindar*. In the former case the taluk is said to be *independent*; in the latter, it is said to be *dependent*.

A *taluk* imports a permanent and hereditary tenure, if there be nothing in the surrounding circumstances or in the instrument itself which creates the interest to show that it was intended to be otherwise (*Krishna Chunder* v. *Mir Safdar Ali*, 22 W. R. p. 327; *Khaja Ahsanullah* v. *Kali Mohan*, 18 W. R. 469).

Talukdar. The grantee or holder of a *taluk*; a petty zemindar.

Tamassuk. (*Ind.*) A bond or obligation in writing.

Tamassuk-jaidadi. A bond hypothecating property.

Tamasul. (*Meh. L.*) The division of an inheritance among the legal sharers when their number and that of the shares is the same. *See* LEGAL SHARERS.

Tanaka. (*Ind.*) This is a term commonly used, perfectly well understood by the people of the Ganjam District as meaning a mortgage and in no other sense (*Dakkata* v. *Sasanapuri*, Mad. W. N., 1914, p. 270).

Tangible property. Corporeal property. Property which may be touched and is the object of sensation; as chairs, tables, &c., among moveables, and fields, gardens, &c., among immoveables. As opposed to intangible rights, as patents, copyrights, advowsons, rents, &c.

Tanistry. Tanistria. An old Irish tenure, by which, from time immemorial, the inheritance of lands descended to the *eldest* and *most worthy* of the blood and name. This, in reality, was giving it to the strongest, and naturally occasioned bloody wars in families; for which reason it was abolished in the reign of James I.

Tankhah. (*Ind.*) An assignment of lands, or order on the treasury, for the payment of a stipend, or salary, or the like. A salary.

Tappa. (*Ind.*) A small group of villages recognised for administrative purposes.

Taraf. (*Ind.*) A sub-division of a *pergunnah*, including several villages (*Rani Hemanta Kumari* v. *Secretary of State*, 3 Cal. L. J. 560, P. C.; 1 M. L. T. 175).

Taran gahan. (*Ind.*) A security pledge.

Tare and tret. Tare is an allowance in merchandise, made to the buyer, for the weight of the box, bag, or cask wherein goods are packed; and tret is a consideration in the weight, for waste in emptying and re selling the goods, by dust, dirt, breaking, &c. Tare is distinguished into real tare, customary tare, and average tare. The first is the actual weight of the package; the second, its supposed weight according to the practice among merchants; and the third is the medium tare deduced from weighing a few packages and taking it as a standard for the whole.—*Tomlins.*

Tariff. A table alphabetically arranged, specifying the various duties, drawbacks, bounties, &c., charged and allowed upon merchandise exported and imported, as settled by authority, or agreed on between the several princes and states that hold commerce together.

Tarika. Tarikat. (*Ind.*) Things left after death. Effects. Inheritances. Bequests.

Tarwad. (*Ind.*) A house; a family; especially a united family in Malabar whose affairs are managed by one or more of the chief members. The chief of the family is called *Karnavan*, and the junior members, *Anandravans*. The separate heirs of a member, *i. e.*, his brothers, sisters and their descendants, are called his *tavashi* (*Govindan* v. *Sankaran*, 6 M. L. T. 106; 32 Mad. 351).

Every member of a *tarwad* is the *karnavan* of his junior in age, and *anandravan* of those senior to him in the *tarwad*, the terms *karnavan* and *anandravan* being correlative, every member is thus a *karnavan* or *anandravan* of every other member in the *tarwad* (*Kenath Puthen* v. *Narayanan*, 28 Mad. 182, F. B.).

Tashhir. (*Meh. L.*) Public exposure; formerly the especial punishment for perjury.

Tath. In the counties of Norfolk and Suffolk, the privilege anciently claimed by the lords of manors to have their tenants' flocks or sheep brought at night upon their own demesne lands, there to be folded for the improvement of the ground.

Taulliat. (*Ind.*) Trusteeship or superintendence of a religious establishment; the management of the funds appropriated to its support; appointing a person to such an office; transferring property to him for such a trust. It also signifies a sale in which the owner

disposes of the article sold at the price which he originally paid for it.

The word implies the consignment of a thing appropriated to pious uses by the appropriator to another person, for the purpose of such person's applying it in the manner designated. Transferring property. The superintendency of Mosques and religious establishments.—*MacN. Meh. Law.* *See* MUTUWALI.

Tauliatnamah. A deed of trusteeship; one appointing a person to the management of a religious endowment.

Tavazhi. (*Ind.*). *See* TARWAD.

Tax (*taxa*; *tributum*). A tribute or imposition laid upon the subject; an excise; tallage.

Tax-ward. An annual payment heretofore made to a superior in Scotland instead of the duties due to him under the tenure of ward-holding; now abolished.

Taxation of costs. The mode by which certain officers of the various courts allow or disallow the sums claimed by solicitors from their clients, or by one party in an action from the other. The allowance of particular items in the bill will in a great measure depend on the order directing the taxation. In a bill sent in by a solicitor, items would be allowed which would not be allowed in the ordinary taxation of costs between parties in a suit or action. But in some cases, even between the parties to a suit or action, costs are given on the higher scale, and then the costs are said to be taxed *as between solicitor and client* (or *as between attorney and client*), as opposed to the ordinary taxation *as between party and party.*—*Mozley.* As between party and party, a taxation of costs is always had, and the costs which are disallowed cannot be recovered by the successful from the unsuccessful party, but must be paid nevertheless by such successful party to his solicitor unless they be disallowed as between solicitor and client. Taxation as between solicitor and client, which may be had whether the business be transacted in court or not, is only had upon the application of the party chargeable.—*Wharton.* *See* COSTS.

Taxing-masters. Officers of the Supreme Courts appointed to tax costs, who examine and allow or disallow items in bills of costs.

Taxing officer. An officer appointed in each House of Parliament to tax the costs of private bills. *See* TAXING-MASTERS.

Tazir. (*Ind.*) Punishment.

Team and theame. A privilege granted by royal charter to a lord of a manor, for the having, restraining, and judging of bondmen and villeins, with their children, goods and chattels, &c.

Teamster. A waggoner who carries goods for hire.

Teding-penny. Tething-penny. Tithing-penny. A small duty or payment to the sheriffs from each tithing, towards the charge of keeping courts, &c., from which some of the religious were exempted by royal charter.

Teinds. Tithes in Scotland are so called.

Teinds Court. (*Sc. L.*) A commission for the plantation of churches and settling of stipends of ministers out of the tithes of the various parishes. The commissioners are the judges of the Court of Session.

Teind-masters. Those who are entitled to tithes.

Teinland. Tainland. Thainland. *See* THANELAND.

Tellers. Those who number; numbers. Four officers of the Exchequer, formerly appointed to receive monies due to the king and to pay monies payable by the king; now abolished. Members of parliament appointed by the speaker to count the numbers in a parliamentary division; two tellers are appointed for each party, of whom one for the ayes and another for the noes are associated to check each other in the telling. There can be no division without two tellers on each side.

Tellworc. That work or labour which the tenant was bound to do for his lord, for a certain number of days.

Tementale. Tenementale. A tax of two shillings upon every ploughland. A decennary or tithing.

Templars (*templarii*). Otherwise called Knights of the Temple. A religious order of knighthood instituted about the year 1119, and so called because they dwelt in part of the buildings belonging to the Temple at Jerusalem, and not far from the sepulchre of our Lord. They entertained Christian strangers and pilgrims charitably, and in their armour led them through the holy land to view the sacred monuments of Christianity, without fear of Infidels; for at first their profession was to defend travellers from highwaymen and robbers.—*Tomlins.*

Temple. Two of the Inns of Court, called the *Inner* Temple and *Middle* Temple. So called because anciently they were the dwelling place of Knights Templars. On the suppression of that order, they were purchased by some professors of the Common Law, and converted into *hospitia* or inns of court. They were called the *Inner* and *Middle* Temple, in relation to the Essex House, which was also a part of the house of the Templars, and called the *Outer* Temple, because situated without Temple-bar. *See* INNS OF COURT.

Temporalities of bishops. Temporals. These are the secular possessions of the bishop as distinguished from ecclesiastical rights; such as revenues, lands, tenements and lay-fees annexed to the archbishops' and bishops' sees by the kings and others, as they are barons and lords of parliament.

Temporal lords. The peers of the realm; the bishops are not strictly peers but merely lords of parliament. *See* HOUSE OF LORDS, LORDS TEMPORAL.

Temporalty. The laity; seculiar people.

Temporary injunction. *See* INJUNCTION.

Tena. A coif worn by ecclesiastics.

Tenancy (*tenentia.*) The condition of a tenant; the temporary possession of what belongs to another.

Tenancy in common. This estate is created when several persons have several distinct estates, either of the same or of a different quantity, in any subject of property, in equal or unequal shares, and either by the same act or by several acts and by several titles, and not a joint title. This tenancy therefore happens where there is a unity of possession merely, but there may be an entire disunion of interest, of title, and of time. For if there be two tenants in common of lands, one may hold his part in fee simple, the other in tail or for life, so that there is no necessary unity of interest. One may hold by descent, the other by purchase; or the one by purchase from A, the other by purchase from B; so that there is no unity of title. One's estate may have been vested fifty years, the other's but yesterday; so there is no unity of time. The only unity there is is that of possession. Tenants in common are compellable to make partition of their lands, which they were not at common law. They properly take by distinct moieties, and have no entirety of interest, and therefore there is no survivorship between tenants in common Estates in common can only be dissolved (1) by uniting all the titles and interests in one tenant, by grant, devise, surrender or otherwise; which brings the whole to one severalty, (2) by making a voluntary partition between the several tenants in common, which gives them all respective severalties; for indeed tenancies in common differ in nothing from sole estates, but merely in the blending and unity of possession; (3) by compulsory partition. The estate is subject to curtesy and dower. It may also exist in moveable property.

Joint tenancy. This is where an estate is acquired by two or more persons in the same land, by the same title (not being a title by descent), and at the same period: and (if created by a written instrument) without any words importing that the parties are to take in distinct shares. The principal feature of this tenancy is that on the death of one of the parties his share accrues to the others by survivorship, till it passes to a single hand and the joint tenancy ceases. This right of survivorship (*jus accrescendi*) holds good as well in equity as at law. Equitable estates, therefore, are subject to joint tenancy and its properties. While equity recognizes this rule, it has laid down many exceptions to it, the most important of which are the following; (1) If two join in lending money on mortgage, though they take a joint security, yet equity holds that it could never have been intended that their interests should survive, the fair presumption being that each means to lend his own money, and to be repaid his own again; so that on the death of one, the survivor, who holds the entire legal estate, is deemed by equity a trustee for the personal representatives of the deceased co-mortgagee until the money be repaid; (2) When two persons purchase an estate and advance the purchase-money between them in *unequal* portions, equity treats them as tenants in common, notwithstanding the transfer be made to them generally; but the inequality must appear on the face of the conveyance. If the purchase-money be paid by them in *equal* portions, and the transfer is general, equity has not any ground to infer that this was not a joint purchase of the chance of survivorship, and they must be deemed even in equity as joint tenants; (3) When partners in trade purchase property for the partnership concern, equity treats them as tenants in common, holding the survivor to be trustee of the legal estate for the personal representatives of the deceased partner as to his share, the maxim on this subject being, *jus accrescendi inter mercatores locum non habet pro beneficio commercii*, the right of survivorship does not exist among merchants for the benefit of commerce.

A joint tenancy, being created by the convention of parties must arise out of the *same* deed, will, or claim, for there must exist a unity of *title* between them which must be by purchase, and not by mere operation of law, and the estate must vest in them at one and the same *time*; for a joint tenancy must subsist *ab initio*; an estate cannot become a joint tenancy by the happening of any circumstances *ex post facto*. Joint tenancy is also applied to the holding of personal property under the like conditions.

Tenancy at sufferance. *See* SUFFERANCE.

Tenancy at will. This is where a person is in possession of lands let to him to hold at the will of the lessor. The tenancy ceases at the will of the lessor. *See* ESTATE AT WILL, WILL.

Tenancy by the verge (or *rod*). The same as copyhold, which *see*.

Tenancy by copy That arising from copyhold tenure. *See* COPYHOLD.

Tenancy by curtesy. *See* CURTESY.

Tenancy for life. A tenancy under which a person holds an estate for his or another's life. *See* LIFE-ESTATE.

Tenancy in dower. *See* DOWRESS.

Tenancy in tail. *See* TAIL.

Tenant (*tenens*). One that holds or possesses lands or tenements by any kind of title, either in fee, for life, years, at will, or at sufferance, in dower, curtesy or otherwise; all lands being considered as *holden* of the king or some superior lord. One that has temporary possession and use of the land of another, correlative to *landlord*. A defendant in a real action. The word is also used in reference to interests in pure personalty, as when we speak of any one as tenant for life of a fund, &c. Tenants are distinguished

according to the nature of the estate which they hold, as a tenant in fee simple, a tenant in tail, a tenant for years, &c. *See* TENANCY, TAIL.

Tenant is a word which standing by itself denotes in law "one who holds land by any kind of title, whether for years or for life or in fee," and does not necessarily mean a "lessee" unless it is used in opposition to "landlord" (*Ekambara* v. *Meenatchi*, 27 Mad. 401).

Under the Bom. Land Revenue Code (Bom. Act V of 1879), s. 3 (15), tenant signifies a person who holds by a right derived from a superior holder called his 'landlord,' or from his landlord's predecessor in title; or where such highest right vests equally in more holders than one, any one of such holders. *See* HOLDER.

A tenant is a person who holds of another; he does not necessarily occupy. In order to occupy, a party must be personally resident by himself or his family (*per* Littledale, J., *R.* v. *Ditcheat*, 9 B. & C. 183).—*Stroud.*

Once a tenant always a tenant. Where a tenant has possession and enjoyment of certain land by virtue of his lease, he can never obtain ownership by prescription in any part of his leasehold, during the term of the lease (*Hiria* v. *Mahomed*, 4 N. L. R. 104; *Durga* v. *Atmaram*, 3 C. P. L. R. 160). *See* ESTOPPEL OF TENANT.

About twenty-five years before suit brought, R, being possessed of a house, allowed K to occupy it without paying rent, on condition that K would keep it in repair, and restore it to R on demand. Nine years afterwards and without any demand having been made by R, K died, and his heirs continued to occupy the house, apparently on the same terms as K had done. In a suit brought by R against the heirs of K, to recover possession of the house, *Held* that K occupied the house as tenant-at-will of R; that such tenancy was not, on the death of K, as of course, converted into an adverse occupation by the heirs of K in the absence of proof of the intention of the parties to that effect, and in the absence of anything to show that R did not assent to the heirs of K continuing to hold on the same terms as K had done (*Radhabai* v. *Shama*, 4 Bom. H. C., A. C., 155).

Tenant-right. In England, a custom ensuring to an outgoing tenant compensation from his landlord for not being able to reap the full benefit of labour or improvements expended or made during the tenancy; the money due in pursuance of the custom.—*Wharton.* In Ireland, a right on the tenant's part to sell his holding to the highest bidder, subject to the existing or a reasonable increase of rent from time to time as circumstances may require, with a reasonable veto reserved to the landlord with respect to the incoming tenant's character and solvency. Or, a custom ensuring a permanence of tenure in the same occupant without liability to any other increase of rent than may be sanctioned by the general sentiments of the community.

Tenant-right of renewal. The expectation of a lessee that his lease will be renewed, in cases where it is an established practice to renew leases from time to time, as in the case of leases from the Crown, from ecclesiastical corporations, or other collegiate bodies.—*Mozley.*

Tenant to the præcipe. This signified a tenant in a real action against whom a præcipe or writ was sued. But the phrase was especially used of a person against whom, in the proceeding called a *common recovery*, the fictitious action was to be brought.—*Mozley.* *See* RECOVERY.

Very tenant (verus tenens). *See* LORD.

Tenantable repair. Such a state of repair in houses or buildings as renders them fit for the present occupation of a tenant. A tenant from year to year of a house is bound to keep it wind and water tight, to use it in a tenant like manner, and to make fair and tenantable repairs, such as putting in windows or doors that have been broken by him, so as to prevent waste and decay of the premises.—*Mozley.*

Under an obligation to keep premises in *tenantable repair*, decorative repair is not included. Papering, always, and painting, unless needed for the protection of the property, are decorative repairs; nor does the obligation extend to repairing or restoring what is worn out by age; but waste, whether voluntary or permissive, is a breach of the obligation (*Crawford* v. *Newton*, 36 W. R. 54; *Proudfoot* v. *Hart*, 59 L. J. Q. B. 129).—*Stroud.*

Tend. Tende. To tender or offer; specially used in old pleading, as to tend a traverse, an averment, &c.

Tender. Offer. Proposal for acceptance. The offering of money or any other thing in satisfaction of a debt or liability. A tender must be absolute and unconditional, and the money must be actually produced at the time of the tender, unless that be dispensed with by the creditor.

Plea of tender. This signifies a plea by which the defendant alleges that he has been always ready to pay the debt demanded, and *before* the commencement of the action tendered it to the plaintiff, and now brings it into court ready to be paid to him. The plea of tender must be accompanied by an actual payment of the amount into court, such payment being in fact stated in the plea.—*Brown.*

A mere offer by a debtor by letter to pay an amount cannot be treated as a tender either in law or in equity; In order to stop interest, a strict tender should be proved (*Kamaya* v. *Devapa*, 22 Bom. 440). *See* SALE,

An offer by letter of the amount due on a mortgage is not a good tender within the meaning of s. 84 of the Transfer of Property Act. It is necessary that the money should be

actually produced, unless it could be shown that the person entitled to receive the money had waived this condition (*Chetan Das* v. *Gobind Saran*, 12 All. L. J. 111).

A valid tender which has been improperly refused stops the running of interest. For a valid tender, there must be an unconditional offer to pay a specific and ascertained sum. An offer to pay the amount found to be due on a comparison of accounts if the payee would execute an indemnity bond in accordance with law is not a valid tender (*Lal Batcha Sahib* v. *Arcot Narainaswami*, 34 Mad. 320).

A tender, which has been validly made and improperly refused, is kept good, if the person, who has made the tender, has from that time always kept the money ready to be paid on demand (*Kirpa Sindhu* v. *Annanda Sundari*, 11 Cal. W. N. 983, F. B.; 6 Cal. L. J. 273; 35 Cal. 34; *Krishnaswami* v. *Thippa*, 9 M. L. T. 131; Mad. W. N. 1911, p. 89). But *held*, in *Velaynda* v. *Hyder* (6 M. L. T. 262; 19 M. L. J. R. 648; 33 Mad. 100), that the word "tender" does not in itself imply that the tenderer must always be ready to pay the money. See ss. 83 and 84 of the Trans. of Pro. Act IV of 1882.

Legal tender. Coin, or paper money, which so far as regards the nature and quality thereof, a creditor may be compelled to accept in satisfaction of his debt.

In India, gold coins, whether coined at his Majesty's Royal Mint in England or at any Mint established in pursuance of a proclamation of his Majesty as a branch of His Majesty's Royal Mint, shall be a legal tender in payment or on account at the rate of fifteen rupees for one sovereign; provided that such coins have not been called in by any Proclamation made in pursuance of the Coinage Act, 1870, or have not lost weight so as to be of less weight than that for the time being prescribed for like coins by or under the said statute as the least current weight. The rupee and a half-rupee shall be a legal tender in payment or on account, provided that the coin has not lost in weight so as to be more than ten per cent. below standard weight, and has not been defaced. The quarter-rupee and eighth of a rupee shall be a legal tender for any sum not exceeding one rupee, provided that the coin has not lost in weight so as to be more than such percentage below standard weight as may be prescribed as the limit of reasonable wear, and has not been defaced. The nickle coin of one-anna shall be a legal tender for any sum not exceeding one rupee. Bronze coins of a pice, half pice and a pie shall be a legal tender for any sum not exceeding one rupee.—*Act III of* 1906 (*Coinage*), *ss.* 11 *to* 14. *See* LEGAL TENDER.

A universal currency note shall be a legal tender at any place in British India, and any other currency note shall be a legal tender at any place within the circle from which the note was issued, for the amount expressed in the note, for any revenue or other claim to the amount of five rupees or upwards due to the Govt. of India or due by the Govt. of India or by any body corporate or person in British India. Provided that no currency note shall be deemed to be a legal tender by the Govt. of India at any office of issue.—*Act II of* 1910 (*Paper Currency*), *s.* 15.

Tendering issue. If, in pleading, the defendant traversed or denied some allegation of fact of the plaintiff, a question was at once raised as to the existence or non-existence of the fact. A question being thus raised, the defendant as the party traversing, was obliged to offer to refer the question to the proper mode of trial, and he was thus said to "tender issue." Where the question was one of fact, the formula indicative of such offer was as follows—"and of this the defendant puts himself upon the country," &c., meaning that, with regard to the question in issue, he threw himself upon a jury of his countrymen.

Tenement (*tenementum*). Properly, a house or homestall; but more largely, it comprehends not only houses but all corporeal inheritances which are *holden* of another, and all inheritances issuing out of and exercisable with the same. In its original, proper, and legal sense, it signifies anything which may be holden, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial and ideal kind. *Frank-tenement* (*liberum tenementum*) or freehold is applicable not only to lands and other solid objects, but also to offices, rents, commons, and the like. And as lands and houses are tenements, so is an advowson a tenement; and a franchise, an office, a right of common, a peerage, or other property of the like unsubstantial kind, are all of them, legally speaking, tenements.—*Tomlins*.

Tenemental land. This denoted land distributed by a lord among his tenants, as opposed to the demesnes which are kept for his own enjoyment. *See* DEMESNE, MANOR.

Tenementary land. The outland of manors granted out to tenants by the Saxon thanes under arbitrary rents and services.

Tenheded. Tienheofed (*decanus*). The head of ten, or chief of ten persons. A dean.

Tenmentale. Tenmantale. The number of ten men, which number, in the time of the Saxons, was called a decennary; and ten decennaries made what is called a hundred. Also a duty or tribute to the Crown of two shillings for each ploughland.

Tenor. Sense contained; the purport of a document as opposed to its actual words; general course or drift. A copy or transcript of a writ or record. By the *tenor* of a deed, or other instrument in writing, is signified the matter contained therein, according to the true intent and meaning (*juxta tenorem*) thereof; it implies that a correct copy is set out. But the word *effect* (*ad effectum*) alone implies that the substance only is set out; it imports an identity in sense, but not in words. The tenor of a libel has been held to be a

transcript, which it cannot be if it differs from the libel. *See* EXECUTOR.

The law attaches a technical meaning to the word *tenor*, as signifying either an exact copy, or a statement of the libel verbatim. *Tenor* has so strict and technical a meaning as to make it necessary to recite verbatim; but the expression *manner and form* means nothing more than a substantial recital (*Wright* v. *Clements*, 3 B. & Ald. 503).—*Stroud.*

Tenths (*decimæ*). Tithes. Also the tenth part of the annual value of every spiritual benefice in the kingdom originally payable to the Pope, and after the Reformation, to the Crown by 26 Hen. VIII, c. 8, until applied by Queen Anne for the purposes of Queen Anne's Bounty, that is, for the augmentation of small livings, by 2 Anne, c. 8. *See* FIRST FRUITS, QUEEN ANNE'S BOUNTY. A temporary aid issuing out of personal property anciently granted from time to time by parliament.

Tenure (*tenura*). The manner whereby lands or tenements are holden of their lords. To hold land by *the tenure* of any given service is to hold land on condition of a faithful performance of that service; so that the non-performance thereof would be a cause of forfeiture to the lord. There can be no tenure without some service, because the service makes the tenure.

In England, the tenure of land was formerly *allodial* or *feudal*, the latter being held of a superior, the former not; and all land is now in theory held of the Crown mediately or immediately. Lay tenures were divided into (*a*) *frank tenements* or freehold, and (*b*) *villenage*; and frank tenements into (i) military tenures, as *Knight Service*, *Grand Serjeanty*, and *Cornage*, and (ii) free socage, as *Burgage* and *Gavelkind*. Ecclesiastical tenures, which were not abolished by 12 Car. II, c. 24, with other feudal tenures, are *frankalmoign*, and tenure by *divine service*, *e.g.*, to sing so many masses, for neglect of which the lord can distrain at once.—*Rawson*. See these titles.

Tenure-holder means a person who has acquired from a proprietor, or from other tenure-holder, a right to hold land for the purpose of collecting rents, or bringing it under cultivation by establishing tenants on it, and includes also the successor in interest of persons who have acquired such a right.—*Act VIII of* 1885 (*Bengal Tenancy*), *s.* 5 (1).

Terce (*Sc. L.*) Thirds, *i.e.*, the right which a widow has by the law of Scotland to the third part of the lands of which her husband died infeft. It corresponds to *dower* in England. *See* THIRDS.

Term. Terms (*terminus*). This signifies commonly the limitation of time or estate; as a lease for a term of life, or years, &c.

Term is also the period of time in which alone the superior courts of common law at Westminster were formerly open for the redress of injuries, *i. e.*, the courts of King's Bench, the Common Pleas, and Exchequer. But the High Court of Parliament, the Chancery, and inferior courts did not observe the terms. Of these terms, there were four in every year, *viz.*, Hilary Term, which formerly began on the 23rd of January and ended on the 12th of February, unless that day were Sunday, and then the day after; Easter Term began the Wednesday fortnight after Easter Day and ended the Monday next after Ascention Day; Trinity Term began on the Friday after Trinity Sunday, and ended the Wednesday fortnight after; and Michaelmas Term began on the 6th of November and ended the 28th of November, unless that day were Sunday, and then the day after.

By 11 Geo. IV and 1 Wm. IV, c. 70, and 1 Wm. IV. c. 3, the duration of the terms was as follows:—Hilary Term began on the 11th and ended on the 31st of January; Easter Term began on the 15th of April, and ended on the 8th of May; Trinity Term began on the 22nd of May and ended on the 12th of June; and Michaelmas Term began on the 2nd and ended on the 25th of November.

By the Judicature Act, 1873 (36 & 37 Vic. 66), s. 26, the division of the legal year into terms is abolished, so far as relates to the administration of justice. And the terms are superseded for this purpose, by the "sittings" of the Court of Appeal, and the "sittings" in London and Middlesex of the High Court of Justice. *See* SITTINGS. University terms for students are different from the law terms.

Term of years. Terms for years. This generally means a fixed period of time extending over several years; but in law of real property, it is especially used to signify an estate or interest in land to be enjoyed for a fixed period. Such an estate for years is generally denominated a "term" because its enjoyment is strictly fixed, and by "term" is meant not only the interest which passes, but also the period for which it is held. It is a chattel real; chattel, because it goes, on the death of the owner, to his executors or administrators, and not to his heir-at-law, and so far partakes of the nature of personalty; real, because it is an interest in lands, and partakes of the nature of real property. *See* CHATTELS. The operative verbs in a term are 'demise, *or* grant, lease, and to farm let'; but any other words showing the intention are sufficient for the purpose.

Term in gross. This designates an estate for years in land *not* held in trust for the party who would be entitled to the land on the expiration of the term. *See* ATTENDANT TERM, OUTSTANDING TERM, GROSS.

Term fee. A certain sum, which a solicitor is entitled to charge to his client, and the client to recover, if successful, from the unsuccessful party who has to pay costs to him; it is payable for every term in which any step was taken in the cause, from the time of the delivery of the declaration until final judgment; the term for this purpose was considered as including the following vacation.

Term probatory. The period of time allowed to the promoter of an ecclesiastical suit to produce his witnesses and prove the facts on which he rests his case.

Terms for the payment of rent. Rent terms. The four quarterly feasts upon which rent is usually paid. *See* QUARTER-DAYS.

Terms legal and conventional, in Scotland, are periods for the payment of rents; they correspond in some measure to *quarter-days* in England and Ireland. *See* QUARTER-DAYS. The *legal* terms are Whitsunday (15th May) and Martinmas (11th Nov.). *Conventional* terms are such as are created by contract between parties. The principal conventional terms in Scotland are Candlemas (2nd Feb.) and Lammas Day (1st Aug.).

Terms of the law. Artificial or technical words and terms of art, particularly used in and adapted to the profession of the law. A dictionary of law terms "*Termes de la Ley*" by Rastall, a judge of Common Pleas in the reign of Queen Mary.

To be under terms. A party in an action or other legal proceeding is said to be *under terms*, when an indulgence is granted to him by the court in the exercise of its discretion, on condition of his observing certain things. Thus, when an injunction is granted *ex parte*, the party obtaining it is put *under terms* to abide by such order as to damages as the court may make at the hearing.—*Mozley.*

Terminable property. Such property as has no permanent duration, but will and must end and determine at a certain term, usually ascertained beforehand; as leaseholds, and the like.

Terminal charges. Charges made at either terminus, by a railway company, in addition to the charges for carriage, as for warehousing, loading, cartage to or from station, &c. Charges for the use of goods station and for the various duties which a railway company, as common carriers, perform in connection with the goods consigned to them for carriage. Charges which are levied on account of the carrying of goods to and from the waggon, loading and unloading them on and from the waggon, and for the use of the company's premises till the goods are removed (*Laljibhai* v. *The G. I. P. R. Co.*, 15 Bom. 537; on appeal, 19 Bom. 434).

Termor. He that holds lands or tenements for a given number of years or for life; generally applied to a person entitled to a term of years.

Terrage (*terragium*). A land tax. Also an exemption from all uncertain services or land taxes.

Terre-tenant. Tertenant (*terræ tenens*). He who is in the actual possession, occupation or enjoyment of land. For example, a lord of a manor has a freeholder, who letteth out his freehold to another to be occupied by him; this occupier (having the actual possession) is called the terre-tenant. The phrase also denotes sometimes the owner of the legal estate, *e. g.*, the trustee's estate; and in that sense, although the *cestui que trust* should die without heirs, the lands will not escheat to the lord for want of a tenant (*per defectum sanguinis*), for the tenant is the terre-tenant (*Burgess* v. *Wheate*, 1 Eden, 177).

Terrier. Terrar (*terrarium*). A land roll or survey of lands, either of a single person or of a town, containing the quantity of acres, the tenants' names, and such like.

Ecclesiastical terriers contain a detail of the temporal possessions of the church in every parish.

Territorial jurisdiction. It is a maxim of almost every jurisprudence, that the jurisdiction of a country is limited by its territory, including in such phrase its dominions proper and also its territorial waters (*see* HIGH SEAS). However, by the comity of nations, the decrees of the country are in many instances aided by other countries in their execution; and certain offences (*e.g.*, international piracy) are justiciable everywhere (*See* COMITY OF NATIONS).—*Brown.*

Territorial waters. The part of the open sea within one marine league, *i. e.*, three miles of the coast of a country as measured from the low water mark, over which the jurisdiction of the Admiral (*i. e.*, of the Court of Admiralty) extends. By international law they are held to be within the jurisdiction of that country, so that, even foreign ships within that distance are under its control. *See* HIGH SEAS.

Territory of a judge. The district within which he has right of jurisdiction, and of deciding the causes proper to him, beyond which his acts as a judge are null.

Testable. Having testamentary capacity. All persons of full age and not under the disability of coverture, or of unsoundness of mind, can make a will; married women can do so as to their separate estate.

Testament (*testamentum*). A disposition of personal property to take place after the owner's decease, according to his desire and direction. The true declaration of a man's last will as to that which he would have to be done after his death. *See* WILL.

Testamentary. Given by a will or testament; contained in a will; relating to a will, as testamentary powers. *See* TESTABLE.

Testamentary causes. Proceedings in the Probate Division of the High Court of Justice relating to the proving, validity, and execution of wills, and intestacies of personal property. These causes formerly belonged to the ecclesiastical jurisdiction.

Testamentary estate. This phrase in a gift of "personal and testamentary estate" carries the realty; as otherwise it would be inoperative (*Smith* v. *Coffin*, 2 H. Bl. 445; *Roe* d. *Penwarden* v. *Gibbert*, 3 Brod. & B. 85; *Doe* d. *Evans* v. *Walker*, 19 L. J. Q. B. 293; 15 Q. B. 28). In the last of these cases Camp-

bell, C. J., said, "I think the words 'my testamentary estate' mean to include all that I can dispose of. They are *prima facie* sufficintly large to carry both the realty and personalty."—*Stroud.*

Testamentary guardian. A guardian appointed by will. By state . 12 Car. II, c. 24, a father may, by deed or will, appoint a guardian to his infant children. *See* GUARDIAN.

Testate. Having made a will; one who dies having made a will.

Testation. Witness; evidence.

Testator. He who makes a will or testament.

Testatrix. She who makes a will.

Tested. Bearing witnesses; attested.

Testes, proof of will per. A proof of a will by witnesses in a more solemn form than ordinary, in cases where the validity of the will is disputed. *See* SOLEMN FORM.

Testes, trial by. *See* TRIAL.

Testimonial. Generally, a written recommendation to character. Especially, under 39 Eliz. c. 17, a certificate under the hand of a justice of the peace, testifying the place and time where and when a soldier or mariner landed, and the place of his dwelling or birth unto which he was to pass, and a convenient time limited for his passage.

Testimonial proof. (*Civ. L.*) Parol evidence

Testimonium clause. The attesting clause in a will.

Testimony. Evidence given; proof by a witness. *See* PERPETUATING TESTIMONY.

Textile factory. *See* FACTORY.

Thakbust. (*Ind.*) The operation of laying down the boundaries of village mahals or estates.

Thana. (*Ind.*) A station; a military post; a police station.

Thanadar. A petty police officer.

Thanage of the King (*thanagium regis*). This signified a certain part of the king's land or property, whereof the ruler or governor was called thane.

Thane. An Anglo-Saxon nobleman. It signifies sometimes a nobleman, sometimes a freeman, sometimes a magistrate, but more properly an officer or minister of the king. An old title of honour, perhaps equivalent to baron. Soon after the Conquest this name was disused.

Thanelands. Such lands as were granted by charter of the Saxon kings to their thanes; which were held with all immunities, except the *trinoda necessitas*, threefold necessity, *i. e.*, of expeditions, repairs of castles and mending of bridges.

Thaneship. The office and dignity of a thane.

Thavie's Inn. Once an Inn of Chancery. *See* INNS OF CHANCERY.

Theft (*furtum*). An unlawful felonious taking away of another man's moveable and personal goods, against the will of the owner.

Whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves such property in order to such taking is said to commit theft. A thing, so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth. A moving, effected by the same act which effects the severance, may be a theft. A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it. A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal. The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.—*Act XLV of* 1860 (*Penal Code*), *s.* 378. *See* ROBBERY.

Theft, in the English law, goes by the name of *larceny*, which is defined as the wrongful taking and carrying away by any person of the personal goods of another from any place, with a felonious intention to convert them to his own use, and make them his own property without the consent of the owner. *See* LARCENY.

Distinction between larceny and theft. Under larceny, the stolen property should be the *property* of some one; whereas under theft, it should be *in the possession* of some one; that is, theft may be committed though the person from whom the thing is taken has no title thereto, but a larceny implies a taking from the possession of the *rightful owner.* Under theft, everything becomes its object which is *moveable*, *i. e.*, capable of being severed from its place; hence it is theft to sever and remove things which are attached to the ground, such as trees, vegetables, &c.; in larceny, no offence is committed if the objects removed *savour of the realty*, and are, at the time they are taken, part of the freehold, whether they be of the substance of the land, as lead or other minerals, or of the produce of the land, as trees, corn, grass, or other fruits, or things affixed to the land, as buildings, and articles such as lead, &c., annexed to buildings; the severance and taking of things of this description was at common law only a trespass. Under larceny it is necessary to show an intention to *appropriate* the chattel, and exercise an *entire dominion* over it; under theft, it is only necessary to show an intention to take dishonestly the property out of any person's possession without his consent, and that it was moved for that purpose; it makes no difference that the person does not intend to assume entire dominion over the property taken, or to re-

tain it permanently (*Empress* v. *Nagappa*, 15 Bom. 344). Under larceny it must be shown that the taking was *against* the person's consent; under theft it will be sufficient to show that it was *without* his consent. To constitute theft it is unnecessary to prove that the thief ever had the stolen thing *in his power*; but there can be no larceny, even if there has been an actual removal, if the offender *has never had* the thing in his power.

Theftbote. The receiving by a party robbed, of his goods back again, or *other* amends, upon an agreement not to prosecute, and to the intent that the thief may escape. It is a species of the offence called *compounding a felony*, and is punishable. According to some, it is not theftbote to receive one's own goods from the thief.

Theka. Thekadar. (*Ind.*) A *thekadar* is ordinarily a person who holds a *theka* or lease of the whole of a zemindar's interest in a village. The term *thekadar* is properly applicable to hereditary cultivators only when they have also a *theka* or lease of a share in, or the whole of the profits of, an estate (*Baijnath* v. *Munglee*, 2 N.-W. P. 411; *Leela Dhur* v. *Bhugwunt*, 3 N.-W. P. 39).

Them. Theme. The right of having all the generation of villeins, with their suits and cattle. *See* TEAM AND THEAMB.

Theoden. An under-thane. Among the Saxons, the earl or prime lord was called thane, and the king's thane; and the husbandman or inferior tenant was called theoden or under thane.

Theof. (*Ang -Sax.*) Offenders who joined in a body of seven to commit depredations.

Theowes. Theowmen. Thews. The slaves, captives, or bondsmen among the Saxons were called *theowes* and *esnes*; who were not counted members of the commonwealth, but parcels of their master's goods and substance.

Thereabouts. *See* MORE OR LESS.

Thethinga. A tithing.

Thew. A cucking-stool or ducking stool, for the punishment of scolds. *See* CASTIGATORY.

Things. The subjects of dominion or property, as distinguished from *persons*. Things may be either *in action* or *in possession*; the former are not immediately available to the owner without the consent of some other person, whose refusal will give a right of *action*; the latter may be used immediately without the concurrence of any other person.—*Mozley*. Things are also distributed into—things *real* or immoveable, comprehending lands, tenements, and hereditaments; things *personal* or moveable, comprehending goods and chattels; and things *mixed*, partaking of the characteristics of the two former, as a title-deed, a term of years. The Civil Law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*).—*Wharton*.

A bequest of "all things" in a particular house will not pass bonds and other choses in action (*Popham* v. *Aylesbury*, 1 Amb. 68). A residuary bequest of "all things not before bequeathed" will not pass the testator's share in leaseholds (*Cook* v. *Oakley*, 1 P. Wms. 302).—*Stroud*.

Thingsters. A sort of gentle beggars.

Thingus. A nobleman, knight, or freeman.

Third-borough. Third borow. An under constable.

Thirdlings. The third part of the corn growing on the ground, due to the lord for a heriot on the death of his tenant, within the manor of Turlat in Hereford.

Third-night-awn-hinde (*trium nootium hospes*). A guest of three nights. By the laws of St. Edward the Confessor, if a guest lay a third night in an inn, he was accounted a domestic, and his host was answerable for any offence he might commit. *See* AGENHINE.

Third party. The phrase is used to introduce any one, into a scene already occupied by two in a definite relation to one another, as principal and agent, guardian and ward, solicitor and client, or the two parties to a suit or litigation.—*Wharton*. *See* AS AGAINST.

Thirds. The widow's right to one-third part of her husband's personal property, in the case of his decease intestate leaving children or a child. The widow takes her thirds absolutely, and not (as in the case of her dower-third) for life only. Thirds (like dower) are defeasible by the husband's will. *See* TERCE.

Thirlage. (*Sc. L.*) A servitude by which the possessor of the servient tenement was bound to carry the grain growing on his lands to a certain mill to be ground, and to pay the owner of the mill a certain proportion of the same, which is called a *multure*. *See* MULTURE. The lands constituting the servient tenement were said to be *astricted to the mill*. Under 39 Geo. III, c. 55, this servitude may be commuted, on application of either party, to an annual payment in grain.

This day six months. An expression used in parliament to mean "never." Thus a proposal to read a bill "this day six months" is a proposal to reject it because parliament would not be sitting six months hence. "This day three months" has also the same meaning. The term fixed in either case is one beyond the probable duration of the session.—*Mozley*.

Thistle-take. This was a custom in the manor of Halton in Chester, that if in driving beasts over a common the driver permitted them to graze or take but a thistle, he should pay a halt penny a beast to the lord of the fee. And in Fiskerton in Nottinghamshire, by ancient custom, if a native or cottager killed a swine above a year old, he paid to the lord a penny, which purchase of leave to

kill a hog was also called thistle-take.—*Tomlins.*

Tholed an assize. The plea of having tholed an assize, in criminal cases, is equivalent to a plea that the prisoner has stood trial already.—*Rawson.*

Threats. Any means of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free voluntary action which alone constitutes consent.—*Moxley.* Threats and menaces of bodily hurt, through fear of which man's business is interrupted, are a species of injury to individuals. A menace alone, without a consequent inconvenience, makes not the injury; but, to complete the wrong, there must be both of them together. The remedy for this is pecuniary damages, to be recovered by action of trespass *vi et armis*, this being an inchoate though not an absolute violence.—*Tomlins.* *See* CRIMINAL INTIMIDATION.

Three A.'s. The rule of the three A.'s is that an attorney, agent or arbitrator may be added as a party and made liable for costs.—*Rawson.*

Threnges. In the time of the Conqueror, these were vassals, but not of the lowest degree, of those who held lands of the chief lord. Also called *Drenches.*

Thrithing (*thrithingum*). A division consisting of three or four hundreds; or, a court of such division. Hence the word *riding.*

Throw out To ignore, *e. g.*, a bill of indictment. *See* IGNORE.

Thude weald. (*Sax.*) A woodward, or person that looks after a wood.

Thug. (*Ind.*) A cheat; a knave. Whoever shall have been habitually associated with any other or others, for the purpose of committing robbery or child-stealing by means of, or accompanied with, murder, is a thug.—*Act XLV of* 1860 (*Penal Code*), *s.* 310.

Thewertnick. (*Sax.*) The custom of giving entertainments to a sheriff, &c., for three nights.

Ticket of leave. A written license to a convict sentenced to penal servitude, to be at large for good conduct before the expiration of his sentence. Such license is revocable upon subsequent mis conduct.

Ticket of leave man. A convict who has obtained a ticket of leave.

Tip. (*Ind.*) A note of hand; a promissory note or bill; a bond or cheque; a memorandum; an inventory; a list of houses, trees, cattle, &c., preparatory to a tax upon them.

Tirait. (*Ind.*) An umpire, an arbitrator; any third person; a stranger; a *punchayat* collectively.

Tidal river. An arm of the sea where the sea flows and re-flows, Therefore a river is a tidal river in such parts only as are within the regular ebb and flow of the highest tides.—*Stroud.*

Tidesman. Tidewater. An old name for a custom house officer appointed to watch or attend upon merchant ships, till the goods on board are examined and placed in bond, or the duties are paid. So called because the officers go aboard the ship at their arrival, and come up with the tide.

Tigh. A close or enclosure.

Tillage (*agricultura*). Land under cultivation, as opposed to lands lying fallow or in pasture. So careful is our law to preserve tillage or agriculture, that a bond or condition to restrain tillage or sowing of land, &c., is void.—*Tomlins.*

Timber. Wood felled or fitted for building or repairing, or other such like use. In a legal sense it extends to oak, ash and elm, &c., but in some parts of the country, where other kinds of trees are generally used for building, they are also for that reason considered as timber. For a tenant for life to cut down timber trees, or to do any act whereby they may decay, is waste, timber being part of the inheritance.

Many descriptions of trees, which are not generally considered as timber, are so in some places by the custom of the country, *being there used for the purpose of building*; thus it has been laid down that Horse-chestnuts, Limes, Birch, Beech (*R. v. Minchinhampton*, 3 Burr. 1309), Ash, Walnut trees, and the like, may under such circumstances be deemed timber, and therefore are protected by the law as such (*Chandos v. Talbot*, 2 P. Wms. 606; *Palmer's Case*, Co. Litt. 53 a). It has been determined that, in the county of York, Birch trees are timber, because they are used in that county for building sheep-houses, cottages, and such mean buildings (*Cumberland's Case*, Moore, 812); and it would seem that, in Hampshire, Willows have been considered as timber by the custom of the country (*Layfield v. Cowper*, 1 Wood, 330; *Gruffly v. Pindar*, Hob. 219). *Woodfall on Landlord and Tenant.*—*Stroud.*

Every tenant for a limited estate (other than a tenant at will) is entitled to estovers (*See* ESTOVERS). A tenant for life may therefore fell timber for (among other purposes in support of this enjoyment) the necessary repairs of his tenement; and such a tenant, if without impeachment of waste, may even cut timber (not being ornamental) for sale. When timber is blown down or wrongfully cut, the property in it vests in the first estate of inheritance *in esse*, subject (when it is sold and proceeds invested) to the prior life estates.—*Brown.*

By the term "timber" is meant properly such trees only as are fit to be used in building and repairing houses. A mango tree, which is primarily a fruit tree, might not always come within the term "standing timber," as used in the definition of immoveable property in s. 3 of the Registration Act (XX of 1866). But it may be classed as a timber

tree where, according to the custom of a locality, its wood is used in building houses (*Krishnarao* v. *Babaji*, 24 Bom. 31).

"*Main timbers*," in a covenant to repair, will include iron beams which are used as substitutes for timbers (*Manchester Bonding Warehouse Co.* v. *Carr*, 49 L. J. C. P. 812; 5 C. P. D. 507).

Timberlode. A service by which tenants were bound to carry timber felled from the wood to their lord's house.

Time bargain. A contract for the sale of a certain amount of stock at a certain price on a future day, the vendor not in general having such stock to sell at the time of the contract, but intending to purchase it before the time appointed for the execution of the contract. Such a contract is illegal at Common Law and under stat. 8 & 9 Vic. c. 109. *See* PUTTS AND REFUSALS.

Time-barred. *See* STATUTE-BARRED.

Time immemorial. Time out of mind. Time beyond legal memory, *i. e.*, time prior to the commencement of the reign of Richard I, A. D. 1189. Time whereof the memory of man runneth not to the contrary. *See* LEGAL MEMORY.

Time policy. A policy of marine insurance in which the risk is limited, not to a given voyage, but to a certain fixed term or period of life; in such policies the risk insured is entirely independent of the voyage of the ship.—*Mozley.* *See* MIXED POLICY.

Time the essence of the contract. Where a contract specifies a time for its completion, or something to be done towards it, then, if time be of the essence of the contract, the non-performance by either party of the act in question by the time so specified will entitle the opposite party to regard the contract as broken. Whether time be or be not of the essence of the contract must, in the absence of express words, be gathered from the general character of the contract and the surrounding circumstances.—*Mozley.* At Law time used to be always of the essence of the contract (*Stowell* v. *Robinson*, 3 Bing. N. C. 928); but in Equity the question of time was differently regarded; for a court of Equity discriminated between those terms of a contract which were formal, and those which were of the substance and essence of the agreement (*Parkin* v. *Thorold*, 16 Beav. 59); and accordingly held time to be *prima facie* non-essential. Now the rules of Equity as to whether time is or is not of the essence of the contract prevail at Law also (Judicature Act 1873, s. 25, sub-s. 7; *Noble* v. *Edwards*, 5 Ch. D. 378).—*Brown.*

Tineman. Tienman. A petty officer in the forest who had the care of vert and venison at night and other servile duties.

Tinewald. The ancient parliament or annual convention of the people in the Isle of Man.

Tinpenny. A tribute paid for the liberty of digging in tin mines.

Tinsel of the feu. (*Sc. L.*) The loss or forfeiture of the estate held by the feu duty in Scotland, from allowing two years' feu duty to remain unpaid. To *tyne* in Scotch is to *lose.*

Tipstaffs. Tipstapps. Tipstaves. Officers appointed by the marshall of the King's Bench to attend upon the judges with a kind of rod or staff tipt with silver, who take into their custody all prisoners either committed or turned over by the judges at their chambers, and to attend such prisoners as go at large upon license. Constables attending courts.

Tithes (*decimæ*). A certain part of the fruit, or lawful increase of the earth, beasts, and men's labour, which in most places, and of most things, is the tenth part, which by law hath been given to the ministers of the Gospel, in recompense of their attending their office. They are a species of ecclesiastical incorporeal hereditaments. Tithes, with regard to value, are divided into *great* and *small*. *See* GREAT TITHES, SMALL TITHES. Almost all the tithes of England and Wales are now commuted into rent-charges under 6 & 7 Wm. IV, c. 71. *See* TITHE RENT-CHARGE.

Tithe-free. Exempted from the payment of tithes.

Tithe rent-charge. A charge on land, substituted by commutation for that charge on the produce of the land for the benefit of the church which was called *tithe*, from being the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon the lands, and the personal industry of the inhabitants; the first species being usually called *prædial*, among which are tithes of corn, grass, hops and wood; the second *mixed*, as of wool, milk, pigs, &c.; and the third *personal*, as of occupations, trades, fisheries, and the like. As between landlord and tenant, the tenant paying the tithe rent-charge is entitled, in the absence of express agreement, to deduct it from his rent. Prædial tithes are comprised under *great* tithes, while mixed and personal tithes are classed among *small* tithes.

The *parsonage* or *rectorial* tithe is of corn; the *vicarial* tithe is of lesser fruits, *e. g.*, cattle, fowls, &c.

Tithing. (Sax. *dacuria*). Originally, the number or company of ten men with their families held together in a society, all being bound to the king for the peaceable behaviour of each other; of these companies there was one chief or principal person called *teothingman* or *tithing-man*, who was in fact a constable. In Saxon times, for the better conservation of the peace, and more easy administration of justice, every hundred was divided into ten districts or tithings, and within every tithing the tithing-men were to examine and determine all lesser causes between villagers and neighbours, but to refer greater matters to the then superior courts, which had a jurisdiction over the whole hundred.

Tithing-man. The head of a tithing. A petty constable. A peace officer.

Tithing penny. *See* TEDING-PENNY.

Title (*titulus*). A title of honour, which is an addition to a person's name, implying that he has some honour, office or dignity. A general head, comprising particulars, as in a book. A claim of right.

Title to lands or goods signifies either (1) a party's right to the enjoyment thereof, or (2) the means whereby such right has accrued, and by which it is evidenced; or, as it is defined by Blackstone, the means whereby an owner hath the just possession of his property.—*Mozley.*

There are several stages or degrees requisite to form a complete title to lands and tenements:—(1) The lowest and most imperfect degree of title consists in a mere naked possession, or actual occupation of the estate, without any apparent right, or shadow or pretence of right, to hold and continue such possession; which naked possession, by length of time, and negligence of him who hath the right, may by degrees ripen into a perfect and indefeasible title; and, at all events, without actual possession, no title can be completely good; (2) The next step to a good and perfect title is a right of possession, which is either actual or apparent, and which may reside in one man, while the actual possession is in another. This actual possession may be recovered by him who has the right of possession, if sued for within a competent time; otherwise he will have nothing left in him; (3) There is also a third stage or degree, *viz.*, the mere right of property, without even possession, or the right of possession (*See* MERE RIGHT, TURNED TO A RIGHT). Title to lands, tenements and hereditaments is said to accrue either by descent or purchase (*See* PURCHASE).—*Tomlins.*

Property in, or title to, things personal may be acquired or lost either by occupancy, prerogative, invention, forfeiture, custom, succession, marriage, judgment, gift, grant, contract, bankruptcy or insolvency, will, or administration.

Doubtful titles. There are at least three species of doubtful titles:—(1) Where the title is doubtful by reason of some uncertainty in the law itself; (2) where the doubt is as to the application of some settled principle or rule of law; and (3) where a matter of fact upon which a title depends is either not in its nature capable of satisfactory proof, or, being capable of such proof, is not yet satisfactorily proved.—*Wharton.*

Good title. A good title is produced whenever it appears that upon certain acts being done, the legal and equitable estates in the property contracted for will become vested in the purchaser, those acts being such as the vendor can either himself perform or cause to be performed.—*Ibid.* When we speak of a man having a *good* title to his property, we mean that the evidence of his right is cogent and conclusive, or nearly so; and when we speak of a *bad* title, we mean that the evidence is weak and insufficient.—*Mozley.* *See* GOOD TITLE.

Buying of pretended titles. *See* CHAMPERTY, MAINTENANCE, PRETENDED RIGHT.

The *title of an Act of Parliament* is its heading; sometimes the Act has also a "short title" more condensed than the heading, mentioned in the body of the act as the name by which it is to be called or known.

Title of clergymen to orders. A certificate of preferment or provision, in order that a person may be admitted into holy orders; an assurance of being preferred to some ecclesiastical benefice. Some certain place where clergymen may exercise their functions; a title, in this sense, is the church to which a priest was ordained, there constantly to reside, the church being called a *titulus.*

The *title of an affidavit* consists of two parts—(1) the style of the court (*i. e.*, the division of the High Court of Justice) in which the affidavit is to be used, and (2) the names of the parties to the action or other proceeding. Writs, pleadings and all other documents used in legal proceedings are headed by similar titles.

Title-deeds. Documents of title to land; deeds evidencing a person's right or title to lands; otherwise called *muniments of title.* *See* DOCUMENT OF TITLE. The possession of the title-deeds is of importance, as the land cannot be sold without them. Thus, what is called an equitable mortgage is generally effected by a deposit of title-deeds. *See* EQUITABLE MORTGAGE, MORTGAGE.

Title of entry. This is when one seised of land in fee makes a feoffment thereof on condition, and the condition is broken; after which the feoffer has title to enter into the land, and may do so at his pleasure; and by his entry the freehold shall be said to be in him presently.—*Tomlins.* *See* ENTRY.

See ABSTRACT OF TITLE, COVENANTS FOR TITLE.

Titulars of Erection. Persons who in Scotland, after the Reformation, obtained grants from the Crown of the monasteries and priories then *erected* into temporal lordships. Thus the titles formerly held by the religious houses, as well as the property of the lands, were conferred on these grantees, who were also called Lords of Erection and Titulars of the Teinds.—*Mozley.* *See* LORDS OF ERECTION.

Toalia. A towel. There is a tenure of lands by the service of waiting with a towel at the king's coronation.

Tocher. (*Sc. L.*) The marriage proportion or dowry which a wife brings to her husband.

Toft (*toftum*). A messuage or house; or rather a place or piece of ground where a house formerly stood, but is decayed or casually burnt, and not re-edified. It is a

word much used in fines (*see* FINE) wherein we often read *toftum* and *croftum*.—*Tomlins*. *See* CROFT.

Toftman. (*toftmanus*). The owner or possessor of a toft.

Toll. To bar, defeat, or take away; as to toll an entry, is to deny and take away the right of entry by lapse of time or otherwise; hence the right of entry was said to be *tolled*. A payment in towns, markets and fairs, for goods and cattle bought and sold; it is a reasonable sum of money due to the owner of the fair or market upon sale of things tollable within the same; a liberty to take toll. The word is also used for a liberty to be free from the payment of such tribute; a liberty to buy and sell within the precincts of a manor, which seems to imply as much as a fair or market. A tribute or custom paid for passage.

Tollage. Any custom or imposition; the same as tailage.

Tollbooth. *Tolbuthe*. A booth for the collection of tolls; a custom house. The place where goods are weighed, &c. A place of confinement for those who refused to pay custom; hence a prison.

Toll-corn. Corn taken for toll ground at a mill.

Toll dish. A vessel by which the toll of corn for grinding is measured.

Toller. One who collects tribute or taxes.

Toll gatherer. The officer who takes or collects toll.

Toll-hop. A small dish or measure by which toll is taken in market, &c,

Toll-thorough. Money paid for the passage of man or beast in or through highways, or over ferries, bridges, &c. This is when a town prescribes to have toll for such a number of beasts, or every beast that goeth *through* their town, or over a bridge or ferry maintained at their cost.

Toll-traverse or *Travers*. This is where one claims to have toll for every beast driven *across* his ground, for which a man may prescribe, and distrain for it in *via regia*; it is properly when a man pays certain toll for passing over the soil of another man in a way not a high street.

Return toll. *Turn toll*. A toll paid for beasts that are driven to market to be sold and do *return* unsold. There is also *in* toll and *out* toll, mentioned in ancient charters.

Tolsester (*tolcestrum*). A duty paid by the tenants of some manors to the lords for the liberty to brew and sell ale.

Tolsey. Tolzey. The seat of toll, that is, the place where merchants meet in a city or town of trade. Also the name of the local court of civil jurisdiction in the city of Bristol.

Tolt. A writ whereby a cause depending in a court baron was taken and removed into a county court.

Tonnage. The carrying power of a ship; the estimated number of tons' burden that a ship will carry. A custom or impost paid to the king for merchandise carried out or brought in in ships, at a certain rate for every ton.

Tonnage rents. *See* ROYALTY.

Tontine. A life annuity, or a loan raised on life-annuties, with benefit of survivorship. A species of loan, in which the parties who invest receive life annuties with benefit of survivorship. The nature of the plan is this —An annuity after a certain rate of interest, is granted to a number of people, divided into classes according to their respective ages, on the understanding that, as deaths occurred, the annuities should continue payable to the survivors of the class, and that the last survivor should take the whole. So that the whole annual fund of each class is regularly divided among the survivors of that class; and on the death of the last survivor, reverts to the power by which the tontine was erected. The system is so called from its inventor Lorenzo Tonti, an Italian, who lived in the seventeenth century, when the Governments of Europe had some difficulty in raising money in consequence of the wars of Louis XIV, who first adopted the plan in France.

Toohr. Under the Mehomedan Law, *toohr* means the period of purity (*i. e.*, between two occurrences of monthly courses) in a woman.

Top annual. (*Sc. L.*) An annual rent out of a house built in a burgh.

Tora. (*Ind.*) A purse or bag of money.

Tora Garas Huk. An annual payment or rent-charge of a fixed nature on a village *jumma*, made by the Bombay Government through their collectors in the different zillas of Gujarat.

Tort. A wrong; so called because it is wrested (*tortum*), wrung, or crooked. The word is especially used to signify a civil wrong independent of contract; that is to say, an actionable wrong not consisting of a breach of contract. An action for such a wrong is called an *action of tort*.—*Moxley*.

Tort is a term of art in English law. The word means that which is wrested or crooked, and so that which is contrary to right. A tort has been usually described as a wrong independent of contract. As such, a tort may be described as an invasion by A of B's rights which avail against persons generally, in respect of either property, person, liberty or reputation. The Roman law called such wrongs *delicts*, and they have been defined as spontaneous, that is, free or voluntary actions or omissions contrary to law. The wrong being an act which is against right or law, the obligation to make reparation for the damage arises from the fault and not from the intention; and conversely, a thing which is not a legal injury or wrong, is not made actionable by being done with a bad intent.—*Collect on Torts*.

A person commits a tort and renders himself liable to an action for damages, who (independent of any contract) commits some act not authorized by law, or omits to do something which he ought to do by law, and by such act or omission either infringes some absolute right, to the uninterrupted enjoyment of which another is entitled, or causes to such other some substantial loss of money, health or material comfort, beyond that suffered by the public. Thus it will be perceived that two distinct factors go to make a tort, *viz.*, (1) A wrongful act or omission independent of contract; and (2) either a consequential invasion of another's right, or the consequential infliction on him of some loss. Neither of these two factors will, by itself, be sufficient to sustain an action for damages, though the first may, under certain circumstances, be alone sufficient to sustain an action for an injunction.—*Underhill on Torts.*

The action of *tort* will lie for a direct injury to the person or property, for the wrongful taking or conversion of goods, for consequential damage; the right of action for a tort being founded (1) on the invasion of some general legal right; or (2) on the violation of duty towards the public, productive of special damage to the plaintiff; or (3) on the infraction of some private duty or obligation productive likewise of damage to the plaintiff.—*Broom's Com. Law.*

Damage without injury. Injury without damage. An invasion of a right, or the infliction of damage, unconnected with a wrongful act, is technically called a *damnum absque injuria* (damage without injury), the word *damnum* being used to signify the invasion of a right or the infliction of loss, and the word *injuria* being used to signify a wrongful act or omission, and it is a maxim that *ex damno absque injuria non oritur actio* (damage without injury is not actionable). Thus a great loss and misery may be caused by an individual with impunity, so long as he is careful to avoid doing an unlawful act or making an unlawful omission. It has been said that although a *damnum absque injuria* is no ground for an action for damages, yet there are certain cases in which an *injuria* is sufficient without a *dumnum*, or as it has been expressed, *ex injuria sine damno oritur actio* (injury without damage is actionable). —*Underhill on Torts.*

Damage without injury is never actionable; or more accurately, mere loss in money or money's worth does not of itself constitute legal damage. To set up a shop in opposition to another, may cause loss of custom, and so damage, but it is not actionable: but to drive away customers by threats or by publishing defamatory statements regarding a man's trade, is actionable. So every man has a right to derive the fullest benefit from that which in his, though the exercise of his right may be contrary to the interests of another. But injury, though without damage or money loss, is actionable; or more accurately, an injury imports legal damage though there is no pecuniary loss, and actual perceptible damage is not indispensable as the foundation of an action. It is sufficient to show the violation of a right, in which case the law will presume damage. Thus a trespass on another's land may cause no actual damage; and generally, wherever any act injures another's right, and would be evidence in future in favour of the wrong-doer, an action may be maintained for an invasion of the right without proof of any special damage.—*Collett on Torts.* *See* DAMAGE, INJURY.

Actions arising *ex delicto*, or founded on tort, are four in number, *viz.*, trespass, case, trover and replevin.

Trespass. Trespass is the proper form of action for a direct injury to person or to property, *i. e.*, for an injury caused by immediate violence or force—actual or implied; *actual*, as in the case of assault; *implied*, as in the case of a wrongful, though peaceful, entry on land.

Case. Case is a remedy far more extensive than any other by action; it lies for what are called *consequential* injuries, that is, injuries supposed to arise indirectly and consequentially from the act complained of,—as from slander, whereby the complainant's character is injured; or from negligent driving, whereby the plaintiff is run over and hurt, and the like. A familiar illustration of the difference between trespass which lies for direct, and case, which lies for a consequential injury, is this:—Suppose a person throws a log of wood on to a highway, and by the act of throwing another person is injured, the remedy under such circumstances is trespass. But if the log reaches the ground, and remains there, and a person falls over it and is injured, the remedy is case, as the injury is not immediately consequent on the act done. So, if the defendant drive his carriage against that of another, the remedy may be trespass; but if the defendant's servant be driving, the remedy is usually case. It was called an action upon the case, because the original writ by which this action was formerly commenced was not conceived in any fixed form, but framed and adapted to the nature and circumstances of the case by virtue of the statute *De Consimili Casu* (13 Edw. I, c. 24). *See* TRESPASS.

Trover. Trover is a form of action on the case. It originally lay for recovery of damages against one who had found goods and refused to deliver them on demand, to the rightful owner, but *converted* them to his own use; and from this fiction of the loss and finding of the goods, the remedy derived its name. The action is, in substance a remedy to recover the value of personal chattels wrongfully converted by another to his own use. *See* TRESPASS TO PERSONAL PROPERTY.

Replevin. Replevin is usually brought for goods taken under a distress, but is generally

maintainable where there has been a wrongful taking of goods out of the possession of the party who replevies. Replevin is an action founded upon any taking by another party; the question to be tried in the action being, whether the party from whom the goods were taken is really entitled to them. The action in question is however usually brought where goods have been taken under a distress, either for rent, or damage feasant. When a person alleges that his goods have been unjustly distrained he may have them *replevied*, that is, redelivered to him upon giving security to prosecute an action with effect, and without delay, against the distrainer, for the purpose of trying the legality of the distess, and (if the right be determined in favour of the latter) to return the goods. —*Broom's Com. Law.*

Where an injury amounts to an infringement of the civil rights of an individual, and at the same time to a crime, a cause of action arises immediately upon the commission of the offence; but notwithstanding the existence of the cause of action, the policy of the law will not allow the person injured to seek civil redress, if he has failed in his duty of bringing, or endeavouring to bring, the felon to justice, unless where the offender has been brought to justice at the instance of some third person injured by a similar offence, or where prosecution is impossible by reason of the death of the offender, or by reason of his escape from the jurisdiction before a prosecution could by reasonable diligence have been commenced (*ex parte Ball, re Shepherd*, L. R. 10 Ch. D. 673; *Wells* v. *Abrahams*, L. R. 7 Q. B. 557).—*Underhill on Torts.* It is, however, quite clear that in India no such rule prevails. In India, a person can sue for damages for a wrongful act even though it amounts to an offence, without in the first instance instituting criminal proceedings against the offender (*Rupa Bewa* v. *Ram Kumar*, Marsh. 248; 2 Hay 13; *Adram* v. *Harballabh*, 2 N.-W. P 58; *Shama Charan* v. *Bhola Nath*, 6 W. R. 9; *Srinath* v. *Kamal Karmokar*, 16 W. R. 83; *Chaitanno* v. *Zamiudin*, 18 W. R. 27; *Viranna* v. *Nagayya*, 3 Mad. 6; *Abdul Kadir* v. *Mahamad Mera*, 4 Mad. 410; *Adamson* v. *Arumugam*, 9 Mad. 463).

Tort feasor. A wrong-doer. A trespasser. There is no contribution between tort-feasors, like that which subsists between co-debtors (*Merryweather* v. *Nixan*, 2 Sm. L. C. 481).

Tortious. Wrongful; anything done by wrong.

Tortious operation. Tortious conveyances. Prior to 8 & 9 Vic. c. 106, a feoffment might have had a tortious operation, that is to say, it might have passed to the feoffee a greater estate than that which the feoffer could lawfully pass. But all such tortious conveyances have now been abolished by the last mentioned Act, unless indeed the disentailing assurance should be so regarded.—*Brown.* *See* INNOCENT CONVEYANCES.

Torture. A cruel and wanton infliction of pain on any living being. The word is used especially of the rack or question which was sometimes applied to extort confession from criminals. *See* RACK.

Total loss. The entire loss of an insured vessel, or of goods insured, so as to render the underwriters liable to the owner. Total loss is either *actual* or *constructive*. *Actual*, when the thing is actually destroyed, or so damaged that it cannot ever arrive in specie at the port of destination; *constructive*, when the injury, though short of actual loss, is yet so great as to make the subject of it useless to its owner.

When the subject of the insurance, though not wholly destroyed, is placed in such peril as to render the successful prosecution of the venture improbable, the insured may treat the case as a total loss, and demand the full sum insured. In such case, however, he must, within a reasonable time, give notice to the insurer of his intention, and of his abandonment to the insurer of all right in the thing insured.—*Mozley.* See *East Indian Ry. Co.* v. *Australasian Insurance Co.* (7 B. L. R., O. C., 347). *See* ABANDONMENT OF SHIP.

Totted. A good debt to the king (*i. e.*, a debt, paid to the sheriff, to be by him paid over to the king) was formerly noted by the foreign apposer or officer in the Exchequer writing the word *tot* opposite to it in the Exchequer, to indicate that for so much the sheriff must account to the king. Debts *totted* were opposed to debts *nilled*.—*Mozley.* *See* ESTREAT, FOREIGN APPOSER.

Tourn. *See* SHERIFF'S TOURN.

Tout. A person who procures the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner, or proposes to a legal practitioner to procure his employment in any legal business in consideration of such remuneration.—*Act XVIII of* 1879 (*Legal Practitioners*), *s.* 3, *as amended by Act XI of* 1896, *s.* 1. Under s. 36 of the same Act, as substituted by Act XI of 1896, s. 4, Courts have power to frame and publish lists of persons, proved by evidence of general repute or otherwise, habitually to act as touts, and to exclude them from the precincts of the Court. Under ss. 13 and 22 of the same Act, as substituted by Act XI of 1896, ss. 2 and 3, respectively, pleaders, mukhtars and revenue-agents accepting employment in any legal business through a person who has been proclaimed as a tout under s. 36, are liable to be suspended or dismissed.

Towage (*towagium*). The towing or drawing of a ship or barge along the water by another ship or boat fastened to her, or by men or horses, &c., on land. Also the money paid by bargemen to the owner of ground near a river where they tow a barge or other vessel; money paid for towing.

Town. A walled place or borough; a tithing or vill; any collection of houses larger than a village. Towns are either corporate, that is, having a corporation to transact their business, or not corporate. Some have the liberty or franchise of a market, others have not.

Town Cause. A cause tried at the sittings for London and Middlesex.

Town Clerk. A fit person (usually, but not necessarily, a solicitor) appointed by the council of a municipal borough to manage their legal business.

Town Council. The council of a municipal borough, elected by the burgesses to act for the corporation.

Town Crier. An officer in a town whose business it is to make proclamations.

Town Hall. The hall where the public business of a town is transacted, and on or near the door of which public notices are fixed.

Township. The district of a town, tithing, or vill, which three are of the same signification in law. *Parish* is properly the ecclesiastical term, and *township* the civil one.

Trade. Traffic; commerce; exchange of goods for other goods or for money. Also a private art, and way of living. Trading with enemies is generally prohibited by positive statutes in time of war. Trading with an enemy without the king's license is illegal. As to private trades, at common law, none was prohibited to exercise any particular trade, wherein he had not any particular skill or knowledge; and if he used it unskilfully, the party aggrieved might have his remedy against him by action on the case, &c. But by 5 Eliz. c. 4, s. 31, it was enacted that a man should serve seven years' apprenticeship before he set up a trade; that statute was, however, repealed by 54 Geo. III, c. 96, which also abolished all restrictions upon taking apprentices.—*Tomlins.*

Trade-description means any description, statement, or other indication, direct or indirect, (*a*) as to the number, quantity, measure, guage, or weight of any goods, or (*b*) as to the place or country in which, or the time at which, any goods were made or produced, or (*c*) as to the mode of manufacturing or producing any goods, or (*d*) as to the material of which any goods are composed, or (*e*) as to any goods being the subject of an existing patent, privilege, or copyright; and the use of any numeral, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters shall be deemed to be a trade-description.—*Act IV of* 1889 (*Merchandise Marks*), *s.* 2 (2). *See* FALSE TRADE-DESCRIPTION.

Trade-mark. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade-mark, and for the purposes of the Indian Penal Code, the expression trade-mark includes any trade-mark which is registered in the register of trade-marks kept under the Patents, Designs, and Trade-marks Act, 1883 (46 & 47 Vic. c. 57), and 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 one hundred and third section of the Patents, Designs and Trade-marks Act, 1883, are under order in Council, for the time being applicable.—*Act XLV of* 1860 (*Penal Code*), *s.* 478, *as amended by Act IV of* 1889 (*Merchandise Marks*), *s.* 3. *See* PROPERTY-MARK.

Using a false trade-mark. Whoever makes any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade-mark.—*Ibid.*, *s.* 480, *as amended by Act IV of* 1889, *s.* 3.

The limitations to which the right of property in the use of a trade-mark is subject, are:—*Firstly*, the right of use is limited to the specific kind of goods or property to which it has been actually applied; and another is fully entitled to apply the identically same mark to other kinds of goods or property; *Secondly*, the use must have been actually acquired; apart from express law as to registration, the right can be acquired only by actual usage, in the sale of the specific kind of goods or property; *Thirdly*, and chiefly, the mark must, in its nature, be such as is appropriate for the purposes for which only a trade-mark can be used: a man cannot exclude others from using a name, title, number, or device commonly applied to all such goods: he cannot turn such a title as "Arnee Muslin" or "Mysore Coffee" into a trade-mark. Whatever the particular form which a trade-mark may assume, it must not be of a common character, so that others may, with equal truth and equal right, employ it for the same purpose. A name otherwise fitted for a trade-mark, may forfeit protection by being itself deceptive, as suggesting that the goods are in their nature, or origin, what they are not. There can be no right of property in a fraud.—*Collett on Torts.*

User as trade mark. "Now what constitutes the use of anything as 'a trade-mark'? Not the mere use of it, but the use of it in a particular way, and with a particular result; you use the thing as a 'trade-mark' if you use it in business, or, as is often said in the market, as a mark to denote your goods and to distinguish them from the goods of any one else. You use it not merely as a writing, but as a mark in the market, and you must show that you used it in the market for the purpose of distinguishing your goods, and I think you must also show that the market accepted it as a distinguishing mark of your goods—then you use it as your 'trade-mark.'"

(*per* Lord Esher, M.R., *Richards* v. *Butcher*, 1891, 2 Ch. p. 548).

Tort to trade-mark. To constitute a piracy of a trade mark, an exact resemblance is not necessary, but the question is whether there is such a resemblance as was either intended, or is calculated, to deceive ordinary persons, so as to induce them to purchase defendant's goods under the supposition that they are the goods of the plaintiff; if so, no special damage need be proved. It is sufficiently a sale of the goods as being of plaintiff's manufacture, if they are sold by the defendant to dealers to be retailed by them as such, though the dealers knew the truth. Obviously, for the purposes of a civil remedy, the invasion is none the less, though the false trade-mark is sued unwittingly or innocently; but for criminal liability the invasion must be intentional, in the sense of fraudulent; for a use of the same mark, even knowingly, but under an honest belief of a right to use it, would not be criminal,—*Collett on Torts.*

To entitle a plaintiff to the benefit of an injunction, he must not himself have been guilty of fraudulent representations to the public regarding the quality of his own goods; otherwise, as he does not come into Court with clean hands, he will be entitled to no relief; and it is immaterial that the misrepresentation is so gross and palpable, that no one is likely to be deceived by it. A trade mark falsely suggesting that there is a continuing patent is a misrepresentation. A third person having the custody of falsely marked goods may, though wholly innocent of the piracy, be restricted by an injunction, and will be liable for the costs. The mere making and selling of labels or other trade-marks, so that others may buy and use them to the fraud and damage of the plaintiff, may also be restrained. But so making and selling of labels, &c., does not constitute forgery. —*Ibid.*

When granting an injunction the Court may also order the destruction of such false trade-marks.—*Act I of* 1877 (*Specific Relief*), *s.* 44, *ill.* (*w*), *and s.* 55, *ill.* (*g*).

Since there is no system of registration in India which gives a person a statutory title to a trade-mark, the person who brings an action for the infringment of a trade mark, must establish that the mark, in respect of which he makes the claim, has acquired a reputation in connection with the goods that he sells (*Jawala Prasad* v. *Munna Lal*, 37 Cal. 204; 5 Ind. Cas. 1000), and the rights of the parties must be determined in accordance with the principles of the English Common Law (*British American Tobacco Co.* v. *Mahboob Bux*, 7 Ind. Cas. 279).

No trade-mark can be transferred in gross; that is, no trade-mark can be assigned except in connection with the good will of the business in which it has been used or, in other words, the assignment of good-will must accompany or follow the transfer of a trade-mark. Consequently, where a person merely takes an assignment of the trade-mark without an assignment of the good-will, he acquires no title to the trade-mark (*British American Tobacco Co.* v. *Mahboob Bux*, 7 Ind. Cas. 279, relying upon 30 Ch. D. 454, 479; 55 L. J. Ch. 125; 54 L. T. 112).

Trade fixtures. These, in a house or other premises occupied for the purposes of business, include machinery and utensils of a chattel nature, such as salt-pans, vats, &c., for soap-boiling; engines for working collieries; also buildings of a temporary description erected by the tenant for the purpose of carrying on his business.—*Moxley.* *See* FIXTURES.

Trade union. A combination on the part either of employers or of employés to regulate the price of labour. An association of workmen in any trade, which has for one of its chief objects the protection of their interests as against their employers, *e. g.*, by organizing strikes for raising wages.

Trade usage. Persons contracting with a knowledge thereof, or under circumstances which impute to them a knowledge thereof, are bound thereby; and such a usage may be annexed to the contract by extrinsic evidence, provided the contract be not thereby varied. See Act I of 1872 (Evi.), s. 92, proviso 5.

Restraint on trade. Public policy requires that every man shall be at liberty to work for himself, and shall not be at liberty to deprive himself or the state of his labour, skill, or talent, by any contract that he enters into. On the other hand, public policy requires that when a man has, by skill or any other means, obtained something which he wants to sell, he should be at liberty to sell it in the most advantageous way in the market; and, in order to enable him to sell it advantageously in the market, it is necessary that he should be able to preclude himself from entering into competition with the purchaser (*LeatherCloth Co.* v. *Lorsont*, L. R. 9 Eq. 354). Hence agreements by which any one is generally restrained from exercising a lawful profession, trade or business of any kind are void, and partial restraints are presumed to be bad until shown to be reasonable (*Mitchel* v. *Reynolds*, 1 P. Wms. 181). Partial restraints on trade on the sale of the good-will of a business, or in anticipation of a dissolution of a partnership, or during the continuance of a partnership, are not void. See Act IX of 1872 (Contract), s. 27.

Trader debtor summons. A summons formerly obtainable by the creditor of a trader under Bankruptcy Law (12 & 13 Vic. c. 106). Its operation was similar to that of the debtor summons under the present law. *See* DEBTOR'S SUMMONS.

Tradition (*traditio*). The act of handing over; delivery.

Trailbaston. The Court of Trailbaston was erected by Edward I. This was commission of oyer and terminer of an unusual kind,

and was issued for the correction of public disorders. The office of the Justices of Trailbaston was to make inquisition, throughout the kingdom, of all officers and others, touching extortion, bribery, and such like grievance of intruders into other men's lands, barrators, robbers, breakers of the peace, and diverse other offenders.

Traitor (*traditor*; *proditor*). One who being trusted betrays. One guilty of treason. A state offender.

Traitorous (*perfidiosus*). Treacherous, or full of disloyalty.

Transcript. The copy of any original writing, or deed, &c.; especially, an official copy.

Transfer. To convey; to make over to another. The document by which property, as shares in public companies, is made over by one to another.

The word *transfer* has long been recognized to be a technical term of law in all countries where English is the language of the Legislature and of the Courts of Justice. It is used as a convertible term with *alienation*, *conveyance* and *assignment*. Whether any distinction exists between the technical meanings of these expressions, and, if so, what that distinction is, it is not necessary exactly to determine. But it may be safely taken that the word *transfer* is used in law in the most generic signification, comprehending all the species of contract which pass real rights in property from one person to another (*per* Mahmood, J., *Mata* v. *Kazim Husain*, 13 All. p. 476; *Gopal Panday* v. *Parsotam Das*, 5 All. p. 137; *Kishen Lal* v. *Ganga Ram*, 13 All. p. 38). It is one of the widest terms that can be used (*per* James, L. J., *Gathercole* v. *Smith*, 50 L. J. Ch. 672).

Transfer of cause. The removal of a cause from one court or judge to another by lawful authority.

Transference. (*Sc. L.*) In the law of Scotland, this is where a party in an action dies while it is pending, and the action is transferred to the heir of the deceased. If it is the pursuer (*i. e.*, the plaintiff) who dies, and the heir takes up the action, the transference is said to be *active*; if it is the defender or defendant, the transference is said to be *passive*.—*Mozley.*

Transhipment. Taking the cargo from one ship, and loading another with it, *e g.*, in case of emergency.

Transire. A warrant or permit from the custom-house to let goods pass.

Transitory actions. Those that may be laid in any county or place, such as personal actions of trespass, &c. As opposed to *local actions*, which *see*.

Transitory venue. *See* VENUE.

Translation (*translatio*). The removal from one place to another. The removal of a bishop from one diocese to another. A version of a book or publication out of one language into another. Copyright may exist in translations, these latter being regarded as original works (*Wyatt* v. *Barnard*, 3 V. & B. 78). *See* COPYRIGHT.

Transportation. The banishing or sending away a criminal in another country, either pursuant to the express terms of a judicial sentence, or as a condition of pardon by the Crown, there to remain during the term for which he is ordered to be transported. It has been held, therefore, that a convict under such circumstances is not restored to his civil rights till after the expiration of the term for which he is ordered to be transported.

Transumpt. An action in Scotland, brought by one having an interest in a deed or writing, to have it produced, so that a copy may be taken in court. It is directed against the custodier of the writing, calling upon him to exhibit it The copy thus judicially made is also called transumpt.

Traverse. A denial, in pleading, of facts alleged on the other side, upon which the other side comes and affirms the facts; and this makes a single and good issue for the cause to proceed to trial. To deny.

A defendant must be taken to admit all material allegations in the plaint which he does not traverse (*Yeknath* v. *Gulabchand*, 1 Bom. H. C., A. C., 85).

Traverse is *common* and *special*. Common traverse consists of a *tender of issue*, *i. e.*, of a denial accompanied by a formal offer of the point denied, for decision, and the denial that it makes, is by way of express contradiction, in terms, of the allegation traversed. *See* SPECIAL TRAVERSE.

Traverse of an indictment. The denial of an indictment by plea of not guilty. The postponement of the trial of an indictment after a plea of not guilty thereto; now prohibited.

Traverse of an office. The challenging, by a subject, of an inquest of office, *i. e.*, an inquisition made of lands and goods by the escheator, as being defective and untruly made. *See* INQUEST OF OFFICE.

Traverse toll. *See* TOLL TRAVERSE.

Traverser. In Ireland, a prisoner.

Traversing note. A note filed by a plaintiff in Chancery on behalf of a defendant who has refused or neglected to answer, the effect of which is to deny the statements of the bill, and to put the plaintiff upon proof of the whole. This is a course by which a plaintiff, if he thinks that he can himself prove his case against a defendant who has so neglected or refused to answer, may save great expense and delay.

Traylbaston. *See* TRAILBASTON.

Treadmill. Treadwheel. An instrument of prison discipline, being a large revolving wheel or cylinder with a horizontal axis, having steps attached to it; the prisoners walk up these steps, and their weight moves the cylinder round; the prisoners hold on by

a fixed rail, and as their weight presses down the step upon which they tread, they ascend the next step, and thus drive the wheel.

Treason (*proditio*). Also called *lesæ-majesty*. A betraying, treachery, or breach of faith, especially against the sovereign. The crime of treachery and infidelity to the lawful sovereign; an offence against the duty of allegiance, and the highest known crime, for it aims at the very destruction of the commonwealth itself.

Treason is defined by the Statute of Treasons (25 Edw. *III*, stat. 5, c. 2, passed in 1350) as consisting in one or other of the following acts:— (1) Compassing the death of the sovereign, or his or her consort, or of the Prince of Wales; (2) Violating the consort of the king, or his eldest daughter unmarried, or the Princess of Wales; (3) Levying war against the sovereign within the realm, or being adherent to such, or relieving same; (4) Counterfeiting the King's great or privy seal, or the king's money, or importing counterfeit money; (5) Killing the Lord Chancellor or Lord Treasurer, or any judge while on the Bench; and generally (6) Committing such other offence or offences as should by any future Parliament be declared treason. Of these No. (4) is no longer treason.—*Brown*.

Treason against the sovereign has always been regarded as *high* treason, in contradistinction to certain offences against private superiors, which were formerly ranked as *petty* (or *petit*) treasons. *See* CRIME, PETIT TREASON. It is now sufficient to speak of high treason as treason simply, seeing that petty treason, as a distinct offence, has been abolished.—*Mozley*.

Men convicted of high treason were formerly sentenced to be drawn on a hurdle to the place of execution, and to be there hanged and disembowelled, alive, and then beheaded and quartered. Women, for all kinds of treason, were sentenced to be burned alive. Now the punishment of treason is reduced to hanging in public.

In India, the offence of engaging in a conspiracy to wage war, and that of abetting the waging of war against the King, under s. 121 of the Indian Penal Code, are offences under the Penal Code only, and are not treason or misprision of treason (*Queen* v. *Amiruddin*, 7 B. L. R., A. Cr., 63). *See* MISPRISION.

Treason-felony. Under 11 & 12 Vic. c. 12, passed in 1848, treason-felony is the offence of compassing, devising, &c., to depose Her (His) Majesty from the Crown; or to levy war in order to intimidate either House of Parliament, &c., or to stir up foreigners by any printing or writing to invade the kingdom. By this statute Government is enabled to treat as felony many offences which must formerly have been treated as high treason. —*Mozley*.

Treasurer (*thesaurarius*). One who has the care of money or treasure. An officer to whom the treasure of another is committed to be kept and truly disposed of. The chief of these was the Lord High Treasurer of England, but the duties are now executed by Commissioners of Her (His) Majesty's Treasury. The Prime Minister generally fills the office of First Lord of the Treasury.

Treasurer of the county. He that keeps the county stock.

Treasurer's Remembrancer. He whose charge was to put the Lord Treasurer and the rest of the judges of the Exchequer in remembrance of such things as were called on and dealt in for the king's behoof; he made process against sheriffs, escheators, receivers and bailiffs, for their accounts.

Treasure trove (*thesaurus inventus*). Money or coin, gold, silver, plate, or bullion found hidden in the earth or other private place, the owner thereof being unknown or unfound. In such case the treasure belongs to the Crown, and any person concealing the same from the Crown is liable to fine and imprisonment; but if he that hid it be known or afterwards found out, the owner, and not the king, is entitled to it. But if it be found in the sea or upon the earth, it does not belong to the king, but to the finder, if no owner appears. So that, it seems, it is the hiding, and not the abandonment of it, that gives the king a property. The difference clearly arises from the different intentions which the law implies in the owner. A man that hides his treasure in a secret place evidently does not mean to relinquish his property, but reserves a right of claiming it again when he sees occasion; and if he dies, and the secret also dies with him, the law gives it to the king in part of his royal revenue. But the man that scatters his treasure into the sea, or upon the public surface of the earth, is construed to have absolutely abandoned his property, and returned it into the common stock, without any intention of reclaiming it; and therefore it belongs, as in a state of nature, to the first occupant or finder, unless the owner appear and assert his right, which then proves that the loss was by accident, and not with an intention to renounce his property.—*Tomlins*.

In many cases treasure-trove belongs to the lord of the manor within whose limits it is found, by special grant or prescription.

In India, the Treasure Trove Act (VI of 1878), s. 11, directs the treasuse found to be delivered over to the finder thereof, in case no other person appears to claim a share thereof as owner of the place in which it has been found.

Treasury. The place where the king's treasure is deposited. The department of state which manages the Royal Public Revenue. The Lord High Treasurer is the head of this department, but in practice, the function of this great officer is discharged by several commissioners. The office of a treasurer. *See* TREASURER.

Treating. The offence of giving or pro-

viding, or paying any expense for, meat, drink, entertainment, or provision, for any person, in order to be elected, for influencing any person to give or refrain from giving his vote, or on account of having voted or refrained from voting, or being about to vote or refrain from voting.

Treaty. A negotiation preliminary to an agreement. Act of treating. A compact between nations.

Treble costs. These were three times the amount of the costs incurred by a party in an action, and the payment of such costs was by various statutes imposed as a punishment upon persons violating the provisions of those statutes. But all provisions entailing treble costs and double costs were repealed by 5 & 6 Vic. c. 97.

Trebucket (*terbichetum*). A tumbrel, castigatory, or cucking stool. *See* CASTIGATORY.

Trespass (*transgressio*). Any transgression of the law, less than treason, felony, or misprision of either. But it is most commonly used for that wrong or damage which is done by one private man to another, or to the king in his forest, &c.; in which signification it is of two sorts—trespass general, otherwise called trespass *vi et armis*, and trespass special, or upon the case.—*Tomlins.*

A trespass is an injury committed with violence (*vi et armis*), and this violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediate kind, and committed on the person or tangible and corporeal property of the plaintiff. Of actual violence, an assault and battery is an instance; of implied, a peaceable but wrongful entry upon the plaintiff's lands. —*Wharton.* *See* TORT.

Trespass to land. Trespass to realty consists in a wrongful and unwarrantable entry upon the soil or land of another, which the law entitles a trespass *by breaking his close*, these words being derived from the form of the writ of trespass anciently in force commanding the defendant to show cause *quare clausum fregit* (wherefore he broke his close) every man's land, in the eye of the law, being closed and set apart from his neighbour's. —*Broom's Com. Law.*

Trespass *quare clausum fregit*, is a trespass committed in respect of another man's land, by entry on the same without lawful authority. It constitutes a tort without proof of actual damage. Thus, driving nails into another's wall or placing objects against it are trespasses. So, it is a trespass to allow one's cattle to stray on another's land, unless there is contributory misconduct on his part, such as keeping in disrepair a hedge which he is bound by prescription or otherwise to repair. Where one has authority to use another's land for a particular purpose, any user going beyond the authorized purpose is a trespass. —*Underhill on Torts.*

The right of action for trespass is founded upon actual possession by the plaintiff, by himself, or by his servant or agent. Hence the tenant in possession is the person who is aggrieved by an entry upon land, though if special damage of a permanent nature ensues, the reversioner may also have an action on that account.—*Collett on Torts.*

Trespassers ab initio. Whenever a person has authority given him *by law* to enter upon lands or tenements for any purpose, and he goes beyond or abuses such authority by doing that which he has no right to do, then, although the entry was lawful, he will be considered as a trespasser *ab initio* (*i. e.*, from the beginning). But where authority is not given by the law, but *by the party*, and abused, then the person abusing such authority is not a trespasser *ab initio*. The abuse necessary to render a person a trespasser *ab initio* must be a misfeasance and not a mere non-feasance (*The Six Carpenters' Case*, 1 Sm. L. C. 132). Thus, in the above case, six carpenters entered an inn and were served with wine, for which they paid. Being afterwards at their request supplied with more wine, they refused to pay for it, and upon this it was sought to render them trespassers *ab initio*, but without success; for though they had authority by law to enter (it being a public inn), yet the mere non-payment, being a nonfeasance and not a misfeasance, was not sufficient to render them trespassers.—*Underhill on Torts.*

See CATTLE-TRESPASS, ANIMALS, CRIMINAL TRESPASS, MISFEASANCE, NONFEASANCE.

Trespass between tenants in common. As between tenants in common of either land or chattels, there cannot be trespass unless the act amounts to an actual ouster, *i. e.*, dispossession. Short of that, trespass will not lie by the one against the other so far as the land is concerned. There is no wrong to the co-tenant's right of property until there is an act inconsistent with the enjoyment of the property by both. For every tenant or owner in common is equally entitled to the occupation and use of the tenement or property; he can therefore become a trespasser only by the manifest assumption of an exclusive and hostile possession.—*Pollock on Torts.*

Trespass to personal property. Conversion. Trover. Every direct forcible injury or act disturbing the possession of goods without the owner's consent, however slight or temporary the act may be, is a trespass, whether committed by the defendant himself or by some animal belonging to him. And if the trespass amount to a deprivation of possession to such an extent as to be inconsistent with the rights of the owner (as by taking, using, or destroying them), it then becomes a wrongful conversion. Thus beating the plaintiffs' dog is a trespass.—*Underhill on Torts.*

A conversion is where one finding or having the goods of another in his possession applies them to his own use without the consent of

the owner, and such application to the finder's use is, in many cases, evidenced by a demand of the goods and a refusal to give them up. A person is guilty of a conversion who intermeddles with another's property and disposes of it. When a man taks possession of the chattel of another without justifiable cause, there can be no doubt that he is guilty of conversion. In order to constitute a conversion, there must be an intention of the defendant to take to himself the property in the goods, or to deprive the plaintiff of it. If the entire article is destroyed, as, for instannce, by burning it, that would be a *taking* of the property from the plaintiff and *depriving* him of it, although the defandant might not be considered as appropriating it to *his own use*. Conversion means detaining goods so as to deprive the person entitled to the possession of them of his dominion over them. —*Broom's Com. Law.*

Trespass *de bonis asportatis*, was a form of action which lay for goods taken and carried away; or wrongful taking of chattels; while trover was for the wrongful keeping of property in the first instance rightfully obtained. The action was founded on the right of possession in the plaintiff, but the possession might be either constructive or actual.

To maintain an action merely for trespass or conversion, the plaintiff must be the person in actual or constructive possession of the goods. Any possession, however temporary, is sufficient to sustain an action for trespass or conversion against a wrong-doer. But the person entitled to the reversion of goods may maintain an action for any *permanent* injury done to them.—*Underhill on Torts.*

Trespass ab initio. If one lawfully taking a chattel, but not absolutely, abuses or wastes it, he renders himself a trespasser *ab initio*. Thus if one find a chattel, it is no trespass to keep it as against all the world except the rightful owner; but if one spoil or damage it, and the rightful owner eventually claim it, then the subsequent damage will revert back, and render the original taking unlawful. But as against the true owner, a man commits no conversion by keeping the goods until he had made due inquiries as to the right of the owner to them —*Ibid.*

Trover only lies where some dominion is asserted by the defendant over the chattel which is the subject of the action. One who takes possession of goods unlawfully, which are in consequence lost to the owner, is to a certain extent guilty of a conversion. But where there is no unlawful taking of possession or assertion of dominion over the goods, there is no conversion, unless the defendant is a participator in the act which causes their destruction. The action of trover is peculiarly adapted for trying the title to goods; it is, indeed, commonly brought with this express object, *e. g.*,—by or against personal representatives—or by a judgment-creditor against a sheriff—who, perchance, has wrongfully sold goods under an execution posterior in point of time to that issued by the plaintiff. The remedy in question is appropriate, also, in many other cases where conflicting claims to chattel property call for adjustment.—*Broom's Com. Law.* *See* TORT.

The *distinction between trespass and conversion* is really substantial, though as to form, a good deal technical. Trespass is where force, actual or implied, is used, and constitutes the injury. To damage or intermeddle with the chattel of another, but without intending to exercise an adverse dominion over it, is a trespass and not a conversion. Thus, if a man wrongfully removes the goods of another from where they lawfully were, and turns them out into the street or elsewhere, this is a trespass, though he himself retains no control over them, and the owner might repossess himself of them when he likes; but if he takes them for the use of himself or of another, or so controls them that his act is inconsistent with the general right of dominion which the owner of a chattel has in it, who is entitled to the use of it at all times and in all places, that is a conversion. A conversion may thus be said to mean a breach, made adversely, in the continuity of the owner's dominion over his goods, though the goods may not be hurt. The gist of the action in trespass is the force and direct damage inflicted; in conversion, it is the deprivation of the use.—*Collett on Torts.*

Distinction between trespass and case. Prior to the Judicature Acts, 1873-75, the distinction was important between actions of trespass and of case; and the rule was that trespass (and not case) lay for injuries at once wilful and direct, and case (and not trespass) for injuries neither wilful nor direct, but negligent and indirect only, and that case or trespass lay indifferently when the injury, although direct, was not wilful but only negligent (*Scott* v. *Shepherd*, 2 W. Bl. 892; *Mereton* v. *Hardern*, 4 B. & C. 224).—*Brown.* *See* TORT.

Trespassants. An old term for passengers; those who pass.

Trespasser. One who commits a trespass

Tret. *See* TARE AND TRET.

Trethings. Taxes or imposts.

Treyts. (*Fr.*) Taken out or withdrawn; applied to a juror removed or discharged.

Trial (*triatio*). The examination of a cause civil or criminal, before a judge who has jurisdiction over it, according to the law of the land.

The expression "trial" means the proceeding which commences when the case is called on, with the Magistrate on the Bench, the accused in the dock, and the representatives of the prosecutions and for the defence, if the accused be defended, present in Court(*Gomer Sirda* v. *Queen-Empress*, 25 Cal.863).

Trial is the examination of the matter of fact in issue of which there are many differ-

ent species, according to the difference of the subject to be tried; as for example, trial by record, by inspection or examination, by certificate, by witnesses, and by jury. The first four of these are only had in certain special and eccentrical cases, where the trial by the country, *per pais*, or by jury would not be so proper or effectual.—*Tomlins.* *See* INSPECTION, JURY, RECORD.

Trial by certificate. A form of trial in which the evidence of the person certifying was the only proper criterion of the point in dispute. As if the issue be whether A was absent with the king in his army out of the realm in time of war. This was tried by the certificate of the mareschall of the king's host in writing under his seal, which was to be sent to the justices.—*Moxley.* Now practically obsolete.

Trial by testes (witnesses). A trial by witnesses, without the intervention of the jury, in which the judge is left to form in his own breast his sentence upon the credit of the witnesses examined. The trial of questions of fact without a jury in various cases of a civil nature, and in petty criminal charges, is a matter of daily occurrence.

Trials at Bar are those which take place before all the judges of one of the Superior Courts at Westminster, or before a quorum representing the full court in which the action is brought. *See* BAR.

At a *trial by jury*, the cause is called on, or the prisoner arraigned, before the jury is sworn. The parties may then challenge the jury. The pleadings are then (in civil causes and misdemeanours) opened by the junior counsel for the plaintiff; and if the burden of proof is on the plaintiff, his senior counsel states the case to the jury; after which the witnesses for the plaintiffs are examined by his counsel, the cross-examination being generally conducted by the senior counsel for the defendant. If the plaintiff have evidence to rebut the issues of which the burden of proof lies on the defendant, he may either produce it at the same time as his other evidence, or reserve it until after the defendant has given affirmative evidence on the issuse. At the end of the plaintiff's evidence, the defendant's counsel declares, whether he will call witnesses; and if he does not, the plaintiff's senior counsel sums up his evidence, and the defendant's senior counsel next addresses the jury, and the judge sums up. If the defendant's counsel calls evidence, he immediately opens his case to the jury, and the witnesses are called and examined as in the plaintiff's case. The plaintiff is, in general, entitled to call witnesses to rebut the evidence of the defendant, if he has not already given all his evidence, which is more generally the case. Then the defendant's senior counsel sums up, and the senior counsel for the plaintiff replies upon the whole case. The judge then sums up. In criminal trials, the effect of the pleadings is stated to the jury by the clerk of the court, except in a case of misdemeanour where that is done by counsel as in a civil case. In other respects the order of proceedings is the same. After a conviction for misdemeanour the counsel for the defendant may address the court in mitigation, and the counsel for the prosecution in aggravation, of his sentence.—*Wharton.*

There were formerly two other kinds of trial, by wager of battle, and by wager of law. Both of them are now abolished. *See* BATTEL, WAGER OF LAW.

Tribunal. The seat of a judge. A court of justice. Tribunals, *i. e.*, courts of justice, are of three great varieties:—(1) *Regular*, *i. e.*, those which (like the High Court of Justice) are constantly sitting and proceed in accordance with a well-defined and formal procedure; (2) *Summary*, *i. e.*, those which (like justices of the peace) exercise a summary jurisdiction, principally under particular statutes authorizing them in that behalf; and (3) *Casual*, *i. e.*, courts or commissioners constituted for emergencies of rare occurrence, and which (when the emergency is over) cease to exist.—*Brown.*

Tridingmote. *See* TRITHINGMOTE.

Triens. A third part; also dower.

Trinity House. A society or company of masters of ships incorporated by Henry VIII, in 1515, for the promotion of commerce and navigation, by licensing and regulating pilots, and ordering and erecting bacons, light-houses, buoys, &c. Trinity House is a self-elected body, and is composed of *elder brethren* and *younger brethren*. The former manage the affairs of the society, being for the most part elected from the younger brethren.

Trinity term. One of the law termes beginning on the 22nd of May, and ending on the 12th of June. Now superseded by Trinity Sittings. *See* TERM.

Triors. Triours. Triers. The lords selected to try a peer, when indicted for felony, in the Court of the Lord High Steward. Also two indifferent persons named by the Court to examine whether a challenge made to the pannel of jurors, or to any of them, be just or not.

Trithing. Triding. Trihing. In ancient times, when a county was divided into three jurisdictions, each of them was called a trithing. These divisions still subsist in the county of York, and are corrupty called *ridings*. *See* RIDING.

Trithingmote. The court held for a trithing or riding.

Trithing reeve. The officer over a trithing or triding.

Triverbial days (*dies fasti*). Judicial days, in the Roman calendar, when the Courts were open for business, and for deciding cases; so called because in so deciding the prætor pronounced the three words *do*, *dico*, and *addico*.

Tronage (*tronagium*). A customary duty or toll for weighing wool.

Tronator. A weigher of wool.

Trophy money. Money formerly collected and raised in London and the several counties of England, towards providing harness and maintenance for the militia, &c.

Trover (*Fr. trouver*, to find). One of the forms of action at law, being originally a kind of action of trespass on the case, based on the finding by the defendant of the plaintiff's goods, and converting them to his own use. But in time, the suggestion of the finding became mere matter of form, and all that it became necessary to prove was that the goods were the plaintiff's, and that the defendant refused to deliver them on demand, but sold or converted them to his own use; from which finding and converting it was called an action of trover and conversion. It lay where the defendant having obtained possession of the goods by delivery, finding, or other lawful means, refused to deliver them, and sold or converted them to his own use. In this action the plaintiff could not recover the specific chattel, but only damages for its conversion. The form of action is now abolished. *See* CONVERSION, TORT, TRESPASS.

Truce (*treuga*). A league or cessation of arms. *See* CONSERVATOR OF THE TRUCE.

Truck system. A name given to the practice that prevailed, particularly in the mining and manufacturing districts, of paying the wages of workmen in goods instead of money. The plan has been for masters to establish warehouses or shops, and the workmen in their employ have either had their wages accounted for to them by supplies of goods from such depots, without receiving any money; or they have had the money given them with an express understanding that they were to resort to the warehouses or shops of their masters for the articles of which they stood in need. This system of dealing being considered open to grave abuses, was abolished in 1831, by 1 & 2 Wm. IV, c. 37, commonly called the Truck Act.

True bill (*bilia vera*). The endorsement which the grand jury makes upon a bill of indictment, when, having heard the evidence, they are satisfied of the truth of the accusation. *See* BILL OF INDICTMENT, GRAND JURY.

True copy. A true copy does not absolutely mean an exact copy, but so true that no body can by any possibility misunderstand it (*per* Bacon, C. J., *In re Hemer*; *Exparte Kahen*, 51 L. J. Ch. p. 905).

True grandfather. True grandmother. Under the Mehomedan Law, true grandfather is a male ancestor into whose line of relationship to the deceased a female does not enter, *i. e.*, father's father and so forth. A false grandfather is one into whose line a female intervenes, *e. g.*, mother's father and father's mother's father.

A true grandmother is a female ancestor into whose line of relationship a false grandfather does not enter, *i. e.*, mother's mother and father's mother, are true grandmothers. A false grandmother is one between whom and the deceased a false grandfather interposes, for instance, mother's father's mother. —*Sadagopah's Meh. Law.*

Trust (*fiducia*; *confidentia*). A trust is a confidence reposed by one person conveying or bequeathing property to another, that the latter will apply it to a purpose or purposes desired by the former. These purposes are generally indicated in the instrument, whether deed or will, by which the disposition is made. Also it signifies the beneficial interest created by such a transaction; in this sense it may be defined as a beneficial interest in, or ownership of, real or personal property, unattended with the legal or possessory ownership thereof.—*Mozley.* A trust is but a new name given to a use.

A *trust* is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner; the person who reposes or declares the confidence is called the *author of the trust*; the person who accepts the confidence is called the *trustee*; the person for whose benefit the confidence is accepted is called the *beneficiary* (*cestui que trust*); the subject matter of the trust is called the *trust-property* or *trust-money*; the *beneficial interest* or *interest* of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument (if any) by which the trust is declared is called the *instrument of trust.—Act II of* 1882 (*Trusts*), *s.* 3.

Object must be lawful. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (*a*) forbidden by law, or (*b*) is of such a nature that if permitted, it would defeat the provisions of any law, or (*c*) is fraudulent, or (*d*) involves or implies injury to the person or property of another, or (*e*) the Court regards it as immoral or opposed to public policy. Every trust of which the purpose is unlawful is void, and where a trust is created for two purposes, of which one is lawful, and the other unlawful, and the two purposes cannot be separated, the whole trust is veid.—*Ibid.*, *s.* 4.

Trust of immoveable property. No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.—*Ibid.*, *s.* 5.

Trust of moveable property. No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee. These rules do not apply where they would operate so as to effectuate a fraud.—*Ibid.*

Creation of trust. Subject to the provisions of s. 5, a trust is created when the author of the trust indicates with reasonable certainty

by any words or acts (*a*) an intention on his part to create thereby a trust, (*b*) the purpose of the trust, (*c*) the beneficiary, and (*d*) the trust property, and (unless the trust is declared by will, or the author of the trust is himself to be the trustee) transfers the trust property to the trustee.—*Ibid.*, *s.* 6.

There are certain requisites for the creation of a trust, these requisites being *three* in number, and familiarly called the *three certainties in trusts*. These three certainties are—(1) certainty in *words* creating the trust; (2) certainty in the *subject* of the trust, *i. e.*, in the trust property; (3) certainty in the *object* of the trust *i. e.*, in the beneficiary.—*Brown.*

Trusts may be classed as (I) Express, divided into—(*a*) Trusts executed, perfect, complete, or constituted; (*b*) Trusts executory, imperfect, incomplete, or directory (*See* EXECUTED AND EXECUTORY TRUSTS); (II) Arising by operation of law, divided into—Constructive, Resulting, Implied. See these titles. Trusts are also divisible into—(1) permanent, when there is a continuing duty to be performed for the benefit of several persons in succession; and (2) Temporary, when there is one particular duty only to be performed. Again, trusts may be general, where a trustee's duty is passive; and special, where it is active.—*Wharton.* *See* ACTIVE TRUST, PASSIVE TRUST.

Trusts are also divided under the following headings:—(I) Express trusts, being trusts which are created in so many fit and appropriate terms, and which are subdivided thus—(*a*) express private trusts, being trusts affecting private individuals only, as executed and executory trusts, trusts voluntary and for value, trusts in favour of creditors; (*b*) express public trusts, being trusts affecting public bodies primarily, also called charitable trusts. (II) Implied trusts, being trusts founded on the presumable, although unexpressed, intention of the party who creates them, such as (*a*) trusts resulting from a purchase in the name of a stranger, (*b*) trust resulting from an incomplete disposition of the equitable estate, including (*c*) trusts of the undisposed of surplus of personal estate for the next of kin, or of real estate for the heir-at-law; (*d*) trusts under conversions that fail wholly or partially; (*e*) trusts in cases of joint tenancies, whether of purchasers, or of mortgagees. (III) Constructive trusts, being trusts which are founded neither on an expressed, nor on any presumable, intention of the party, but which are raised by *construction* of equity without any regard to intention, and simply for the purpose of satisfying the demands of justice and of good conscience, as, for example (*a*) vendor's lien, also vendee's lien, in respect of purchase-money either unpaid or prematurely paid; (*b*) renewal of leases by trustee in his own name; (*c*) permanent improvements to an estate which were unavoidable; (*d*) heir of mortgagee in respect of mortgage loan for next of kin of mortgagee.—*Brown.*

Trusts are also arranged—(I) According to the mode in which they are created, into (1) express trusts, (2) implied trusts, including precatory trusts, *i. e.*, trusts by way of prayer, (3) resulting trusts, (4) constructive trusts by implication of law. (II) According to their scope, into (1) private trusts, and (2) public or charitable trusts. (III) According to their complexity, into (1) simple, and (2) special. (IV) According as to whether they are complete in themselves or require the court's help, into (1) executed, and (2) executory. (V) According to their legality, into (1) lawful, and (2) unlawful (creating prepetuities, superstitious uses, to defraud creditors).

See BREACH OF TRUST, CRIMINAL BREACH OF TRUST, DISCLAIMER OF TRUST.

Trust investment. A list of investments which, unless expressly forbidden by the trust deed, is authorised for trust money by statute.

Trustee. *See* TRUST.

For the purpose of the Limitation Act, *trustee* does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.—*Act IX of* 1908 (*Limitation*), *s.* 2 (11).

Trustee in bankruptcy. In bankruptcy, a person in whom the debtor's property vests in trust for the creditors.

Appointment of new trustees. *See* APPOINTMENT.

Tubman. One of the two most experienced barristers in the Court of Exchequer (the other being called the *postman*), who have precedence in motions in that court. *See* POSTMAN, PRE-AUDIENCE.

Tuccavi. (*Ind.*) Advances of money to ryots to enable them to buy seed and stock for cultivation.

Tulub. (*Ind.*) Wages. Salary. A demand, as of arrears of revenue.

Tulub-i-mowasibut. Tulub-i-ishhad (*ishtishhad*). *Tulub-i-khasomut.* For claiming a right of pre-emption under the Mehomedan Law (*See* SHOOFA), it is necessary that the person claiming the right should declare his intention of becoming the purchaser, *immediately* on hearing of the sale, and that he should, with the least practicable delay, make affirmation, by witnesses, of such his intention, either in the presence of the seller, or of the purchaser, or on the premises. The above preliminary conditions being fulfilled, the claimant of the pre-emption is at liberty at any subsequent period to prefer his claim to a court of justice. The immediate claim or demand above referred to is called *talub-i-mowasibut.* The affirmation by witnesses, is called *tulub-i ishhad* (*Prokas Sing* v. *Jogeswar*, 2 B. L. R., A. C., 12; *Golakam* v. *Brindaban*, 6 B. L. R., A. C., 165; *Jadu Lal* v. *Janki Koer*, 35 Cal. 575); and the claim by litigation, *tulub-i-khasomut.* If a party in due legal form makes a *tulub-i-mowasibut*, or immediate demand, some delay in making the

tulub-i-ishhad prior to the *tulub-i-khasomut*, is not material, and does not under the Mehomedan Law bar the claim to the right of pre-emption.—*MacN. Meh. Law.*

On hearing of a sale, the pre-emptor must immediately make his demand called *tulub-mawasibut*. Where he, on hearing of the sale of the property, went to the property and there declared his right as pre-emptor, *held*, that such delay was fatal to his claim (*Ram Charan* v. *Narbir*, 4 B. L. R., A. C., 216).

The mere fact of the pre-emptor taking a short time before performance of *tulub-mawasibut* for ascertaining whether the information conveyed to him was correct or not does not invalidate his right. The Mehomedan Law allows a short time for reflection before performance of the first demand (*Syad Amjad* v. *Kharag Sen*, 4 B. L. R., A. C., 203).

A pre-emptor claiming pre-emption under the Mehomedan Law is bound, at the time when he makes his *tulub-i-ishtishhad*, to state distinctly that he has already made *tulub-i-mowasibut* (*Rujjub Ali* v. *Chundi Churn*, 17 Cal. 543; *Akbar Husain* v. *Abdul Jalil*, 16 All. 383; *Ahmad Shah* v. *Abadi Begam*, 17 All. W. N. 23; *Abbasi Begam* v. *Afzal Husen*, 20 All. 457; *Abid Husen* v. *Bashir Ahmad*, 20 All. 499; *Jadu Sing* v. *Raj Kumar*, 4 B. L. R., A. C., 171; *Jadu Singh* v. *Butan Singh*, 2 Ind. Cas. 207). And this necessity is not removed by the fact that the witnesses to both demands were the same, the reason being that though the witnesses to both the demands may be the same, a third party, namely, the vendee or the vendor, must be present at the second demand and it is for his information that, at the second demand, reference is required to be made to the fact that the first and immediate demand had been made (*Mubarak Husein* v. *Kaniz Bano*, 27 All. 160; 24 All. W. N. 201; 1 All. L. J. 569).

The mere fact that the *talab-i-istishhad* is made in the presence of certain persons, who happen to be present at the place where it is made is not sufficient to make the demand a good one unless those persons are specifically called upon to bear witness to the demand being made (*Ganga Prasad* v. *Ajudhia Prasad*, 25 All. W. N. 167; 2 All. L. J. 682; see *Chotu* v. *Hussain*, 13 All. W. N. 101).

It is not a binding rule of law that *tulub-i-ishhad*, if made within a day after receipt of intelligence of the purchase, is necessarily in time for the preservation of the right of pre-emption. The due observance of the formality as to time is a question to be decided in each case by the Court (*Mt. Jamilan* v. *Latif*, 8 B. L. R., F. B., 160).

To the due performance of *tulub-i-ishtihad* it is not necessary that any particular form of words should be employed (*Ramdular* v. *Jhumak Lal*, 8 B. L. R., A. C., 455). No particular *formula* is necessary so long as the claim is unequivocally asserted (*Jug Deo* v. *Kazi Sayed Mahomed Afzal*, 9 Cal. W. N. 826; 32 Cal. 982).

The personal performance of the *tulub-i-ishhad*, or demand for pre-emption by the pre-emptor, depends on his ability to perform it. He may do it by means of a letter or messenger, or may depute an agent, if he is at a distance and cannot afford personal attendance (*Syed Wajid Ali* v. *Lala Hanuman*, 4 B. L. R., A. C., 139; *Ali Muhammad Khan* v. *Muhammad Said Husain*, 16 All. W. N. 76).

Where the custom of pre-emption prevails among Hindus, or where a Mehomedan claims a right of pre-emption in respect of a sale between Hindus, founding such right on local custom, it does not necessarily follow that the person claiming pre-emption must fulfil all the conditions of the Mehomedan Law regarding pre-emption. It should be determined whether the custom is a custom under which it is incumbent upon him to fulfil those conditions (*Jai Kuar* v. *Heera Lal*, 7 N.-W. P. 1; *Zamir Husain* v. *Daulat Ram*, 2 All. W. N. 199).

Tumbrell. A cucking stool or ducking stool. A dung-cart. *See* CASTIGATORY.

Tumleek. (*Meh. L.*) The word *tumleek* is one of general import and may be applied to a gift, whether unconditional or conditional, to a sale, or to a will. But the term *hiba* (gift) signifies the immediate transfer of property to another without a consideration. Thus the difference between a *tumleek* and a *hiba* is that the one is general and the other particular.—*MacN. Meh. Law.* *See* HIBA.

Tumleek, or assignment of ownership, is a term of general import applying to the various modes of acquisition of property recognized by Mehomedan Law, but forms no separate and distinct mode of acquiring property. When applied to gift, it does not avoid the legal requirements of acceptance and seisin (*Saiad Kasum* v. *Shaista Bibi*, 7 N.-W. P. 313).

Tumleeknamah. A deed of gift.

Tumultuous petitioning. By 13 Car. II, st. 1, c. 5, it was enacted that not more than twenty names should be signed to a petition to the Crown or either House of Parliament for alteration of matters in Church or State, without the previous approval of the contents by three justices or the majority of a grand jury; and further that no petition should be presented by a company of more than ten persons.

Tun greeve. A town-reeve or bailiff.

Tunnage. *See* TONNAGE.

Turbary (*turbagium*). The right or liberty of digging turf on another man's ground. It may be either by grant or prescription, and either appurtenant or in gross. If appurtenant to a house, it can only be a right to take turf for fuel for such house. Turbary is also the place where turfs are dug. A common of turbary is a liberty which some

tenants have by prescription to dig on the lord's waste. *See* COMMON.

Turn. Tourn. *See* SHERIFF'S TCURN.

Turned to a right. By this phrase, according to Mr. Serjeant Stephen, is generally meant that a person whose estate is divested by usurpation cannot expel the possessor by mere entry, but must have recourse to an action either possessory or droitural. Blackstone, however, uses the expression "put to a right" to apply to the case where the owner of land was so far divested of his right of possession as to be unable to bring a possessory action to recover the land, and was driven to his "writ of right," or action in the nature of a writ of right. He speaks of such an estate as being "turned into a *mere* right."—*Moxley.* *See* WRIT OF RIGHT.

Turnpike Acts. These are local Acts of Parliament under which certain highways, thence called turnpike roads, are kept in repair; by which Acts the management of such roads is usually vested, for a term of years, in trustees or commissioners, who are empowered thereby to erect toll-gates and to levy tolls from those who pass through, as a fund for defraying the expenses of repairs or improvements.

Turnpike roads. Highways upon which gates and barriers (which were originally called "turns") are set up, and tolls collected; the distinctive mark of a turnpike road being the right of turning back any person who refuses to pay toll. *See* TURNPIKE ACTS.

Turn-toll. *See* TOLL.

Tutelage. Guardianship; state of being under a guardian.

Tutor In Scotch Law, a guardian of an infant under the age of puberty. *See* PUPIL. A tutor may be a *tutor-nominate* (testamentary), a *tutor-at-law* or *legitim* (appointed by the court on the application of the infant), or a *tutor-dative* (named by the sovereign on failure of the two preceding). A tutor frequently has charge of both the person and property of the pupil; a curator only of the property.—*Rawson.*

Tutorship. The office and power of a tutor.

Tutrix. A female tutor.

Twanight geste (*hospes duarum noctium*). A guest at an inn a second night. A guest of two nights. *See* AGENHINE.

Twelfhindi. (*Sax.*) The highest rank of men in the Saxon government, who were valued at 1200 s. and if any injury were done to such persons, satisfaction was to be made according to their worth.

Twelve tables. A system of laws (civil and criminal), drawn up in B. C. 450, and extending the protection of the law to the plebeians as well as to the patricians.

Twyhindi. (*Sax.*) The lower order of Saxons, valued at 200 s., as to pecuniary mulcts inflicted for crimes.

Tyburn ticket. A certificate which was given to the prosecutor of a felon to conviction.

Tyhtlan. An accusation, impeachment or charge of any trespass or offence.

Tylwith. A tribe, house or family. A tribe or family branching forth from another, called in the old English heraldry second or third houses.

Tyrannicide. The slaugher of a tyrant.

Tyth. A tenth part. *See* TITHE.

Tything. A company of ten; a district; a tenth part. *See* TITHING.

U

Udal. The same as allodial. It is applied to rights and property possessed independently of any superior. *See* ALLODIAL.

Ullage. The want of measure in a cask; properly, the quantity required to fill it up.

Ulnage. *See* ALNAGE.

Ultimatum. Ultimation. The final proposal, concession, or condition, in a negotiation, in which it is intimated that, in case of its rejection, the negotiation must be broken off.

Ultroneous witness. (*Sc. L.*) One who gives voluntary evidence.

Umd. (*Ind.*) A wilful act. This word is used by the Mehomedan criminal lawyers in opposition to *khataa*, accidental.

Umedwar. (*Ind.*) An expectant; a candidate for employment; an unpaid probationer.

Umpirage. The decision of an umpire. The friendly decision of a controversy. *See* ARBITRATION.

Umpire. A submission to arbitration usually provides that in case of arbitrators not agreeing in an award, the matters should be decided by a third person who is called an *umpire.* The submission either provides that the arbitrators shall appoint the umpire, or he is named therein. An arbitrator. *See* ARBITRATION.

Umquhile. (*Sc. L.*) Deceased.

Unceasesath. An old Saxon word, compounded of *un*, not, *ceas*, a lawsuit, and *ath*, an oath. It signifies that he who kills a thief may make an oath that he killed him in flying for the fact, and his relations will not avenge his death.

Uncertainty. This is where a deed or will is so vague, obscure, and confused that the judges can make nothing of it, and no meaning with definite limit can be assigned to it. Any disposition or conveyance to which it is impossible to affix a meaning is said to void for uncertainty.

Unconscionable bargain. A bargain so one-sided and inequitable in its terms as to raise a presumption of fraud and oppression.

Uncuth. (*Sax*). Unknown; said of a guest on his first night. *See* AGENHINE.

Undefended. A person is said to be undefended when he has no counsel to speak for him on his trial, and has to make his defence himself. An undefended cause is one in which a defendant makes default (1) in not putting in an appearance to the plaintiff's action; (2) in not putting in his statement of defence; (3) in not appearing at the trial either personally or by counsel, after having received due notice of trial,—*Mozley.*

Under-lease. Sub-lease. A lease by a lessee to another, of a *part* of his whole interest under the original lease, reserving to himself a reversion; as opposed to an *assignment*, which conveys the lessee's *whole* interest, and passes to the assignee the right and liability to sue and be sued upon the covenants in the original lease. An under-lease for the whole term of the original lease amounts to an assignment. The under-lessee has no privity with the original lessor, and is liable for rent to his immediate lessor only. But it is different with the assignee. *See* UNDER-TENANT.

Underlie the law. An accused person, in appearing to take his trial, is, in the Scotch criminal procedure, said to "compear and underlie the law."

Under-sheriff. The sheriff's deputy. An officer who acts directly under the sheriff, and performs all the duties of the sheriff's office.

Undertaking. A promise; especially one formally given in the course of a legal proceeding, which may be enforced by attachment or otherwise. An *undertaking to appear* is a promise by a solicitor to appear for his client in an action so as to make personal service on the client unnecessary. In Company Law, the word undertaking denotes all the property of the company, past, present and future, and is a mortgageable interest, being commonly charged by the debentures of the company.

Under-tenant. One who holds by underlease, from a lessee. Between the original lessor and an under-tenant there is neither privity of estate nor privity of contract, so that, these parties cannot take advantage, the one against the other, of the covenants, either in law or in deed, which exist between the original lessor and lessee. *See* PRIVITY, PRIVY.

Under Treasurer of England. The officer who transacted the business of the Lord High Treasurer. *See* TREASURER.

Underwood. Generally speaking, the term 'underwood' is applied to a species of wood which grows expeditiously and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, and so yielding a succession of profits (*per* Bayley, J., *R.* v. *Ferrybridge*, 1 B. & C. 384).—*Stroud.*

Underwriter. The person who underwrites. An insurer of ships, so called from his subscribing or writing his name under the policy of insurance, thereby undertaking to indemnify the assured against the losses by sea or fire referred to in the policy, to the extent therein mentioned. The word is used especially with reference to *marine* insurers; and it is a practice among them to make contracts of re-assurance *inter se*. In the case of a total loss, either actual or constructive, the property insured vests in the underwriter, as a partial indemnity to him against the payment he has to make under the policy. *See* INSURANCE, RE-INSURANCE, TOTAL LOSS.

Undue influence. *See* CONTRACT.

Undue preference. The improper preferring of one customer over another by a railway or canal company. As to the undue preference of creditors, *see* FRAUDULENT PREFERENCES.

Unfair preference. The term 'unfair preference' may be fairly taken to refer to what in the English Bankruptcy Law is called a 'fraudulent preference' and to aim at suppressing voluntary conveyances or dispositions of property (*Sheikh Allahdin* v. *Faiz-ul-lah*, Punj. Rec., No. 142 of 1883). In order to constitute a 'fraudulent preference, the act must be the spontaneous act of the debtor, not *bona fide* originating in a demand or some other step of a creditor (*per* James, L. J. *Exparte Tempest*, 6 Ch. 74). From the mere fact that the judgment-debtor has paid a creditor, it cannot be inferred that he had given him an 'unfair preference.' Payment in consequence of some pressure or *bona fide* application by a person having a right to make it cannot be regarded as 'unfair preference' (*Nath Mal Das* v. *Hira Lal*, 2 All. W. N. p. 18). *See* FRAUDULENT PREFERENCE.

Ungeld. A person out of the protection of the law; so that, if he were killed, no *geld* or fine should be paid for him, or composition made, by him that killed him. An outlaw.

Unigeniture. The state of being the only begotten.

Unilateral. One sided.

Unilateral contracts. A contract by which one party only is bound. Contracts in which all the benefit is on one side, and all the burden on the other. *Bilateral* contracts are those in which there are (as there usually are) benefits and burdens on both sides. The phrase bilaterality should not be confused with mutuality of obligation, which is a very different thing, and which denotes that where either party to an alleged contract is not bound, the other is not bound either (*Burton* v. *G. N. Ry. Co.*, 9 Exch. 507; *G. N. Ry. Co.* v. *Witham*, L. R. 9 C. P. 16).—*Brown.* *See* CONTRACT, MUTUALITY.

Union (*unio*). The consolidation of two or more parishes into one. *See* UNITED PARISHES.

Clause of union. (*Sc. L.*) By a clause of union in an enfeftment, or by a charter from the Crown for that purpose, lands or tenements lying discontiguous are incorporated,

so that one sasine may suffice for them all.—*Tomlins.*

United parishes. The phrase is often used to denote parishes which are united for ecclesiastical purposes, but remain distinct for civil purposes, or *vice versa.*

Unity of interest. Joint tenants are said to have unity of interest, as none of them has a greater interest in the subject of tenancy than the others have.

Unity of possession (*unitas possessionis*). The joint possession by one person of two rights by several titles. This is where one has a right to two estates, and holds them together in his own hands, as if a person takes a lease of lands from another at a certain rent and afterwards buys the fee-simple; this is a unity of possession by which the lease is extinguished, because he who had before the occupation only for his rent, is now become lord and owner of the land. The phrase also signifies the holding of the same estate in undivided shares by two or more.

An easement is *suspended* when the dominant owner becomes entitled to the possession of the servient heritage for a *limited* interest therein, and *vice versa*; and *extinguished* when the same person becomes entitled to the *absolute* ownership of the whole of the dominant and servient heritage.—*Act V of* 1882 (*Easements*), *ss.* 46 *and* 49.

Unity of time. This is where an estate comes into the ownership of two or more persons at the same moment. *See* JOINT TENANCY.

Unity of title. This is where an estate comes to two or more persons by the same title. *See* JOINT TENANCY.

Universal agent. One who is appointed to do all the acts which the principal can personally do, and which he may lawfully delegate the power to another to do.—*Story on Agency.* In practice this does not exist.

Universal currency-note. *See* CURRENCY.

Universal legacy. (*Civ. L.*) A testamentary disposition by which the testator gives to one or more persons the whole of the property which he leaves at his decease.

Universal legatee. A person to whom the testator, having no heirs, bequeaths the whole of his property.

Universal partnership. (*Civ. L.*) A species of partnership by which all the partners agree to put in common all their property, not only what they then have but also what they shall acquire.

Universal succession. A succession to a bundle or series of rights, as opposed to *singular succession.* The party who succeeds is called *universal successor* as opposed to a *singular successor*, which *see.*

University (*universitas*). A series of rights (*universitas rerum*). A corporation. Particularly, a corporation for the advancement of learning.

University Courts. Courts established in the Universities of Oxford and Cambridge, by ancient charters, confirmed in 1571, by 13 Eliz. c. 29. The Courts in each University are—(1) The Chancellor's Court, having jurisdiction in personal actions affecting members of the University, and in cases of misdemeanours and minor offences committed by them; (2) The Court of the Lord High Steward, having jurisdiction in cases of treason, felony, and mayhem, when committed by a member of the university.—*Mozley.*

University Press. The public press of the University of Oxford.

Unlage. (*Sax.*) An unjust law.

Unlawful. The word *unlawful* is not defined in the Indian Penal Code, and there are various sections in the Code where the words *illegal* and *unlawful* are indiscriminately used; an act however may be lawful though it may be illegal; and an act may be unlawful though not illegal (*per* Ghose and Gordon, JJ., *Cahoon* v. *Mathews*, 24 Cal. p. 496). It is only when some express provision of law is intrenched upon that the term *unlawful* can accurately be applied. The accurate signification of the word is 'contrary to law.' (See the observations of Lord Halsbury, L. C., *Mogal Steamship Co.* v. *McGregor, Gow & Co.*, 1892, App. Cas. p. 39).

Unlawful assembly. An assembly of five or more persons is designated an 'unlawful assembly' if the common object of the persons composing that assembly is—(1) To overawe, by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency or any Lieutenant Governor, or any public servant in the exercise of the lawful power of such public servant; or (2) To resist the execution of any law or of any legal process; or (3) To commit any mischief or criminal trespass, or other offence; or (4) By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or (5) By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.—*Act XLV of* 1860 (*Penal Code*), *s.* 141.

Being member of an unlawful assembly. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.—*Ibid.*, *s.* 142.

Unlawful association. This means any combination or body of persons, whether the same be known by any distinctive name or

not, (*a*) which encourages or aids persons to commit acts of violence or intimidation, or of which the members habitually commit such acts or (*b*) which has been declared to be unlawful by the Governor-General in Council under the powers hereby conferred.—*Act XIV of* 1908 (*Criminal Law Amendment*), *s.* 15.

Unlawful consideration. *See* CONTRACT.

Unlawful games. At common law, no game was in itself unlawful. But as common gaming houses were prohibited by the common law, all gaming in a common gaming house is unlawful gaming. But no game of mere skill is now unlawful *per se* (8 & 9 Vic. c. 109, s. 1).—*Stroud.* *See* GAME, GAMING.

Unlawfully. The word is used exceptionally in a wide general sense as regards conspiracy; but its ordinary import is, an act which is 'forbidden by some definite law'; and does not embrace that which is merely immoral. But an act which would give a right to a judicial separation would be done unlawfully (*R.* v. *Clarence*, 58 L. J. M. C. 18; 22 Q. B. D. 23).—*Stroud.*

Unlimited company. A joint stock company, the liability of whose members is unlimited. *See* COMPANY.

Unliquidated damages. Damages the amount of which in money is not settled, as in cases of libel, slander, assault, &c. *See* LIQUIDATED DAMAGES.

Unmarried. Without ever having been married (*Dalrymple* v. *Hall*, 50 L. J. Ch. 302; 13 Ch. D. 715; *Re Sergeant*, 54 L. J. Ch. 159; 26 Ch. D. 575; *Blundell* v. *Falbe*, 57 L. J. Ch. 576; *Clarke* v. *Colls*, 9 H. L. Cas. 601); but it is a word of flexible meaning, and slight circumstances, no doubt, will be sufficient to give the word its other meaning of 'not having a husband, or wife, at the time in question' (*per* Pearson, J., *Re Sergeant*, *supra*). In *Re Lesingham* (53 L. J. Ch. 333; 24 Ch. D. 703), this secondary meaning was attached to the word as used thus—"upon trust to pay unto J. H., spinster, if she be then sole and unmarried."—*Stroud.*

Unnatural offence. The infamous crime against nature. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.—*Act XLV of* 1860 (*Penal Code*), *s.* 377. *See* SODOMY.

Unseaworthiness. The word admits of two meanings—the one relating to the fitness of the ship to encounter the perils of the sea; the other in relation not only to that fitness but also to the fitness of the ship and her equipment to carry the particular goods with which she is loaded (*Rathbone Brothers* v. *Mac Iversons*, 1903, 2 K. B. p. 393).

Unsound food. *See* ADULTERATION.

Unsound mind (*insanæ memoriæ*). A generic term including lunacy and idiocy. A 'person of unsound mind not so found by inquisition' is one who is a lunatic, but has not been subjected to a formal inquiry in lunacy for the purpose of declaring him to be such. *See* CONTRACT, INTOXICATION, LUNATIC.

The term "unsound mind," as used in s. 1, Act XXXIV of 1858 (Lunacy, see now Act IV of 1912, s. 2 [5]), comprehends imbacility whether congenital or arising from old age or mental alienation resulting from disease (*In the matter of Cowasji Byramji*, 7 Bom. p. 18). Mere accentricity does not make a man of unsound mind (*Pilkington* v. *Gray*, 1899, A. C. p. 403).

Unthrift. A person of outrageous prodigality.

Until. The word may be construed either exclusive or inclusive of the day to which it is applied, according to the context and the subject matter (*The King* v. *Stevens and Agnew*, 5 East 244).

Until further order. When an interim order is made to extend over a certain day *or until further order*, it does not mean that it is to go on *after* that day or until further order, but that it is to stop *earlier* if the Court shall so order—until that day or "further order" meaning at an earlier date (*per* Malins, V.-C., *Bolton* v. *London School Board*, 7 Ch. D. p. 771).

Upanayana. (*Hin. L.*) Drawing near; the ceremony of the investiture of a Brahman youth with the sacerdotal thread, usually performed within the eighth year of age.

Upeksha. (*Ind.*) Neglect; disregard. In law, laches, silent neglect of a right, which is held to constitute or amount to its forfeiture.

Upland. High ground or *terra firma*, in contradistinction to marshy and low ground.

Upon. The word "on" or "upon" may either mean *before* the act done to which it relates, or *simultaneously with* the act done, or *after* the act done, according as reason and good sense require with reference to the context and the subject-matter (*Rasma* v. *Hamphery*, 10 A. & E. 335, 370).

Upper Bench (*bancus superior*). In the time of the Commonwealth, the King's Bench was called the Upper Bench.

Upset price. In sales by auction, an amount for which property to be sold is put up, so that the first bidder at that price is declared the buyer.—*Wharton.*

Urban servitudes. City servitudes, *i. e.*, servitudes connected with houses, as the right to light and air, support, stillicide, &c. *See* SERVITUDE.

Ure. Use; custom; practice; habit. Effect; operation.

Usage. The custom of a locality; the custom of merchants; the customs of particular

trades. A practice long continued. It differs from *custom* in that it must always be proved; whereas a custom is frequently general, and as such is noticed without proof. *See* CUSTOM. In French law, it corresponds very much to the tenancy-at-will or on sufferance of English law.

Usage of trade. These words are to be understood as referring to a particular usage to be established by evidence; and perfectly distinct from the general custom of merchants which is the universal established law of the land, to be collected from decisions, legal principles and analogies (not from evidence *in pais*), and the knowledge of which resides in the breasts of the judges (1 Sm. L.C. 581-2, 9th Edn.).—*Stroud.*

Usance. Usance, in reference to foreign bills of exchange, is the common period, fixed by the usage or habit of dealing between the country where the bill is drawn, and that where it is payable, for the payment of bills. The word imports different periods of time, according to the country in which the bill is drawn. It sometimes means a month, sometimes two or more months, sometimes half a month. Moreover, bills may be drawn payable at usance, at half usance, or at double or treble usance. Where usance is a month, half usance means fifteen days.

Use (*usus*). Use, in application of law, is the profit or benefit of lands and tenements, or a trust and confidence reposed in a man for the holding of lands, that he to whose use the trust is made shall take the profits thereof.—*Tomlins.*

A *use*, before the Statute of Uses (27 Hen. VIII, c. 10, passed in 1536), consisted in the equitable right to receive the profit or benefit of lands and tenements, which was, in cases of lands conveyed to uses, divorced from the legal ownership thereof. The object of such conveyances was principally to evade the Statutes of Mortmain (7 Edw. I; 15 Ric. II, c. 5) by which lands were prohibited from being given directly to religious houses; and the invention of *uses* is commonly attributed to the ecclesiastics, they having been the early lawyers. Thus, by means of uses, lands came largely into mortmain (*see* MORTMAIN) to spiritual corporations, contrary to the Statutes of Mortmain. The ecclesiastics obtained grants to persons *to the use of* religious houses, which the clerical chancellors of those days declared to be binding. Another supposed advantage of uses was that they could be dealt with and disposed of without the formalities required for the transfer of the legal estate. The person enjoying the beneficial right was called the *cestui que use*, or he to whose use the land was conveyed; and the person in possession, the *feoffee to uses*. Ultimately, after some Acts of more imperfect character, the Statute of Uses (27 Hen VIII, c. 10) was passed, which enacted in effect that the *use* of the land should involve the *legal ownership*, and that where the *use* was there the land or *legal estate* should be and should be deemed to be; for the statute provided that where any person or persons shall stand seised of any lands or other hereditaments to the use, confidence or trust of any other person or persons, the persons that have any such use, confidence or trust shall be deemed in lawful seisin and possession of the same lands and hereditaments for such estates as they have in the use, trust or confidence. In consequence of this statute, the word *use* departed with its original signification and became equivalent to seisin or legal estate. And whether the use was *express*, or was *implied*, or was *resulting*, the statute of uses was held equally to apply to it; it was turned into the legal estate or seisin. The statute aimed at the total destruction of the use, by effecting an amalgamation of legal and equitable interests; and is said to be the Magna Charta of English conveyancing; but, however this might be, it is certain that such an object has been signally defeated by the creation of modern trust, which sprang from the judicial interpretation by the Common Law judges of the meaning of this celebrated statute.

By the joint operation of the Statute of Uses and the decision in *Tyrrell's Case* (4 & 5 Ph. & M.) two lines of estates have become well established in Law, namely,—(1) the legal estate in *the trustee*, which retains all, or nearly all, of its ancient incidents; and (2) the equitable estate in the *cestui que trust*, which has received incidents analogous to those of the legal estate, upon the maxim, *Equity follows the Law.*

Some writers have distinguished between *uses* and *trusts*, regarding uses a species of trusts. The distinction seems to be the following:—(1) A use regards principally the *beneficial interest*; a trust regards principally the *nominal* ownership. So far as this distinction is concerned, they mean the same thing regarded from two different points of view. (2) The usage of the two terms is, however, widely different. The word *use* is employed to denote either an estate vested since the Statute of Uses and by force of that statute, or to denote such an estate created before that statute, as, had it been created since, would have become a legal estate by force of the statute. The word *trust* is employed *since* that statute to denote the relation between the party invested with the *legal estate* (whether by force of that statute or independently of it) and the party beneficially entitled who has hitherto been said to have the *equitable* estate. The main distinction between legal and equitable estates is abolished for the future by s. 24 of the Judicature Act, 1873 (36 & 37 Vic. c. 66). There appears to have been a distinction between a *use* and a *trust*, even before the Statute of Uses. The use was an equitable interest general and permanent in the land, but an equitable interest which was either special and transitory was strictly a trust. But, although for the sake of distinction, and in practice, as above

stated, the first use executed by statute is called a use, and the second use not executed by the statute a trust, yet this phraseology is altogether arbitrary, for either word may be applied indiscriminately and convertibly to either estate, since the particular interests enjoyed by the parties depend upon their position with regard to one another, and not upon the term employed in their denomination.

Use upon use. If, since the Statute of Uses, lands should be conveyed to A to the use of B to the use of C, B would have the legal estate, the use of C, being a *use upon a use*, which the courts of law refused to recognise (*Tyrrell's Case*, 4 & 5 Ph. & M.), holding that the statute of uses intended the first use only, and that as soon as they had executed that use and made it the legal estate it was exhausted. But the courts of Chancery, while adopting the rule of Law so far, went further, and gave the benefit or beneficial enjoyment, as before, to the person intended to benefit, calling the fist *usee* the legal estate man or *trustee*, and the proper beneficiary being the second or last usee, the equitable estate man, or *cestui que trust*, and the true owner in Equity; and practically the relation between B and C would be expressed by the word *trust*, and not by the word *use*.

Active uses. When the use involved a direction to sell the estate and then divide the proceeds of the sale, or to pay debts, or to pay over the profits, or to convey to a child on attaining majority, or to re-convey on the re-payment of a mortgage-loan, the Statute of Uses was precluded from the very nature of the transaction from converting such a use into a legal right to the land, and equity, therefore, compels the trustee, who retains the legal estate notwithstanding the Statute, to perform the duty confided in him.

Action for use and occupation. An action for damages due on an *implied* agreement to pay for the use of landlord's property. An action brought by a landlord against a tenant for profits of land, where there has been no demise by deed; this action is allowed by 11 Geo. II, c. 19, s. 14. It is also maintainable against a tenant holding over after a lease by deed has expired, in respect of such holding over. *See* HOLDING OVER The measure of damages recoverable in this action is the rent where a rent has been agreed upon; and where no rent has been agreed upon, then such sum as the jury may find the occupation worth.—*Mozley.*

See SUPERSTITIOUS USES.

User. Enjoyment of property. The act of using or enjoying any profit or benefit, or any easement upon or over any land or water. The effect of such user, if continued for a period sufficiently long, and under circumstances which indicate the exercise of a right on the part of the person so using the land, is to establish a prescriptive claim ever after to enjoy the same profit or easement. *See* EASEMENT, PRESCRIPTION.

User de action. The pursuing or bringing action in the proper county, &c.

Usher. A door-keeper of a Court; an officer who keeps silence in a court. *See* BLACK ROD.

Usual covenants. Covenants usually inserted in deeds having a similar scope to that in respect of which a question arises. The phrase generally occurs in agreements for lease, stipulating that the lease when granted shall contain all the usual covenants. What these are is a question of fact, but generally they are covenants by the lessee to pay rent, to pay taxes, and to repair, and a qualified covenant by the lessor for quiet enjoyment —*Wharton.* A proviso for re-entry on breach of covenats generally is not 'usual' but a proviso for re-entry on breach of the covenant to pay rent is (*per* James, L. J., *Hodgkinson.* v. *Crowe*, L. R. 10 Ch. 222).

Usual terms. A phrase very frequently applied to the terms on which further time for pleading is allowed, namely, pleading issuably, rejoining gratis, and taking short notice of trial.—*Mozley.*

Usucapion. Usucaption (*usucapio*). (*Rom. L.*) The enjoying a thing by long continuance of time; property acquired by use or possession. In Roman Law, the word indicated that when a person had for a fixed time been *bona fide* in possession of a chattel not his own, he acquired a property therein by use against all the world. There is nothing in the English law precisely corresponding to it, but there are two things which in different ways resemble it—(1) A purchase in market overt, whereby a *bona fide* purchaser in general acquires a property in a chattel, though it was not the vendor's to sell. (2) The positive prescription arising under the Prescription Act (2 & 3 Wm. IV, c. 71). But this prescription applies to *incorporeal* hereditaments only, whereas *usucapion* applies to all kinds of property. The purely negative prescription, arising from the Statutes of Limitation, is often confounded with *usucapion*; but *usucapion* was a *direct* source of title to property. The Statutes of Limitation confer no title at all directly, but merely bar the right of action.—*Mozley.*

Usufruct. In the Roman Law, this was a temporary right of using or reaping the fruits (*fructus*) of things belonging to others, without having the full dominion over the substance (*salva rerum substantiâ*) or destroying or wasting the subject over which such right extends. But in practice it was generally understood to signify a right of enjoying any thing for the life of the usufructuary, *i.e.*, the party entitled to the usufruct. And the word is so understood in Scotland.—*Mozley.*

Usufructuary (*usufructuarius*). One that has the use, and reaps the profit of a thing.

Usufructuary mortgage. *See* MORTGAGE.

Usurious contract. A contract tainted with usury.

Usurpation (*usurpatio*). Using that which is not one's own; disturbing a man in his right and possession; an interruption of *usucapio*. It is called *intrusion* in the Civil and Canon Laws.

Usurpation of an advowson. An injury which consists in the absolute ouster or dispossession of the patron. This is when a stranger, who is not the patron, presents a clergyman to the living, and the clergyman so presented is thereupon admitted and instituted. *See* ADVOWSON.

Usurpation of a franchise. The use of a franchise by a person who has no right to it. When any subject doth use, without lawful warrant, royal franchise, he is said to usurp upon the king those franchises.

Usury (*usura*). Money or reward given for the use of money; the gain of anything in consideration of a loan beyond the principal or thing lent; otherwise called interest. The term usually applies to the taking of exorbitant interest, or interest to a greater amount than is allowed by law. The rate of interest in English law was 10 p. c. per annum in the reign of Henry VIII and Elizabeth, reduced by Jac. I to 8 p. c., and by Car. II to 6 p. c., and last of all by 12 Anne, st. 2, c. 16, fixed at 5 p. c. on ordinary contracts—any contract (being an ordinary contract) for the loan of money at a higher rate being void for usury or illegality. These laws against usury are now repealed by 17 & 18 Vic. c. 90; but the interest which pawnbrokers may take is still restricted by law to 25 p. c. per annum on loans under 40 s., and 20 p. c. per annum on loans exceeding that amount (35 & 36 Vic. c. 93, sch. IV).

The repeal, however, does not affect the jurisdiction of the Court of Chancery in granting relief to persons who have obtained loans of money on exorbitant and inequitous terms.

Uterine brother (*uterinus frater*). A brother by the mother's side only; a brother born of the same mother. *Frater consanguineus* is the brother by the same father.

Utero-gestation. Pregnancy.

Utfangthef. A jurisdiction by which the lord of a manor was empowered to punish a thief dwelling out of his liberty and committing theft without the same, if taken within the jurisdiction of the manor. The word is properly used of the thief himself. *See* OUTFANGTHEF.

Utland. Tenemental land. *See* INLAND, OUTLAND.

Utlawry. Utlary. (*utlagaria*; *utlagatio*). *See* OUTLAWRY.

Utlegh (*uthlagus*; *utlagatus*). An out-law.

Utlepe. (*Sax.*) An escape (out-leap) of a felon out of prison.

Utter Bar. Utter Barristers. Barristers-at-law who plead *without the bar* of court. All such counsel as are not either king's counsel or serjeants-at-law. The junior barristers are said to plead *without* the bar, while those of the higher rank are admitted to seats *within* the bar, and address the court or a jury from a place reserved for themselves and divided off by a bar. *See* OUTER BAR.

Uttering. Tendering; selling; putting in circulation; publishing; as uttering false coins; uttering forged instruments, meaning passing them off as genuine.

V

Vacant possession. This is where a tenant has entirely abandoned the premises which he held, for if he still retains the virtual possession of them, though he has ceased to occupy, the possession cannot be treated as vacant. Where the tenant of a house locked it up, and quitted it, the court held that the landlord should treat it as a vacant possession. But where there is anything left by the tenant on the premises, however trifling, (for almost any matter will suffice to prevent a vacant possession), it cannot be treated as a vacant possession.—*Tomlins.* For the recovery of a vacant possession, in an action of ejectment, the copy of the writ may be pasted on the door of the dwelling house, or other conspicuous part of the property.

Vacant succession. This is where, on the death of a sovereign or other person of title, there is no one appointed by law to succeed. The phrase may also be applied to an *hæreditas jacens*, where there is no one to succeed the deceased.—*Mozley.*

Vacation (*vacatio*). The time between the end of one term and the beginning of another. It begins the last day of every term, as soon as the court rises. *See* TERM. The period from the avoidance of a bishopric or ecclesiastical dignity to the appointment of a successor. *See* AVOIDANCE.

Vacation judges. Judges who sit during vacations, for the hearing of such applications as may require to be immediately or promptly heard.

Vacation sittings. Sittings of the court during vacation, to transact urgent business. *See* VACATION JUDGES.

Vadil. (*Ind.*) Elder; ancestor.

Vadilki. Right of eldership.

Vadiloparjita. Ancestral property.

Vadium. *See* BAILMENT.

Vagabond (*vagabondus*). One that wanders about, and has no certain dwelling; an idle fellow. By various statutes it is provided that certain acts shall constitute their perpetrator a rogue and vagabond; as leaving a wife and children chargeable to the parish; using subtle craft to deceive His Majesty's subjects, &c.

Vagrants (*vagrantes*). Sturdy beggars; vagabonds. A vagrant is a person belonging to one of the following classes:—(1) Idle and disorderly persons; (2) rogues and vagabonds;

(3) incorrigible rogues. These several classes are defined by various acts of Parliament.

Vagrant (European) means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence.—*Act IX of* 1874 (*European Vagrancy*), *s.* 3.

Vaishya. (*Hin. L.*) The third of the four classes of Hindus, *i. e.*, the merchants and traders.

Vakalat-namah. (*Ind.*) A power-of-attorney; letter of authority; an instrument giving a vakeel authority to plead in a particular suit.

Vakdana. (*Ind.*) A verbal or promised gift; affiance; betrothal; promise to give a boy in adoption, or a daughter in marriage.

Vakeel. (*Ind.*) One endowed with authority to act for another; an ambassador; an agent; an authorised attorney; a pleader in a court of justice. *See* PLEADER.

Valesheria. The proving by the kindred of the slain, one on the father's side, and another on the side of the mother, that the man slain was a Welshman. Similarly, proving that the person slain was an Englishman, was named *englescherie*. The fact, if proved, excused (in the times of Canute and of William the Conqueror) the neighbourhood from the fine they would have been liable to, had a Dane or a Norman been slain.

Valuable consideration. The distinction between a good and a valuable consideration is this, that the former consists of considerations of blood, or of natural love and affection; as where a man grants an estate to a near relation from motives of generosity, prudence, and natural duty; and the latter consists of such a consideration as money, marriage which is to follow, or the like, which the law esteems an equivalent given for the grant. The conveyance by bargain and sale requires to be for valuable consideration as distinguished from that by a covenant to stand seised, which requires to be for blood or natural affection. In the statutes of Elizabeth against fraud (13 Eliz. c. 5 and 27 Eliz. c. 4), a *good* consideration means a valuable one.—*Brown*. *See* CONSIDERATION, GOOD CONSIDERATION.

A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other (*Currie* v. *Misa*, L. R. 11 Exch. 162; *Muhamed-un-nissa* v. *J. C. Batchelor*, 7 Bom. L. R. 477).

Valuable security. The words 'valuable security' denote a document which is or purports to be a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right. —*Act XLV of* 1860 (*Penal Code*), *s.* 30.

A document is a valuable security within the meaning of s. 30 of the Penal Code, if it purports to be such though it might not have been in fact valuable security (*Empress* v. *Nasir-ud-din*, 3 All. W. N. 59).

An unregistered document, though it may not be a valuable security until the registration is completed, still "purports" to be a valuable security within the meaning of s. 467 of the Penal Code (*Kashinath Naek* v. *Queen-Empress*, 25 Cal. 207).

The fact that a document has not been stamped, and is not, therefore, receivable in evidence, does not prevent its being a 'valuable security' within the meaning of s. 477 of the Penal Code (*Pro.*, *Aug.* 5, 1873, 7 Mad. H. C. R. 26; *Queen-Empress* v. *Ramasami*, 12 Mad. 148).

Valuation list. A list of all the ratable hereditaments in a parish, showing the names of the occupier, the property, the extent of the property, the gross estimated rental, and the ratable value, prepared by the overseers of each parish.

Value (*valentia*; *valor*). This is a relative term. The value of a thing means the quantity of some other thing or things in general, which it exchanges for.

Value of marriage (*valor maritagii*). *See* AVAIL OF MARRIAGE.

Value received. A phrase implying the existence of valuable consideation. The phrase is especially used to indicate that a bill of exchange has been accepted for value, and not by way of accommodation.

Purchaser (or *holder*) *for value.* One who gives valuable consideration, as opposed to a *volunteer*, which *see*.

Valued policy. A policy in which the sum to be recovered under it is agreed upon beforehand between the parties, and expressed on the face of the policy, such value being conclusive between them in case of loss. *See* OPEN POLICY.

Valuer. Valuator. A person whose business is to appraise or set value upon property.

Valvasour. *See* VAVASOUR.

Variance (*variantia*). An alteration of a thing formerly said in a plea; or where the declaration in a cause differs from the writ, or from the deed upon which it is grounded. A discrepancy between the statements in the pleadings and the evidence adduced in proof thereof. The court has power to grant amendments of variances in proceedings, especially where neither party is prejudiced thereby.

Varshasan. (*Ind.*) An annual allowance; annuity.

Vassal (*vassalus*). A tenant holding lands under a lord, and bound by his tenure to feudal services. A subject. A dependant.

Vassalage. The state of a vassal; tenure at will; slavery.

Vassaleria. The tenure or holding of a vassal.

Vavasour. An obsolete title of dignity next to a peer. One who, himself holding under a superior lord, has others holding under him.

Vavasory. Lands held by a vavasour.

Veal-money. Money payable by certain tenants in the manor of Bradford, in Wiltshire to their lord, in lieu of veal paid formerly in kind.

Vejours. Viewers; such as those sent by a court to take a view of any place in question for the better decision of the right thereto; also persons appointed to view the result of an offence, or to view those that excuse themselves from appearance in court on the ground of illness. *See* LICENSE TO ARISE.

Venaria. Beasts that are caught in the woods by hunting.

Venary. Chase; hunting. Beasts of venary are beasts of chase, and were formerly held to belong to the king or to such as were authorized under him.

Vendee. One to whom anything is sold.

Vendition (*venditio*). Sale. The act of selling.

Vendor. One who sells anything.

Vendar's covenants for title. These ordinarily extend to the acts done by the vendor and the persons from whom he claims by succession, devise, or voluntary conveyance; that is, to all acts done since the last sale of the estate. *See* COVENANTS FOR TITLE.

Vendor's lien. An unpaid vendor of lands is entitled to a lien thereon for the purchase-money (or the proportion thereof) remaining unpaid after execution of the conveyance and possession delivered; and such a lien is equivalent in value to an equitable mortgage, being a real right and not a merely personal one. The lien is not lost by taking a collateral security, *e. g.*, a bond; but if the bond was substitutive of, and not cumulative with, the lien, then the lien is gone. The lien, when it exists, and not lost, waived, or abandoned, holds good against the purchaser himself, and his heirs, and all persons taking under him or them as volunteers; also against subsequent purchasers for valuable consideration who bought with notice of the purchase-money remaining unpaid; also against the assignees, *i.e.*, trustees, of a bankrupt, although they may have had no notice of it; and if the legal estate is outstanding, then also against all subsequent purchasers and mortgagees of the land. On the other hand the lien will not prevail against a *bona fide* purchaser for valuable consideration without notice, who has the legal estate in him.—*Brown.* *See* LIEN, SELLER'S LIEN.

In a suit claiming possession of land purchased by the plaintiff from the defendant, the Munsif threw out the claim for want of consideration; but the District Judge found that the plaintiff was entitled to have the land, and that the defendant might sue him for the purchase money. *Held*, that the equitable doctrine of the vendor's lien for unpaid purchase-money applied to the case (*Yellappa* v. *Mantappa*, 3 Bom. H. C., A. C., 102).

In the absence of a contract to the contrary, the seller of immoveable property is entitled, where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money or any part thereof remaining unpaid, and for interest on such amount or part.—*Act IV of* 1882 (*Trans. of Pro.*), *s.* 55 (4) (*b*).

Distinction between vendor's lien under English law and a charge under s. 55 (4) (*b*) *of the Trans. of Pro. Act* The *charge* which the vendor obtains under the Trans. of Pro. Act is different in its origin and nature from the *vendor's lien* given by Courts of Equity to an unpaid vendor. The latter is a creation of the Courts of Equity and can be modified to the circumstances of the case by the Court of Equity. As regards the former, the law of India knows nothing of the distinction between legal and equitable property in the sense in which that is understood when equity is administered by the Court of Chancery in England; and the Trans. of Property Act gives a statutory charge upon the estate to an unpaid vendor, unless it be excluded by contract. Such a charge stands in quite a different position from a vendor's lien. The Court has to find something, either express contract, or at least something from which it is a necessary implication that such a contract exists, in order to exclude the charge given by the statute. The charge is not excluded by a mere personal contract to defer payment of a portion of the purchase-money, or to take the purchase-money by instalments, nor is it excluded by any contract, covenant or agreement with respect to the purchase-money which is not inconsistent with the continuance of the charge. A conveyance or sale in consideration of a covenant to pay a sum of money in the future is different from a sale in consideration of money which the purchaser covenants to pay. The distinction between the two may seem fine one, but it is a real distinction. The former does not give rise to a charge, while the latter does (*Webb* v. *MacPherson*, 5 Bom. L. R. 838).

Vendor and purchaser. For the rights and liabilities of a vendor and purchaser, in the absence of a special agreement, see Act IV of 1882 (Trans. of Pro.), s. 55.

Vendue master. An auctioneer.

Venue (*vicinetum*). A neighbouring place; the place whence a jury are to come for trial of an action or indictment. In former times the direction to the sheriff was to summon a jury, not from the *body of the county* but from the *immediate neighbourhood* where the facts occurred, and from among those persons who

best knew the truth of the matter. Hence to *lay the venue* means, in the language of pleading, to allege the place where the facts occurred.

Changing the venue means changing the place of trial.

A venue is either *transitory* or *local*. It is transitory when the cause of action is of a sort that might have happened anywhere, which is generally the case where the locality is not the gist of the action, as in a case of assault. It is local, when it could have happened in one county only, as in an action of trespass in breaking and entering the plaintiff's close.

Veppu. (*Ind.*) A sort of mortgage, in which the mortgagee or veppu-holder has the right of pre-emption, and also the prior right of making further advances (*Vasudevan* v. *Keshavan*, 7 Mad. 309).

Verbal. Made by word of mouth; oral.

Verderor (*veredarius*). An officer in the king's forest whose office is properly to look to the vert and see it well maintained; and to keep the assizes of the forest, to receive and enrol attachments and presentments of trespasses of vert and venison. *See* VERT.

Verdict (*vere dictum*). The answer of a jury given to the Court, concerning the matter of fact in any cause committed to their trial. The verdict is either *general* or *special*; general, when they give it in general terms, as guilty or not guilty; special, when they find it at large according to the evidence given and pray the direction of the Court as to what the law is upon the facts so found. *See* GENERAL VERDICT, PRIVY VERDICT, SPECIAL VERDICT.

Verge. Virge (*virgata*). The compass of the king's court which bounds the jurisdiction of the Lord Steward of the household and of the Coroner of the King's house. It extends to twelve miles from the royal residence. *See* COURT OF MARSHALSEA. An uncertain quantity of land, from fifteen to thirty acres. A stick or rod by which a tenant of a manor is admitted; and, holding it in his hand, takes the oath of fealty to the lord of the manor.

Vergers (*virgatores*). Those who carry white wands before the judges, or before church dignitaries.

Verification (*verificatio*). The concluding averment in a pleading, which was formerly necessary in every pleading which contained new affirmative matter. It was made in these words—"And this he is ready to verify" (*et hoc paratus est verificare*). It is now rendered unnecessary.

A verification is a matter of great importance as possessing the security of being made under the sanction of a solemn declaration, for which the person making it would be liable to the penalties attaching to the crime of giving false evidence, if the declaration were false to his knowledge (*In re an Attorney*, 14 Crim. L. J., 305; 19 Ind. Cas. 993; 41 Cal. 113). *See* AFFIDAVIT.

Under O. VI, R. 15 of the Code of Civ. Pro. (V of 1908), every pleading shall, save as otherwise provided by any law for the time being in force, shall be verified at the foot by the party pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. The person verifying shall specify, by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge, and what he verifies upon information received and believed to be true.

Vert. In forest laws, this signifies every thing that beareth a green leaf within a forest, that may cover a deer; but especially, great and thick coverts. Of vert there are divers kinds; some that bear fruit, which may serve for food; for the shelter of the game, some are called *haut boys* (high-wood) serving both for food and browze, and also for the defence of them, and for shelter and defence; cf *sub-boys* (underwood) some are for browze and for food of the game. But herbs and weeds, although they be green, legal vert extendeth not to them. Manwood divides vert into *overt-vert*, and *nether-vert*; the overt vert is that which the law-books term *haut-boys*, and nether-vert what they call *sub-boys*; and into *special vert* which is all trees growing within the forest that bear fruit to feed deer, called *special*, because the destroying of it is more grieviously punished than of any other vert. Vert is sometimes taken for that power which a man hath, by the king's grant, to cut green wood in the forest.—*Tomlins*. The vert which grows in the king's demesne woods is termed *special* vert.

Very lord and very tenant (*verus dominus et verus tenens*). Those that are *immediate* lord and tenant one to the other. *See* LORD.

Vessel. The word vessel denotes any thing made for the conveyance by water of human beings or property.—*Act XLV of* 1860 (*Penal Code*), *s.* 48.—*Act III of* 1864 (*Foreigners*), *s.* 1.—*Act VIII of* 1878 (*Sea Customs*), *s.* 3 (*f*).—*Act XV of* 1908 (*Indian Ports*), *s.* 3 (7).—*Act XVII of* 1908 (*Emigration*), *s.* 2 (x).

Vessel includes any ship or boat or any other description of vessel used in navigation.—*Act X of* 1897 (*General Clauses*), *s.* 3 (56).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (48).—*Act IV of* 1884 (*Explosives*), *s.* 4 (3).

Vest (*vestire*). To place in possession; to make possessor of; to give an interest in property when a named period occurs. To come into the possession of any one; to enure to the benefit of any one.

Vested in possession. A phrase used to indicate that an estate is an estate in possession, as opposed to an estate in reversion or remainder. A right of present enjoyment actually existing.

Vested inheritance. Under the Mehomedan Law, where a person dies and leaves heirs, some of whom die prior to any distribution of the estate, the survivors are said to have vested interests in the inheritance; in which case the rule is, that the property of the first deceased must be apportioned among his several heirs living at the time of his death, and it must be supposed that they received their respective shares accordingly.—*MacN. Meh. Law.*

Vested interest. Such an interest as is in the actual possession or certain expectation of some specific person, and is of such a nature that it cannot be lost except by the death or voluntary act or misconduct of the party entitled thereto. A present fixed right of future enjoyment; this would include all estates in possession and reversion, vested remainders, and such executory devises, future uses, conditional limitations, and other future interests, as are not referred to, or made to depend on, a period or event that is uncertain.

Where, on the transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith, or on the happening of an event which *must* happen, such interest is vested, unless a contrary intention appears from the terms of the transfer. A vested interest is not defeated by the death of the transferee before he obtains possession. An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising fram the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen, the interest shall pass to another person.—*Act IV of* 1882 (*Trans. of Pro.*) *s.* 19.

Interest for the benefit of an unborn person. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.—*Ibid.*, *s.* 20.

Protection of vested interests. When parliament makes changes in any institution, *vested interests* are generally respected; that is to say, the incomes and other emoluments enjoyed, or certainly expected by such persons as are then members thereof in virtue of such membership, are secured to them.—*Mozley.*

See CONTINGENT INTEREST.

Vested legacy. A legacy is said to be vested when the words of the testator making the bequest convey a transmissible interest, whether present or future, to the legatee in the legacy. Thus a legacy to one, to be paid when he attains the age of twenty-one years, is a vested legacy, because it is given unconditionally and absolutely, and therefore vests an immediate interest in the legatee of which the enjoyment only is deferred or postponed; and if such legatee die before that age, it shall pass to his representatives at the time that it would have become payable had the legatee himself lived. But a legacy bequeathed in case a specified *uncertain* event shall happen does not vest until that event happens; and until the condition has been fulfilled, the interest of the legatee is called *contingent*; as if the legacy were given when or if the legatee attain a certain age, it would not be vested until that age; and if the legatee were to die before that age, the legacy would fail to take effect, and his representatives could make no claim to it, for in this case the bequest is a kind of conditional one, depending upon the happening of an event, *viz.*, the legatee's attaining the specified age.—*Brown.* See Act X of 1865 (Succession), Part XIII, which is applied to the Hindu Wills Act (XXI of 1870).

Vested remainder. A remainder which is always ready, from its beginning to its end, to come into possession at once, subject only to the determination of some prior particular estate or estates.—*Mozley.* Vested remainders (or remainders executed) are those on the creation of which a present interest passes to the party, though to be enjoyed at a future time, and by which the estate is invariably fixed to remain to a determinate person after the particular estate is spent. As if an estate is conveyed to A, for twenty years, remainder to B in fee; here B's is a vested remainder, which nothing can defeat or set aside; so that a person entitled to a vested remainder has an immediate fixed right of future enjoyment, that is, an estate *in presenti*, though it is only to take effect in possession and receipt of the profits at a future period.—*Brown. See* CONTINGENT REMAINDER, PARTICULAR ESTATE.

Vesting order. An order of the Chancery Division of the High Court vesting any property (real or personal) in the person or persons specified in the order. This is often done under the Trustee Acts, when the trustees appointed are unwilling or unable to act in execution of the trusts; or when, for any reason, it is desirable to appoint new trustees, and it is found impracticable or inconvenient to procure a conveyance to them in the ordinary way.—*Mozley.* In certain cases, as where a person who should convey is lunatic or cannot be found, a vesting order is made in the Chancery Division, or by the Lord Chancellor or Lords Justices, which has the effect of transferring the property to the proper person.—*Rowson.* A vesting order in insolvency is in effect an assignment in trust for the benefit of creditors, and as such paramount to the right of an attachment-before-judgment creditor as it is more equitable that property under the control of the court should be applied for the benefit of all the creditors, than for the exclusive advantage of one (*Ex*

parte Gamble; *Sava Ramjee* v. *Jadavji*, 2 Bom. H. C., O. C., 142; *Shib Kristo* v. *Miller*, 10 Cal. 150; *Sadayappa* v. *Ponnama*, 8 Mad. 554).

Vestry. A place or room adjoining to a church, where vestments of the minister are kept. Also a parochial assembly, commonly convened in the vestry, to transact the parish business. By custom in some parishes, and by 1 & 2 Wm. IV, c. 60, in others, a select number of parishioners is chosen yearly to manage the concerns of the parish for that year; they are called a *select vestry*.

Vestry cess. A compulsory rate formerly levied in Ireland for parochial purposes.

Vestry clerk. An officer appointed to attend vestries, and take an account of their proceedings.

Vesture (*vestura*). A garment. Possession or seisin of land. The profit of land; a crop of grass or corn. Pasturage.

Vexatious suit. One brought without probable cause, for the purpose of annoyance or oppression. One instituted (*e. g.*, in cases of ejectment) after repeated unsuccessful trials of the same question, and so forth. Vexatiousness is a ground for ordering security for costs to be given; and sometimes for commencing an action in the nature of a bill of peace. *See* BILL OF PEACE, FRIVOLOUS.

Viable (*vitæ habilis*). An infant newly born is said to be viable if the organs are in such a state of regular confirmation and development as to render the infant capable of living. But if it be affected with such a disease or malformation as to render a continuance of life impossible, it is said to be nonviable; and, according to some systems of law, is, so far as regards the transmission of right to legal representatives, as if it had never been born.—*Moxley*.

Viability. A capability of living after birth; possibility of continued existence.

Vibhaga. (*Ind.*) Division; partition; apportionment.

Vibhaga-bhak. One who shares in property already distributed, as a son born subsequently to the partition of the paternal inheritance.

Vibhaga-patrika. A deed of partition.

Vicar (*vicarius*). One who performs the functions of another; a substitute. The priest of every parish is called *rector*, unless the prædial tithes be impropriated, and then he is called *vicar*, *quasi vice fungens rectoris*, as if vacariously discharging the duty of a rector.

Vicarage (*vicaria*). The benefice of a vicar. His personage house.

Vicar-general. An ecclesiastical officer who assists the archbishop in the discharge of his office.

Vicarial tithes. Tithes appropriated to a vicarage; petty small tithes payable to the vicar.

Vice, succeeding in the. (Sc. *L.*) Entry into possession in the room of a tenant who is bound to remove, by collusion with him as against his landlord.

Vice-Admiral. An under-admiral at sea, or admiral on the coasts; a naval officer of the second rank.

Vice-Admiralty Courts. Tribunals established in His Majesty's possessions beyond the seas with jurisdiction over maritime causes, including those relating to prize.

Vice-Chamberlain. A great officer, next under the Lord Chamberlain, who, in his absence, has the rule and control of all officers appertaining to that part of the royal household which is called the chamber above stairs.

Vice-comes. A viscount; a sheriff.

Vice-consul. One who acts for a consul. A sheriff.

Vice-dominus. A sheriff.

Vice-gerent. A deputy or lieutenant.

Vice marshal. An officer who was appointed to assist the Earl Marshal.

Vice-roy. The king's lord lieutenant over a kingdom. A person in place of the king; hence a governor of a dependency.

Vicinage (*vicinetum*). Neighbourhood or near dwelling.

Common by reason of vicinage. *See* COMMON.

Vicious intromission. (Sc. *L.*) The unlawful meddling by an heir, or other person not executor, with the property of a deceased person. The party so unlawfully meddling is called the *vicious intromitter*. He corresponds with the *executor de son tort* of the English law.

Vicount. *See* VISCOUNT.

Vicountiel. Vicontiel. Any thing that belongs to the sheriff.

Vicontiel jurisdiction. The jurisdiction of a sheriff.

Vicontiel writ. A writ directed to the sheriff, and triable in the sheriff's county court, in case any question should arise touching its execution.

Victuals (*victus*). Sustenance; things necessary to live by, as meat and provisions.

Victuallers are those that sell victuals; and we call now all common ale-house-keepers by the name of victuallers.

Victualling houses. *See* PUBLIC HOUSE.

Vidame. A vavasour, which *see*. He who held lands of a bishopric on condition of defending its temporalities. He who possessed land erected into a hereditary fief.—*Moxley*.

Viduity. Widowhood.

View (*visus*). An inspection of any person or property in controversy, or of a place where a crime has been committed, by the jury previously to trial. In viewing lands and messuages, two persons will be appointed *showers*, and six jurymen as *viewers*.

View of the body. A coroner's inquisition into the death of a person is held *super visum corporis, i. e.*, on view of the body.

View of frankpledge (*visus francı plegii*). Formerly, the sheriffs at county courts did, from time to time, see the youths comprised in some *decennæ*, whereupon this branch of the sheriff's authority was called *view of frankpledge*. The office which the sheriff in his county court, or the bailiff in his hundred, performed in looking to the king's peace, and seeing that every man was of some pledge. *See* FRANKPLEDGE.

View of the high way. Where a surveyor of highways is charged before justices with non-repair of the same, they may take a view of the high way to see if it is in repair.

View of an inquest. A view or inspection taken by a jury, summoned upon an inquisition or inquest, of the place or property to which the inquisition or inquiry relates.

Vifgage (*vivum vadium*). Living pledge. This is where the property of a debtor is transferred to the creditor, to be retained until the latter shall have satisfied his claim out of the rents and profits thereof. The term hardly ever occurs in practice. *See* DEAD PLEDGE.

Vill. Village (*villa*). A manor; a parish; the out-part of a parish; a collection of houses consisting of ten free men or frankpledges. A mansion may be of one or more houses, but it must be one dwelling place, none near it; for, if other houses are contiguous, it is a village. A manor may consist of several villages, or one alone.

Villain. Villein (*villanus*). A man of base or servile condition; a bondman or servant; one who held by a base service.

Villeins were a sort of people under the Saxon government in a condition of downright servitude, who were used and employed in the most servile works, and who are said to have even belonged to the lord of the soil, like the cattle or stock upon it.—*Brown.*

Of these bondmen or villeins there were two sorts in England; one termed a *villein in gross*, who was immediately bound to the person of the lord and his heirs, and transferable by deed from one owner to another; the other, a *villein regardant* to a manor, being bound to his lord as a member belonging and annexed to a manor, whereof the lord was owner. And he was properly a *pure villein*, of whom the lord took redemption to marry his daughter, and to make him free; and whom the lord might put out of his lands and tenements, goods and chattels, at his will, and chastise, but not maim him. Some were *villeins by title or prescription*, that is to say, that all their blood had been villeins regardant to the manor of the lord time out of mind; and some were made *villeins by confession* in a court of regard, &c.—*Tomlins.* *See* VILLENAGE.

Villein services. Services fit only for peasants or persons of a servile rank; base but certain and determinate services.

Villein socage. A tenure of land by services *certain* in quantity, but *servile* in quality. A holding of the king; a privileged sort of villenage. Also called privileged villenage. *See* PRIVILEGED VILLENAGE, VILLENAGE.

Villanous judgment (*villanum judicium*). That which cast the reproach of villany and shame upon them against whom it is given, whereby they lost their frank-law and were discredited and disabled as jurors and witnesses and forfeited their goods and chattels, and lands for life, and were committed to prison.

Villein. *See* VILLAIN.

Villenage (*villenagium*). A base tenure. The condition of a villain or villein. Villenage was of two kinds, *viz.*, *pure* and *privileged*. *Pure* villenage was where a man held upon terms of doing whatsoever was commanded of him, nor knew in the evening what was to be done in the morning, and was always bound to an uncertain service. *Privileged* villenage was holden of the king, the tenants of the king's demesnes having the privilege that they could not be removed from the land while they did the services due, and these villein-socmen are properly called *glebæ ascriptitii*: they performed villein services, but such as were certain and determined.—*Brown.*

Vinagium (*tributum a vino*). A payment of a certain quantity of wine instead of rent for a vineyard.

Vindex. (*Civ. L.*) A defender.

Vindicatory parts of laws. The sanction of the laws, whereby it is signified what evil or penalty shall be incurred by such as commit any public wrongs and transgress or neglect their duty. *See* SANCTION.

Vindictive damages. Damages given by way of revenge, beyond the actual amount of injury suffered by the plaintiff; those given on the principle of punishing the defendant, over and above compensating the plaintiff. *See* DAMAGE.

Viol. Violation of women. Rape, which *see.*

Violent profits. (*Sc. L.*) The penalty on a tenant who forcibly or unwarrantably retains possession after he ought to have been removed. In houses, the violent profits amount to double the rent, in lands, they amount to the full profits which the proprietor could otherwise have made; they include also damages done to the property by withholding possession. So called because due on the tenant's forcible or unwarrantable detaining the possession.

Virge. A species of copyhold tenure. *See* VERGE.

Tenant by virge. A species of copyholder who holds by the verge or rod.

Virudhasambandha. (*Hin. L.*) Degree of

consanguinity or relationship, within which marriage is prohibited.

Viscount. Vicount (*vicecomes*). A sheriff. A degree of nobility next to an earl.

Visitation (*visitatio*). Judicial visit or perambulation. The office which is performed by the bishop of every diocese once every three years, or by the archdeacon once a year, by visiting the churches and their rectors throughout the whole diocese. At visitation the bishop or archdeacon presides over a lawful court; and those subject to its jurisdiction, and refusing to appear, are liable to ecclesiastical punishment for their contumacy. Also the office of inquiring into and correcting the irregularities of corporations.

Visitor. An inspector of a college or corporation or hospital. A person appointed to visit, inquire into and correct irregularities arising in a society or corporation. The ordinary is the visitor of ecclesiastical corporations, *i. e.*, of corporations composed entirely of spiritual persons, as bishop, &c. An official visitor of lunatics, appointed to see and report upon persons found lunatics by inquisition.

Visitor of manners. Anciently, the name of the regarder's office in the forest. *See* REGARDER.

Visne (*vicinetum*). The neighbourhood. A jury taken originally from the vicinity. *See* VENUE.

Vitilitigate. To litigate cavillously.

Vitious intromission. *See* VICIOUS INTROMISSION.

Vivary. Vivarye (*vivarium*). A place of land or water, where living creatures are kept. A place where animals are preserved; a park, warren, fish-pond or piscary, &c.

Viver. Vivier. A fish-pond.

Vivisection. The dissecting of animals alive, for the purpose of scientific experiments, may only be practised by persons holding a license from a Secretary of State, and subject to the restrictions imposed by the Cruelty to Animals Act, 1876 (39 & 40 Vic. c. 77).—*Wharton.*

Void and Voidable. There is this difference between the two words:—A transaction is said to be *void*, when it is a mere nullity and nothing can cure it; whereas a *voidable* transaction is one which may be either avoided or confirmed by matter arising *ex post facto*, or the imperfection or defect can be cured by the act or confirmation of him who could take advantage of it. Thus, while acceptance of rent will make good a voidable lease, it will not affirm a void lease. Thus, prior to the Infants' Relief Act, 1874 (37 & 38 Vic. c. 62), the contract of a minor (otherwise than for necessaries) was merely voidable, as it might be confirmed by him on coming of age; but since that Act such a contract is void, and incapable of confirmation.—*Mozley.* A *void* is a house lying empty or unlet.

Void agreement. An agreement not enforceable by law is said to be void.—*Act IX of* 1872 (*Contract*), *s.* 2 (*g*).

The following agreements are void under the Indian Contract Act, 1872:—Agreement of which the object or consideration is unlawful, either wholly or in part; agreement without consideration, unless it is in writing and registered, or is a promise to compensate for something done or is a promise made in writing to pay a debt barred by limitation; agreement in restraint of marriage; agreement in restraint of trade, except agreement not to carry on business of which good will is sold; agreement between partners prior to dissolution or during continuance of partnership; agreement in restraint of legal proceedings, except agreement to refer to arbitration a dispute that may arise or that has already arisen; agreement the meaning of which is not certain or capable of being made certain; agreement by way of wager, except in favour of certain prizes for horse-racing; agreement contingent on impossible events; agreement to do impossible act.—*Ibid.*, *ss.* 23 *to* 30, 36 *and* 56.

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it; or to make compensation for it, to the person from whom he received it.—*Ibid.*, *s.* 65.

See ILLEGAL CONTRACTS.

Void contract. A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.—*Act IX of* 1872 (*Contract*), *s.* 2 (*j*).

Voidable contract. An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.—*Ibid.*, *s.* 2 (*i*).

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract whose consent was caused by fraud or misrepresentation may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the same position in which he would have been if the representation made had been true. *Explanation.*—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of s. 17 of the Contract Act, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. A fraud or misrepresentation, which did not cause the consent to a contract of the party on whom such fraud was practised; or to whom such misrepresentation was made, does not render a contract voidable.—*Ibid.*, *s.* 19, *as amended by Act VI of* 1899, *s.* 3.

When consent to an agreement is caused

by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely, or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just.—*Ibid.*, *s.* 19 *A*, *as added by Act VI of* 1899, *s.* 3.

When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.—*Ibid.*, *s.* 64.

Voidance. The act of emptying. The state of an ecclesiastical benefice without an incumbent; ejection from a benefice. *See* AVOIDANCE.

Volture. Carriage; transportation by carriage.

Voluntarily. A person is said to cause an effect voluntarily, when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it. A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here A may not have intended to cause death and may even be sorry that death has been caused by his act; yet if he knew that he was likely to cause death, he has caused death voluntarily.—*Act XLV of* 1860 (*Penal Code*), *s.* 39.

Voluntary. Acting without compulsion; doing by design. When applied to a gift, promise, conveyance, &c., it means that it is made either without, or only for a *good*, consideration, and not for a valuable consideration.

Voluntary answer. One which was filed by a defendant to a bill in equity, without being called upon to answer by the plaintiff, that is, when the plaintiff had filed no interrogatories which required to be answered.

Voluntary confession. A confession of crime made by an accused person without any promise of worldly advantage held out to him, or any harm threatened to him. Such a confession is always admissible in evidence against the party. See Act I of 1872 (Evi.), s. 24.

Voluntary conveyance. A conveyance made without a consideration, either of money or marriage, &c.; a conveyance not founded upon a valuable consideration. Such a conveyance is void as against a purchaser for valuable consideration, though with notice of the voluntary conveyance.

Voluntary courtesy. A spontaneous act of kindness, as opposed to one done upon the request of the party for whose benefit it is intended. When it is said that a voluntary courtesy will not uphold an assumpsit, it is meant that a spontaneous act of kindness is not a sufficient consideration for a subsequent promise by the party towards whom it is performed to pay the other party for his trouble, so as to enable the latter to maintain an action for the breach thereof. Hence the meaning of the phrases, that a "voluntary courtesy will not support an assumpsit," but that "a courtesy moved by a previous request will." (*Lampleigh* v. *Brathwaite*, Hob. 105; 1 Sm. L. C.).—*Mozley.*—*Brown.* See on this subject Act IX of 1872 (Contract), s. 25 (2).

Voluntary deposit. Such as arises from the mere consent and agreement of the parties.

Voluntary escape. *See* ESCAPE.

Voluntary jurisdiction. A jurisdiction which consists in doing that which no one opposes, as the granting of licenses, &c. A jurisdiction voluntarily submitted to by the parties in a dispute.

Voluntary oath. An oath not taken before a magistrate or other proper officer in some civil or criminal proceeding. An oath taken by a person in extra-judicial matters, and not regularly in a court of justice or before an officer invested with authority to take the same. *See* OATH.

Voluntary redemption. (*Sc. L.*) This is when a mortgagee receives the sum due into his own hands and discharges the mortgage voluntarily without any consignation. *See* CONSIGNATION.

Voluntary settlement. A settlement made without valuable consideration.

Voluntary waste. Waste committed on lands by the deliberate and voluntary act of the tenant, as where he pulls down a wall, or cuts timber; as opposed to *permissive* waste. *See* WASTE.

Volunteer. A person who takes property under a voluntary conveyance, as opposed to a purchaser for value. A person who does any service to another without being requested, or without any promise of remuneration in return. A person who has voluntarily joined a corps raised either for home or foreign service; or for the purpose of being trained to act with the regular troops in defending the country in the event of invasion.

Vote. Suffrage; voice given.

Votes and proceedings. Short entries of the proceedings of the House of Commons made by the clerks at the table, without any reference to the debates.

Voter. One who has the right of giving his voice or suffrage.

Vouch. To give testimony; to obtest; to answer for.

Vouche. To call one to warrant lands. In the old practice of recoveries, the person against whom the action for the land was brought *vouched* him who had warranted the title, *i. e.*, called him to defend it. The form-

er was called *voucher*, the latter *vouchee*. *See* RECOVERY. To rely on; to quote.

Vouchee. The person vouched or summoned in a writ of right. *See* RECOVERY. VOUCHE.

Voucher. A witness; testimony. A ledger book, or book of accounts, wherein are entered the acquittances or warrants for the accounts discharged. Any acquittance or receipt, discharging a person, or being evidence of payment. A person who vouches or calls another to warrant lands. *See* RECOVERY, VOUCHE.

Vouching to warranty. This, in the old form of real action for the recovery of land, was the calling in of some person to answer the action, who had warranted the title of the tenant or defendant to the land in question. If, the "vouchee" appeared, he was made defendant instead of the "voucher"; but if he afterwards made default, recovery might then be had against the original defendant, who in his turn might recover over an equivalent in value against the deficient vouchee.—*Moxley*. *See* RECOVERY.

Voyage policy. A policy of insurance on a ship against losses incurred during a voyage specified in the policy. *See* TIME POLICY.

Vulgar purgation. (*vulgaris purgatio*). *See* PURGATION.

W

Wadest. (*Sc. L.*) A mortgage. The lender or mortgagee is called the *wadsetter*; the borrower or mortgagor, the *reverser*; and the mortgagee-debt, the *wadset sum*.

Wadset improper. This was where the mortgagee entered into possession.

Waftors. Conductors of vessels at sea.

Wage. The giving of security for the performance of anything, as to wage or gage deliverance, to wage law, &c.

Wager. Wagering contracts. A wager is a contract by A to pay money or money's worth to B on the happening, determination or ascertainment of an uncertain event, in consideration of B paying money to him on the event not happening. At common law, a wager was a legal contract which the courts were bound to enforce so long as it was not against morality, decency, or sound policy (*Johnson* v. *Lumley*, 12 C. B. 468; *Thackoorseydass* v. *Dhondmull*, 4 Moo. I. A. 339). But by 8 & 9 Vic. c. 109, ss. 17-19, all contracts of agreements by way of gaming or wagering are declared null and void, and no action or suit is maintainable for recovering any sum of money or other valuable article alleged to be won upon any wager, or which has been deposited in the hands of any person to abide the event of the wager. To the same effect is Act IX of 1872 (Contract), s. 30. Wagers are not, however, made illegal; so that money paid by an agent in discharge of lost bets may be recovered by the agent from his principal, although money paid to a stake holder may be recovered by the loser if he countermand the authority to pay before the stakes are paid to the winner (*Hampden* v. *Walsh*, 1 Q. B. D. 189; *Thacker* v. *Hardy*, 4 Q. B. D. 685; *Tribhuwandas* v. *Motilal*, 1 Bom. H. C., A. C., 34; *Parakh Govardhan* v. *Ransordas*, 12 Bom. H. C., A. C., 51; *Shibbo Mal* v. *Lachman Das*, 23 All. 165; *contra*, *Doshi Talakshi* v. *Shah Ujamsi*, 24 Bom. 227, decided under Bom. Act III of 1865).

Contracts are not wagering contracts, unless it be the intention of both contracting parties, at the time of entering into the contracts, under no circumstances to call for or give delivery from or to each other. But if either party is prepared, if forced to do so, to perform them in kind, then they are not agreements by way of wager (*J. H. Todd* v. *Lakhmidas*, 16 Bom. 441; *Ajudhia Prasad* v. *Lalman*, 25 All. 39; *Perosha* v. *Manekji*, 22 Bom. 899; *Dayabhai* v. *Lakhmichand*, 9 Bom. 358; *Sassoon* v. *Tokersey*, 6 Bom. L. R. 521; 28 Bom. 616). In order to determine whether a contract is a wagering contract, the court will not only look at the terms of the written contract, but also try among the surrounding circumstances to find out the true intention of the parties (*Perosha* v. *Manekji*, 22 Bom. 899; *Doshi Talakshi* v. *Shah Ujamsi*, 24 Bom. 227; following *Universal Stock Exchange, Ld.* v. *Strachan*, [1896] App. Cas. 166, and *In re Grieve*, [1899] 1 Q. B. 794; *Mathuradas* v. *Narbadashankar*, 11 Bom. L. R. 997; *Sassoon* v. *Tokersey*, 5 Bom. L. R. 503; *Kong Yee* v. *Lowjee*, 3 Bom. L. R. 476).

To constitute a wager, the transaction between the parties must wholly depend upon the risk in contemplation and neither must look to anything but the payment of money on the determination of an uncertainty. But if one of the parties has the event in his own hands, the transaction lacks one essential ingredient of a wager (*per* Birdwood, J., *Dayabhai* v. *Lukhmi Chand*, 9 Bom. 363).

There is no difference between "gaming and wagering" used in the English statute, and the expression "by way of wager" used in s. 30 of the Contract Act, 1872 (*Kong Yee* v. *Lowjee*, 3 Bom. L. R. 476).

Wager of battel. *See* BATTEL.

Wager of law (*gager de ley*; *vadiatio legis*). A proceeding which consisted in a defendant's discharging himself from the claim on his own oath, bringing with him at the same time into court eleven of his neighbours (*compurgatores*) to swear that they believed his denial to be true. It was based on the principle that a man's credit depended upon the opinion which his neighbours had of his veracity. So called because the defendant put in sureties (*vadios*) that at such a day he would *make his law*, that is, take the benefit which the law allowed him. Now abolished by 3 & 4 Wm. IV, c. 42, s. 13. *See* COMPURGATORES, MAKE LAW.

Wagering policies. Those effected for gambling purposes; those in the subject matter of which the assured has no interest; as, for instance, an insurance on the life of a stranger. They are void by 14 Geo. III, c. 48.

Wages. Any money or salary paid or payable to any clerk or servant, labourer or workman.

The word *wages* is confined to the earnings of labourers and artisans, while the word *salary* is used for payment of services of a higher class (*per* Grove, J., *Gordon* v. *Jennings*, 51 L. J. Q. B. p. 418). *See* SALARY, PRIVILEGED DEBTS.

Waggonage. Money paid for carriage in a wagon.

Wahiduzzina. (*Meh. L.*) Fornication or adultery; children of fornication or adultery (*Mt. Shahebzadi* v. *Mirza Himat*, 4 B. L. R., A. C., 103).

Waif. Waift. Weif. Weft (*waiviatum*; *bona waviata*). Goods stolen and waived or thrown away by the thief in his flight, for fear of being apprehended. These were formerly forfeited to the king, or lord of the manor, as a punishment upon the owner for not himself pursuing the felon and taking away his goods from him. But if the goods stolen and thrown away belonged to a foreign merchant, they were not forfeited, for there was no wilful default in his not pursuing the thief, he being generally a stranger to the laws, usages, and language of the kingdom. Waived goods did not belong to the king till seized by somebody for his use; for if the party robbed could seize them first, though at the distance of twenty years, the king should never have had them.—*Tomlins.* Goods found but claimed by nobody, that of which every one waives the claim. Waifs are to be distinguished from *bona fugitiva*, which are the goods of the felon himself which he abandons in his flight from justice.

Wain. A cart, waggon, or plough, to till land. A cart or waggon, with its equipments.

Wainable. Land that may be ploughed, manured or tilled.

Wainage (*wainagium*). The *countenance* of a villein; that which is necessary for the cultivation of land. *See* GAINAGE.

Wain-bote. Timber for waggons or carts.

Waive (*waiviare*). To forego or decline to take advantage of: to forsake. Specially applied to a woman, who, for any crime for which a man may be outlawed, is termed *waived*; to put a woman out of the protection of the law. To waive a claim or objection is not to put it forward. So a man is said to *waive a tort* when he foregoes his right of treating a wrongful act as such, which may be done by adopting the acts of the wrong doer; thus, if goods have been wrongfully taken and sold, and the owner thinks fit to receive the price, or part thereof, he adopts the transaction, and cannot afterwards treat it as a wrong. *See* WAIVER.

Waiver. The passing by of an occasion to enforce a legal right, whereby the right to enforce the same is lost. A waiving or forsaking the assertion of a right at the proper opportunity. The passing by of a thing, or a declining or refusal to accept it. A common instance of this is where a landlord waives a forfeiture of a lease by receiving rent or distraining for rent which has accrued due after the forfeiture. Sometimes it is applied to an estate or something conveyed to a man, and sometimes to a plea; and it is frequently applied to the declining to take advantage of an irregularity in legal proceedings. *See* WAIVE.

A waiver is an intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and there can be no waiver, unless the person against whom the waiver is claimed had full knowledge of his rights and of the facts which would enable him to take effectual action for the enforcement of such rights (*Dhanukdhari* v. *Nathima*, 11 Cal. W. N. 848; 6 Cal. L. J. 62).

Wajib-ul-urz. (*Ind.*) A record of existing local customs in a locality kept by the zemindar or other officer of the place. The object of the wajib-ul-urz is to supply a reliable record of existing local custom. It was never intended that the wajib-ul-urz should be used as an indirect means of giving effect to the wishes of a sole proprietor with regard to the nature of his tenure or the mode of devolution of the property which should obtain after his death (*Superundhwaja* v. *Garuraddhwaja*, 15 All 147). A wajib-ul-urz prepared and attested according to law, is *prima facie* evidence of the existence of any custom (*e. g.*, of pre-emption) which it records, such evidence being open to be rebutted by any one disputing such custom (*Isri Singh* v. *Ganga*, 2 All. 876). Such a custom cannot be established by one instance (*Tota Ram* v. *Mohan Lal*, 2 Agra, 120). When a claim was based on a village custom in proof of which a passage in a *wajib-ul-arz* was produced affirming its existence, *Held*, that this was a piece of evidence no doubt, but it required to be supported by proof of instances in which the custom had taken effect (*Muhammad Ali* v. *Harbhagat*, 2 All. W. N. 29). The record in the *wajib-ul arz* as to the custom of pre-emption is not the custom. It is a mere record of custom, and if its language is ambiguous, it may, when unsupported by other evidence, be insufficient either to prove the custom as a whole or any particular incident of that custom (*Jahangira* v. *Amir Singh*, 12 All. L. J. 19). A wajib-ul-urz is not a mere contract; it is a record of rights made by a public servant; and therefore without attestation or execution by the proprietors of the mouzath, it is entitled to weight as evidence of village custom (*Dabee Dutt* v. *Sheikh Enait Ali*, 2 N.-W. P. 395). But the mere signature by an agent of a wajib-ul urz, from which a record of an important interest in property was omitted, cannot be construed as

a waiver of such right or claim; still less can the imperfection or inaccuracy of settlement proceedings operate to extinguish or disallow existing rights (*Mt. Imambundee* v. *Bhugwandas*, 1 N.-W. P. 38).

Wakeman. The chief magistrate of the town of Ripon in Yorkshire is so called.

Wakening. (*Sc. L.*) The revival of an action. In Scotland, where an action has been called on in Court, and allowed to lie over for the space of a year without any procedure having taken place, it is said to fall asleep, and requires to be wakened by a new summons requiring that all persons cited on the first should compeare, hear, and see the aforesaid action called, awakened and debated, till sentence be given.

Wakf. (*Meh. L.*) The correct legal meaning of the word *wakf*, which originally means nothing more than *detention*, is an appropriation of a pious or charitable nature (*per* Melvill, J., *Abdul Ghani* v. *Hussain Miya*, 10 Bom. H. C., O. C., p. 12).

Wakf is an endowment and signifies the appropriation of property to the service of God; when the right of the appropriator becomes divested, and the profits of the property so appropriated are devoted to the benefit of mankind.—*MacN. Meh. Law.*

To create a valid wakf the use of the word *wakf* is not essential; and other words purporting to effect a transfer may, when read together with surrounding circumstances, be sufficient to create a valid wakf (*Salig-unnissa* v. *Mati Ahmad*, 25 All. 418). On the other hand, the mere fact that a document is styled as *wakfnama* does not make it so. To be a true wakf, the provision therein must be of a religious or charitable character (*Mahomed Hussan* v. *Mahomed Ibrahim*, 5 Bom. L. R. 624; *Abdul Ganne* v. *Hussein Miya*, 10 Bom. H. C., O. C., 7).

The test of the validity of a wakf which confers benefit on the family of the settlor is to see whether the property in substance is given to charitable uses or whether it is merely intended to create a perpetuity for the benefit of the family under color of a charitable trust. Where the effect of the deed is to give the property not in substance to charitable uses, but to the grantor's family, no valid wakf is created (*Fazlur Rahim* v. *Mohomed Obedul*, 30 Cal. 666; *Mt. Mujef-unnissa* v. *Abdul Rahim*, 11 M. L. J. R. 58; *Abdul Gunne* v. *Hussen Miya*, 10 Bom. H. C., O. C., 7).

But under Act VI of 1913 (Mussalman Wakf Validating), ss. 3 and 4, no wakf for the maintenance and support wholly or partially of the settlor's family, children or descendants, and, where the settlor is a Hanafi Mussalman, also for his own maintenance and support during his life time or for the payment of his debts out of the rents and profits of the property dedicated, shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purposes of a permanent nature is postponed until after the extinction of the family, children or descendants of the settlor.

A *wakf* must be certain as to the property appropriated, unconditional, and not subject to an option. It must have a final object which cannot fail, and this object must be expressly set forth. It is not rendered invalid merely by an intermediate settlement on the founder's children and their descendants (*Fatmabibi* v. *The Advocate-General of Bombay*, 6 Bom. 42).

An erroneous opinion appears to be entertained that all property destined to religious purposes necessarily partakes of the nature of an endowment; but in point of fact, no property should be considered as such, unless specially appropriated by the owner.—*MacN. Meh. Law.*

Provision made for the reading of the *Koran* at, and lighting of, the tomb of a testator cannot be looked upon as creating *wakf* property.—*Ibid.*

The terms of a *Firman* that the general superintendence of the resources of the property should be continued to a person named, and should remain vested in him, his heirs and successors for pious and charitable purposes, is sufficient to constitute *wakf*, without the express use of that term, and the alienation of such property from the purposes intended is illegal. The character of the property is not changed even by the use of the words *Inam* and *Altamgah* in the grant, and the persons named are not to be considered proprietors, as the institution mentioned was the real donee, and the persons named were only *Mutuwalis* of the same.—*Jewan Doss Sahoo* v. *Shah Kubeer-ood deen* (2 Moore's I. A. 390).—*MacN. Meh. Law.*

A *wakf* is valid without delivery and is created by a mere verbal declaration of interest.—*Ibid.*

An endowment is not a fit subject of sale, gift or inheritance; and if the appropriation be made *in extremis*, *i. e.*, on death-bed, it is viewed as a legacy and takes effect only to the extent of a third of the property of the appropriator. Undefined property is a fit subject of endowment.—*Ibid.*

See ALTUMGAH, MUTUWALI.

Wakif. One who dedicates property to pious uses.

Wakil. (*Ind.*) An ambassador or representative; an agent, attorney or pleader. *See* VAKEEL.

Wali. (*Ind.*) A guardian.

Walkers. Foresters, within a certain space of ground assigned to their care, in forests, &c.

Wanlass. An ancient customary tenure of lands, *i. e.*, to drive deer to a stand that the lord may have a shot.

Wanta land. (*Ind.*) A sort of rent-free or

tax-free land (*Shaik Gulam Mohidin* v. *Collector of Ahmedabad*, 12 Bom. H. C. R., Ap., 276).

Wantnipatra. (*Ind.*) A writing or document exhibiting the proportions in which patrimonial or other property is to be distributed.

Wapentake. The same as a hundred; specially used in the north counties beyond the river Trent.

Waras. Waris. (*Ind.*) An heir. *See* MALIK.

Warasat namah. Waraspatra. A deed of acknowledgment of heirship; a deed making or appointing an heir.

Ward (*custodia*). This signifies care or guard, and is used variously to denote a portion of a city or town; a division of a forest; a prison; a child under guardianship; a minor under the protection or tutelage of a guardian. The heir of the king's tenant that held by knight's service *in capite*, was called a ward during his nonage.

Ward means a minor for whose person, or property, or both, there is a guardian.—*Act VIII of* 1890 (*Guardians and Wards*), s. 4 (3).

Government ward shall mean any person of whose property, or of whose person and property, the Court of Wards may, for the time being, have the superintendence under this Act.—*Bom. Act I of* 1905 (*Court of Wards*), *s.* 2 (*a*).

Ward in Chancery. Ward of Court. A minor under the protection of the Court of Chancery. *See* MINOR.

Ward-holding. An ancient military tenure of Scotland, corresponding to knight's service in England.

Ward mote (*wardmotus*). A court anciently held in every ward in London.

Ward penny. Warpeny. Money paid and contributed to watch and ward.

Court of Wards and Liveries. The Court of Wards was first erected in the reign of Henry VIII for the purpose of inquiring, on the death of any of the king's tenants *in capite*, of what lands he died seised, who was his heir, and of what age, in order to entitle the king to his marriage, wardship, relief, *primer seisin*, or other advantages, as the circumstances of the case might turn out; and it was afterwards augmented by him with the office of liveries; wherefore it was styled the Court of Wards and Liveries. Abolished by 12 Car. II, c. 24, abolishing the military tenures.

Wardship. Pupilage; guardianship; the custody of a ward; the relation between guardian and ward.

Wardship in chivalry. This was the right claimed by a lord to have the custody of the body and lands of the heir of a tenant by knight's service, without any account of the profits, till the age of twenty-one in males, and sixteen in females. Abolished by 12 Car. II, c. 24.

Wardship in copyholds. This partakes both of that in chivalry and that in socage. As in chivalry, the lord is the legal guardian; but, like the guardian in socage, he is accountable to his ward for the profits.—*Mozley.* In this, the lord is guardian of his infant tenant by special custom.

Wardship in socage. This differed from wardship in chivalry, inasmuch as in socage tenures the guardian was accountable to his ward for the profits of the land, and the guardian was not the lord, but the nearest relation to whom the inheritance could not descend. This form of wardship ceased at the age of fourteen.

See. GUARDIAN.

Wardwit. The being quit of keeping ward in a town, and of giving or contributing money thereto.

Wardstaff. A constable or watchman's staff.

Warda. The custody of a town or castle.

Wardage (*wardagium*). The same as wardpenny.

Warden (*guardianus*). A guardian or keeper. He that has the custody of any person or thing by his office; as the warden of a fellowship or company in London; the Warden of the Cinque Ports; the warden of a college.

Warehouse book. A book used by merchants to contain an account of the quantities of goods received, sent out, and on hand.

Warehouse system. The system of allowing goods imported to be deposited in public warehouses, at a reasonable rent, without payment of the duties on importation if they are re-exported; or, if they are ultimately withdrawn for home consumption, then without payment of such duties until they are so removed, or a purchaser found for them.

Wargus. A banished rogue.

Warning of a caveat. A notice to a person who has entered a caveat in the Probate branch of the High Court to appear and set forth his interest.

Warnoth. An ancient custom, that if any tenant holding of the castle of Dover failed in paying his rent at the day, he should forfeit double, and for the second failure treble.

War Office. A department of State from which the sovereign issues orders to his forces. The office of the Secretary of State for War.

Warrandice. (*Sc. L.*) Warranty. The obligation which, according to the law of Scotland, lies upon every vendor of land or goods to protect the purchaser from all claims, and every diminution in the value of the thing sold, arising from causes antecedent to the sale. This warrandice, which is the natural warrandice of sale, is what is termed *absolute warrandice*. When the warrandice rests on the personal obligation of the vendor, it is called *personal warrandice*. So far as it rests upon lands (thence called *warrandice lands*) accepted by the purchaser either in

lieu of, or in addition to personal warrandice, it is called *real warrandice*. But warrandice may be of a slighter kind, in cases where it is so stipulated between the parties, as *warrandice from fact and deed*, which implies that nothing has been done by the grantor or vendor to defeat the right; or the warrandice may be still lighter, as *simple warrandice*, which implies no more than that the grantor or vendor will do nothing inconsistent with the grant or sale.—*Mozley*.

Warrant. A precept under hand and seal to some officer to arrest an offender, to be dealt with according to due course of law. A written document authorizing and requiring a person to do some specific act. A writ conferring some right or authority. A citation or summons.

Warrant of arrest. This is usually issued for the apprehension of persons accused or suspected of serious crimes.

Warrant-of-Attorney. A letter sent by a debtor to some attorney named by the creditor, empowering him to confess judgment in an action of debt to be brought by the creditor against the debtor for the specific sum due. *See* POWER-OF-ATTORNEY.

Warrant case. A case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months.—*Act V of* 1898 (*Crim. Pro.*), *s.* 4 (*w*). *Summons case* is a case relating to an offence and not being a warrant case.—*Ibid*, *s.* 4 (*v*).

Warrant of commitment. A warrant of commitment, as opposed to a warrant of arrest is a written authority committing a person to prison. This may be done (1) in pursuance of a judicial sentence; (2) for the purpose of securing the attendance of the party to take his trial for an indictable offence; (3) for the purpose of a remand, for securing the party's attendance at an adjourned hearing of the charge against him; (4) for default in payment of a sum of money ordered to be paid, whether by way of fine or otherwise; (5) for default in finding sureties to keep the peace; (6) in default of sufficient property being found to satisfy a warrant of distress; (7) for contumacy, as in a witness refusing to answer questions properly put to him.—*Mozley*.

Distress warrant. A warrant issued for raising a sum of money upon the goods of a party specified in the warrant; as for the purpose of levying the amount of the costs upon the goods of a complainant whose complaint has been dismissed with costs; for levying a sum payable by a defendant, by way of penalty or otherwise.—*Mozley*.

Dividend warrant. An order in the nature of a cheque by a joint stock company upon its bankers, directing them to pay a sum of money specified therein to a shareholder entitled thereto in respect of a dividend, or to his order.

General warrant. Warrant not specifying particularly any person or subject matter, but intended to be executed upon all persons or things coming within a general description in the warrant. Also warrant for the seizure of a party guilty of a specific offence, without naming any party.

See DOCK-WARRANT, SEARCH WARRANT.

Warrantee. The person to whom a warranty is made.

Warrantor. A person who warrants, or gives a warranty. The heir of one's husband.

Warranty (*warrantia*). A guarantee, or security. An express or implied statement of something, which the party undertakes shall be part of a contract, and though part of the contract, yet collateral to the express object of it. A promise from a vendor to a purchaser, that the thing sold is the vendor's to sell, and is good and fit for use, or at least for such use as the purchaser intends to make of it. As applied to lands, it is defined to be a covenant real annexed to lands or tenements, whereby a man and his heirs are bound to warrant the same; a promise or covenant by deed by the bargainor for himself and his heirs, to warrant or secure the bargainee and his heirs against all men for the enjoying of the thing granted.

The general rule of law applicable to all sales of goods is that the buyer buys at his own risk, *caveat emptor*, unless the vendor give an express warranty, or unless the law imply a warranty from the nature of the thing sold and the circumstances of the sale; or unless the vendor have been guilty of a fraudulent representation or concealment in regard to the thing sold.—*Wharton*.

As applied to real estate, a warranty was either *lineal* or *collateral*. *Lineal warranty* was where the heir derived, or might by possibility have derived, his title to the land warranted, either from or through the ancestor who made the warranty. *Collateral warranty* was where the heir's title to the lands neither was nor could have been derived from the warranting ancestor. A warranty bound the warrantor and his heirs, whether it was lineal or collateral, that is to say, whether the heirs had or had not derived, or might or might not by possibility have derived, title from or through the warrantor; but in either case, only if he had received other sufficient lands or assets by descent from the warrantor.—*Brown*.

The term *warranty* as used in policies of marine insurance denotes two kinds of conditions—(i) those that are to be performed by the assured, and (ii) those that denote an exception from or limitation on the general words of the policy (*The South British F. & M. Ins. Co. v. Brajanath*, 36 Cal. 516; 13 Cal. W. N. 425).

Express warranty. Every affirmation made by the vendor at the time of the sale in relation to the goods amounts to a warranty, provided it be so intended. A general warranty does not extend to patent defects which are apparent upon due inspection, or to de-

fects which are at the time known to the buyer. In marine insurance, an *express* warranty is an agreement expressed in the policy whereby the assured stipulates that certain facts are or shall be true, or that certain acts shall be done relative to the risk; it may relate to an existing or past fact, or be promissory and relate to the future.

Implied warranty is such as necessarily results from the nature of the contract. For instances of implied warranty see Act IX of 1872 (Contract), ss. 110-5. In marine insurance there is an implied warranty that the ship is seaworthy; but in time policy there is no such implied warranty of seaworthiness; the implied warranty in such case is merely that the ship is in existence and capable of navigation, and has not sustained actual damage. *See* SEAWORTHY.

Distinction between breach of warranty and fraud. If a man sell a horse to another, and *expressly* warrant him to be sound, the contract is broken if the horse prove otherwise. The purchaser in such case relies upon the contract; and it is immaterial to him whether the vendor did or did *not* know of the unsoundness of the horse. In either case he is entitled to recover all the damages which he has sustained by reason of the breach of that contract. A warranty extends to all faults known and unknown to the seller.

Again, if the vendor say to the purchaser, "I do not know whether the horse is or is not sound, and therefore will not warrant him; all I can say is, that I have long owned him, and know of no unsoundness"; here manifestly is no warranty, and, if the vendor spoke the truth, no fraud. If, however, the vendee can show that the horse was unsound, that the vendor knew it to be so at the time of the sale, and that in consequence of the false representation made by him, the purchaser was defrauded, the vendor would be liable, not for a breach of a contract of warranty, for he made no such contract, but for making representations which he knew to be false. In such case the guilty knowledge of the vendor would constitute an essential ingredient in the fraud, and, in an action against him, should be both alleged and proved.—*Broom's Com. Law.*

Distinction between a warranty and a representation. The distinction between a warranty and a representation is sometimes rather fine. There is no doubt that a representation intended by the vendor as a warranty, and acted on as such by the vendee, amounts in law to a warranty; and it is also well settled that such representation so operates, although made during the treaty for a sale, and some days before the sale was finally agreed upon, if it appear that it was not withdrawn, and provided the contract of sale does not exclude it by its terms. When, however, negotiations have actually terminated in a *written* contract, the parties thereby tacitly affirm that such writing contains the whole contract between them, and no new terms are allowed to be added to it by extraneous evidence. So where the contract between parties has not been reduced into writing, the tests for determining whether a statement made by one of them does or does not amount to a warranty will be: was it made pending the contract? was it intended, and reasonably and *bona fide* accepted, as a warranty? A mere expression of opinion, or of intention, will not be deemed tantamount to a warranty; and further, in order to be operative as such, the representation relied upon must be shown to have been made *pending the contract.*—*Ibid.*

A warranty differs from a misrepresentation in that a warranty must always be given contemporaneously with and as part of the contract, whereas a misrepresentation precedes and induces to the contract. Upon breach of warranty, the contract remains binding, and damages only are recoverable for the breach; whereas upon a false representation the defrauded party may elect to avoid the contract, and recover the entire price paid. The warrantor is liable for damages for breach of warranty whether he knew or did not know that the thing sold was imperfect; whereas for a misrepresentation he would only be liable if he knew it was false when he made it, or made it with culpable recklessness.—*Brown.*

Warren. A free warren is a franchise, or place privileged by prescription or grant from the king, for the keeping of beasts and fowls of the warren, which seem to be only hares and conies, partridges and pheasants, though some add quails, wood-cocks, and water-fowl, &c.

Warscot. A contribution usually made towards armour in the time of the Saxons.

Warth. A customary payment for castle-guard.

Warth-money. See SWARF-MONEY.

Wasiladar. (*Ind.*) A client or dependant.

Wasilat. (*Ind.*) The proceeds of an estate; the mesne profits of land; the total collected under every description.

Wasiyat namah. (*Ind.*) A last will. A deed constituting heirs. A paper of administration. *See* WILL, LEGACY.

Wassool baki. (*Ind.*) Demand, collection and balance.

Waste (*vastum*). A spoil made either in houses, woods, lands, &c., by the tenant for life or years, to the prejudice of the heir, or of him in the reversion or remainder. Waste (or waste-lands) is also taken for those lands which are not in any man's occupation, but lie common; which seems to be so called because the lord cannot make such profit of them as of his other lands, by reason of that use which others have of it in passing to and fro; upon this none may build, cut down trees, dig, &c., without the lord's license. Waste, in its most usual acceptation, is a spoil or destruction in houses, gardens, trees or

other corporeal hereditaments, to the disherison (disheritance) of him that has the remainder or reversion.—*Tomlins.* Whatever is hurtful to the freehold or inheritance is waste.

Waste is either (1) *Legal*, subdivided into (*a*) *voluntary* or *commissive*, as where the tenant pulls down a house or a part thereof, or ploughs up ancient meadow, and (*b*) *permissive* or *omissive*, as where a tenant suffers a house to fall out of repair; and (2) *Equitable*, which comprehends acts not deemed waste at common law.—*Wharton.*

There may be a tort to real property by one lawfully in possession, and entitled to the use and enjoyment thereof, but who exceeds the limit of his beneficial interests therein, to the detriment of the permanent interests of another having a subsequent or the ultimate and absolute estate in the subject-matter, for example, a remainderman or reversioner. Such is where *waste* is committed by a tenant for life or by a tenant for a term of years or other shorter period, or by any other usufructuary with a qualified interest. Waste may be either *legal*, *equitable*, or *permissive*. *Legal* or legitimate waste includes such acts (as cutting timber, altering buildings, &c.) as the owner of an estate in fee simple, having due regard to his present interest and to the permanent advantage of the estate, might properly commit in a due course of management. *Equitable* or extravagant waste is such as cannot be imputed to any fair acts of ownership, but is destructive of the property itself. It came to be called *equitable*, because if a tenant for life or other qualified owner was entitled to do all ordinary acts of ownership, there was at law no remedy to prevent an abuse of this right, and so courts of equity had to interfere to prevent the unconscientious abuse of a legal right. Waste is *permissive* when it arises from acts of omission, as neglecting to repair, and so leaving the property to go to ruin. It is thus distinguishable from the other kinds of waste which are active, voluntary, or wilful. Generally a tenant for life has the bare enjoyment and use of the property, and may not commit even *legal* waste; and if such waste occurs, as where trees are blown down, or cut down by a trespasser, the property therein belongs to the owner of the first estate of inheritance, and not to the tenant for life. Generally, therefore, one having the usufruct of real property for life, or for years, is, unless otherwise expressly or by law privileged, entitled only to use the thing for his own benefit and convenience, according to its natural or agreed uses, and to enjoy the produce—whether natural, as the fruit, or legal, as the rents,—but so that the substance of the thing is saved, its nature and form not being changed, and the permanent interests of the proprietor not being invaded. As to *permissive* waste it is well settled that a mere tenant at will, or from year to year, is not liable therefor, except by express agreement, that is, he is not bound to make repairs. In the absence of an express contract or usage to the contrary, the general rule seems to be that a usufructuary for life or for a term of years, is bound to make all ordinary repairs essential to prevent the destruction of the property; but he is not liable to repair extraordinary damages, as by flood, lightning, &c., nor to replace the substance of the thing, his duty being affected by the condition of the property when he took possession, and it being sufficient that he leaves the premises in as good repair as when he received them, saving all reasonable wear and tear.—*Collett on Torts.*

Ameliorative waste. When a tenant commits waste in the technical sense of that word, but the acts of commission are really a bettering of the inheritance and not a worsening of the property, such waste is called meliorative or ameliorative waste, The courts will not at present day grant an injunction to stay sach waste although they would formerly do so.—*Brown.*

See IMPEACHMENT OF WASTE, YEAR, DAY AND WASTE.

Wastors. Thieves.

Watan. (*Ind.*) A hereditary right, property, or office. Village offices which descend according to the laws of succession.

The watan property if any, and the hereditary office (*see* HEREDITARY OFFICE) and the right and privileges attached to them, together constitute the watan.—*Bom. Act III of* 1874 (*Hereditary Offices*), *s.* 4.

Watan property means the moveable and immoveable property held, acquired or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office; it includes a right to lay customary fees or perquisites, in money or in kind, whether at fixed times or otherwise; it includes cash payments in addition to the original watan property made voluntarily by Government and subject periodically to modification or withdrawal.—*Ibid.*

Watandar means a person having an hereditary interest in a watan.—*Ibid.*

Representative watandar means a watandar registered by the Collector under the Hereditary Offices Act as having a right to perform the duties of an hereditary office.—*Ibid.*

Watan bandhu. A co-heir; a joint inheritor; a fellow hereditary officer; one who holds an office jointly with another.

Watandar. The holder of a hereditary right, property, or office, within the privileges and emoluments attached to it. The possessor of watan property.

Watandaree. A species of tenure differing from *mirassi* tenures chiefly in this, that the former (*watandaree*) exists only by sufferance, whilst the latter are positive and permanent rights.

Watanpatra. A title-deed of hereditary property.

Watanwadi. A patrimonial estate; patrimonial lands and tenements.

Watch. To stand sentry, or attend as a guard. A body of constables on duty on any particular night.

Watch and ward. *Watch* is the word applicable to the night duty of constables and begins at the time when ward ends; *ward*, to their duties in the day time, in apprehending rioters and robbers on the highways, &c. In 1233, watch and ward was established in every township throughout the country to supplement the then inadequate police organization.

Watch committee. A committee of the town-council of a municipal borough, having the appointment and control of the borough constables.

Watch rate. A rate leviable in many municipal boroughs by order of the council.

Water. Under the word "water" in a conveyance, a right of fishing will pass, but the soil does not pass. But the word "land" includes water. An action cannot be brought to recover possession of a pool or other piece of water by the name of water only, but it must be brought for the land that lies at the bottom, *e. g.*, "twenty acres of land covered with water." Water, being a moveable, wandering thing, there can only be a temporary, transient usufructuary property therein.

Watercourse. A species of incorporeal hereditament, being a right which a man has to the benefit of the flow of a river or stream. This right includes that of having the course of the stream kept free from any interruption or disturbance to the prejudice of the proprietor, by the acts of persons without his own territory, whether owing to a diversion of the water, or to its obstruction, or pollution by offensive commixture. When the banks on each side of the watercourse belong to different owners, the proprietor of each bank is considered as *prima facie* the proprietor also of half the land covered by the stream, *i. e.*, *usque ad medium filum aquæ*, unless the stream be navigable, for then the bed of it, so far at least as the tide of the sea flows, presumably belongs to the Crown.

The right to use *surface* water (for there is no *property* in the water) flowing in a *natural* and *defined* course exists by natural or universal law. Each proprietor of land through which water so runs has a right to use the same for any reasonable purpose of his own, not inconsistent with a similar right in the proprietors of the land above or below; but he may not seriously diminish the quantity, or injure the quality of the water which would otherwise descend, to the damage of a proprietor below, save under a title by grant or prescription; nor can he, without the license or grant of a proprietor above, pen or dam back the water, so as to cause actual damage to him. The right to running water includes a right to it in its natural purity; but a right to pollute a natural stream may be acquired by grant or prescription, though such enjoyment, or any other kind of enjoyment in excess of the natural right, will not begin to be adverse and of right, until the injurious effect is suffered.

Surface water *not* running in a *defined* channel, but spreading over the land may be used by the occupant of the land for any purpose; but a natural visible supply from a spring head must not be cut off, nor prevented from falling below into a regular natural channel; and drains should be so arranged as to restore the water at the boundary of an estate to its ancient or natural channels.

Where *subterranean* water flows in a *known* and *defined* course, its diversion or pollution will be an injury as much as if it ran on the surface. But usually the course of such water is not ascertainable, and the general rule is that one man may, in his own land, sink a well or shaft for a mine, though he may thereby drain his neighbour's well dry; and there is no limit to the quantity of water he may raise, or the use he may make of it. But though there is no right to subterranean water percolating in an undefined course, yet one may not commit a nuisance by poisoning that water for another, any more than he may poison the air which that other has a right to receive, though there is no right of property in it.

Artificial watercourses. The rights and duties as to artificial watercourses exist, not at common law, but by contract, grant, or prescription, that is, the right to such a watercourse is an easement.—*Colleti on Torts.*

An artificial watercourse or stream is a stream which flows at its source by the operation of man, or, if it flows at its source by the operation of nature, flows in a channel made by man.

Sea EASEMENT.

Water-bailiff. An officer in port towns, whose duty is to search ships. An officer belonging to the city of London, who has the supervising and search of the fish brought thither.

Water-gage. A sea-wall or bank to restrain the current and overflowing of the water. Also an instrument to guage or measure the quantity or deepness of any water.

Water-gang. (*Sax.*) A trench or course to carry a stream of water; such as are commonly made to drain water out of marshes.

Water-gavel. A rent paid for fishing in, or other benefit received from, some river.

Water ordeal. *See* ORDEAL.

Waterscape. An aqueduct or passage for water.

Waveson. Such goods as after shipwreck do appear swimming upon the waves. *See* FLOTSAM.

Wax scot (*ceragium*). Duty anciently paid, twice a year, towards the charge of wax candles in churches.

Way. A road made for passengers.

There are (says Lord Coke) three kinds of ways:—(1) A *foot-way* (*iter*); (2) A *pack and prime way*, which is both a horse and foot-way (*actus*); (3) A *cart-way* (*via* or *aditus*), which contains the other two, and also a cart-way; and is called *via regia*, if it be common to all men; and *communis strata*, if it belong only to some town or private person. There is, however, another kind of way, namely, a *driftway*, for driving cattle, which is not included in the above division; for although a carriage way comprehends a horse-way, yet it does not necessarily include a drift-way (*Ballard* v. *Dyson*, 1 Taunt. 279). However, evidence of a carriage-way is strong presumptive evidence of a grant of a drift-way. —*Tomlins*. *See* HIGHWAY.

Ways are also *public* or *private*. Any of the said ways which is common to all the king's subjects, whether it lead directly to a market town, or only from town to town, may properly be called a high way, and is commonly called the king's public highway; any such cart-way may be called the king's highway; a river common to all men may also be called a highway. Bridges are public highways. Highways generally become so by what is called a dedication of them to the public by the owner of the soil; they also become so by act of parliament. But it seems that a way to a parish church, or to the common fields of a town or to a village, which terminates there, may be called a private way, because it belongs not to all the king's subjects, but only to the particular inhabitants of such parish, house, or village. A private right of way may be claimed by prescription and immemorial usage. *See* EASEMENT.

A public way need not be a thoroughfare; nor is a thoroughfare of necessity a public way.—*Brown*.

Way-bill. A writing in which is set down the names of passengers who are carried in a public conveyance, of the description of goods sent with a common carrier by land.

Way-going crops. *See* AWAY-GOING CROPS.

Way-leave. A right of way to carry minerals; usually for a rent, which may be either fixed, or varying with the amount carried.

Way of necessity. A way which arises by operation of law, where a person grants to another a piece of land which can only be reached by crossing other land of the grantor; for a right to cross such land is impliedly given to the grantee, though only for so long as an absolute necessity exists therefore. *See* EASEMENTS OF NECESSITY.

See COMMITTEE OF WAYS AND MEANS.

Waynagium. Implements of husbandry.

Wazifah. (*Ind.*) Lands assigned for the payment of a pension or a stipend.

Wazifahdar. A holder of *wazifah* lands.

Wealreaf. The robbing of a dead man in his grave.

Wear. Weir. A great dam or fence made across a river, or against water, formed of stakes, interlaced with twigs of osier, and accommodated for the taking of fish, or to convey a stream to a mill.

Wear and tear. The waste of substance by the ordinary use of it. These words, no doubt, include destruction to some extent,—destruction of surfaces by ordinary friction—but we do not think they include total destruction by a catastrophe which was never contemplated by either party (*per* Lindley, J., *Manchester B. W. Co.* v. *Carr*, 49 L. J. C. P. 809; 5 C. P. D. 507).—*Stroud*.

Wed. (*Sax.*) A covenant or agreement; whence to wed, a wedded husband, wedded bond-slave.

Wedbedrip. The customary service which inferior tenants paid to their lord in cutting down their corn, or doing other harvest duties. From the Saxon *wed*, a covenant, *bidden*, to pray or desire, and *rippan*, to reap or mow.

Week. This merely means *seven days*, and not the particular seven days commencing from Sunday (*per* Wood, V.-C., *Bazalgatti* v. *Lowe*, 24 L. J. Ch. 368).

Weighage. A toll or duty paid for weighing merchandise.

Weight of evidence. This is, in a trial, the preponderance or superiority in the evidence adduced by one side over that adduced in the other. A new trial is frequently applied for on the ground that the verdict is *against the weight of evidence*.

Weights and measures. Instruments used between buyers and sellers of goods and merchandise, for reducing the quantity and price to a certainty, that there may be the less room for deceit and imposition. As to the power of the police to inspect weights and measures, see Act V of 1898 (Crim. Pro.), s. 153. Keeping, selling, &c., false weights and measures is made punishable under Act XLV of 1860 (Penal Code), ss. 264-7. *See* AUNCEL WEIGHT.

Welsh mortgage. A conveyance of an estate redeemable at any time by the mortgagor on payment of the loan. The rents and profits of the estate being received by the mortgagee in satisfaction of *interest*. There is no covenant for the repayment of the loan, and the mortgagee cannot compel either redemption or foreclosure. A Welsh mortgage differs from a *vivum vadium* or vifgage, which is a conveyance of the property to the creditor until out of the rents and profits of the estate he has satisfied the *debt* with *interest*; it was so called because neither debt nor estate was lost. In the vifgage the profits are applied in the periodical reduction of the *debt*; while in the Welsh mortgage they are applied in satisfaction of the *interest*, the principal remaining undiminished. In neither, however, is the estate ever forfeited.—*Wharton*.

Were. Wera. A pecuniary compensation for an injury. The estimation or price of a man, especially of one slain. Among the

Anglo-Saxons, every man's life had its value, called a *were* or *capitis æstimatio*. In the time of Athelstan, a law was made to settle the *were* of every order of persons in the State.—*Mozley*. *See* WITE.

Weregild. *Wergeld*. *Weregildum* (*weregildus*). The fine formerly paid for killing a man, when such crimes were punished with a pecuniary mulct, and not with death. It was paid partly to the king for the loss of his subject, partly to the lord whose vassal he was, and partly to the next of kin of the slain man.

Werelada. This was where a party accused of slaying a man, and not paying the *weregild*, but denying the fact of the killing, purged himself by the oaths of several persons, according to his degree and quality. *See* COMPURGATORS, WAGER OF LAW.

Westminster the First, statute of. Statute 3 Edw. I, made at Westminster, in 1275.

Statute of Westminster the Second. Statute 13 Edw. I, st. 1, made in 1285; otherwise called the statute *De Donis Conditionalibus*. *See* TAIL.

Statute of Westminster the Third. Statute 18 Edw. I, st. 1, made in 1290; otherwise called the statute *Qua emptores terrarum*.

Whale. A royal fish, the head being the King's property, and the tail the Queen's. *See* FISH-ROYAL.

Wharf (*wharfa*). A broad plain place, near some creek or haven, to lay goods and wares on, that are brought to or from the water. There are two kinds of wharfs,—*legal quays* and *sufferance wharfs*. The former are established by act of parliament or exist as such by immemorial usage. The latter are places where certain goods may be landed and shipped, such as hemp, flax, coal and other bulky goods, by special sufferance granted by the Crown for that purpose.—*Tomlins*.

Wharfage (*wharfagium*). Money paid for landing of goods at a wharf, or for shipping and taking goods into a boat or barge from thence.

Wharfinger. He that owns or keeps a wharf and takes care of goods for shipment or delivery. He has a general lien for the balance of his account. *See* BANKER'S GENERAL LIEN.

Whatsoever. The word negatives any qualification, and affirms generality (*per* Fry, L. J., *Duck* v. *Bates*, 13 Q. B. D. p. 852).

Wheelage (*rotagium*). Duty or toll paid for carts, &c., passing over certain ground.

Whereas. A word which implies a recital of past facts.

Whinlard. A sword.

Whipping. A punishment inflicted for many of the smaller offences.

Whitefriars. A place in London between the Temple and Blackfriars, which was formerly a sanctuary, and therefore privileged from arrest.

White meats. Milk, butter, cheese, eggs, and any composition of them.

White rents (*reditus albi*). Payments received in silver or white money. *See* BLACK MAIL, QUIT RENT.

White spurs. A kind of esquires called by this name.

Whitsunday. *See* QUARTER DAYS, TERM.

Whole blood. A kinsman of the whole blood is he that is derived not only from the same ancestor, but from the same couple of ancestors, as opposed to the relation of half blood, in which there is but one common ancestor, whether male of female.

Wic. A place on the sea shore or on the bank of a river.

Wica. A country house or farm.

Wichencrif. Witchcraft.

Widow (*vidua*; *relicta*). A married woman bereft or her husband, a woman whose husband is dead.

Widow-bench. Otherwise called *Free-bench*. That share of her husband's estate which a widow is allowed by certain customs, besides or in lieu of, her dower.—*Rawson*

Widow's chamber. In London, the widow of a freeman was, by the custom of the city, entitled to her apparel and the furniture of her bed chamber, called the widow's chamber. The custom was abolished by 19 & 20 Vic. c. 94.

Widow of the king (*vidua regis*). She tha after her husband's death, being the king's tenant *in capite*, could not, during the continuance of the feudal law of tenures, marry again without the king's consent. *See* KING'S WIDOW.

Widow's quarantine. *See* QUARANTINE.

Widow's terce. *See* TERCE.

Widow's thirds. *See* THIRDS.

Widower. The word, as used in s. 5 o Act XXI of 1865 (Parsi Succession), means a widower relatively to the deceased wife only and without consideration of the fact or possibility of the widower re-marrying (*Jehangir* v. *Perozbai*, 11 Bom. 1).

Wife (*uxor*). A woman married; a woman that has a husband.

Wife's equity to a settlement. *See* EQUITY TO A SETTLEMENT.

Wigreve. The overseer of a forest.

Wild animals. Animals *ferœ naturæ*; animals of an untamable disposition. *See* ANIMALS.

Wilful. Intentional; deliberate. Mortgagees and others in possession of securities, lands, &c., are liable for losses caused by their wilful default or negligence.

Generally, the word 'wilful,' as used in Courts of Law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises

from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent (*per* Bowen, L. J., *Re Young and Harston*, 31 Ch. D. 174; 53 L. T. 837).—*Stroud.*

Wilful misconduct. This means misconduct to which the will is a party, something opposed to accident or negligence: the misconduct, not the conduct, must be wilful (*per* Bramwell, L. J., *Lewis* v. *G. W. Rly, Co.*, 3 Q. B. D. 206).

Wilfully. As explained in *Freeman* v. *Cooke* (2 Ex. 654), by the term *wilfully* we must understand, if not that the party represents that to be true which he knows to be untrue, at least, that he means his representation to be acted upon and that it is acted upon accordingly (*per* Turner, C. J., *Vishnu* v. *Krishnan*, 7 Mad. p. 7).

Will. The legal declaration of a man's intentions, which he wills to be performed after his death. It is of no force till after the death of the testator or person making it. A will and a testament, strictly speaking, are not words of the same meaning. A will is properly limited to land, and a testament only to personal estate.—*Tomlins.* But this distinction, if it ever existed, is now quite obsolete. —*Mozley.*

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death.—*Act X of* 1865 (*Succession*), *s.* 3.—*Act XXI of* 1870 (*Hindu Wills*), *s.* 6.—*Act V of* 1881 (*Prob. and Admin.*), *s.* 3.

Will shall include a codicil and every writing making a voluntary posthumous disposition of property.—*Act X of* 1897 (*General Clauses*), *s.* 3 (57).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (49). *See* LEGACY.

The word 'will' shall extend to a testament, and to a codicil, and to an appointment by a will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament of devise of the custody and tuition of any child by virtue of an Act passed in the twelfth year of the reign of King Charles the Second, intituled 'An Act for taking away the Court of Wards and Liveries, and tenures *in capite* and by knight's service and purveyance, and for settling a revenue upon His Majesty in lieu thereof,' or by virtue of an Act passed in the Parliament of Ireland in the fourteenth and fifteenth years of the reign of king Charles the Second, intituled 'An Act for taking away the Court of Wards and Liveries and tenures *in capite* and by knight's service,' and to any other testamentary disposition.—*Act XXV of* 1838 (*Wills*), *s.* 1.

Persons capable of making wills. Every person of sound mind and not a minor may dispose of his property by will. A married woman may dispose by will of any property which she could alienate by her own act during her life. Persons who are deaf or dumb, or blind, are not thereby incapacitated for making a will if they are able to know what they do by it. One who is ordinarily insane may make a will during an interval in which he is of sound mind. No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.—*Act X of* 1865, *s.* 46.—*Act XXI of* 1870, *s.* 2.

Will obtained by fraud, &c. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.—*Act X of* 1865, *s.* 48.—*Act XXI of* 1870, *s.* 2.

Wills may be revoked or altered. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.—*Act X of* 1865, *s.* 49.—*Act XXI of* 1870, *s.* 2. *See* AMBULATORY.

The irrevocability of a document is perfectly inconsistent with its being a will. The fact that a document is registered as a non-testamentary one, and is stamped shows that the parties did not regard it as a will (*Sita Koer* v. *Deo Nath*, 3 Cal. L. J. 370).

Execution of unprivileged wills. Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules:—(1) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction. (2) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will. The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.—*Act X of* 1865, *s.* 50.—*Act XX of* 1870, *s.* 2.

Due execution of a will implies not only that the testator was in such a state of mind as to be able to authorize and to know he was authorizing the execution of a document as his will, but also that he knew and approved of the contents (*per* Pigott and Banerji, JJ., *Woomesh Chandra* v. *Rashmohini*, 21 Cal. 279).

The person making the signature of a will for the testator is not competent as an attesting witness of its execution under the provi-

sions of the Indian Succession Act (*Avabai* v. *Pestanji*, 11 Bom. H. C., Ec., 87).

Incorporation of papers by reference. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.—*Act X of* 1865, *s.* 51.—*Act XXI of* 1870, *s.* 2.

Privileged wills. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as mentioned in section 53. Such wills are called privileged wills.—*Act X of* 1865, *s.* 52.

Mode of making and executing privileged wills. Privileged wills may be in writing, or may be made by word of mouth. The execution of them shall be governed by the following rules:—(1) The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested. (2) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested. (3) If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognized it as his will. If it appear on the face of the instrument, that the execution of it in the manner intended by him was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument. (4) If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will. (5) If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute is will, although they may not have been reduced into writing in his presence, nor read over to him. (6) Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time. (7) A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.—*Act X of* 1865, *s.* 53.

Expedition. Actual warfare. The right of making privileged wills is limited to those who are *on an expedition*, and consequently the will of a soldier made while he was quartered in barracks, either at home or in the colonies, is not privileged. The same was held of the will of a soldier made at Bangalore, whilst in command of the Mysore Division of the army there stationed, and who died whilst on a tour of inspection of the troups under his command. So of a sargeant, with his regiment at Malta, under order for the West Indies. But a soldier passing from one regiment to another—both regiments being in active service against the enemy—or joining a regiment with the view of marching against the enemy, is within the privilege. So is one who has received a *mortal* wound on the battle-field.—*Stroud.*

Revocation of unprivileged wills or codicils. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, 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 the same.—*Act X of* 1865, *s.* 57.—*Act XXI of* 1870, *s.* 2.

Revocation of privileged wills or codicils. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged 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 the same. In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should, at the time of doing that act, be in a situation which entitles him to make a privileged will.—*Act X of* 1865, *s.* 59.—*Act XXI of* 1870, *s.* 2.

Wording of wills. It is not necessrry that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.—*Act X of* 1865, *s.* 61.—*Act XXI of* 1870, *s.* 2.

There is no objection to one part of an instrument operating *in præsenti* as a deed, and another *in futuro* as a will (*Chand Mal* v. *Lachmi Narain*, 22 All. 162).

Estate at will. The estate of a tenant holding lands at the will of the lessor. The tenant is called a tenant-at-will. An estate at will must be at the reciprocal will of both parties, and the dissent of either determines it. A tenant at will is entitled to emoluments where his estate is determined by the lessor or by his death, and his personal representatives are entitled to them where the estate is determined by his own death; but if the

lessee forfeit or determine the estate himself, he is not then entitled to them. If a tenant at will rendering rent quarterly determine his will in the middle of a quarter, he must pay a quarter's rent. If the lessor determine his estate, the lessee shall have reasonable ingress and egress to take away his goods and chattels,—*Woodfall's Landlord and Tenant.* *See* ESTATE.

Will of the summons. In Scottish legal procedure, that part of a letter or other authoritative document issued in the name of the sovereign, which begins with the words "Our Will is," &c. That part which declares the royal will or command.

Wind bills. (*Sc. L.*) Accommodation bills, which *see.*

Winding up an estate. The putting an estate in liquidation for the purpose of distributing the assets among the creditors and others who may be found entitled thereto. The phrase is most frequently used in connection with public companies unable to satisfy their liabilities.—*Mozley.*

Winding up order. The order directing a company to be wound up is so called.

Window tax. This was at first laid upon houses which contained windows exceeding nine, and afterwards extended to those containing more than six. Abolished in 1851 by 14 & 15 Vic. c. 36.

Winter Circuit. Originally an occasional circuit appointed for the trial of prisoners, and in some cases, of civil causes, between Michaelmas and Hilary sittings. But of late years the circuit held in spring has been termed the "Winter Circuit."

Wisbuy, ordinances of. A code of maritime jurisprudence, compiled at Wisbuy, in the isle of Gothland, principally from the law of Oleron, in the year 1400, for the governance of the Baltic traders. *See* LAWS OF OLERON.

Wit, to (*scilicet*; *videlicet*). To know; that is to say; namely.

Witam. The purgation from an offence by the oath of the requisite number of witnesses (*secundum witam jurare*).

Witchcraft. Supposed intercourse with spirits; conjuration; sorcery. This was formerly punishable with death, but now with imprisonment.

Wite (*pœna mulcta*). (*Sax.*) Punishment; pain; penalty; mulct; criminal fine. Also freedom or immunity from fines and amerciaments. *Wite* was a penalty paid to the Crown by a murderer; the *were* was the fine he had to pay to the family or relatives of the deceased; the former was the satisfaction to be rendered to the community for the public wrong; the latter was to the family for their private injury.—*Wharton.* *See* WERE.

Witens. (*Sax.*) The chiefs of the Saxon lords or thanes, their nobles and wise men.

Witena-gemote. ***Wittena-gemote*** (*conventus sapientium*). A general assembly of great and wise men to advise and assist the sovereign in the time of the Saxons, answering to our parliament.

With costs. The phrase, when used with reference to the result of an action, implies that the successful party is entitled to recover his costs from his opponent.

Withdrawal of juror. When a jury cannot agree upon a verdict, one of them is often withdrawn by consent of the litigants, so as to put an end to the proceedings, each party paying his own costs.

Withdrawing the record. This is where a plaintiff revokes the entry of a cause for trial, and thus discontinues the action.

Without day (*sine die*). Without a day being fixed; indefinitely. The consideration of a matter is said to be adjourned *sine die*, when it is adjourned indefinitely, without a day being fixed for its resumption.

Without impeachment of waste. *See* IMPEACHMENT.

Without prejudice. *See* PREJUDICE.

Without recourse to me. *See* INDORSEMENT.

Without reserve. Unconditional. When property is thus announced to be sold, a puffer ought not to be appointed. *See* PUFFER.

Witness (*testis*). A person who on oath or solemn affirmation gives evidence in any cause or matter. A witness must attend in court according to the requirement of his subpœna. If he has not been paid his lawful expenses he may refuse to be sworn; but if he be once sworn, he must give his evidence. A witness is not obliged to answer any question which tends to criminate him. On the application of either party, all the witnesses on both sides are ordered to leave the court until called; and each is only called when his evidence is actually required. If a witness who has been ordered out of court remains, it is a contempt, if wilful, and may be treated as such; but his evidence is not rejected. Each witness remains in court after he has given his evidence, and is expected not to communicate with those outside. But every party to the cause is entitled to be present throughout, though he be about to give evidence. A witness cannot leave the precincts of the court without leave after the evidence of his side is over, nor even when the judge has begun to sum up, for any witness may at the discretion of the judge be recalled at any time before the verdict is given.—*Wharton.* A distinction is taken between the competency and the credibility of witnesses, the former determining absolutely the admission or rejection of their evidence, the latter going to corroborate or to impugn its truthfulness.—*Brown.* *See* COMPETENCY OF WITNESSES.

Wittena-gemote. *See* WITENA-GEMOTE.

Wolfeshead. Wolferhefod (*caput lupinum*). The condition of such as were out-

lawed in the time of the Saxons, who, if they could not be taken alive to be brought to justice, might be slain, and their heads brought to the king; for they were no more accounted of than a wolf's head, a beast so hurtful to man.—*Tomlins.*

Wong. (*Sax.*) A field.

Wood-corn. A certain quantity of grain paid by the tenants of some manors to the lord for the liberty to pick up dead or broken wood.

Wood-geld. The cutting of wood within the forest, or rather the money paid for the same to the foresters. It also signifies to be free from payment of money for taking wood in a forest.

Wood-mote. *See* FORTY DAYS' COURT.

Wood-Plea-Court. A court held twice in the year in the forest of Clun, in Shropshire, for determining all matters of wood and agistment there.

Woodwards. Officers of the forest, whose duty consists in looking after the wood, and vert and venison, and presenting offences relating to the same, at the next court of the forest.

Woolferthfod. Woolverhefod. *See* WOLFESHEAD.

Woolsack The seat of the Lord Chancellor in the House of Lords.

Woolstaple. The city or town where wool was sold

Workhouses. Municipal institutions for the support and maintenance of paupers.

Working classes. Classes earning their livelihood by manual labour.

Working days. *See* LAY DAYS

Worship. A title of honour applied to a magistrate.

Wort. Worth. A curtilage or country farm.

Worthiest of blood. An expression of the lawyers, signifying the preference given in descents to sons before daughters.

Worthine of land. A certain quantity of ground so called in the manor of Kingsland, in the county of Hereford. The tenants are called worthies.—*Tomlins.*

Wound. An aggravated species of assault and battery, consisting in one person giving another some dangerous hurt. Any lesion of the body, whether cut, bruise, contusion, fracture, dislocation or burn.

Wreck (*wreccum maris*). Such goods as after a shipwreck are cast upon the land by the sea, and left there, within some county, for they are not wrecks so long as they remain at sea in the jurisdiction of the admiralty. Where a ship perisheth on the sea, and no man escapes alive out of it, this is called a wreck; if any person escaped alive out of the ship, it was no wreck. By the common law all wrecks belong to the Crown. This revenue of wrecks is frequently granted to lords of manors as a royal franchise. If any alive thing escape, or if proof can be made of the property of any of the goods or lading which come to shore, they shall not be forfeited to the Crown as wreck.

Wreck Commissioners. Officers appointed under the Merchant Shipping Act to enquire, at the instance of the Board of Trade, into any accident to a ship whereby loss of life is caused.

Wreck-frec. Wreckfry. Exemption from the forfeiture of ship-wrecked goods and vessels, which the barons of the Cinque Ports enjoy by charter of Edward I.

Receivers of Wreck. Officers whose duty it is to preserve wreck for its owners, who may claim it within a year, if unclaimed, it is sold, and the proceeds paid into the Exchequer.

Wrecking. Stealing from a ship in distress.

Writ (*breve*). The king's precept, in writing under seal, issuing out of some court to the sheriff or other person, and commanding something to be done touching a suit or action, or giving commission to have it done. A judicial process by which any one is summoned as an offender. A legal instrument to enforce obedience to the orders and sentences of the Courts.

Writs are distinguished into *original* and *judicial* writs. Original writs are those that were sent out for the summoning of a defendant in an action, and bear in the *teste* the name of the sovereign. Judicial writs are those that are sent out by order of the Court where the cause depends, and the *teste* bears the name of the chief justice of that court where it issues. Now, under the Judicature Act, 1875, every writ shall be tested in the name of the Lord Chancellor, or if his office be vacant, in the name of the Lord Chief Justice of England.—*Mozley.* The 3 & 4 Wm. IV, c. 27, has abolished a great number of writs.

Writ of assistance. An ancient writ issuing out of the Exchequer, authorizing a person to take a constable, or other public officer, to seize goods or merchandise prohibited or on which duty has not been paid. Also a writ issuing out of Chancery when a defendant has been ordered to give up possession of lands, and has refused to do so, the writ is directed to the sheriff of the county in which the lands lie, commanding him to eject the defendant, and to put the plaintiff in possession.

Writ of entry. *See* ENTRY.

Writ of error. *See* ERROR.

Writ of escheat. A writ in the nature of a writ of right, which lay for a lord claiming by escheat.

Writ of Inquiry of Damages. A process in an action at common law, by which, after judgment by default for the plaintiff, the

sheriff inquires, by the oaths of twelve honest and lawful men, what amount of damages the plaintiff has really sustained. *See* INQUIRY.

Writ of protection. A prerogative writ protecting a person from arrest in civil proceedings for a year and a day.

Writ of revivor. *See* REVIVOR OF JUDGMENT.

Writ of right (*breve de recto*). The old writ in the law for asserting the right to lands in fee simple unjustly withheld from the true proprietor. The writ was properly brought, in the first instance, in the court baron of the lord of whom the lands were held, and then it was called a *writ of right patent*; but if the lord had no court, or had waived his right, it might be brought in the king's courts in the first instance, *qua dominus remisit curiam*, and then it was called a *writ of right close*, and was directed to the sheriff and not to the lord. Also when one of the king's immediate tenants *in capite* was deforced, his writ of right was called a *writ of right close*.

The *writ of right patent* might be removed from the lord's court into the county court by writ of *tolt*, and thence into the king's courts by writ of *pone* or *recordari facias*, at the suggestion of either party that there was a delay or defect of justice.—*Mozley*.

The writ of right properly lay only to recover corporeal hereditaments for an estate in fee simple, but there were other writs said to be "in the nature of writs of right" available for the recovery of incorporeal hereditaments or of lands for a less estate than a fee simple estate.

Writ of right of advowson. A writ of right framed for the purpose of trying a right to an advowson, but in other respects corresponding with other writs of right, except that the Statutes of Limitation did not apply to it.

Writ of summons. *See* SUMMONS.

Writ of trial. A writ directing an action brought in a superior court to be tried in an inferior court or before the under-sheriff.

Writer of the tallies (*scriptor talliarum*). An officer in the Exchequer, being clerk to the auditor of the receipt, who wrote upon the tallies the whole letters of the teller's bills. *See* TALLEY, TELLERS.

Writers to the Signet. *See* SIGNET.

Writing. This word usually denotes any instrument in the nature of an agreement under hand only, and not under seal.

Expressions referring to *writing* shall be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.—*Act X of* 1897 (*General Clauses*), *s.* 3. (58).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (50).

Writings obligatory. Bonds.

Written statement. The written statement of defence presented by a defendant to the Court. See Act V of 1908 (Civ. Pro.), Sch. I, O. VII, R. 1.

Wrong (*injuria*). The privation of right; an injury; a designed or known detriment; any damage or injury contrary to right. *See* TORT. The words *wrong* and *tort* may be used in law to signify any injury; but they are used especially to denote such civil injuries as are independent of contract.

Wrongful confinement. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said 'wrongfully to confine' that person.—*Act XLV of* 1860 (*Penal Code*), *s.* 340.

Wrongful gain. Wrongful gain is gain by unlawful means of property to which the person gaining it is not legally entitled. A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully.—*Act XLV of* 1860 (*Penal Code*), *s.* 23. For either wrongful loss or gain, the property must be lost to the owner, or the owner must be wrongfully kept out of it (*Pro., Sept. 18th*, 1866, 3 Mad. H. C. R., Ap., 6).

Wrongful loss. Wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.—*Act XLV of* 1860 (*Penal Code*), *s.* 23.

Wrongful restraint. Whoever voluntarily obstructs any person, so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person. The obstruction of a private way over land or water, which a person, in good faith, believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.—*Act XLV of* 1860 (*Penal Code*), *s.* 339.

Wronglands. Ill grown trees that will never prove timber: such as wrong the ground they grow in.

Wrongous imprisonment. (*Sc. L.*) False imprisonment, which *see*.

Wydraught. A water-passage, gutter, or watering place; often mentioned in old leases of houses, in the covenants for repairs, &c.

Wyte. *See* WITE.

X

Xenodoceum. Xenodocheum. An inn allowed by public license for the entertainment of strangers and other guests; also an hospital.

Xenodochy. Reception of strangers; hospitality.

Y

Yard. An enclosed space of ground, generally attached to a dwelling house, &c. A measure of three feet.

Yardland (*virgata terræ*). A quantity of land differing in extent in different parts of the country, from fifteen to forty acres.

Yautaka. (*Hin. L.*) A kind of woman's property received by her at the time of marriage or other ceremony whilst seated together with her husband. That which is given by the relations to the bride and the bridegroom, at the marriage ceremony when they are sitting on the same seat. Also a gift to a youth or child at any of the initiatory ceremonies or *sanskaras*.

Yea (Ya) and Nay. Yes and No. According to a charter of Athelstan, the people of Ripon were to be believed in all actions or suits upon their yea and nay, without the necessity of taking any oath.

Year (*annus*). The period in which the revolution of the earth round the sun is completed. Generally, when a statute speaks of a year, it must be considered as twelve calendar and not lunar months.

Year shall mean a year reckoned according to the British calendar.—*Act X of* 1897 (*General Clauses*), *s.* 3 (59).—*Bom. Act I of* 1904 (*General Clauses*), *s.* 3 (51).

The year, as divided by Julius Cæsar, consists of twelve months. In early English times, the year began with Christmas Day. But from the reign of William I, the year is designated by that of the reign only. Upon the Reformation of Religion, the year was made to begin with the 25th of March, but the year of the reign continued to be the common mode of denoting dates until the Commonwealth, when the year of our Lord came into use; and, ultimately, by the 24 Geo. II, c. 23, it was enacted that the 1st of January next following the last day of December, 1751, should be the first day of the year 1752, and so on for the first day of every succeeding year; and that the next ensuing 3rd of September, 1752, should be reckoned as the 14th of September, 1752, omitting for that time only the eleven intermediate days. And all writings after the 1st of January, 1752, were to be dated according to the new style. —*Brown.*

Before 1751, the legal year in England began on the 25th March, therein differing from the common usage in the whole kingdom. In 1751, the Gregorian, or present calendar, was substituted for the Julian calendar by 24 Geo. II, c. 23.

Revenue year. Under the Bom. Land Revenue Code (Bom. Act V of 1879), s. 3 (21), the words 'revenue year' or 'year' means the period from, and exclusive of, the 31st July of one calendar year until, and inclusive of, 31st July in the next calendar year.

Half a year is not the same as 'six months,' but means half the days of the year.—*Stroud.*

See MONTH, NEW STYLE, OLD STYLE.

Year and day (*annus et dies*). A time that determines a right or works a prescription, &c., in many cases by law; as, in case of an estray, if the owner challenge it not within that time, it belongs to the lord; unless a party die of a stroke inflicted within a year and a day, it is not killing by the striker; the owners of wreck must likewise claim within a year and a day, otherwise the king or his grantees became entitled to it (*see* WRECK); a year and a day was given to prosecute appeals of murder, now abolished. The reason for the addition of a day to a year seems to be that it may appear with greater certainty that the year is completed.

Year, day, and Waste (*annus, dies, et vastum, an, jour, et waste*). A part of the king's prerogative, whereby he had the profits of lands and tenements for a year and a day of those that were attainted of petit treason or felony, whosoever was lord of the manor whereto the lands or tenements belonged; and the king might cause waste to be made on the tenements, by destroying the houses, ploughing up the meadows and pastures, rooting up the woods, &c. (unless the lord of the fee agreed with him for the redemption of such waste), afterwards restoring them to the lord of the fee.—*Tomlins.* This prerogative is now abolished by 54 Geo. III, c. 145. In case of high treason, or in cases of lands held immediately of the king, the lands were absolutely forfeited to the king, in the latter case there being no mesne lord of the fee against whom the right could be exercised. Forfeitures for treasons or felonies are also abolished by 33 & 34 Vic. c. 23, s. 1. *See* FORFEITURE.

Year-books. These were reports of cases in a regular series, from the reign of King Edward II to the reign of King Henry VIII, inclusive. They were taken down by the prothonotaries or chief scribes of the courts, at the expense of the Crown, and published annually, whence they were known under the denomination of *Year-books* or *Books of years and terms.*

Tenancy from year to year. A tenant from year to year has a lease for one year certain, with a growing interest during every year thereafter, springing out of the original contract, and parcel of it (*Cattley* v. *Arnold*, 1 J. & H. 651; 28 L. J. Ch. 352). This tenancy may be either expressly created by letting premises to hold "from year to year," or may arise by implication, where rent is paid in respect of occupation of premises, and with reference to a yearly holding (*per* Parke, B., *Braythwayte* v. *Hitchcock*, 10 M. & W. 497).—*Brown.* This estate may arise impliedly, as when property is occupied generally under a rent payable yearly, half-yearly, or quarterly; or when a tenant holds over, after the expiration of his term, without having

entered into any new contract, and pays rent (before which he is tenant on sufferance).—*Wharton.*

Estate for years. An estate demised or granted for a term of years. *See* TERM OF YEARS.

Yeoman. Yeman. Yoman. He that has free land of forty shillings a year; who was anciently thereby qualified to serve on juries, vote for knights of the shire, and do any other act, where the law required one that was *probus et legalis homo*, a farmer, a gentleman farmer; the highest order among the plebeians. Also an officer of the king's house.

Yeomanry. The collected body of yeomen; small freeholders and farmers. The name is also given to certain local forces raised by individuals with the approbation of the king, who accepts their voluntary services.

Yeomen of the Guard. Otherwise called yeomen of the guard of the royal household. A force originally established by King Henry VII, in 1485, for the defence of his person, and perhaps to be considered rather as the king's domestic servants than his soldiers. The corps still forms the defence of the sovereign's palace.

Yeven. Yeoven. Given; dated.

Yielding and paying (*reddendo et solvendo*). Words used at the beginning of the *reddendum* clause in a lease, with reference to the rent intended to be payable under the lease. The phrase which commonly expresses the reservation of rent in a deed of lease No special form of words is, however, essential.

Yokelet. A little farm, requiring but a yoke of oxen to till it. *See* JOCELET.

York, custom of. A custom in the province of York, for the distribution of intestate's effects. The custom was the same as the Custom of London. *See* CUSTOM OF LONDON. Abolished in 1856 by 19 & 20 Vic. c 94.

Younger brethren. *See* TRINITY HOUSE.

Younger children. The phrase, when used with reference to settlement of land, signifies all such children as are not entitled to the rights of an eldest son. It therefore includes daughters, even those who are elder than the eldest son.—*Moxley.* A younger child is a child who neither originally is, nor (through the death of a child or children older than himself) become an eldest son (*Bayley's Settlement*, L. R. 9 Eq. 491; 6 Ch. App. 590, *Bathurst* v. *Farrington*, 4 Ch. Div. 251; 2 App. Ca 698).—*Brown.*

Youthful offender. Any boy who has been convicted of any offence punishable with transportation or imprisonment, and who, at the time of such conviction, was under the age of fifteen years.— *Act VIII of* 1897 (*Reformatory Schools*), *s.* 4.

Yule. The times of Christmas and Lammas.

Z

Zaman. Zamin. (*Ind.*) Surety; bail; security in general; answering or being surety for another, either for person or property.

Zamanat-namah. A deed of surety by which a person makes himself answerable for the debts of another.

Zananah. (*Ind.*) Apartments appropriated to women. The part of a house which is set apart for women. A seraglio.

Zealot. A person who separates from the Church of England is termed a zealot or fanatic.

Zealous witness. A witness who is over-zealous on behalf of his party. Over-zeal in a witness is clearly a matter affecting his trustworthiness.

Zebanbundy. (*Ind.*) Examination of a witness; the document that contains the questions put to a witness, and his answers.

Zemindar. (*Ind.*) A landholder. An officer who, under the Mehomedan government, was charged with the financial superintendence of the lands of a district, the protection of the cultivators, and the realization of the government's share of its produce, either in money or kind.

A zemindar's estate is analogous to an estate tail as it originally stood upon the statute *de donis*. The zemindar is the owner of the zemindari, but can neither encumber nor alienate beyond the period of his own life (*Chintalaputi* v. *Zemindar of Vizianagram*, 2 Mad. H. C. R. 128).

Zemindary. An estate held by a *zemindar*; the revenue settlement made with *zemindars*, in contradiction to *ryotwary*. The office and jurisdiction of a zemindar

Zi-hakk. (*Ind.*) Allowances. Rights. Dues

Zihar. (*Moh. L.*) A formula of divorce. *See* TALAK.

Zillah. (*Ind.*) A district, a province, a tract of country.

Zillah Court. A district court.

Zingari. Rogues and vagabonds were so called in the middle ages.

Ziziya. (*Ind.*) Poll tax. In India this tax was imposed upon the subjects by Aurangzeb, the Emperor of India, in the Mehomedan period.

Zual-Ihram. (*Ind.*) Kindred in whose line of relation a female enters.

Zur-i peshgi lease. (*Ind.*) A lease made in consideration of money advanced by the lessee to the lessor. It is not a mere contract for the cultivation of the land at a rent, but is a security to the tenant for his money advanced. The tenant's possession is that of a creditor operating payment to himself (*Bengal Indigo Co.* v. *Raghobur Das*, 24 Cal. 272).

Zygostates (*liprimens*). The clerk of the market, who looks to the weights and measures; a scalesman.

Appendix A.

A LIST OF ABBREVIATIONS USED IN LAW REPORTS AND TEXT-BOOKS.

A. *Antiquo* (I vote against) Used by the Romans in voting against a proposed law or candidate for office. *See* U. R. The letter A is also used as a mark of reference, for the purpose of identification. The letter was also inscribed on a ballot or waxen tablet, to be used in the Roman Courts of Judicature, being the initial letter of *absolvo*, I acquit (not guilty). *See* N. L.

A.; An.; Anon. Anonymous.

A 1. A mark signifying a first class vessel, excellently built.

A. C. *Ante Christum* (Before Christ) Appellate Civil Jurisdiction.

A. C. J. Appellate Civil Jurisdiction.

A. Cr. Appellate Criminal Jurisdiction.

A. D. *Anno Domini* (in the year of our Lord).

A. & E. Admiralty and Ecclesiastical.

A.-G. Attorney-General. Advocate-General Adjutant-General. Accountant-General.

A. J. Appellate Jurisdiction.

A. P. Annual Practice.

A. R. *Anno regni* (in the year of the reign)

A. R. R. *Anno regni Regis* (or *Reginæ*) (in the year of the reign of the King [or Queen]). As A. R. V. R. 22 (*Anno Regni Victoriæ Reginæ* 22), in the twenty-second year of the reign of Queen Victoria.

A. S. Acts of Sederunt. Anglo-Saxon.

A. V. Authorized version.

Abr. Abridgment. Abridged.

Acc. Accords or Agrees with.

Acc.; Acct. Account. Accountant.

Act. Reg. *Acta Regia.*

Ad fin *Ad finem* (at or near to the end).

Ad id. *Ad idem* (tallying in the essential point).

Ad lib. *Ad libitum* (at pleasure).

Adm. Admiral. Admiralty.

Adm. Co. Admiralty Court.

Admor.; Admr. Administrator.

Admx. Administratrix.

Ads. *Ad sectam* (at the suit of). *See* Ats. Administrators.

Adv. *Adversus* (against); also written v. or *vs.* Advocate. *Ad valorem* (at or on, the value; according to value).

Æ. Æt. *Ætatis* (aged; of age).

Affd.; Affir. Affirmed.

Agt. Agent.

Amt. Amount.

An. *Anno* (in the year).

Ang.-Sax.; A.-S. Anglo-Saxon.

Anon. Anonymous.

Ap. App. Appendix.

App. Cas. Law Reports, New Series, Appeal Cases.

Appr. Approved.

Arm. fil. *Armigeri filius* (an esquire's son).

Art. Article.

Ass. Tax. Assessed Taxes.

Assn. Association (chiefly in names of cases).

Ast. Ent. Aston's Entries.

Ats. At the suit of (*ad sectam*); thus, C. D. (defendant), *ats.* A. B. (plaintiff).

Att.; Atty. Attorney.

Atty.-Gen. Attorney-General.

Ayl. Pan. Ayliffe's Pandects.

Ayl. Par. Ayliffe's Parergon Juris.

B

B. Baron. British. Book.

B. C. Before Christ. Bail Court. Bengal Code.

B. C. L. Bachelor of Civil Law.

B. I. British India.

B. L. Bachelor of Laws.

B. LL. *Baccalaureus Legum* (Bachelor of Laws). *See* LL. B. The initial letter of a word is sometimes doubled, as in this instance, to signify the plural. as, pp. pages; ss. sections; rr. rules.

B. O Buyer's option.

B. R *Bancus Regis* (King's Bench). *Bancus Reginæ* (Queen's Bench).

Bac. Abr. Bacon's Abridgment of the Law, first published in 1736.

Banc. Sup. *Bancus Superior* (the upper Bench). The King's Bench was so called during the Protectorate.

Bankry. Bkcy. Btcy. Bankruptcy.

Bd. Bond. Bound. Board.

Beaw. Beawe's *Lex Mercatoria.*

Beng. Reg. Bengal Regulation.

Bk. Book. Bank.

Bl.; Blac. Com. Blackstone's (Sir W.) Commentaries on the Laws of England; published 1765-9, in 4 vols.

Blount. Blount's Law Glossary or Dictionary.

Bom. C. Bombay Code.

Bom. Reg. Bombay Regulation.

Bp. Bishop.

Bract. Bracton's (Henry de) *De Legibus et Consuitudinibus Angliæ* (concerning the Laws and Customs of England). He lived in the reign of Henry III. The work was in Latin, and was edited with an English translation by Sir T. Twiss in the Rolls Series.

Brev. Sel. *Brevia Selecta* (choice writs or processes).

Brit. Britton, a famous lawyer of the reign of Edward I, at whose command, and by whose authority, he wrote a learned book of the law, in French.

Bro. Abr. Brooke's (Sir Robert) Abridgment; also called the Grand Abridgment first printed in 1568.

Bro. Ent. Browne's Entries.

Bull. N. P. Buller's Law of Nisi Prius.

Bt.; Bart. Baronet.

C

C. This letter, inscribed upon a ballot in the Roman Courts of Judicature, stood for *condemno* (I condemn). *See* N. L. Church. Consul. *Centum* (hundred).

C.; Cap. *Caput* (chapter).

C.; Cod.; Cod. Jur. Civ. Codex (Juris Civilis), Justinian Codex.

C. A. Court of Appeal.

C. A. V.; Cur. adv. vult. *Curia advisari vult* (the court desires to consider [before delivering judgment]).

C. B. Chief Baron. Common Bench. Companion of the Bath.

C. C. County Court. County Commissioner. Cases in Chancery. Crown Cases. Crown Clerk. County Councillor. Contra credit. *Compte courante* (account current).

C. C. A. Chief Clerk of the Admiralty. County Court Appeals.

C. C. Ct. Central Criminal Court.

C. C. P. Court of Common Pleas.

C. C. R. Crown Cases Reserved.

C.-G. Coast-Guard, Consul-General.

C. H. Courthouse. Customhouse.

C. I. F. Cost, insurance and freight. A price quoted "c. i. f." at a certain place, includes cost, insurance and freight.

C. J. Chief Justice.

C. L. R. Common Law Reports. Calcutta Law Reports.

C. L. P. A. Common Law Procedure Act.

C. O. Crown Office. Colonial Office. Criminal Office. Circular Order.

C. O. D. Cash (*or* collect) on delivery.

C. P. Common Pleas. Central Provinces. Clerk of the Peace. Court of Probate.

C. P. C. Clerk of the Privy Seal.

C. P. D. Law Reports, New Series, Common Pleas Division.

C. P. S. *Custos Privati Sigilli* (Keeper of the Privy Seal).

C. R. *Carolus Rex* (King Charles). *Carolina Regina* (Queen Caroline). *Custos Rotulorum* (Keeper of the Rolls).

C. R. P. *Calendarium Rotulorum Patentium* (Calendar of the Patent Rolls).

C. S. *Custos Sigilli* (Keeper of the Seal). Civil Service. Court of Session. Clerk to the Signet. Clerk of Session. Commissioner of Supply.

C. W. O. Cash with order.

Ca.; Cas.; Cs. Cases.

Ca. Sa. *Capias ad satisfaciendum* (that you take to satisfy). A writ of execution against the person of the debtor, who might be arrested and imprisoned thereunder.

Cf. *Confer* (compare).

Ch. Chancery.

Ch.; Chap. Chapter.

Ch. D. Law Reports, New Series, Chancery Division.

Chanc. Chancellor.

Cir. Circular. Circuit.

Cir. O. Circular Order.

Cit. Citation.

Civ. Pro. Civil Procedure Code.

Civ. Rul. Civil Rulings.

Cl. Clause.

Cler. fil. *Clerici filius* (the son of a clergyman).

Clift. Clift's Entries.

Cml. Commercial.

Co. Company. County. Coke's Reports.

Co. Co. County Court.

Co. Cop. Coke's Copyholder.

Co. Ent. Coke's Entries.

Co. Litt. Coke upon Littleton. Coke's (Sir Edward) edition of Littleton's Treatise on Tenures. Coke was Chief Justice of England in the time of James I, and the author of the "Institutes" and of Reports The Institutes were in four volumes; the first was a commentary on Littleton, and the other three treated respectively of Magna Charta, Criminal Law, and the Jurisdiction of the Courts. *See* Inst.

Co. M. C. Coke's Magna Charta (2 Inst.) *See* Co. Litt.

Co on Courts. Coke's Fourth Institute. *See* Co. Litt.

Co. P. C. Coke's Pleas of the Crown (3 Inst.) *See* Co. Litt.

Col. Column.

Coll. College. Collector. Colloquial, Colleague.

Coll. Jurid. *Collectanea Juridica.*

Com. Commissioner. Commander. Commodore. Common. Commerce. Commentary (comm.).

Com. Cas. Commercial Cases.

Com. Dig. Comyn's Digest of the Laws of England; first published in 1762.

Comm. Blackstone's (Sir W.) Commentaries on the Laws of England; published 1765-9, in 4 vols. Commented on.

Commrs. Commissioners.

Comp. Compare. Comparative. Compound. Compounded. Composition.

Con. *Contra* (against; in opposition).

Con. Cr. Contra credit.

Const. Constable. Constitution.

Conv. A. Conveyancing Act.

Conv. & L. P. A. Conveyancing and Law of Property Act.

Coss. *Consules* (consuls).

Cowel. Cowel's (Dr. John) "Interpreter," being a dictionary of Law Words and Terms; first published, 1607.

Cp. Compare.

Cr. Credit. Creditor. Craig, Jus Feudale.

Cr. Ca. Crown Cases.

Cr. Ca. Res., C. C. R. Crown Cases Reserved.

Crim. con. Criminal conversation, *i. e.*, adultery.

Crim. Pro. Criminal Procedure Code.

Crim. Rul. Criminal Rulings.

Cru. Dig. Cruise's Digest.

Ct. Count. Court. *Centum* (a hundred).

D

D. Died. *Denarius, Denarii* (a penny or pence). Dominicus. Day. Deputy. Duke. Duchess. Dowager, Dutch. Daughter.

D.; Dem. Demise, in the sense of a lease. Doe dem. Smith, *i. e.*, Doe on the demise (lease) of Smith.

D.; Dig. Digest. Particularly, the Pandects of Justinian in fifty books containing the opinions and writings of eminent lawyers digested in a systematical method. Published on the 16th of December, 533, and declared to have the force of law from the 30th of that month.

D. C. L. Doctor of Civil or Canon Law.

D. C. S. Deputy Clerk of Session.

D. D. D. *Dono dedit dedicavit* (he gave and consecrated as a gift).

D. F. Dean of the Faculty. Defender of the Faith. *See* F. D.

D. G. *Dei gratia* (by the grace of God). *Deo gratias* (Thanks to God).

D. P.; Dom. Proc. *Domus Procerum* (the House of Lords).

D. & S.; Doc. and Stud. Doctor and Student. A work containing dialogues between a doctor of divinity and a student of the common law, in the form of question and answer. The author is Saint Germain, in the reign of Henry VIII. The first dialogue was published in 1518, and the second in 1530. Both afterwards passed several editions.

D. S. P. *Decessit sine prole* (he died without issue).

Danv. Abr. Danvers' Abridgment.

Def. Definition.

Dep. Deputy. Department.

Dept. Department.

Dft. Deft. Defendant.

Disc. Discussed.

Diss. *Dissentiente* (dissenting). Dissented from.

Dist. District. Distinguished.

Dist. Atty. District Attorney.

Do. *Ditto* (the same).

Dpt. Dept. Department. Deponent.

Dr. Doctor. Debtor.

Dugd. Orig. Dugdale's Origines.

E

E. E. Errors excepted. A phrase appended to an account stated, in order to excuse slight mistakes or oversights.

E. G.; Ex. gr. *Exempli gratia* (for the sake of an instance or example).

E. I. C. S. East India Company's Service.

E. & Ir. A. English and Irish Appeals.

E. & O. E. Errors and omissions excepted. *See* E. E.

East P. C. East's Pleas of the Crown.

Ec. & Ad. Ecclesiastical and Admiralty.

Ec. & Mar. Ecclesiastical and Maritime.

Eccl. Ecclesiastical.

Ed. Edition. Editor.

Emp. Emperor. Empress.

Env. Ext. Envoy Extraordinary.

Eq. Equity. Equal.

Et. al. *Et alibi* (and elsewhere). *Et alii* or *aliæ* (and others). Sometimes improperly written *et als.*

Et seq. *Et sequentia* or *sequentes* (and what follows; and the following).

Ex. Example. Exception. Examined.

Exc. Excep. Exception.

Exch. Exchequer. Exchange.

Exch. D.; Ex. Div. Law Reports, New Series, Exchequer Division.

Exec.; Exor.; Exr. Executor.

Execx.; Exx. Executrix.

Exh. Exhibit.

Expl. Explanation. Explained.

F

F. The letter wherewith *felons*, &c., were branded and marked with a hot iron, on their

being admitted to the benefit of clergy. *Fiat* (let it be done). Consuetudines Feudorum.

F.; Fitz. Fitzherbert.

F. A. P. Free of Particular Average.

F. B. Full Bench.

F. C. L. D. Fisher's Common Law Digest.

F. C. S. Free of Capture and Seizure.

F. D.; Fid. Def. *Fidei Defensor* or *Defensatrix* (Defender of the Faith). A title of the sovereigns of England, first conferred by Pope Leo X on King Henry VIII. Foreign Department.

F. G. A. Free of General Average.

F. N. B. Fitzherbert's (Sir Anthony) Natura Brevium (nature of writs). *See* N. B.

F. O. B. Free on board. In contracts for the sale of goods, this means that the cost of shipping will be paid by the vendor.

Fearne. Fearne on Remainders.

Fec. *Fecit* (he or she did it).

Feud. Feudal.

Ff. Pandectæ. (Juris Civilis).

Fi. fa. *Fieri facias* (that you cause to be made). A writ of execution in an action of debt or damages.

Fitzh. Abr. Fitzherbert's (Sir Anthony) Abridgment, first printed in 1514.

Fl. Fleta. The feigned name of a learned lawyer and judge, who lived in the times of Edward II and Edward III, and who was confined in the *Fleet* prison. During confinement he wrote a book on the common law of England, as it existed in his time, which is known by his assumed name. It serves as an appendix, and often as a commentary, to Bracton.

Fo.; Fol. Folio.

Foll. Followed.

For. Pla. Brown's Formulæ.

Fort. de Laud. Fortesque de Laudibus. Angliæ Legum.

Fra. M. Francis' Maxims.

G

G. B. Great Britain.

G. B. & I. Great Britain and Ireland.

G.-G.; Gov.-Gen. Governor-General.

G. O. General Orders. Government Order.

G. R. *Georgius Rex* (George the King). Government Resolution.

G. R.; Gen. Rul. General Rules.

Gail. Gaii Institutionum Commentarii IV.

Gaz. B. Gazette of Bankruptcy.

Gen. fil. *Generosi filius* (the son of a gentleman).

Gib. Cod. Gibson's Codex.

Glanv. Glanville, the author of a book entitled *Tractatus de Legibus et Consuetudinibus Regni Angliæ*. It was probably the first of its kind, and seems to be written about the year 1181, and is confined to the proceedings in the King's Court. A translation of Glanville, with notes, was published in 1812, by Mr. Beames.

Govt. Government.

Gr. Greek. Grains. Gross.

Gro. de J. B. Grotius de Jure Belli.

Gwil. and Dodd. Gwillim and Dodd's edition of Bacon's Abridgment of the Law; published, 1832, being the 7th Edn. of the Abridgment.

H

H. C. High Court House of Commons. Heralds' College.

H. C. R. High Court Reports.

H. E. *Hoc est* or *hic est* (that is, or this is). His Excellency.

H. L. House of Lords.

H. P. C. Hale's Pleas of the Crown.

H. R. House of Representatives.

Hab. Corp. *Habeas corpus* (that you have the body).

Hale C. L. Hale's Common Law.

Harr. Dig. Harrison's Analytical Digest.

Hawk. P. C. Hawkin's Pleas of the Crown.

Hein. Heineccius.

Heredits. Hereditaments.

Hugh. Hughes' Entries.

Hund. Hundred, Hundreds.

I

I., Imp. Imperial. *Imperator* (Emperor). *Imperatrix* (Empress).

I. A., Ind. App. Indian Appeals.

I. C. A. India Council Act.

I. E. *Id est* (that is).

I. L. R. Indian Law Reports, published under the authority of the Government of India, from 1876.

I. O. U. A written acknowledgment of a debt, so called because it commences with those letters which custom has substituted for the words *I owe you*, because they have the same sound.

I. P. D. *In præsentia Dominorum* (In the presence of the Lords of Session).

I. Q. *Idem quod* (the same as).

I. T. Inner Temple. Indian Territory.

Ib.; Ibid. *Ibidem* (in the same place, volume, or case).

Ictus. This is an abbreviation of *juris consultus*, a lawyer.

Id. *Idem* (the same)

Illust. Illustration.

Inf. *Infra* (below).

Inl. Rev. Inland Revenue.

In lim. *In limine* (at the outset).

In loc. *In loco* (in the place; in its place)

Ins. Gen. Inspector General.

Inst. Sir Edward Coke's Institutes, in four volumes, published in 1628. The first volume is an extensive comment upon Littleton's Treatise on Tenures, and usually cited by the name of *Co. Litt.*, or as 1 *Inst.* The second is a comment upon old Acts of Parliament; the third, a treatise on the Pleas of the Crown; and the fourth, an account of the several species of Courts. These are cited as 2, 3, or 4 *Inst.*, without any author's name. *See* Co. Litt. Instant (the present month).

Ins. Insur. Insrce. Insurance (chiefly in names of cases).

In trans. *In transitu* (on the passage; in transit).

Int. Interest.

Internat. International.

Introd. Introduction.

Inv. Invoice.

Ir. Ireland. Irish.

J

J. Judge. Justice. Plural., JJ.

J. A. Justice of Appeal. Judge-Advocate.

J. A. G. Judge Advocate-General.

J. C. Justice Clerk. *Jurisconsultus* (Jurisconsult).

J. C. D. *Juris Civilis Doctor* (Doctor of Civil Law).

J. D. *Jurum Doctor* (Doctor of Laws).

J. P.; Jus. P. Justice of the Peace.

J. Prob. Judge of Probate.

J. R. *Jocubus Rex* (King James).

J. U. (*or* V.) D. *Juris Utriusque Doctor* (Doctor of both Laws—canon and civil).

Jr.; Jun.; Junr. Junior.

Jud. Act. Judicature Act.

Jud. Commr. Judicial Commissioner.

Judg. Judges.

Jdgmt. Judgment.

Jus. Justice.

Just. Justice. Justinian.

Just. Inst. Justinian's Institutes.

K

K. King. Knight.

K. B. King's Bench. Knight of the Bath.

K. C. King's Counsel. Knight of the

Kn. Tr. Kames' Historical Law tland).

Kent Com. Kent's Commentaries on ited States.

L

L. Law. Latin. Lady. Lord. *Liber* (book).

L. A. Legislative Assembly.

L. A. S. Lord Advocate of Scotland.

L. C. Lord Chamberlain. Lord Chancellor. *Loco citatio* (in the place before cited).

L. C. B. Lord Chief Baron.

L. C. J. Lord Chief Justice.

L. H. A. Lord High Admiral.

L. H. C. Lord High Chancellor.

L. H. T. Lord High Treasurer.

L. J. Lord Justice. Law Journal.

L. JJ. Lords Justices.

LL.; L. Lat. Low Latin. Law Latin.

LL. B. *Legum Baccalaureus* (Bachelor of Laws).

LL. D. *Legum Doctor* (Doctor of Laws). Doctor of Letters.

L. L. I. Lord Lieutenant of Ireland.

LL. M. *Legum Magister* (Master of Laws)

L. Mag The Law Magazine.

L. P. Lord Provost. Lower Provinces.

L. P. S. Lord Privy Seal.

L. Q. R. Law Quarterly Review.

L. R. Law Reports. In England, prior to 1865, the reports were all executed and published as mere private speculations, one reporter or a pair of reporters being usually, though not always, accredited by the chief judge of each Court. In 1865, "The Incorporated Council of Law Reporting" began to publish monthly the reports called *The Law Reports*, which, though they have no monopoly,—for contemporaneous monthly reports are published under the name of *The Law Journal*, and contemporaneous weekly reports under the names of *The Law Times*, and *The Weekly Reporter*—possess a peculiar authority, being sometimes spoken of as "the authorised reports." Legal Remembrancer.

L. Rev. Law Review.

L. R. I. Law Reports (Ireland).

L. S. *Locus Sigilli* (place of the seal). Left side.

Lands. C. C. A. Lands Clauses Consolidation Act.

Ld. Lord. Limited.

Leg. Legis. Legislature. Legislative.

Leg. Rem. Legal Remembrancer.

Lex. Merc. *Lex Mercatoria* (Law Merchant).

Lex Merc. Red. Lex Mercatoria, by Beawes.

Lib. *Liber* (book).

Lib. Ass. Liber Assisarum, Year Book, pt. 5.

Lib. Int. Liber Intrationum.

Lib. Pl. Liber Placitandi.

Lind.; Lynd. Lyndewood, Provinciales.

Litt. Littleton, a judge of the Common Pleas in the reign of Edward IV, who composed a book of tenures for the use of his son, to whom it is addressed. It contains three books; the first upon estates, the second upon tenures and services, the third, discourses of several incidents and consequences of tenures and estates. Sir Edward Coke has written a very copious and minute Commentary on this book. *See* Co. Litt., Inst.

Long Quinto. Year Book, pt. 10, K. B.

Lp. Ldp. Lordship.

Loq. *Loquitur* (speaks).

M

M. The brand or stigma of a person convicted of manslaughter, and admitted to the benefit of clergy. It was burned on the brawn of the left thumb.

M. C. Magistrates' Cases. The abbreviation is used in reference to the series, in the *Law Journal Reports*, of cases connected with the duties of magistrates. Maritime Cases, Madras Code.

M. L. A. Member of the Legislative Assembly.

M. P. Member of Parliament.

M. R. *Magister Rotulorum* (Master of the Rolls).

MS. Manuscript. Plural, MSS.

M. W. P. A. Married Women's Property Act.

Mad. Reg. Madras Regulation.

Mal. Malyne's Lex Mercatoria.

Manw. Manwood's Forest Laws.

Mem. Memo. Memorandum. Memoranda.

Mirror. Mirror des Justices, or Miriour of Justices, generally spoken of as the Mirror, or Mirrour. It is a work generally ascribed to the reign of Edward II. It is stated to have been written by one Andrew Horne, and it treats of all branches of the law, whether civil or criminal.

Misc. Miscellaneous.

N

N. A. R. Nizamat Adawlut Reports.

N. B. *Nota Bene* (note well *or* take notice).

N B., Nat. Br. Fitzherbert's (Sir Anthony) *Natura Brevium* (nature of writs). Fitzherbert was a judge of the Common Pleas in the time of Henry VIII. The first book published by him was his "Grand Abridgment," in 1514. In 1534 he published his new *Natura Brevium*, which was an improvement of a more ancient work of the same nature and title, which is referred to as the old *Natura Brevium*. It was a treatise on the nature and effect of the principal writs in the Register. *See* O. N. B.

N. D. No date.

N. L.; Non liq. *Non liquet* (it does not appear clear). In ancient Rome, each *judex* or juryman was provided with three tablets, on one of which was marked A. (*absolvo*, I absolve or acquit), on a second, C. (*condemno*, I condemn), and on a third, N. L. (*non liquet*, it is not clear). The *judices* voted by placing one of these three tablets in an urn, which was afterwards examined for the purpose of ascertaining the votes. A majority determined the acquittal or condemnation of the accused, and if the votes for acquittal and condemnation were equal, there was an acquittal.

N. P. Nisi Prius. Notary Public. New Providence.

N. R. Not reported. New Reports.

N. S. New Series. New Style.

Narr. *Narratio* (a declaration in a cause).

Nem. con. *Nemine contradicente* (no one contradicting, that is, unanimously). The phrase is used with special reference to votes and resolutions of the House of Commons.

Nem. dis. *Nemine dissentiente* (no one dissenting; that is, unanimously). The phrase is used with special reference to unanimous votes in the House of Lords.

Nient cul. *Nient culpable* (not guilty).

Non-con Non content, *i.e.*, dissentient. (House of Lords).

Non. cul. *Non culpabilis* (not guilty).

Nul. fil. *Nullius filius* (the son of no man; a bastard, a natural child).

Non. obs. *Non obstante* (notwithstanding).

Non. pros. *Non prosequitur* (he [the plaintiff] does not pursue [prosecute] his action). So a judgment for the defendant by reason of such neglect in the plaintiff to prosecute, is called a judgment of *non pros.*, and the plaintiff was said to be *non prossed.*

Non seq. *Non sequitur* (it does not follow). Used in argument to indicate that the premises do not warrant the inference drawn from them.

O

O. C., O. C. J. Original Civil Jurisdiction.

O. J. Original Jurisdiction.

O. N. B. Old *Natura Brevium*. A law tr published in the reign of Edward III, containing those writs which were then most with their nature and application, a their effects and consequences. T became a model to Fitzherbert in *Natura Brevium*. *See* N. B.

O. Ni. *Oneratur, nisi habeat exonerationem* (let him be ch

he have sufficient excuse). A mark formerly set against a sheriff when he had entered into his accounts in the Exchequer, to indicate that he thenceforth became the king's debtor for such accounts.

O. O. C. J. Ordinary Original Civil Jurisdiction.

O. S. Old Series Old Style (previous to 1752). Original suits.

Ob. Obiit (died).

Obs. Obsolete.

Ord. Ch. Orders in Chancery.

Ought. Oughton's Ordo Judiciorum.

Overr. Overruled.

P

P. Page. Plural, pp.

P. C. Privy Council. Privy Councillor Parliamentary Cases. Practice Cases. Pleas of the Crown. Police Constable Patent Cases Penal Code.

P. C. S. Principal Clerk of Session.

P. D. Law Reports, New Series, Probate Division.

P. D. & A. Probate, Divorce and Admiralty.

P. & D. Probate and Divorce.

P. H. A. Public Health Act.

P. J Police Justice

P. L. B. Poor Law Board.

P. L. C. Poor Law Commissioners.

P. M. & A. Probate, Matrimonial and Admiralty.

P. & M. Probate and Matrimonial.

P/N. Promissory Note.

P. O Public officer. Post Office. Postal Order. These initials appended to a person's name in the title of a suit indicate that he is suing or being sued not in his private capacity, but as the public officer of some banking or other corporation.

P. P. Parish Priest. *Per procurationem* (*See* Per pro.). *Pater Patriæ* (Father of his Country). Points of Practice.

P. R. N. *Pro re nata* (according to the occasion or emergency).

P. S. Privy Seal. *Post scriptum* (postscript).

Par. Paragraph.

Parl. Parliament. Parliamentary.

Per Cur. *Per Curiam* (by the Court), meaning that a decision was arrived at by the court, consisting of one or more judges, as the case may be.

Per pro., Per proc. *Per procurationem* (by procuration; by agency), meaning that a receipt, note or other writing, is signed by one man as agent for another.

Per. tot. Cur. *Per totam Curiam* (by the whole court; by the unanimous judgment of the whole court).

Plff. Plaintiff.

Plowd. Plowden's Commentaries or Reports; first published in 1571.

Pres. President. Presidency.

Pres. Shep. Touch. Shepherd's Touchstone, by Preston.

Prid. Conv. Prideaux's Conveyancing.

Pro. Province. Provincial. Provost.

Proc. Procuration. *See* Per pro.

Pro. quer. *Pro querente* (for the plaintiff).

Pro tem. *Pro tempore* (for the time being).

Pub. doc. Public documents.

Q

Q. B. Queen's Bench.

Q. B. D. Law Reports, New Series, Queen's Bench Division.

Q. C. Queen's Counsel. Queen's College.

Q. D. *Quasi dicat* (as if to say).

Q. E. *Quod est* (which is).

Q. L. *Quantum libet* (as much as you please).

Q. P.; Q. Pl. *Quantum placet* (as much as you please).

Q; Qu; Qy. Quœre (question)

Q. S. Quarter Sessions *Quantum sufficit* (a sufficient quantity).

Q. V *Quod vide* (which see); used to refer a reader to the word, chapter, &c., the name of which immediately precedes. It directs the reader to consult the passage referred to. *Quantum vis* (as much as you wish).

Qu. Queen. Question.

Quinti Quinto. Year Book, 5 Hen. 5.

R

R. *Rex* (King). *Regina* (Queen). *Recipe* (take). The Reports (1893-1895).

R.; Rep. The Reports, *i. e.*, Coke's (Sir Edward) Reports, from 14 Eliz. to 13 Jac. I. *See* Co. Litt.

R. C. Ruling Cases.

R Co.; Ry. Co. Railway Company (chiefly in names of cases),

R. G.; Reg. Gen. *Regulæ generales* (general rules).

R. J. P. J. Revenue, Judicial and Police Journal.

R. S. C. Rules of the Supreme Court.

Rast. Abr. Rastell's (John) Abridgment of the Statutes prior to the time of Henry VII, being translated from the French. He also abridged those of Henry VII and Henry VIII, which were printed together by his son Wil-

liam Rastell in 1533. John Rastell (Rastall) was a printer in London, and his son William Rastell was a judge of the Court of Common Pleas in the reign of Queen Mary. William Rastell was the original author of *Les Termes de la Ley* (the Terms of the Law), being a dictionary of Law Terms.

Recd. Received.

Recpt.; **Rect.** Receipt.

Rect. Rector.

Re. fa. lo. *Recordari facias laquelam* (that you cause the plaint to be recorded). A writ to remove a cause from an inferior court to the King's Bench or Common Pleas, after making a record of the plaint and other proceedings in the county court.

Ref. Reference. Referred to.

Reg. *Regina* (Queen). Regulation. Registration. Register. Registrar. Regular. Regent.

Reg. Brev. *Registrum Brevium* (a Register of Writs). *Register* is the name of a book wherein are entered most of the forms of writs, original and judicial, used at common law, called the Register of Writs. It is said to be one of the most ancient books of the common law.

Reg. Cas. Registration Cases.

Reg. Jud. Register of Judicial Writs.

Reg Lib. Registrar's Book; a book containing an authentic copy of every decree made by the Court of Chancery.

Reg. Orig. Register of Original Writs. An old book in which new forms of original writs were entered. *See* Reg. Brev.

Reg. Prof. *Regius Professor* (professor of the King). The title, when applied to a professor or reader of lectures in the universities, indicates that his office was founded by the King.

Regt. Regent. Regiment.

Rel. on. Relied on.

Rep. Reports. Reporter. Representative. Republic. Coke's Reports.

Rev. Revenue. Review. Revise. Reverend.

Roll. Abr. Roll's Abridgment.

Rul. and Ord. Rules and Orders.

Ry. C. C. A. Railway Clauses Consolidation Act.

Ry. F. Rymer's Fœdera.

S

S. Sect. Section. Plural, Ss.

S. A. *Secundum artem* (according to art). Sudder Adawlut.

S. C. Same case; used for giving a second reference to any case which may be cited. Supreme Court. *Senatus consultum* (a decree of the senate). Settlement Cases.

S. C. C. Small Cause Court. Select Chancery Cases.

S. C. L. Student of the Civil Law.

SCTm. A common mode of writing Scitum, a decree of the Roman people.

S. D. A. R. Sudder Dewany Adawlut Reports.

S. F. A. R. Sudder Foujdari Adawlut Reports.

S.-G.; **Sol.-Gen.** Solicitor-General.

S. J.; **Sol J.** Solicitors' Journal.

S. J. C. Supreme Judicial Court.

S. L. Serjeant at-law. Solicitor-at-law. Student of law.

S. M. I. *Sa Majeste Imperiale* (His [or Her] Imperial Majesty).

S. N. Short Notes.

S. O. Stand over (of a summons, &c). Seller's option.

S. P. *Sine prole* (without issue or progeny). Same point or principle.

S. P. S. *Sine prole superstite* (without surviving issue).

S. S. C. Solicitor of the Supreme Court (Scot.).

SS. *See* Sc. The mark on the collar of the Chief Justice of England. *Semis* (half).

S. V. *Sub voce* (under the word). Used in reference to a word in a dictionary or alphabetical glossary.

Sand. Inst. Sanders' Institutes of Justinian.

Sax. Saxon.

Sc. Scotland. Scotch.

Sc.; **Scil.**; **SS.** *Scilicet* (to wit; namely; to make known).

Scan. Mag. *Scandalum Magnatum* (defamation of great men, *i.e.*, a peer, judge, or other great officer of the realm). This formerly constituted a special offence.

Sch. Schedule.

Sec. stat. *Secundum statutum* (according to statute).

Sem.; **Semb.** *Semble* (it seems). Used in Reports to show that a point is not decided directly, but may be inferred.

Sen. Senator. Senior.

Seq. *Sequentes* or *sequentia* (the following; the next).

Ser. Series.

Serj.; **Serg.** Serjeant or Sergeant.

Shep. Touch. Shepherd's Touchstone.

Sol.-Gen. Solicitor-General.

Spelm. Spelman's Glossary (*Glossarium Archaiologium*).

Sq.; **Sqq.** *Sequens* or *Sequentes* (the following; the next).

Sr. Senior. Sir.

St. Statute. Stair's Institutions of the Law of Scotland. *Stet* (let it stand).

Stat. Abr. Statham's Abridgment, containing cases down to the time of Henry VI.

Stat. West. Statute of Westminster.

Staunf. Staunforde's Pleas of the Crown.

Steph. Com. Serjeant Stephen's Commentaries on the Laws of England (partly founded on Blackstone).

Sup. *Supra* (above). Superior. Supplement.

Sup. C. Superior Court.

Supp. Supplement.

Sus. per coll. *Suspendatur per collum* (that he be hanged by the neck). The punishment for a capital offence.

T

T. Every person who was convicted of felony, short of murder, and admitted to the benefit of clergy, was at one time marked with this letter upon the brawn of the .thumb.

T. L. *Les Termes de la Lay* (the Terms of the Law). *See* Rast. Abr.

T. R. E. *Tempore Regis Edwardi* (in the time of Edward). These initial letters in the *Domesday Register*, where the valuation of manors is recounted, refer to what it was in the time of Edward the Confessor, as distinguished from what it was since the Conquest.

Temp. *Tempore*; *Tempus* (in the time of); for example, Cases temp. Hardwicke (Cases in the time of Lord Hardwicke).

Tit. Title.

Tom. Tome *or* Volume.

Touch. The Touchstone, commonly cited as Shep. Touch. (Shepherd's Touchstone).

U

U. J. D. *See* J. U. D.

U. R. *Uti rogas* (be it as you desire). Used by the Romans in voting in favour of a bill or candidate. *See* A.

U. S. *Ut supra* (as above).

Ubi. sup. *Ubi supra* (cited above).

Ulp. Ulpiani Fragmenta.

UX. *Uxor* (wife).

V

V. *Vide* (see). Verse. Viscount. Victoria. Volume. *Versus* (against).

V.; Vs. *Versus* (against).

V.-A. Vice-Admiral.

V.-C. Vice-Chancellor. Vice-Consul. Victoria Cross. Vice-Chairman.

V.G. *Verbi gratia* (for the sake of a word or example; *i. e.*, taking a word as an instance). The abbreviation *e. g.* (*exempli gratia*) is more common as signifying "for instance." Vice-gerent, *i. e.*, a deputy or lieutenant. Vicar-General.

V. P. Vice-President. Value-payable.

V. R. *Victoria Regina* (Victoria, the Queen).

Vatt. Vattel's Law of Nations.

Vid. Vidian's Entries. *Vide* (see).

Vin. Abr. Viner's General and Complete Abridgment of Law and Equity, in 24 vols. first published in 1741-51.

Vin. Supp. Viner's Supplement.

Viz. Vizt. *Videlicet* (namely; to wit).

Vol. Volume.

Vs. *Versus* (against).

W

W. R. William *Rex* (King).

W. S. Writer to the Signet.

Wat. Cop. Watkins' Copyholds.

Wms. Ex. Williams' Law of Executors.

Wms. Saund. Saunders' Reports, edited by Williams.

Wp. Worship.

Wpful. Worshipful.

Y

Ye. The; thee (Obsolete).

Ym. Them (Obsolete).

Y. Yr. Year. Your. Younger.

Yr. B.; Y. B. Year-Book.

Appendix B.

AN ALPHABETICAL LIST OF ENGLISH, IRISH AND SCOTCH LAW REPORTS.

Title of Reports.	Abbreviation.	Period.	Court.
Acton (2 vols.)	Acton	1809—1811	Privy Council.
Adam	Ad.	1893 to the present time.	Court of Justiciary, Scotland.
Addams (3 vols.)	Add....	1822—1826	Ecclesiastical.
Adolphus and Ellis (12 vols.).	A. & E. *or* Ad. & Ell.	1834—1840	King's (*or* Queen's) Bench.
Do. Do. New Series, (18 vols.)	A. & E. *or* Ad. & Ell., N. S.	1841—1852	Queen's Bench.
Alcock's Registry Cases (1 vol.)	Alc. Reg. Cas. ...	1832—1841	Common Law, Ireland.
Alcock and Napier (1 vol.) ..	Alc. & N.	1831—1833	Do.
Aleyn (1 vol. 1688)	Aleyn *or* Al. ..	1646—1648	King's Bench.
Ambler (2 vols. 1828)	Amb. *or* Ambl. ..	1737—1780	Chancery.
Anderson (Sir E.) (1 vol. 1664)	And....	1534—1694	Common Pleas.
Andrews (George) (1 vol. 1792)	Andr.	1738—1740	King's Bench.
Annaly	Ann....	.....	Do.
Anonymous	Anon.	1741—1774	Election.
Anstruther (3 vols. 1817) ...	Anst....	1792—1797	Exchequer.
Arkley (1 vol.)	Arkl....	1846—1848	Court of Justiciary, Scotland.
Armstrong, MacArtney and Ogle (1 vol.)	Arm. Mac. & O ..	1840—1842	Civil and Criminal Courts, Ireland.
Arnold (1 vol.)	Arn.	1838—1839	Common Pleas.
Arnold and Hodges (1 vol.) ..	Arn. & H.	1840—1841	Queen's Bench.
Aspinall (Maritime Law Cases)	Asp. *or* Asp. M. C.	1870 to the present time.	Admiralty.
Assessed Taxes (Decisions) ..	Ass. Tax.	1823—1848	Exchequer.
(Liber Assisarum)	Ass.	1327—1377	Queen's Bench.
Atkyns (temp. Hardwicke) (3 vols. 1794)	Atk.	1736—1754	Chancery.
Bail Court Cases (Lowndes & Maxwell) (1 vol.)	B. C. C. *or* L. & M.	1852—1851	Bail Court.
Bail Court Reports (Saunders and Cole) (2 vols.)	B. C. R. *or* Saund. & Cole.	1846—1848	Do.
Ball and Beatty (2 vols.) ...	Ball. & B. *or* B. & B.	1807—1814	Chancery, Ireland.
Bankruptcy and Insolvency Reports (Bennett, Allnutt & Doria)	.....	1853—1855	Bankruptcy, &c.
Barnardiston (Ch.) (1 vol. 1742).	Barnard. (Ch.) *or* Barn. C.	1740—1741	Chancery.
Barnardiston (K. B.) (2 vols. 1744)	Barnard. (K. B.) *or* Barn. K. B.	1726—1734	King's Bench.
Barnes' Notes of Cases (Cases of Practice) (1 vol. 1790)	Barnes.	1732—1760	Common Pleas.
Barnewall and Adolphus (5 vols.)	Barn. & Ad. *or* B. & Ad.	1830—1834	King's Bench.
Barnewall and Alderson (5 vols.)	Barn. & Ald. *or* B. & A.	1817—1822	Do.
Barnewall and Cresswell (10 vols).	Barn. & Cress. *or* B. & C.	1822—1830	Do.
Barron & Arnold (1 vol.) ...	Bar. & Arn. ..	1843—1846	Election Committees.
Barron & Austin (1 vol.) ...	Bar. & Aust. *or* Bar. & A.	1842	Do.
Batty (1 vol.)	Batty *or* Batt. .	1825—1826	King's Bench, Ireland.

Title of Reports.	Abbreviation.	Period.	Court.
Beatty (temp. Hart) (1 vol.)	Beat.	1814—1830	Chancery, Ireland.
Beavan (36 vols.)	Beav.	1838—1866	Rolls Court.
Bell (Crown Cases) (1 vol.) ..	Bell. C. C.	1858—1860	Crown Cases Reserved.
Bell (Scotch Appeal Cases) (7 vols.)	Bell's App. Ca. ..	1842—1850	House of Lords.
Bell (Scotch Decisions) (1 vol.)	Bell's Sc. Dec. ...	1790—1792	Court of Session, Scotland
Do. Do. (1 vol.)	.....	1791—1795	Do.
Bell's Dictionary of Decisions (2 vols.)	Bell Dict.	1808—1832	Do.
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Brooke's New Cases (1 vol. 1873)	Brooke N. C. *or* B, N. C.	1515—1558	Common Law.
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Title of Reports.	Abbreviation.	Period.	Court.
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Buck's Cases in Bankruptcy (1 vol.	Buck *or* Bk. ..	1816—1820	Bankruptcy, &c.
Bulstrode (1 vol. 1688)... ...	Bulstr.	1609—1639	King's Bench.
Bunbury (1 vol. 1793)	Bunb.	1713—1741	Exchequer.
Burrell, by Marsden	Burrell	1758—1774	Admiralty.
Burrow's Reports (5 vols. 1812)	Burr.	1756—1772	King's Bench.
Burrow's Settlement Cases ...	Burr. S. C. ..	1732—1776	Do.
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Caldecott's Settlement Cases.	Cald. S. C. ...	1776—1785	King's Bench.
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Cases of Settlements and Removals.	Cas. Sett. & R. ..	1687—1732	King's Bench.
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Colles (1 vol. 1789)	Colles	1697—1713	House of Lords.
Collyer (2 vols.)	Coll.	1844—1846	Chancery.

Title of Reports.	Abbreviation.	Period.	Court.
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Common Bench Reports, New Series (20 vols.)	C. B., N. S. ...	1856—1865	Do.
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Cooper (George, temp. Eldon) (1 vol. 1815)	Coop. G.	1814—1815	Chancery.
Cooper's (C. P.) Cases in Chancery (temp. Lord Brougham) (1 vol.)	Coop. temp. Brg	1833—1834	Do.
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Cox (Chancery) (2 vols. 1816)	Cox...	1783—1796	Chancery.
Cox (Criminal Law *or* Criminal Cases)	Cox C. L. *or* Cox Cr. Ca.	1843 to the present time.	Criminal Courts, English and Irish.
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Title of Reports.	Abbreviation.	Period.	Court.
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Crockford, Maritime Law Cases	Crockf.	1860—1870	Admiralty.
Croke (temp. Elizabeth) (4 vols. 1796.)	Cro. Eliz. *or* Cro. 1.	1581—1603	Common Law.
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De Gex and Smale (5 vols) ...	De G & Sm. *or* De G. & S.	1846—1852	Chancery
De Gex, Fisher and Jones (4 vols.)	De G. F. & Jo. *or* D F. & J	1859—1862	Chancery and Bankruptcy Appeals
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Douglas (Election Cases) (4 vols.)	Doug. *or* Doug. E. C.	1774—1776	Election Committees.

Title of Reports.	Abbreviation.	Period.	Court.
Douglas (King's Bench) (4 vols. 1813-31)	Doug.	1778—1785	King's Bench.
Dow (6 vols.)	Dow.	1812—1818	House of Lords.
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Exchequer Reports (*See* Welsby, Hurlstone and Gordon) (11 vols.)	Exch. Rep. *or* Exch *or* Ex.	1847—1856	Exchequer.

Title of Reports.	Abbreviation.	Period.	Court.
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Do. 2nd Series (7 vols.)	.....	1808—1825	Do.
Do. 3rd Series (16 vols.)	.....	1825—1841	Do.
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Forrester's Cases (temp. Talbot) (1 vol. 1793)	Fas. temp. Talbot. *or* Forr.	1733—1737	Chancery.
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Haggard (Consistorial Reports) (2 vols. 1822)	Hagg. Cons. *or* Consist	1789—1821	Ecclesiastical.
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Holt (Nisi Prius) (1 vol.) ...	Holt, N. P... ..	1815—1817	Nisi Prius.
Holt, Wm....	Holt Eq.	1845	Vice Chancellors' Courts
Holt, Rule of the Road Cases ...	Holt, R R. Cas. ...	1864—1866	Admiralty.
Home (1 vol.)	Home	1735—1744	Court of Session, Scotland.
Hope's (Thomas) Reports ...	Hope	.....	Do.
Hopwood and Coltman (Registration Cases) (2 vols.)	Hop. & Colt. *or* Hop. & C.	1868—1878	Common Pleas.
Hopwood and Philbrick (Registration Cases) (1 vol.)	Hop & Ph... ...	1863—1867	Do.
Horn and Hurlstone (1 vol.)...	Horn & H. *or* H & H	1838—1839	Exchequer.
House of Lords Cases (continuation of Clark and Finnelly, *q. v.*) (11 vols.)	H L Cas. *or* H. & C	1847—1866	House of Lords.
Do. Index to (1 vol.) ...	.....	1814—1866	Do.
Hovenden's Supplement to Vesey, Junr.	Hov. Suppl. ..	.....	Chancery.
Howell's State Trials (34 vols)	How. St Tr. ...	1163—1820	All the Courts.
Hudson and Brooke (2 vols.)...	Hud. & Bro. *or* Hud. & B. *or* H & B.	1827—1831	Common Law, Ireland.
Hume (1 vol.)	Hume	1781—1822	Scotch Courts.
Hunt's Annuity Cases	Hunt's A. C. *or* Hunt	1777—1794	All the Courts.
Hurlstone and Coltman (4 vols.)	H. & C.	1862—1866	Exchequer.

Title of Reports.	Abbreviation.	Period.	Court.
Hurlstone and Gordon (included in the Exchequer Reports, *q. v.*)	Hurl. & G.	1854—1856	Exchequer.
Hurlstone and Norman (7 vols.)	H. & N.	1856—1861	Do.
Hurlstone and Walmsley (1 vol.)	H. & W.	1840—1841	Do.
Hutton (Sir Richard) (1 vol. 1682)	Hutt.	1618—1636	Common Pleas.
Irish Chancery Reports (17 vols.)	Ir. Ch.	1850—1866	Chancery.
Irish Circuit Cases or Reports (1 vol.)	Ir. Cir. Cas ...	1841—1843	Assize Courts.
Irish Common Law Reports (17 vols)	Ir. C. L. R	1850—1866	Common Law.
Irish Equity Reports (13 vols.)	Ir. Eq. R.	1838—1850	Chancery.
Irish Jurist	Ir. Jur.	1848—1866	Irish Courts.
Irish Law Recorder (4 vols.)..	Ir. L. Rec	1827—1831	Do.
Do. New Series (6 vols.)	Ir. L. Rec., N. S....	1833—1838	Do.
Irish Law Reports (13 vols) ...	Ir. L. Rep... ..	1838—1850	Common Law.
Irish Reports, Common Law Series (11 vols.)	Ir R. C. L	1866—1878	Do.
Irish Reports, Equity Series (11 vols.)	Ir. R. Eq.	1866—1878	Chancery.
Irish Reports, Current Series...	I. R. *or* Ir Rep.	1894 to the present time.	All the Courts.
Irish Reports, Registry, &c Appeals (1 vol.)	Ir. R. Reg. App. ...	1868—1876	Registry Cases, Ireland.
Irish Term Reports (Ridgway, Lapp and Schoales) (1 vol.)	Ir. T. R. *or* R. L. & S.	1793—1795	King's Courts.
Irvine (5 vols)	Irvine	1852—1867	Court of Justiciary, Scotland.
Jacob (1 vol.)	Jac.	1821—1822	Chancery.
Jacob and Walker (2 vols.) ...	Jac. & W. *or* J. & W.	1819—1821	Do.
Jebb (Crown Cases Reserved) (1 vol.)	Jebb. C. C. ...	1822—1840	Criminal Courts, Ireland.
Jebb and Bourke (1 vol.) ...	Jabb. & B. *or* J. & B.	1841—1842	Queen's Bench, Ireland.
Jebb and Symes (2 vols.) ...	Jebb. & S. *or* J. & S.	1838—1841	Do.
Jenkins' Centuries (*i. e*, Hundreds) of Reports (1 vol. 1777)	Jenk Cent. ...	1220—1624	Exchequer.
Jeremy's Digest...	Jer. Dig	1838—1849	All the Courts.
Johnson (1 vol.)	Jo. *or* Johns. ...	1858—1860	Chancery (V.-C. Wood).
Johnson and Hemming (2 vols)	Johns. & Hem. *or* Jo & H. *or* J. & H	1859—1862	Do
Jones (Exchequer Reports) (2 vols)	Jon Ex. R ...	1834—1838	Exchequer, Ireland.
Jones (Sir T.) (1 vol. 1729) ...	Jo. T. *or* Jon. 2 ...	1671—1684	Common Law.
Jones (Sir William) (1 vol 1675)	Jo. W. *or* Jon. 1 ...	1620—1640	Do
Jones and Carey (1 vol.) ...	Jones & C... ...	1838—1839	Exchequer, Ireland.
Jones and La Touche (temp. Sugden) (3 vols.)	Jon & La. T. *or* Jon & L. *or* Jo & La T	1844—1846	Chancery, Ireland.
Jurist Reports (18 vols.) ..	Jur....	1837—1854	All the Courts.
Do. New Series (12 vols)	Jur. N. S.	1855—1866	Do.
Jurist (Scottish) (45 vols.) ..	Sc. Jur. *or* Jur. (Sc.)	1829—1873	Scotch Courts.
Justice of the Peace*	J. P...	1837 to the present time.	All the Courts.

* To find the date of the Justice of the Peace, add 36 to the number of the volume, *e. g.*, 10 J. P. + 36 = 1846.

Title of Reports.	Abbreviation.	Period.	Court.
Kames' Ramarkable Decisions, Scotland (2 vols.)	Kame's Rem. D. .	1716—1752	Court of Justiciary, Scotland.
Kames' Select Decisions, Scotland (1 vol.)	Kame's S. D. ..	1752—1768	Do.
Kay (1 vol.)	Kay	1853—1854	Chancery. (V.-C. Wood).
Kay and Johnson (4 vols.) ...	Kay & J.	1854—1858	Do.
Keane and Grant (Registration Cases) (1 vol)	Kea. & Gr. *or* K. & G.	1854—1862	Common Pleas.
Keble (3 vols. 1685)	Keb...	1661—1677	King's Bench.
Keen (2 vols.)	Keen *or* Kee. .	1836—1838	Rolls Court.
Keilwey (1 vol. 1688)	Keil...	1497—1530	Common Law.
Kelynge (Sir John) (1 vol. 1873)	Kel. J.	1662—1669	King's Bench.
Kelynge (William) (1 vol. 1873)	Kel. W. Ch ..	1730—1732	Chancery.
Kelynge (William)	Kel W. K B. .	1731—1735	King's Bench.
Kenyon's Notes of Cases (Hanmer) (2 vols. 1819-25)	Ken. *or* Ld. Ken.	1753—1759	King's Bench.
Kilkerran's Decisions (Scotland) (1 vol.)	Kilk.	1736—1752	Court of Session, Scotland
Knapp (Privy Council Cases) (3 vols.)	Knapp. P. C. *or* Kn. P. C.	1829—1836	Privy Council.
Knapp and Ombler (1 vol.) ...	Knapp & O. *or* Kn. & O.	1834—1835	Election Committees.
Lane (1 vol. 1657)	Lane *or* La. ...	1605—1611	Exchequer.
Latch (1 vol. 1662)	Latch *or* Lat.	1625—1628	King's Bench.
Law Journal Reports (Old Series) (9 vols.)	L. J. (O. S.) ..	1823—1831	All the Courts.
Do. (New Series)*	L. J N. S. *or* L J.	1832 to the present time.	Do.
Law Recorder (Ireland) (4 vols)	Ir. L. Rec.... ...	1827—1831	All the Courts, Ireland.
Do (New Series) (6 vols.)	Ir L. Rec. N. S ...	1833—1838	Do.
Law Reporter (Scottish) ...	Sc. L. R.	1865 to the present time.	Scotch Courts.
Law Reports, The † (94 vols.)	L. R *or* Law . Rep	1865—1875	All the Courts.

* As the Old Series of the Law Journal Reports consisted of but nine volumes, it is not necessary to append the initials "N. S." to the references to volumes of the New Series later than the ninth, and in fact they are often omitted in such references, the omission not involving any risk of confusion. As the Law Journal Reports consist of several sections, according to the jurisdiction in which any given case is heard, the abbreviations representing the section or jurisdiction should, in referring, be added to the initials "L. J." Thus, "L. J. Ch." is a reference to the Chancery section of the Reports, L. J. Bank." or "L. J. Bkcy." to the Bankruptcy section, &c. Cases in the House of Lords and Exchequer Chamber are arranged according to the Courts from which they originally come. From the commencement of the 45th volum in January, 1876, the Queen's Bench, Common Pleas, and Exchhquer Reports form one section; so do the Probate, Divorce and Admiralty Reports. To find the date of the Law Journal Reports add 31 to the number of the volume, *e. g.*, 63 L. J. + 31 =1894. In the case of the Old Series of the Law Journal Reports, 22 must be added, *e. g.*, 4 L. J. (O. S.)+22 =1826.

† Authorized Reports, published under the direction of the Council of Law Reporting. As in the case of the Law Journal Reports, the initials representing the particular series must be added in any reference to the Law Reports. Moreover, in reference to the Law Reports, the figure representing the volume is placed between "L. R." and the abbreviation representing the particular division or series; thus, a reference to the first page of the ninth volume of the Queen's Bench series should be given as "L. R. 9 Q. B. 1." Three new series of the Law Reports have commenced in 1876, of which the first (Chancery, Bankruptcy and Lunacy) series is cited as "Ch. D.", the second (Common Law) is divided into four sections, and cited as "Q. B. D." "C P. D.," "Ex D." and "P. D.", respectively; and the third (Appellate) series is cited as "App. Cas." or "H. L." Since 1891, however, the Law Reports are quoted by the year in brackets, as [1891] Q. B., [1891] Ch., [1891] A. C., [1891] P.

Title of Reports.	Abbreviation.	Period.	Court.
Law Reports, The New Series*	.....	1876 to the present time.	All the Courts.
Law Reports (Ireland) (32 vols.)	L. R. Ir. ...	1879—1893	Irish Courts.
Law Times Reports (Old Series)	L. T. (O. S.) ...	1843—1859	All the Courts.
Do. (New Series)† ..	L. T. N. S. *or* L. T.	1860 to the present time.	Do.
Leach (Crown Cases) (2 vols. 1815)	Leach C. C.	1730—1815	Criminal Courts.
Lee (2 vols. 1833)	Lee	1752—1758	Ecclesiastical.
Lee's Cases (temp. Hardwicke) (1 vol. 1815)	Lee temp. H. ...	1733—1738	King's Bench.
Legal Observer	Leg. Ob.	1830—1856	All the Courts.
Leigh and Cave (1 vol.) ...	Le. & Ca. *or* L & C.	1861—1865	Crown Cases Reserved.
Leonard (1 vol. 1687)	Leon	1540—1615	Common Law.
Levinz (3 vol. 1793)	Lev.	1660—1696	Do.
Lewin's Crown Cases on the Northern Circuit (2 vols.)	Lewin *or* Lew. C. C.	1822—1838	Criminal Courts.
Ley (1 vol. 1659.)	Ley	1608—1628	Common Law.
Liber Assisarum	Ass.... ..	1327—1377	Queen's Bench.
Lilly's Cases in Assize (1 vol.)	Lil.	1688—1693 Published 1719	Nisi Prius.
Littleton (1 vol. 1683)	Litt. R. *or* Lit. ..	1627—1632	Common Pleas and Exchequer.
Lloyd and Goold (temp. Plunkett) (1 vol.)	L. & G. *or* Ll. & G. temp. Pl.	1834—1839	Chancery, Ireland.
Do. (temp. Sugden) (1 vol.)	L. & G. *or* Ll. & G. temp. Sugd.	1835	Do.
Lloyed and Welsby (Mercantile Cases) (1 vol.)	Ll. & Wels. *or* L. & Welsb.	1829—1830	Common Law.
Lofft (1 vol. 1790)	Lofft	1772—1774	King's Bench.
Longfield and Townsend (1 vol.)	Longf. & T. *or* L. & T.	1841—1842	Exchequer, Ireland.
Lowndes and Maxwell (Bail Court Cases) (1 vol.)	L. & M. *or* B. C. C.	1852—1854	Bail Court.
Lowndes, Maxwell and Pollock (2 vols.)	L. M. & P.	1850—1851	Bail Court, &c.
Luders' Election Cases (3 vols.)	Luders *or* Lud. E. C.	1785—1787	Election Committees.
Lumley's Poor Law Cases.	Lumley *or* Lum. P. L. C.	1834—1839	All the Courts.
Lushington (1 vol.)	Lush	1859—1862	Admiralty.
Lutwyche (Sir E.) (2 vols. 1704)	Lutw.	1682—1704	Common Pleas.
Do. Translated by Nelson (1 vol. 1718)	N. L.	.....	.....
Lutwyche's Registration Cases (2 vols.)	Lutw. Reg. Cas...	1843—1853	Do.
McCleland (1 vol.)	McClel. ...	1824	Exchequer, Equity.
McCleland & Younge (1 vol.) ..	McClel. & Yo. *or* McCle. & Y	1825	Do.
Macfarlane (1 vol.)	Macf.	1838—1839	Jury Court, Scotland.
Maclaurin	Macl.	1670—1673	Scotch Criminal Courts.
Maclean and Robinson (Scotch Appeals) (1 vol.)	Macl. & Rob *or* Macl & R. *or* M'C. & Rob.	1839	House of Lords.
Macnaghten and Gordon (3 vols.)	Macn. & Gor. *or* Mac. & G.	1849—1851	Chancery.
Macpherson's Court of Session Cases (Court of Session Cases, third series)	Macph	1862—1873	Court of Session, Scotland.

* See foot-note † on the preceding page.

† In the case of the Law Times there are two volumes a year; so 59 must be added to the half of the number of the volume, *e. g.*, 22 L. T.=11+59=1870.

Title of Reports.	Abbreviation.	Period.	Court.
Macpherson's Indian Appeals (in connection with the Law Reports [Vol. I]). *See* Cowell's Indian Appeals.	Macph. Ind. App. *or* L. R. 1 Inp. App.	1873—1874	Privy Council.
Macqueen's Scotch Appeals (4 vols.)	Macq. Sc. App. *or* Macq. H. L. Cas	1848—1865	House of Lords.
Macrae and Hertslet	M. & H. *or* Mac. & H.	1847—1852	Insolvent Debtors Court
Macrory's Patent Cases ...	Mac. Pat. Cas. *or* Mac. P. C. *or* Macr.	1841—1853	All the Courts.
Maddock (6 vols.)	Madd.	1815—1820	Chancery.
Maddock and Geldart	Madd. & Gel. *or* 6 Madd.	1820—1821	Do.
Magistrate, The	Mag.	1848—1849	All the Courts.
Manning's Digest	Mann. Dig... ...	1820	Nisi Prius.
Manning and Granger (7 vols.)	Man. & Gr. *or* M. & G.	1840—1845	Common Pleas.
Manning and Ryland (5 vols.)	Man. & R *or* M. & R.	1827—1830	King's Bench.
Do. (Magistrates' Cases) ...	M. & R. (M. C.) ...	1827—1829	Do.
Manning, Granger and Scott (C. B. first nine volumes). *See* Common Bench Reports.	C. B. (for Common Bench.)	1845—1849	Common Pleas.
Manson (Winding up Cases)	Mans.	1894 to the present time.	Bankruptcy.
March (New Cases) (1 vol, 1675)	Mar.	1640—1643	Common Law.
Maritime Law Cases (Crockford)	Mar. Law. Cas. ...	1860—1870	Admiralty.
Marriott (1 vol.)	Marr.	1776—1779	Do.
Marsden (1 vol. 1885)	Marsd...	1648—1840	Do.
Marshall (2 vols.)	Marsh...	1813—1816	Common Pleas.
Maule and Selwyn (6 vols.) ...	M. & S.	1813—1817	King's Bench.
Maynards' Reports (year Books, *temp.* Edw. I & Edw. II)		1273—1326	King's Bench & Exchequer.
Meeson and Welsby (16 vols.)	Mees. & Wels. *or* M. & W.	1836—1847	Exchequer.
Megone (Companies' Cases) (2 vols)	Meg.	1888—1891	.....
Merivale (3 vols.)	Mer.	1815—1817	Chancery.
Milward (temp. Radcliffe) (1 vol.)	Milw.	1819—1843	Ecclesiastical Courts, Ireland.
Modern Reports (Leach's) (12 vols. 1793-6)	Mod. *or* Mod. Rep.	1669—1744	All the Courts.
Modern Cases in Law and Equity (8 & 9 Modern Reports)	Mod. C. L. & Eq. *or* 8 & 9 Mod Rep	.....	.....
Molloy (temp. Hart)	Moll.	1827—1829	Chancery, Ireland.
Montagu (1 vol.)	Mont.	1829—1832	Bankruptcy.
Montagu and Ayerton (3 vols.)	Mont. & Ayr. *or* M. & A.	1832—1838	Do.
Montagu and Bligh (1 vol.) ...	Mont. & B. *or* M. & B.	1832—1833	Do.
Montagu and Chitty (1 vol.)...	Mont. & Chitt. *or* M. & C.	1838—1840	Do.
Montagu and M'Arthur (1 vol.)	Mont. & M'A. ...	1826—1830	Do.
Montagu, Deacon and De Gex (3 vols.)	Mont. D. & D. *or* M. D. & D.	1840—1844	Do.
Moody (2 vols.)	Mood.	1824—1844	Criminal Courts.
Moody and Malkin (1 vol.) ...	Mood. & M. *or* M. & M.	1826—1830	Nisi Prius.
Moody and Robinson (2 vols.) ..	Mood. & Rob. *or* M. & R.	1830—1844	Do.
Moore (Sir Francis) (1 vol. 1688)	Moor. Q. B. ...	1512—1621	Common Law.
Moore (J. B.) (12 vols.)... ...	Moo. C. P. *or* Moo. J. B	1817—1827	Common Pleas.
Moore and Payne (5 vols.) ...	Moo. & P. *or* M. & P.	1827—1831	Do.
Moore and Scott (4 vols.) ...	Moo. & S. *or* M. & Scott.	1831—1834	Do.
Moore's (E. F.) Indian Appeals (14 vols.)	Moo. I. A. *or* Moo. Ind. App.	1836—1872	Privy Council.

Title of Reports.	Abbreviation.	Period.	Court.
Moore's (E. F.) Privy Council Cases (15 vols.)	Moo. P. C. C. ...	1836—1862	Privy Council.
Do. New Series (9 vols.) ...	Moo. P. C. N. S.	1862—1873	Do.
Do. The Gorham Case (1 vol.)	.....	1850	Do.
Morrell (Bankruptcy Reports) (10 vols.)	Morr. B. C. ...	1884—1893	Bankruptcy.
Morrison's Dictionary of Decisions (22 vols.)	M. Dict. *or* Morr. Dict. *or* Morr.	1540—1808	Scotch Courts.
Mosley (temp. King) (1 vol. 1803)	Mos. *or* Mosl. ...	1726—1730	Chancery.
Murphy and Hurlstone (1 vol.)	Murp. & H. *or* M. & H.	1836—1837	Exchequer.
Murray's Reports (5 vols.) ...	Murr.	1815—1830	Jury Court, Scotland.
Mylne and Craig (5 vols.) ...	My. & C. *or* M. & C.	1836—1840	Chancery Appeals.
Mylne and Keen (3 vols.) ...	My. & K.	1833—1835	Do.
Nelson (1 vol. 1872)	Nels.	1625—1695	Chancery.
Neville and Macnamara's Railway and Canal Cases (3 vols.) *See* Browne and Macnamara.	Nev. & M. *or* Nev. & Mac.	1855—1881	All the Courts.
Neville and Manning (6 vols.)...	Nev. & M. *or* N. & M.	1832—1836	King's Bench.
Do (Magistrates' Cases) ...	N. & M (M. C.)	1832—1836	Do.
Neville and Perry (3 vols.) ...	Nev. & P. *or* N. & P.	1836—1837	Do
New Benloe.	N. Benl.	1515—1628	Common Pleas & K. B.
New County Court Cases ...	N. C. C. Cas. ...	1848—1851	Common Law.
New Magistrates' Cases ...	New. Mag. Cas *or* N. M. C.	1844—1850	Do.
New Practice Cases (Welford, Bittleston & Parnell)	N. P. C.	1844—1848	Do.
New Reports (5 vols.)... ...	N. R. *or* New Rep.	1862—1865	All the Courts.
Do. New Series	N. R. N. S.	1862—1873	Queen's Bench.
New Sessions Cases (Carrow, Hamerton & Allen) (4 vols.)	New Sess. Cas. ...	1844—1851	Common Law.
Nicholl, Hare and Carrow (Railway and Canal Cases) (7 vols.)	Nic. H & C. *or* Rail. & Can. Cas.	1835—1852	All the Courts.
Nisbet	Nisb.	1665—1677	Court of Session, Scotland.
Nolan (Magistrates' Cases) ...	Nolan	1791—1793	King's Bench.
Northington's Reports by Eden. *See* Eden.	.....	.....	.....
Notes of Cases in the Ecclesiastical and Maritime Courts (*See* Thornton's Notes of Cases)	Not. Cas *or* N. C....	1841—1850	Ecclesiastical and Admiralty.
Noy (1 vol. 1669)	Noy	1559—1642	Common Law.
O' Malley and Hardcastle (Election Petitions)	O'Mall. & H. *or* O' M. & H.	1869 to the present time.	Election Judges.
Owen (1 vol. 1656)	Owen *or* Ow. ...	1556—1615	Common Law.
Palmer (Sir G.) (1 vol. 1721)...	Palm.	1619—1629	King's Bench.
Parker (1 vol. 1791)	Park.	1743—1766	Exchequer.
Paterson's Scotch Appeals (2 vols.)	Paters. App. Cas....	1851—1873	House of Lords.
Paton's Scotch Appeals...	Pat. App. Cas. ...	1759—1821	Do.
Peake's Nisi Prius Cases (1 vol. 1820-29)	Peake *or* Pea. *or* Peak. N. P. C.	1790—1795	Nisi Prius.
Peake's Additional Cases (1 vol. 1820-1829)	Peak, Add. Cas ...	1795—1812	Do.
Peckwell (2 vols.)	Peckw.	1802—1806	Election Committees.
Peere Williams (3 vols. 1826)	P. Wms. *or* P. W...	1695—1735	Chancery.

Title of Reports.	Abbreviation.	Period.	Court.
Perry and Davison (4 vols.) ...	P. & D.	1838—1841	Queen's Bench.
Perry and Knapp (1 vol.) ...	P. & K. *or* Per. & K.	1833	Election Committees.
Philipps	Phil. Elec. *or* Ph.	1782	Do.
Phillimore (3 vols.)	Phill. Eccl. *or* Phillim.	1809—1821	Ecclesiastical.
Phillimore	.....	1867—1875	Do.
Phillips (2 vols.)...	Phill.	1841—1849	Chancery.
Pigott and Rodwell (Reg. Cas.)	Pig. & Rod.... ..	1843—1846	Common Pleas.
Pitcairn's Criminal Trials ...	Pitc...	1488—1624	Court of Justiciay,
Plowden (2 vols. 1816)	Plowd.	1550—1580	Common Law.
Pollexfen (1 vol. 1702)	Pollexf. *or* Pol. ...	1671—1683	All the Courts.
Popham (1 vol. 1682)	Poph.	1592—1627	Common Law.
Power, Rodwell and Dew (2 vol.)	Pow. Rod. & D. *or* P. R. & D.	1847—1856	Election Committees.
Practical Register of Court of Common Pleas (Cooper)	.....	1714—1741	Common Pleas.
Precedents in Chancery (Finch)	Prec. Ch. *or* Ch. Pre.	1689—1722	Chancery.
Price (13 vols.)	Price *or* Pr. ...	1814—1824	Exchequer.
Price (Practice Cases).... ...	Pr. Prac. Cas. ...	1840—1841	Do.
Queen's Bench Reports (Adolphus and Ellis, New Series) (18 vols.)	Q. B. *or* A. & E. N. S.	1841—1852	Queen's Bench.
Railway and Canal Cases (Nicholl, Hare and Carrow) (7 vols.). *See* Neville and Macnamara.	Rail. Cas. or Rail. Can. Cas. *or* Nic. H. & C.	1835—1855	All the Courts.
Raymond (Lord) (3 vols. 1790)	Ld. Raym. *or* Raym. Ld.	1694—1732	Common Law.
Raymond (Sir T.) (1 vol. 1803)	Raym. Sir T. *or* Raym.	1660—1684	Do.
Rayner's Tithe Cases	Rayn. *or* Ray. Ti. Cas.	1575—1782	Chancery and Exchequer.
Real Property Cases	R. P. Cas.	1843—1848	All the Courts.
Reilly's Albert Arbitration ...	.....	1871—1873	Lord Cairns.
Do. European Arbitration	.....	1872	Lord Westbury.
Reports, The (15 vols.)... ...	R.	1893—1895	All the Courts.
Reports (Sir Edward Coke) ..	Rep. *or* R.	1569—1615	Common Law.
Reports in Chancery (1 vol. 1736)	Ch. Rep. *or* Ch. R.	1615—1712	Chancery.
Revised Reports	R. R	From 1785	All the Courts.
Ridgway's Cases temp. Hardwicke (1 vol. 1794)	Ridgw. *or* Ridgw. Cas. *or* Ridgw. temp. H.	1733—1745	King's Bench and Chancery.
Do. Parliamentary Reports (3 vols)	Ridgw. P. C. ...	1784—1796	House of Lords, Ireland
Ridgway, Lapp and Schoales (Irish Term Reports) (1 vol.)	Ridgw. L. & S. *or* R. L. & S.	1793—1795	King's Courts, Ireland.
Robertson's Ecclesiastical Reports (2 vols.)	Rob. Eccl.... ..	1844—1853	Ecclesiastical.
Do. Scotch Appeals (1 vol.)...	Rob. Sc. App. *or* Rob. App. *or* Rob. H. L.	1707—1727	House of Lords.
Robinson (Christoper) (6 vols.)	Rob. Chr. *or* Chr. Rob. *or* Rob. Adm. *or* C. Rob.	1799—1808	Admiralty.
Robinson (George, Scotch Appeals) (2 vols.)	G. Rob.	1840—1841	House of Lords.
Robinson (W.) (3 vols.)	W. Rob. *or* Rob. Adm.	1838—1850	Admiralty.
Rolle (Sir H.) (2 vols. 1675) ...	Roll. *or* Rolle ...	1615—1625	King's Bench.
Rose (2 vols.)	Rose	1810—1816	Bankruptcy.

Title of Reports.	Abbreviation.	Period.	Court.
Ross' Leading Cases on Commercial Law	Ross L. C.... ...	Published 1853	All the Courts.
Do. Do. on the Law of Scotland	Ross. L. C.	Published 1849	Scotch Courts.
Russell (5 vols.)	Russ.	1826—1829	Chancery.
Russell and Mylne (2 vols.) ...	Russ. & Myl. *or* R. & M.	1829—1831	Do.
Russell and Ryan (1 vol.) ...	Russ. & Ry. ...	1799—1824	Criminal Courts.
Ryan and Moody (1 vol.)	Ry. & Moo. *or* Ry. & M.	1823—1826	Nisi Prius.
Salkeld (3 vols. 1795)	Salk.	1689—1711	King's Bench (principally).
Saunders (3 vols. 1845) ...	Saund.	1666—1673	King's Bench.
Saunders and Cole (Bail Court Reports) (2 vols.)	Saund. & Cole *or* B. C. R.	1842—1848	Bail Court.
Saunders & Macrae	Saund. & Mac. ...	1832—1858	Bankruptcy.
Sausse and Scully (1 vol.) ...	Sau. & Sc. ..	1837—1840	Rolls Court, Ireland.
Saville (Sir J.) (1 vol. 1688)	Sav.	1580—1594	Common Law.
Sayer (1 vol. 1790)	Say....	1751—1756	King's Bench.
Schoales and Lefroy (2 vols.)...	Sch. & Lef. *or* S. & L	1802—1806	Chancery, Ireland.
Scots Law Times Reports	Sc. L. T. R. ..	1893 to the present time.	Court of Session, Scotland.
Scots Revised Reports (Scotch) (8 vols.)	Sc. R. R.	1707—1849	House of Lords.
Scott (8 vols.)	Scott *or* Sco. ...	1834—1840	Common Pleas
Do. New Reports (8 vols.)...	Scott, N. R. *or* Sco. N. R.	1840—1845	Do.
Scottish Jurist (45 vols.) ...	Sc. Jur. *or* Jur. (Sc)	1829—1837	Scotch Courts.
Scottish Law Reporter...	Sc. L. R.	1865 to the present time.	Do.
Searle and Smith	Se. & Sm. *or* S. & S.	1859 - 1860	Probate and Divorce
Select Cases in Chancery, temp. King (Anon.) (1 vol. 1850)	Sel. Ca. Ch. *or* S. C. C.	1724—1733	Chancery.
Sessions Cases (1 vol. 1873) ..	Sess. Ca.	1710—1748	King's Bench.
Session (Court of) Cases (Scotch)	Sess. Ca.	1821—1875	Scotch Courts.
Shaw (1 vol.)	Shaw	1848—1851	Court of Justiciary.
Shaw's Court of Session Cases.	Sh.	1821—1808	Scotch Courts.
Shaw's Digest of Decisions ..	Sh. Dig	.....	Do.
Shaw's Scotch Appeals (2 vols.)	Sh. App.	1821—1824	House of Lords.
Shaw and Dunlop (1 vol.) ...	Sh. & Dun. *or* S. & D. *or* S.	1819—1831	Court of Justiciary.
Shaw, Dunlop, Napier and Bell (1 vol.)	S. D. N. & B. ...	1821—1831	Court of Teinds.
Shaw and M'Clean's Scotch Appeals (3 vols.)	Sh. & M'C. *or* Sh. & M'L.	1835—1838	House of Lords.
Shaw, Wilson and Courtenay (7 vols.)	Sh. W. & C. ...	1825—1835	Do.
Shower	Show.	1740	Do.
Shower (2 vols. 1794)	Show. K. B. ..	1678—1695	King's Bench
Shower's Cases in Parliament (1 vol. 1876)	Show. P. C. ...	1694—1699	House of Lords.
Siderfin (Sir T.) (2 vols. 1714),...	Sid....	1657—1670	King's Bench.
Simons (17 vols.)	Sim	1826—1849	Chancery.
Do. New Series (2 vols.) ...	Sim. N. S. . .	1850—1852	Do.
Simons and Stuart (2 vols.) ...	Sim. & St. *or* S. & S.	1822—1826	Do.
Skinner (1 vol. 1728)	Skinn. ...	1681—1697	King's Bench.
Smale and Giffard (3 vols.) ..	Sm. & Giff. *or* Sm. & G.	1852—1857	Chancery (V.-C. Stuart)
Smith	Smith.	1803—1806	King's Bench.
Smith and Batty (1 vol.) ...	Sm. & Bat. ..	1824—1825	King's Bench, Ireland
Smith's Leading Cases	Smith. L. C. *or* Sm. L. C.	Various.	Common Law.
Smith's Registration Cases ...	Smith Reg. ...	1895—1897	Election Committees.
Smythe (1 vol.)	Smythe	1839—1840	Common Pleas, Ireland.

Title of Reports.	Abbreviation.	Period.	Court.
Solicitors' Journal and Reporter.	Sol. Jour. *or* S. J.	1857 to the present time.	All the Courts.
Special Cases	Spec. Ca.	1625—1714	Chancery.
Spinks (2 vols.)	Spinks.	1853—1855	Ecclesiastical and Admiralty.
Spinks' Prize Cases	Spinks' Pr. Cas....	1854—1856	Admiralty.
Spottishwood's Reports of Session (Scotland)	Spottis.	... ...	Court of Session, Scotland.
Stair (2 vols.)	Stair	1661—1681	Do.
Starkie (3 vols.)	Stark.	1814—1823	Nisi Prius.
State Trials (Howell's)(34 vols.)	How St. Tri. ..	1163—1820	All the Courts.
Do. New Series (8 vols.)	St. Tri. N. S. ...	1820—1843	Do.
Stone and Graham	Sto. &. G. *or* S. & G.	1865	Referee's Court in Parliament.
Strange (2 vols. 1795)	Str.	1716—1746	King's Bench.
Stuart, Milne, and Peddie ...	St. M. & P. *or* Stuart.	1851—1853	Scotch Courts.
Styles (1 vol. 1658)	Sty.	1645—1655	King's or Upper Bench.
Swabey (1 vol.)	Swab.*or* Swa. Ad...	1855—1859	Admiralty.
Swabey and Tristram (4 vols.)	Sw. & Tr.	1858—1865	Probate and Divorce.
Swanston (temp. Eldon) (3 vols.)	Swanst.	1818—1819	Chancery.
Swinton (2 vols.)	Swint.	1835—1841	Court of Justiciary.
Syme (1 vol.)	Sym...	1826—1830	Do.
Talbot,Cases temp. (1 vol. 1793)	Cas. temp. Talbot.	1734—1738	Chancery.
Tamlyn (1 vol.)	Taml.	1829—1830	Rolls Court.
Taunton (8 vols.)	Taunt.	1807—1819	Common Pleas.
Temple asd Mews (1 vol.) ...	T. & M	1848—1851	Crown Cases Reserved.
Term Reports (Durnford and East)	Term Rep. *or* T. Rep. *or* T. R.	1785—1800	King's Bench.
Thornton's Notes of Cases (7 vols.)	Thorn.	1841—1850	Ecclesiastical and Maritime Courts.
Times Law Reports, The ...	T. L. R.	1884 to the present time.	All the Courts.
Tinwald's Reports (Scottish)...	Tinw.	... .	Scotch Courts.
Tothill (1 vol. 1872)	Toth...	1559—1646	Chancery.
Tudors Leading Cases (Mercantile and Maritime Law)	Tudor L. C. Merc. Law.	Various.	All the Courts.
Do. (Real Property and Conveyancing). *See* White and Tudor.	Tudor L. C. R. P.	Various.	All the Courts.
Turner and Russell (1 vol.) ...	Turn. & Russ. *or* T. & R.	1822—1824	Chancery.
Tyrwhitt (5 vols.)	Tyrw.	1830—1835	Exchequer.
Tyrwhitt and Granger (1 vol.)...	Tyr. & Gr.	1835—1836	Do.
Vaughan (1 vol. 1706)	Vaugh.	1666—1673	Common Pleas.
Ventris (1 vol. 1726)	Ventr.	1668—1691	King's Bench.
Vernon (2 vols. 1828)	Vern.	1680—1719	Chancery.
Vernon and Scriven (1 vol.) ...	Vern.& Sc. *or* V. & S.	1786—1788	Common Law, Ireland.
Vesey, Junior (22 vols. 1827)... (*See* Hovenden's Supplement)	Ves. Jun. *or* after the first two volumes, Ves. simply.	1789—1817	Chancery.
Vesey, Senior (3 vols. 1818-25) (*See* Bell's Supplement)	Ves. Sen.	1746—1756	Do.
Vesey and Beames (3 vols. 1818)	Ves. & B. *or* V. & B.	1812—1814	Do
Wallis (1 vol.)	Wallis *or* Wall. ...	1766—1791	Irish Courts.
Webster's Patent Cases ...	Webst. *or* Web. P. C.	1601—1855	All the Courts.

Title of Reports.	Abbreviation.	Period.	Court.
Weekly Notes.*	W. N.	1866 to the present time.	All the Courts.
Weekly Reporter.†	W. R.	1853 to the present time.	Do.
Welford, Bittleston and Parnell, New Practice Cases	N. P. C.	1844—1848	Common Law.
Welsby, Hurlstone and Gordon (11 vols.) (*See* Exchequer Reports)	Wels. H. & G. *or* Exch. Rep. *or* Exch. *or* Ex.	1847—1856	Exchequer.
Welsh (1 vol.)	Welsh.	1833—1840	Registry Cases, Ireland.
West (Chancery, temp. Hardwicke) (1 vol. 1827)	West, Ch. *or* West. temp. H.	1736—1739	Chancery.
West (House of Lords) (1 vol.)	West. H. L. ...	1839—1841	House of Lords.
Western's Tithe Cases..... ...	West. Tithe Cas...	1535—1822	Tithe Cases.
White (3 vols.)	White	1885—1893	Court of Justiciary, Scotland.
White and Tudor's Leading Cases in Equity.	Wh. & T. *or* W. & T. *or* L. C. Eq.	Various.	Chancery.
Wightwick (1 vol.)	Wightw.	1810—1811	Exchequer.
Willes (1 vol. 1800)	Willes *or* Will. ...	1737—1758	Common Pleas.
William Blackstone	W. Bl. *or* Bl. W....	1746—1779	Common Law.
Williams (Peere) (3 vols. 1826)	P. Wms. *or* P. W..	1695—1735	Chancery
William Robinson (*See* Robinson W.)	W. Rob. *or* Rob. Admi.	1838—1850	Admiralty.
Williams' Cases in Equity. temp. Talbot (*See* Forrester)	Cas. temp. Talbot *or* Will. Cas. Eq.	1733—1737	Chancery.
Willmore, Wollaston and Davison (1 vol.)	Will. W. & D. *or* W. W. & D.	1837	King's or Queen'sBench
Willmore, Wollaston and Hodges (1 vol.)	Will. W. & H. *or* W. W. & H.	1838—1839	King's Bench.
Wilmot's (Sir E.) Notes and Opinions (1 vol. 1802)	Wilm.	1757—1767	All the Courts.
Wilson (George) (3 vols. 1799)	Wils. *or* G. Wils....	1743—1774	Common Law.
Wilson (John) (1 vol.) ...	Wils. Ch.	1818—1819	Chancery.
Wilson (John) (1 vol.)... ...	Wils. Ex. Eq. ...	1817	Exchequer (Equity)
Wilson and Shaw's Scotch Appeals.	Wils. & S. *or* W. & S.	1825—1834	House of Lords.
Winch (Sir H.) (1 vol. 1657)...	Winch. *or* Win. ...	1621—1625	Common Pleas.
Wolferstan and Bristow (1 vol.)	Wolf & B. *or* Wol. & Br. *or* W. & B.	1859—1865	Election Committees.
Wolferstan and Dew (1 vol.) ...	Wolf. & D. *or* Wol. & Dew. *or* W. & D.	1856—1858	Do.
Wollaston's Practice Cases	W. P. C.	1840—1841	Common Law.
Wood's Tithe Cases *or* Decrees on Tithes.	Wood, Tithe Cas. *or* Wo. Dec. Tit.	1650—1798	Exchequer.
Wordsworth's Digest	Word. Dig. ..	1834	Election.
Year Books (11 vols. 1679) ...	Y. B.	1293—1536	Common Law.
Yelverton (1 vol. 1792)... ...	Yelv.	1603—1613	King's Bench.
Younge (1 vol.)	Younge *or* You. ...	1830—1832	Exchequer (Equity).
Younge and Collyer (Chancery Cases) (2 vols.)	You. & Coll. Ch. Ca. *or* Y. & C. C. C.	1841—1843	Chancery (V.-C. Bruce.)
Younge and Collyer (Exchequer, Equity) (4 vols.)	You. & Coll. Ex. Eq. *or* Y. & C. Ex. Eq.	1833—1841	Exchequer (Equity).
Younge and Jervis (3 vols.) ...	Y. & J.	1826—1830	Do.

* Brief notes of cases published under the sanction of the Council of Law Reporting. The more important of such cases are given at length in the *Law Reports*.

† A series of reports of Cases decided in the Superior Courts of England and Ireland. Published at the office of *The Solicitors' Journal and Reporter*. To find the date of the Weekly Reporter add 52 to the number of the volume, *e.g.*, 34 W. R.+52=1886.

Appendix C.

AN ALPHABETICAL LIST OF INDIAN LAW REPORTS.

Title of Reports.	Abbreviation.	Period.	Court.
Aaton (2 vols.)	Acton	1809—1811	Privy Council.
Agra High Court Reports (3 vols.)	Agra	1866—1868	N.-W. P. H. C., Agra.
Do. Full Bench Volume.	Agra. F. B. ...	1866—1868	Do.
Allahabad Law Journal. ...	All. L. J. *or* A. L. J.	1904 to the present time.	Allahabad H. C. and Privy Council.
Allahabad Weekly Notes (28 vols.)	All. W. N. *or* A. W. N.	1881—1908	Allahabad H. C.
Bellasis' Bombay Sudder Dewany Adawlat Reports (Civil)	.....	1840—1848	S. D. A., Bombay.
Do. Bombay Sudder Foujdary Adawlut Reports (Criminal).	.....	1827—1846	S. F. A., Bombay.
Bellasis and Morris' Bombay Sudder Dewany Adawlut Decisions.	.....	1840—1843	S. D. A., Bombay.
Bengal Law Reports (15 vols.)	Beng. L. R. *or* B. L. R.	1868—1875	Calcutta H.C. and Privy Council.
Do. Supplemental Volume of Full Bench Rulings.	B. L. R., Sup. Vol.	1862—1868	Calcutta H. C.
Do. Short Notes of Cases...	B. L. R., S. N. ...		Do.
Bombay Criminal Cases	Bom. Cr. Cas.	1911 to the present time.	Bombay H. C.
Bombay High Court Reports (12 vols.)	Bom. H. C. R. *or* B. H. C. R.	1862—1875	Do.
Bombay High Court Criminal Rulings.	Bom. Cr. Rul.	1869—1910	Do. (Appellate).
Bombay Law Reporter. ...	Bom. L. R.	1899 to the present time.	Bombay H. C. and Privy Council on appeal from the whole of India.
Bombay Sudder Foujdari Adawlut Cases.	.....	1861—1862	S. F. A., Bombay.
Borradaile's Bombay Sudder Dewany Adawlut Reports (Civil, 2 vols.)	Borradaile.... ...	1800—1824	S. D. A., Bombay.
Boulnois	Boul.	1856—1859	Supreme Court, Calcutta
Bourke's Reports (1 vol.) ...	Bourk.	1865	Calcutta H. C. (Original).
Burma Law Reports (14 vols.)	Bur. L. R. *or* Bur. Rep.	1895—1908	Chief Court, Lower Burma, and Jud. Commr.'s Court, Upper Burma.
Burma Law Times	Bur. L. T.... ...	1908 to the present time.	Do.
Calcutta Law Journal	Cal. L. J. *or* C. L. J.	1905 to the present time.	Calcutta H. C. and Privy Council.
Calcutta Law Reports (13 vols.)	C. L. R.	1877—1883	Do.
Calcutta Nizamut Adawlut Reports (9 vols.)	.....	1851—1859	N. A., Calcutta.
Calcutta Nizamut Adawlut Selected Reports (6 vols.)	.....	1805—1850	Do.
Calcutta Sudder Adawlut Reports	.....	1834—1852	S. A., Calcutta.

Title of Reports.	Abbreviation.	Period.	Court.
Calcutta Sudder Dewany Adawlut Reports (7 vols.)	.....	1791—1848	S. D. A., Calcutta.
Calcutta Sudder Dewany Adawlut Summary Cases.	.....	.....	Do.
Calcutta Sudder Dewany Decisions.	.....	1845—1860	Do.
Calcutta Weekly Notes...	Cal. W. N. *or* C. W. N.	1896 to the present time.	Calcutta H. C. and Privy Council.
Cases appealed from the Adawlut Courts in India (20 vols.)	.....	1834—1853	Privy Council (Appeals from the whole of India).
Central Provinces Law Reports.	C. P. L. R. *or* C. P. R.	1887—1905	Jud. Commr.'s Court, C. P.
Coryton's Reports (1 vol.) ...	Cor. *or* Coryt. ...	1862—1863	Calcutta H. C. (Original).
Criminal Cases of the Bombay High Court. *See* Bombay Criminal Cases.	.....	.....	.....
Criminal Law Journal of India	Cr. L. J.	1904 to the present time.	All High Courts.
Criminal Law Reporter	Cr. L. R.	1913 to the present time.	Do.
Criminal Rulings of the Bombay High Court. *See* Bombay High Court CriminalRulings.	.....	.....	.....
Fulton's Reports...	Fulton	1842—1844	Supreme Court, Calcutta,
Harrington's Bombay Sudder Dewany Adawlut Decisions.	.....	1860—1862	S. D. A., Bombay.
Do. Bombay Sudder Foujdari Adawlut Cases (New Series) (4 vols.)	.....	1861—1862	S. F. A., Bombay.
Hay's Reports (2 vols.) ...	Hay	1862—1863	Calcutta H. C. (Appellate).
Hyde's Reports (2 vols.) ...	Hyde	1863—1864	Calcutta H. C. (Original).
Indian Cases	Ind. Cas.	1909 to the present time.	All High Courts.
Indian Jurist, Old Series (2 vols.)	Ind. Jur. O. S. ...	1862	Calcutta H. C. and Privy Council.
Do. New Series (2 vols.) ...	Ind. Jur. N. S. ...	1866—1867	Calcutta H. C.
Indian Jurist	Ind. Jur.	1877—1893	Madras H. C.
Indian Law Reports :—* ...	I. L. R. ...	1876 to the present time.	
Allahabad series	I. L. R. All.	Do.	Allahabad H. C. and Privy Coucil.
Bombay Series	I. L. R. Bom.	Do.	Bombay H. C. and Privy Conncil.
Calcutta Series	I. L. R. Cal. ...	Do.	Calcutta H. C. and Privy Council.
Madras Series	I. L. R. Mad. ...	Do.	Madras H. C. and Privy Council.
Kathiawar Law Reports ...	K. L. R.	1891 to the present time.	Political Agent's Court, Kathiawar.
Knapp's Privy Council Cases (3 vols.)	Knapp. P. C. *or* Kn. P. C.	1829—1836	Privy Council.

* Published under the authority of the Government of India, in four series, Calcutta, Madras, Bombay and Allahabad.

Title of Reports.	Abbreviation.	Period.	Court.
Law Reports, Indian Appeals...	L. R., I. A...	1868 to the present time.	Privy Council.
Do Supplemental Volume...	L. R., I. A., Sup. Vol.	1872—1873	Do.
Lower Burma Rulings... ..	L. B. R.	1900 to the present time.	Chief Court, Lawer Burma.
MacNaughten's Reports (3 vols)	MacN	1792—1824	Sudder Court, Calcutta.
Madras High Court Reports (8 vols.)	Mad. H. C. R. ...	1862—1875	Madras H. C.
Madras Jurist (11 vols.) ...	Mad. Jur.	1866—1876	Do.
Madras Law Journal Reports...	M. L. J R.... ...	1891 to the present time.	Madras H. C. and Privy Council.
Madras Law Reporter (1 vol.)	Mad. L. R.... ...	1876—1877	Madras H. C.
Madras Law Times Reports ...	M. L. T.	1906 to the present time.	Madras H. C and Privy Council.
Madras Law Weekly	M. L. W.	1914 to the present time.	Do.
Madras Revenue Digest... ...	Mad. R D.. ...	1867—1876	Madras H C.
Madras Revenue Register (7 vols.)	Mad. R. R.... ...	1867—1874	Do.
Madras Sudder Dewany Adawlut Reports (1 vol)	.....	1826—1847	S. D A., Madras.
Do. (3 vols.)	.. ....	1849—1862	Do.
Madras Sudder Foujdari Adawlut Reports (12 vols.)	.. ...	1851—1862	S. F. A., Madras.
Madras Weekly Notes	M. W. N.	1910 to the present time.	Madras H. C. and Privy Council.
Marshall's Reports (1 vol) ...	Marsh.	1862—1863	Calcutta H.C. (Appellate) and Privy Council.
Moore's Indian Appeals (14vols.)	Moo. I. A.	1836—1872	Privy Council.
Do. Privy Council Cases (15 vols.)	Moo. P. C	1836—1862	Do.
Do. Do New Series (9 vols.)	Moo. P. C., N. S....	1862—1873	Do.
Morley's Digest (3 vols.)	Morley Dig. ..	Cases up to the end of 1850	Sudder Courts in India, E. I. Company's Courts and Appeals to the Privy Council.
Morris' Bombay Sudder Dewany Adawlut Reports (Civil).	... ..	1854—1857	S. D. A., Bombay.
Do. Bombay Sudder Foujdari Adawlut Reports (Criminal) (10 vols.)	.....	1854—1858	S F. A , Bombay.
Morton's Decisions of the Supreme Court, Calcutta (1 vol.)	.....	1794—1848	Supreme Court, Calcutta
Mysore Law Reports	Mys. L. R..... ..	1878—1895	Chief Court, Mysore.
Mysore Chief Court Reports ...	Mys. Ch. Ct. ...	1896 to the Present time	Do.
Nagpur Law Reports	N. L. R	1905 to the present time.	Jud. Commr.'s Court, C. P.
Nizamut Adawlut Reports, Calcutta.	... ..	1851—1859	N A., Calcutta.
Do. Do. Selected Reports, Calcutta.	.....	1805—1850	Do.
Nizamut Adawlut Reports, N.-W. P. (9 vols.)	.....	1851—1860	N A., N.-W. P.
Do. Do. Selected Reports, N.-W. P. (6 vols.)	.....	1861—1866	Do.
North-Western Provinces High Court Reports (7 vols.)	N.-W P. H. C. R or N.-W. P.	1869—1875	N.-W. P. H. C., Allahabad.

Title of Reports.	Abbreviation.	Period.	Court.
Norton's Leading Cases in Hindu Law (2 vols.)	.....	.....	All the Courts.
Notes of Cases at Madras, by Strange (2 vols.)	.....	1798—1816	Recorder's Court, Madras, and Supreme Court, Madras.
Oudh Cases	Oudh Cas. *or* O. C.	1898 to the present time.	Jud. Commr.'s Court, Oudh.
Oudh Select Cases	Oudh. Sel. Cas.	.....	Do.
Perry's (Sir Erskine) Oriental Cases.	Perry O. C ..	1850	Supreme Court, Bombay
Printed Judgments of the Bombay High Court.	P. J.	1859—1898	Bombay H. C. (Appellate).
Punjab Law Reporter	Punj. L. R. *or* P. L. R	1900 to the present time	Chief Court, Punjab.
Punjab Record...	Punj Rec. *or* P. R.	1866 to the present time.	Do.
Punjab Weekly Reporter ...	Punj. W. R. *or* P W. R	1906 to the present time.	Do.
Ratanlal's Unreported Criminal Cases of the Bombay High Court.	Ratanlal's Unrep. Cr. Ca.	1862—1898	Bombay H. C.
Revenue, Civil and Criminal Reports (5 vols.)	.....	1865—1867	Calcutta H. C.
Sind Law Reports.	Sind L. R. ...	1908 to the present time.	Jud. Commr.'s Court, Sind
Sind Sudder Court Reports. ...	Sind S. C. R. ...	1899—1900	Do
Sevestre's Reports (in continuation of Marshall) (1 vol.)	Sev....	1863	Calcutta H. C.
Sudder Dewany Adawlut, Bombay, Selected Cases.	.....	1820—1840	S. D. A., Bombay.
Do. Do. Calcutta.	.....	1845—1860	S. D A., Calcutta.
Sutherland's Privy Council Judgments (3 vols.)	Suth. P. C. ...	1831—1867	Privy Council.
Sutherland's Weekly Reporter (26 vols.)	Suth. W. R. *or* W. R.	1864—1876	Calcutta H C. (Appellate) and Privy Council.
Do. Do. Gap. No. (1 vol.)...	Suth. W. R. 1864....	1864	Calcutta H. C. (Appellate).
Do. Do. Special No. (Full Bench Rulings) (1 vol.)	Suth. W. R., S. N. *or* W. R., S. N.	July 1862 to July 1864	Do.
Do. Do. Full Bench Volume	Suth. W. R, F. B. *or* W. R., F. B.	1862—1863	Do.
Taylor and Bell (3 vols.)	T & B.	1849—1853	Supreme Court, Calcutta
Upper Burma Rulings.	U. B. R.	1892 to the present time.	Jud. Commr.'s Court, Upper Burma.
Weekly Notes (Allahabad) (28 vols.)	All. W. N. *or* A. W. N	1881—1908	Allahabad H C.

Title of Reports.	Abbreviation.	Period.	Court.
Weekly Notes (Calcutta) ...	Cal. W. N. *or* C. W. N.	1896 to the present time.	Calcutta H. C. and Privy Council
Weir's Criminal Rulings of the Madras High Court (1 vol.)	Weir	1862—1887	Madras H. C
Woodman's Digest. *	Woodm. Dig. ...	High Courts, from 1862; Privy Council, from 1836	All the High Courts and Privy Council.

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	ALLAHABAD.					BOMBAY.				CALCUTTA.				
YEAR	Agra.	N.W.P.	I.L.R.	W.N.	L.J.	H.C.R.	I.L.R.	Bom. L.R.	Bom. Cr. Ca.	B.L.R.	W.R.	C.L.R.	I.L.R.	C.W.N.
1862	...	...	...	...	...	1	...	....	...	...	Sp. No.	...	...	...
63	...	..	..	...	..	1	...	...	...	...	Sp. No.	...	....	...
64	...	....	...	...	...	1,2	...	...	...	...	Gap. No & 1.	...	...	...
65	...	...	...	...	...	1,2,3	...	...	...	...	2,3,4	...	...	...
66	1	...	...	...	..	2,3 4	...	..	..	...	5,6	...	...	...
67	2	...	....	...	...	3,4	...	...	...	...	7,8	...	..	...
68	3	...	...	...	...	5	...	....	...	1	9,10	...	...	..
69	....	1	...	...	...	6	...	...	...	2,3,4 5	11,12	...	..	...
70	..	2	...	..	...	7	...	....	...	5,6	13,14	...	...	...
1871	...	3	...	...	..	8	...	....	...	6,7,8	15,16	...	..	...
72	...	4	..	...	...	9	...	...	..	8,9	17,18	...	..	..
73	...	5	...	...	..	10	...	...	...	10,11	19,20	...	...	...
74	...	5,6	...	..	.	11	...	...	...	12,13	21,22	...	...	...
75	...	7	...	...	..	12	...	...	...	14,15	23,24	...	...	...
76	...	...	1	....	...	...	1	...	...	...	25,26	...	1	...
77	....	...	1	...	...	...	1	...	...	...	...	1	2	...
78	...	..	1	...	...	...	2	...	...	...	...	1,2,3	3	....
79	...	..	2	....	...	..	3	....	...	....	...	3 to 6	4	...
80	...	..	2	1	...	...	4	...	...	...	...	5 to 8	5	...
1881	...	...	3	1	...	...	5	...	...	...	...	7 to 10	6,7	...
82	...	...	4	2	...	....	6	...	...	...	...	10to13	8	...
83	...	...	5	3	....	...	7	...	..	....	...	12,13	9	...
84	...	...	6	4	...	...	8	...	...	...	...	...	10	...
85	...	...	7	5	...	...	9	...	...	..	...	...	11	...
86	...	...	8	6	...	...	10	...	....	...	...	...	12,13	...
87	...	...	9	7	....	....	11	...	...	...	...	...	14	...
88	...	...	10	8	...	...	12	...	...	...	...	...	15	...
89	...	....	11	9		...	13	...	...	...	...	...	16	...
90	...	...	12	10	.	...	14	.	...	...	...	...	17	...
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92	....	...	14	12	...	..	16	....	..	...	...	...	19	...
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By DESAI NAROTAM, Pleader, H. C., 184, Kika Street, Bombay (No. 4).

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