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CONCISE LAW DICTIONARY

FOR

STUDENTS AND PRACTITIONERS

WITH

SUMMARIES OF THE LEADING CASES

AND

A TRANSLATION OF
ROMAN LAW TERMS AND LATIN MAXIMS.

BY

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PREFACE.

THIS book is an attempt to provide a concise law dictionary for the use of the practitioner and the student, in which the words and phrases, the rules and doctrines of the law of England, are defined and explained. Matter of mere antiquarian interest has been excluded, and space has been found to give on subjects of importance fuller notes than are usually attempted. For instance, in addition to the ordinary definition of an infant, I have endeavoured to state concisely his liability in contract and tort, with a reference to the cases.

To assist the student in his reading, the more important terms of the Roman Law have been included.

To write a law book without cases is like building a house without foundations. This Dictionary is unique in my experience in giving a summary of the leading cases in all the important branches of the law. The principle laid down or exemplified by the case is stated together, where necessary, with a brief statement of the facts, and the decision. References to the cases are made throughout under the proper headings. The student has to become familiar with a good many cases, and these notes, in a convenient form for reference, should prove of assistance. As the titles are arranged in strict alphabetical order, no references are of course given to pages.

The effect of the new Property Acts and other recent statutes has been noted.

I am under a particular obligation to Mr. Byrne for the free use I have made of his monumental Law Dictionary, and to Mr. J. L. Montrose, LL.B., Barrister-at-Law, for reading the proofs and making many suggestions. I am indebted to my brother Mr. Harold Osborn and to Miss Helene Ross, B.A., of University College, for their invaluable assistance. Any imperfections which may appear I very much regret, but the sacrifice of many leisure hours will not have been in vain if I am able to help the student along his interesting but intricate way.

P. G. O.

"Work, work while it is yet day, and in your lives let there be no misspent hours." (WILLIS, *Law of Negotiable Securities*, 4th ed., p. 171.)

LATIN FOR LAWYERS.

ACCENT AND PRONUNCIATION.

Accent.

(1) In words of two syllables the accent is always on the first.

E.g., *bó-na, jú-ris, fó-rum.*

(2) In words of three or more syllables, the accent falls on the last syllable but one (penultimate) if its vowel sound is long, but otherwise on the last but two (ante-penultimate).

E.g., *man-dá-ta, per-só-næ, ma-tri-mó-ni-um, cá-ve-at, hæ-ré-di-tas.*

Pronunciation.

The Latin alphabet is the same as the English except that it has no *w*.

On the whole, the letters and combinations of letters (e.g., *er, or, ch, th*) are pronounced as in English.

I.—VOWELS.

The vowel sounds, as in English, may be either long or short. If short they are frequently indeterminate in unaccented syllables. For instance *a*, unless in the final syllable before a consonant, often has the sound of the final *a* in *America.*

E.g., *mén-sa, a-cú-tus.*

Such indeterminate vowels are left unmarked in the examples given.

THE LONG VOWELS (ā as in *fate*, ē in *mete*, ī in *pine*, ō in *note*, ū in *tube*, ȳ in *type*) are used in the following cases:

(1) In final syllables ending in a vowel.

E.g., *con-dí-ti-o* (kondĭshiō), *fi-de-i* (fīdēī), *sí-tu* (sītū).

(2) In all syllables before a vowel or a diphthong.

E.g., *ré-us* (rēus).

(3) Generally in accented syllables, other than final, before a single consonant, especially if it is followed by *e, i* or *y* before another vowel.

E.g., *né-mo* (nēmō), *pá-ter* (pātēr), *de-cré-tum* (dekrētum), *nó-ce-o* (nōsheō), *ob-li-gá-ti-o* (ŏblĭgāshiō), *de-pó-no* (dēpōnō).

(4) In syllables followed by a mute before a liquid.

E.g., *sa-lú-bri-tas* (salūbrĭtas).

THE SHORT VOWELS (ă as in *fat*, ĕ in *met*, ĭ in *pin*, ŏ in *not*, ŭ in *tub*, ў in *myth*) are used in the following cases:

(1) In final syllables ending in a consonant, except in the case of *post* and plural case endings in *es* and *os.*

E.g., *rex-it* (rĕxĭt), *hă-bet* (hăbĕt), but *res* (rēz), *cŭs-tos* (kŭstōz), *jū-di-ces* (jūdĭkēz).

(2) Before *x* or two consonants other than a mute followed by a liquid.

E.g., *bĕl-lum* (bĕlum), *ha-bĕn-dum* (habĕndum), *jū-dex* (jūdĕx).

(3) Often in accented syllables, not penultimate, before one or more consonants.

E.g., *pă-tri-bus* (pătrĭbus), *dŏ-mi-nus* (dŏmĭnus), *hæ-rĕ-di-tas* (herĕdĭtas).

NOTES.

i between other vowels, takes the place of a consonant, and is pronounced like *y*.

E.g., *Pom-pē-ius* (pŏmpēyus).

i and *y* when unaccented, are generally short except in the first and last syllable.

E.g., *dĕ-bi-tor* (dĕbĭtôr).

u is always short before *bl*.

E.g., *pŭ-bli-cus* (pŭblĭkus).

u after *q*, *g* or *s* usually has the sound of *w*.

E.g., *qui* (kwī), *lĭn-gua* (lĭngwa), *per-suă-dĕ-o* (pĕrswādēō).

II.—DIPHTHONGS. Diphthongs are pronounced as follows:

Æ, æ, like ē. E.g., *læ-si-o* (lēshiō).

Œ, œ, like ē. E.g., *cœ-lum* (sēlum).

au as in *author*. E.g., *caŭ-sa* (kâûza).

eu as in *neuter*. E.g., *neu* (nū).

III.—CONSONANTS.

Liquids: l, m, n, r.

Mutes: p, b, t, d, g, c, k, q.

The consonants have in general the English sounds, thus:

(1) *c* and *g* are soft before *e*, *i*, *y*, *æ* and *œ*, but hard elsewhere.

E.g., *cē-do* (sēdō), *Cæ-sar* (sēzêr), but *cum* (kŭm), *că-pi-as* (kāpias).

(2) *c*, *s*, *t* and *x* are aspirated before *i* preceded by an accented syllable and followed by a vowel.

E.g., *ō-ti-a* (ōshia), *Ăl-si-um* (ălshium), *fă-cie* (fāshē).

t is hard, however, if after *s*, *t* or *x*.

E.g., *re-sti-tŭ-ti-o* (rĕstĭtūshiō).

(3) *s* is pronounced like *z* at the end of a word after *e*, *œ*, *au*, *b*, *m*, *n* or *r*, and where influenced by analogy to the English word.

E.g., *pars* (pârz), *spes* (spēz), *caŭ-sa* (kâûza).

TABLE OF REGNAL YEARS OF ENGLISH SOVEREIGNS.

William I	14 October, 1066, to 9 September, 1087	21 years
William II	26 September, 1087, to 2 August, 1100	13 years
Henry I	5 August, 1100, to 1 December, 1135	36 years
Stephen	26 December, 1135, to 25 October, 1154	19 years
Henry II	19 December, 1154, to 6 July, 1189	35 years
Richard I	3 September, 1189, to 6 April, 1199	10 years
John	27 May, 1199, to 19 October, 1216	18 years
Henry III	28 October, 1216, to 16 November, 1272	57 years
Edward I	20 November, 1272, to 7 July, 1307	35 years
Edward II	8 July, 1307, to 20 January, 1327	20 years
Edward III	25 January, 1327, to 21 June, 1377	51 years
Richard II	22 June, 1377, to 29 September, 1399	23 years
Henry IV	30 September, 1399, to 20 March, 1413	14 years
Henry V	21 March, 1413, to 31 August, 1422	10 years
Henry VI	1 September, 1422, to 4 March, 1461	39 years
Edward IV (*a*)	4 March, 1461, to 9 April, 1483	23 years
Edward V	9 April, 1483, to 25 June, 1483	1 year
Richard III	26 June, 1483, to 22 August, 1485	3 years
Henry VII	22 August, 1485, to 21 April, 1509	24 years
Henry VIII	22 April, 1509, to 28 January, 1547	38 years
Edward VI	28 January, 1547, to 6 July, 1553	7 years
Mary (*b*)	6 July, 1553, to 17 November, 1558	6 years
Elizabeth	17 November, 1558, to 24 March, 1603	45 years
James I	24 March, 1603, to 27 March, 1625	23 years
Charles I	27 March, 1625, to 30 January, 1649	24 years
Charles II (*c*)	30 January, 1649, to 6 February, 1685	37 years
James II	6 February, 1685, to 11 December, 1688	4 years
William and Mary (*d*)	13 February, 1689, to 8 March, 1702	14 years
Anne	8 March, 1702, to 1 August, 1714	13 years
George I	1 August, 1714, to 11 June, 1727	13 years
George II	11 June, 1727, to 25 October, 1760	34 years
George III (*e*)	25 October, 1760, to 29 January, 1820	60 years

(*a*) Henry VI (restored)—9 October, 1470, to about April, 1471.
(*b*) Jane—6 July to 17 July, 1553. Mary married Philip, 25 July, 1554.
(*c*) Not king *de facto* until 29 May, 1660.
(*d*) Mary died 27 December, 1694.
(*e*) Regency from 5 February, 1811.

George IV	29 January, 1820, to 26 June, 1830	... ...	11 years
William IV ...	26 June, 1830, to 20 June, 1837 ...	... ...	7 years
Victoria	20 June, 1837, to 22 January, 1901	... ...	64 years
Edward VII	22 January, 1901, to 6 May, 1910	... ...	10 years
George V	6 May, 1910.		

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Wilm.	Wilmot's Notes and Opinions, K. B. 1757-70.
Wils. Ch.	Wilson's Chancery Reports. 1818-19.
Wils. Exch.	Wilson's Exchequer Reports. 1805-17.
Wils. K. B.	Wilson's King's Bench Reports. 1742-74.
Win.	Winch's Common Pleas Reports. 1621-25.
Wm. Bl.	William Blackstone's King's Bench Reports. 1746-80.
Wms. Peere	Peere Williams' Chancery Reports. 3 vols. 1695-1736.
Woll.	Wollaston's Bail Court Reports. 1840-41.
Wyatt & Webb	Wyatt and Webb's Reports, Victoria. 1861-63.
†Y. B.	Year Books.
Y. & C. Ch.	Younge and Collyer's Chancery Reports. 1841-43.
Y. & C. Ex.	Younge and Collyer's Exchequer Equity Reports. 1834-42.
Y. & J.	Younge and Jervis' Exchequer Reports. 1826-30.
Yel.	Yelverton's King's Bench Reports. 1603-13.
You.	Younge's Exchequer Equity Reports. 1830-32.
Young Adm.	Young's Nova Scotia Admiralty Cases. 1865-80.

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

LEGAL DICTIONARY.

A.R. (Anno Regni). In the year of the reign.

A and B Lists. See *Contributory.*

A fortiori. Much more; with stronger reason.

A mensa et thoro. From board and bed. See *Divorce.*

A tempore cujus contrarii memoria non existet. From a time of which there is no memory to the contrary. See *Memory.*

A verbis legis non est recedendum. You must not vary the words of a statute.

A vinculo matrimonii. From the bond of matrimony. See *Divorce.*

Ab.: Abr. Abridgment.

Ab antiquo. From old times.

Ab initio. From the beginning. See *Six Carpenters' Case.*

Abandonment. In marine insurance, when there is a constructive total loss, the insured may abandon the subject-matter insured to the insurer or underwriter by giving notice of abandonment to him within a reasonable time. Thereupon the insured is entitled to the insurance monies, and the insurer or underwriter to the subject-matter insured. See *Total Loss.*

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

Abatement. A suspension or termination of proceedings in an action for want of proper parties or owing to a defect in the writ or service. Formerly almost every change of interest after the commencement and before the termination of proceedings caused an abatement or termination. But now a cause or matter shall not be abated by the marriage, death or bankruptcy of any of the parties, if the cause of action survives; nor by changes in title during the pendency of the suit; nor by the death of either party between verdict and judgment (Order XVII, r. 1). Criminal proceedings are not terminated by the death either of the prosecutor or of the Sovereign. See *Plea.*

Abatement of Freehold. The entry of a stranger upon land on the death of the owner, prior to the heir. The heir's remedy was by action.

Abatement of Legacies. The receipt by legatees of none or part only of their legacies owing to insufficiency of assets. General legacies not given in payment of a debt due to the legatee or in consideration of the legatee abandoning any right or interest, abate proportionately between themselves, unless the intention is clear that any particular legacy shall be paid in full. Specific legacies take priority of general

legacies, and are liable to abatement only if the assets are insufficient for the payment of debts. Demonstrative legacies are not subject to abatement until the fund out of which payment is directed becomes exhausted.

Abatement of Nuisance. To remove or put an end to it. A public nuisance may be abated by anyone to whom it does a special injury, but only to the extent necessary to prevent such injury. A private nuisance may be abated by anyone aggrieved, but without committing a breach of the peace, and without doing more damage than is unavoidable. See *Nuisance.*

Abatement of Purchase Money. The reduction of the agreed purchase price by way of compensation, when a vendor has misdescribed property and is unable to convey it as described.

Abbott v. Wolsey ([1895] 2 Q. B. 97). Acceptance of goods within the meaning of the Sale of Goods Act, 1893, s. 4, is some act recognising the existence of a contract, and is not the same as acceptance in performance of the contract under section 35.

The plaintiffs sold to the defendant twenty tons of hay. There was no memorandum in writing of the transaction. The hay was sent to the defendant's wharf, who went on the barge and examined a sample, and rejected the hay as not up to sample. *Held,* that such conduct amounted to acceptance under section 4.

Abbreviatio Placitorum. A collection of cases decided in the Superior Courts from the reign of Richard I down to the commencement of the Year Books.

Abdication. Vacating the throne. It can be effected now only by Act of Parliament.

Abduction. The carrying away of women or girls is punishable under the Offences against the Person Act, 1861, and the Criminal Law Amendment Act, 1885. It is a felony to take away, by force or fraud, or to detain against her will from motives of lucre, an heiress; or wrongfully to take away a child from its parents. It is a misdemeanour unlawfully to take away girls under sixteen from the custody of their parents or guardians.

Abet. To aid in the commission of an offence. See *Accessory.*

Abeyance. The condition of an inheritance which has no present owner, *e.g.,* a peerage. Where A, being seised in fee of lands, makes a lease to B for life with remainder to the heir of B, the fee-simple is in abeyance during the life of B.

Abjuration. An oath to leave the realm for ever, taken by a person who had claimed sanctuary (*q.v.*).

Formerly the oath tendered to every person entering any public office to the effect that he renounced the title of the pretended Prince of Wales (the son of James II) to the English throne.

Abominable Crime. The term used in the Offences against the Person Act, 1861, s. 61, to describe the crimes of sodomy and bestiality, both of which are felonies.

Abortion. The confinement of a pregnant woman at anything short of the full term: miscarriage. To procure abortion is a felony, unless it is done in good faith in order the save the life of the woman.

Abrath v. North Eastern Railway Co. ((1883), L. R. 11 Q. B. D. 79). In an action for malicious prosecution the onus of proving that

there was no reasonable cause for prosecuting is on the plaintiff, in spite of its being a negative averment.

Abridgement. A digest of the laws of England, *e.g.*, Viner's, 1741.

Absence. If a person has not been heard of for seven years, and the circumstances are such that, if alive, he would have been heard of, the presumption of death arises but not as to the date of death.

A spouse re-marrying after seven years in such circumstances, does not commit bigamy (Offences against the Person Act, 1861, s. 57).

The time limited for suing a defendant in contract or tort who is absent beyond the seas runs from the time of his return.

Absoluta sententia expositore non indiget. When you have plain words capable of only one interpretation, no explanation of them is required. Evidence cannot be given of the intention with which they were written.

Absolute. A rule or order which is complete and becomes of full effect at once. See *Nisi.*

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

Absque tali causa. Without the alleged cause. See *De Injuria.*

Abstract of Title. A chronological statement of the instruments and events under which a person is entitled to property, showing all incumbrances to which the property is subject. See *Instrument.*

Abundans cautela non nocet. There is no harm done by great caution.

Abuse of Distress. Where animals or chattels lawfully distrained are worked or used, the person distraining is liable to an action for conversion.

Abuse of Process. A frivolous or vexatious action; setting up a case which has already been decided by a competent Court.

Abuttals. The bounds of land; the parts at which it abuts on other lands.

Ac etiam. And also.

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

Acceleration. Where an estate or interest in remainder or expectancy falls into possession sooner than it otherwise would by reason of the particular estate or preceding interest being or becoming void.

Acceptance. The act of assenting to an offer; the expression of a unity of intention with the person making the offer.

Acceptance of a Bill of Exchange. When the person on whom the bill is drawn writes his signature across the bill, with or without the words "accepted," he thereby engages to pay the bill when due (Bills of Exchange Act, 1882, ss. 17—19).

Acceptance of Service. Where a solicitor writes on a writ of summons words to the following effect: "I accept service of the writ on behalf of the defendant A B, and undertake to enter an appearance for him thereto in due course." If such appearance is not entered, the solicitor is liable to attachment.

Acceptance Supra Protest. When a bill of exchange has been protested for non-acceptance by the drawee, anyone may accept it for honour of the drawer or indorsers. (Bills of Exchange Act, ss. 65—68).

Access. The opportunity of marital intercourse between husband and wife.

Accessio cedit principali. An accessory thing when annexed to a principal thing becomes part of, and the property of the owner of, the principal thing; *e.g.*, alluvion, dereliction, and the addition of buildings and plants to the soil.

Accessorium non ducit, sed sequitur suum principale. The incident shall pass by the grant of the principal, but not the principal by the grant of the incident.

Accessory. In felonies, those concerned in the crime, otherwise than as principals, are accessories. An accessory before the fact is one who directly or indirectly procures by any means the commission of any felony but who is not actually or constructively present at the commission of the felony. If he is present, he is a principal in the second degree. An accessory after the fact is one who, with knowledge that a felony has been committed and not being the wife of the felon, in any way secures or attempts to secure the escape of the felon, whether by harbouring him or otherwise. There are no accessories in treasons or misdemeanours. In treason, all are deemed principals.

Accident. An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it.

In the Fatal Accidents Act, 1846, the word is used to describe events which are the result of negligence.

In Courts of equity the use of the word "accident" has always been confined to such an unforeseen event, misfortune, loss, act, or omission as is not the result of any negligence or misconduct by the party applying for relief. If a deed or negotiable security were lost, equity would enforce the plaintiff's rights under the document on his giving, if necessary, a proper bond of indemnity to the defendant. See *Bywell Castle*.

Accommodation Bill. A bill of exchange which a person has signed as drawer, acceptor, or indorser, without receiving value therefor and for the purpose of lending his name to some other person. (Bills of Exchange Act, 1882, s. 28, sub-s. 1.)

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

Accomplice. Any person who, either as a principal or as an accessory, has been associated with another person in the commission of any offence. The evidence of an accomplice is admissible, but the Judge should warn the jury of the danger of convicting on such evidence unless corroborated. "This rule of practice has become virtually equivalent to a rule of law" (R. *v.* Baskerville (1917), 86 L. J. K. B. 28). In some offences, corroboration is required by statute, *e.g.*, Criminal Law Amendment Act, 1885, ss. 2, 3.

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

agreement: the *satisfaction*. There must be consideration to support such an agreement. See *Cumber* v. *Wane*.

Account, Action of. At common law an action lay for not rendering a proper account of profits. A plaintiff may now endorse his writ, under Order III, r. 8, with a claim for an account.

Account Duty. The duty imposed in 1881 upon personal property above the value of £100 passing at death by way of *donatio mortis causa*, joint investment, voluntary settlement, or under a policy of insurance kept up for a donee, or passing by voluntary disposition within three years before death. Replaced by estate duty (*q.v.*).

Account on the footing of wilful default. The liability of a mortgagee in possession to account not only for the rents and profits he actually receives, but for those he would have received if he had used the greatest possible care. See White *v.* City of London Brewery (1889), 42 Ch. D. 237.

Account, Settled. A settled account is a statement in writing of the accounts between two parties, one of whom is under a duty to account to the other, which both of them have agreed to and accepted as correct. The plea of a settled account is a good defence to an action for an account, but the plaintiff may in reply allege error or fraud. Leave may be given to "surcharge and falsify," *i.e.*, add items in his favour which were omitted, and strike out items against him which were wrongly inserted. If fraud be proved the account will be set aside.

Account stated. An admission of a sum of money being due from one person to another, who are under no duty to account to each other, from which a promise to pay is implied by law; *e.g.*, an IOU. It is not necessarily binding: it may be shown to have been given in mistake, or for a debt for which the consideration has failed or was illegal.

Accountable Receipt. An acknowledgment of the receipt of money, or of any chattel, to be accounted for by the person receiving it.

Accountant-General. The officer of the Supreme Court in whom funds paid into Court are vested: the Clerk of the Crown (*q.v.*). (Judicature Act, 1925, s. 133).

Accounts, Falsification of. It is a misdemeanour when wilfully and fraudulently committed by a clerk or servant, or by a director or officer of a company (Larceny Act, 1916).

Accredit. To furnish a diplomatic agent with papers, called credentials or letters of credit, which certify his public character.

Accretion. I. A right is said to accrue when it vests in a person, especially when it does so gradually or without his active intervention, *e.g.*, by lapse of time, or by the determination of a preceding right.

II. When a fund or other property is increased by additions which take place in the ordinary course of nature or by operation of law, the additions are said to accrue either to the original fund or to the person entitled to it.

Accumulation. The continual increase of principal by the re-investment of interest. By the Accumulations Act, 1800 (the "Thellusson Act"), accumulation is restricted to (*a*) the life of the settlor and twenty-one years thereafter; (*b*) the duration of the minority of any person or persons living or *en ventre sa mère* at the death of the settlor; (*c*) the duration of the minority of any person or persons who would have been entitled to the income if of full age. If the purpose is the purchase of

land, then (*c*) is the only period admissible. The restrictions do not apply to accumulations for the payment of debts of the settlor, for raising portions for children, and in respect of the produce of timber or wood. See now, Law of Property Act, 1925, ss. 164-6; *Griffiths* v. *Vere*.

Acknowledgment. An admission in writing that a debt is due, or that some claim or liability is still in existence, which prevents the Statutes of Limitation from running.

Acknowledgment of Deeds. All deeds purporting to dispose of any estate or interest in the land of a woman married before January 1, 1883, or of her reversionary interest in personal property, must, unless she is entitled thereto for her separate use or her title thereto has accrued since that date, be executed by her husband, as well as by her, and must be acknowledged by her before a Judge or a commissioner appointed for the purpose, who examines her separately as to her knowledge of, and consent to, the contents of the deed, and endorses a memorandum as to the fact on the deed. Rendered unnecessary after 1925 by the Law of Property Act, 1925, s. 167.

Ackroyd v. Smithson ((1780), 1 Bro. C. C. 503). A direction for conversion in a will operates only for the purposes of the will, and on partial failure of the trusts of a will the property results to the person entitled to it as if there had been no direction to convert.

A testator directed his real estate to be sold and the proceeds divided amongst several legatees. Two of the legatees died in the lifetime of the testator. *Held*, that the undisposed-of proceeds resulted to the heir-at-law.

Acquiescence. Assent to an infringement of rights, either expressed, or implied from conduct.

Acquit. (1) To discharge from pecuniary liability; (2) To find a prisoner "not guilty."

Acquittal. Discharge from prosecution upon a verdict of not guilty, or on a successful plea of pardon or of *autrefois acquit* or *autrefois convict* (*q.v.*). Acquittal is a bar to any subsequent prosecution for the same offence.

Acquittance. A written acknowledgment of the payment of a sum of money or debt due.

Act of Bankruptcy. An act of a debtor on which a bankruptcy petition may be grounded. (Bankruptcy Act, 1914).

The acts of bankruptcy are summarised in Ringwood's Principles of Bankruptcy as follows:—

A. If in England or elsewhere a debtor makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally ..... (1)

B. If in England or elsewhere a debtor makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof ..... (2)

C. If in England or elsewhere a debtor makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would be void as a fraudulent preference if he were adjudged bankrupt ..... (3)

D. If with intent to defeat or delay his creditors he does any of the following things, namely,
departs out of England, or ..... (4)

being out of England remains out of England, or ..... (5)
departs from his dwelling-house, or ..... (6)
otherwise absents himself, or ..... (7)
begins to keep house ..... (8)

E. If execution levied against him by seizure of his goods and sale, or ..... (9)
held by sheriff for twenty-one days ..... (10)

F. If he files in the Court a declaration of his inability to pay his debts, or ..... (11)
presents a bankruptcy petition against himself ..... (12)

G. Non-compliance with the requirements of a bankruptcy notice ..... (13)

H. If the debtor gives notice to any of his creditors that he has suspended, or ..... (14)
that he is about to suspend payment of his debts ..... (15)

Section 107, sub-section 4. On a judgment summons in lieu of committal the Court may make a Receiving Order, in which case the debtor shall be deemed to have committed an act of bankruptcy ..... (16)

Act of God. An event which happens independently of human action; such as death from natural causes, storm, earthquake, etc. See *Nugent* v. *Smith*.

Act of Grace. An Act of Parliament giving a general and free pardon.

Act of Indemnity. An Act passed to legalise transactions which, when they took place, were illegal, or to exempt particular persons from pecuniary penalties or punishments for acts done in the public service which were breaches of the law; *e.g.*, the Indemnity Act, 1920.

Act of Parliament. The legislative decree of the King in Parliament; a statute.

There are the following kinds of Acts: Public General, Local, Personal, and Private.

Act of Settlement. The statute 12 & 13 Will. 3, c. 2, which enacted:—

(a) That after the death of William III and of the Princess Anne (afterwards Queen Anne) and in default of issue of either of them, the Crown should descend to Sophia, Electress of Hanover and the heirs of her body, being Protestants.

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

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

(d) That no pardon under the Great Seal of England should be pleadable to an impeachment (*q.v.*).

Act of State. An act done by the sovereign power of a country, or by its agent, acting within the scope of his authority. It cannot be made the subject of proceedings in a Court of law.

Act of Supremacy. The statute 1 Eliz. c. 1, passed in 1558 to establish the supremacy of the Crown in ecclesiastical matters.

Act of Uniformity. The statute 14 Car. 2, c. 4, passed in 1662 to regulate public worship.

Actio. An action, the right of suing before a Judge for what is due to one. Also proceedings, or a form of procedure, for the enforcement of such right. (Roman law.)

Actio Arbitraria. An action in which the formula directed the Judge, if he found the plaintiff's claim valid, to make an order that the defendant should make amends to the plaintiff, *e.g.*, give up the thing, at the same time fixing the sum that in all the circumstances the defendant ought to pay the plaintiff in case he should fail to make amends, as ordered. (Roman law.)

Actio bonae fidei. An equitable action the formula in which required the Judge to take into account considerations of what was fair and right as between the parties. (Roman law.)

Actio directa. An action based immediately on the very text of the law; opposed to *actio utilis.* Similarly, an action arising from an essential part of the execution of a contract, as *actio commodati directa*; opposed to *actio (commodati) contraria,* arising on the other side from facts that may or may not emerge in the execution of the contract. (Roman law.)

Actio hypothecaria (or **quasi-Serviana**). An action allowed in all cases where an owner retained possession, but agreed that his property should be a security for a debt. (Roman law.)

Actio in personam. A personal action, in which the plaintiff claims that the defendant ought to give or do or make good something to or for him. (Roman law.)

Actio in rem. A real action, in which the plaintiff claims that, as against all the world, the thing in dispute is his. (Roman law.)

Actio (in rem) confessoria. An action to try a right to a servitude, brought by the owner of the dominant land against the owner of the servient land. (Roman law.)

Actio (in rem) negativa. An action brought by the owner of the servient land, who alleges that his adversary is not entitled to a servitude which he is claiming; or that he himself is entitled to his land free from the servitude claimed by his adversary. (Roman law.)

Actio mixta. A mixed action. (1) An action with a view both to the recovery of a thing and to the enforcement of a penalty. (2) An action that is both real and personal, or rather that is entirely personal, but in one respect more or less similar to a real action; *e.g.*, *familiæ erciscundæ*, which involved the adjudication of particular things to the parties. (3) "Actions are mixed in which either party is plaintiff." (Roman law.)

Actio noxalis. An action brought against a master for delicts committed by his slave, or for damage done from wantonness, heat or savage nature, by his tame animals. The master could free himself from liability by delivering up the offending slave or animal to the person aggrieved. (Roman law.)

Actio personalis moritur cum persona. "A personal action dies with the person." This maxim is limited to actions of tort and does not apply to personal actions founded on contract, except breach of promise of marriage. It means that rights of action arising out of personal torts are in general destroyed by the death of either the injured

or the injuring party. But an action may be maintained by the personal representatives of a deceased person in respect of an injury to his property during his lifetime; and an action lies against him for wrongs committed by him in respect of his property. Under the Fatal Accidents Act, 1846 (Lord Campbell's Act), and the Workmen's Compensation Act, 1906, further exceptions to the general rule are made.

Actio præjudicialis. An action preliminary to proceedings with a view to ascertain a fact which it is necessary to establish before going on with the case; as whether a man is free or is a freedman, or is the son of his reputed father. (Roman law.)

Actio quod metus causa was open to a person who had alienated property or undertaken an obligation under the constraint of intimidation (*metus*) or violence (*vis*). (Roman law.)

Actio Serviana. An action which gave the landlord of a farm a right to take possession of the stock of his tenant for rent due, when the tenant had agreed that the stock should be a security for the rent. (Roman law.)

Actio stricti juris. An action of strict law, the formula in which limited the attention of the Judge to the purely legal considerations involved. (Roman law.)

Actio utilis. See *Utilis actio.*

Action. A civil proceeding commenced by writ or in such other manner as may be prescribed by rules of Court. It does not include a criminal proceeding by the Crown. (Judicature Act, 1925, s. 225.) Before the Judicature Acts, "action" generally meant a proceeding in one of the common law Courts, as opposed to a suit in equity. Actions were divided into real, personal, and mixed:—real (or feudal) actions being those for the specific recovery of lands or other realty; personal actions, those for the recovery of a debt, personal chattel, or damages; and mixed actions, those for the recovery of real property, together with damages for a wrong connected with it. By the Real Property Limitation Act, 1833, s. 36, most of the real and mixed actions were abolished.

Action in rem. An action in the Admiralty Court commenced by the arrest of the *res*, the ship. See *Admiralty Action.*

Action on the Case. The Statute of Westminster II, 13 Edw. 1, c. 24 (1288), enacted that when a writ was found in Chancery (where original writs were prepared for suitors by the clerks) but in a like case (*in consimili casu*), falling under the same right, and requiring the same remedy, no writ was to be found, the clerks should agree in making a new writ, or, if they could not agree, they were to refer the matter to Parliament. Any writ so framed was known as a writ in an action on the case. The term thus embraces a large number of actions not coming under specific heads such as trespass or libel. (See *Ratcliffe* v. *Evans.*) Damage must be proved in all actions on the case.

Action, Prejudicial. A proceeding so called because it had to be disposed of before the hearing of a pending action.

Actiones nominatae. The approved forms of writs. See *Action on the Case.*

Actions, Forms of, were abolished by the Judicature Acts. They were: (I) on contract; (*a*) covenant, being on a deed alone; (*b*) assumpsit, being on a simple contract only; (*c*) debt, being either

on a deed or on a simple contract; (*d*) *scire facias*, being on a judgment; (*e*) account; and (*f*) annuity; (II) in tort; (*g*) trespass, *quare clausum fregit*, to real property, and trespass, *de bonis asportatis*, to goods; (*h*) case; (*i*) trover; (*j*) detinue; and (*k*) replevin: and (III) the mixed action of ejectment.

Actor. A plaintiff, claimant, or demandant.

Actus non facit reum, nisi mens sit rea. The act itself does not constitute guilt unless done with a guilty intent. See *Intention*.

Ad colligenda bona. "To collect the goods." A form of grant of administration where the estate is of a perishable or precarious nature, and where regular administration cannot be granted at once.

Ad idem. See *consensus ad idem*.

Ad medium filum viae (or **aquae**). "To the middle line of the road or stream." The normal boundary of the lands separated by a road or river.

Ad melius inquirendum. A writ by which in certain cases a further inquisition or inquiry is directed, if the first has been unsatisfactory.

Ad quaestionem facti non respondent judices; ad quaestionem juris non respondent juratores. As regards cases tried by a Judge and jury, the Judge does not decide questions of fact and the jury do not decide questions of law.

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

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

Ad vitam aut culpam. An office held during the life of the officer or until he misconducts himself in such manner as to justify his removal.

Adams and the Kensington Vestry, Re (27 Ch. D. 394). The Court now leans against construing precatory words as trusts. A testator disposed of his property to his wife "in full confidence that she will do what is right as to the disposal thereof between my children, either in her lifetime or by will after her decease." *Held*, the widow took an absolute interest "unfettered by any trust in favour of the children."

Addison v. Gandassequi ((1812), 4 Taunt. 574). The defendant being abroad and desirous of purchasing certain goods, came to England and went to his agents, L. & Co. These agents purchased the goods for him from the plaintiffs, he selecting them, and the plaintiffs debited the agents, L. & Co., with the price. *Held*, that the plaintiffs could not now recover the price against defendant, having known who the principal was, and yet having debited the agents.

Address for Service. An address, not more than three miles from the Courts, where writs, notices, summonses, orders, etc., may be left.

Ademption. The complete or partial extinction or withholding of a legacy (but not of a devise of real estate) by some act of the testator during his life other than revocation by a testamentary instrument; *e.g.*, the sale of an object specifically bequeathed. Where a father or person *in loco parentis* provides a portion by his will and subsequently in his life makes or covenants to make another gift also amounting to a portion, the portion is adeemed.

Adfinitas, affinity, the relationship established by marriage between the husband and the kindred of his wife, and between the wife and the kindred of her husband. (Roman law.)

Adjective Law. So much of the law as relates to practice and procedure. (Bentham.)

Adjournment sine die. Putting off indefinitely.

Adjudication. 1. The order which declares a debtor to be bankrupt. 2. The decision of the Commissioners of Inland Revenue as to the liability of a document to stamp duty.

Adjunctio. A form of accession; the joining of materials belonging to one person with something belonging to another; *e.g.*, when one weaves another's purple into his own vestment. (Roman law.)

Adjustment. The operation of settling and ascertaining the amount which the assured, after allowances and deductions are made, is entitled to receive under a policy of marine insurance and of fixing the proportion which each underwriter is liable to pay. See *Average.*

Admeasurement of Dower. A writ formerly brought by an heir against the widow of an ancestor who was alleged to withhold more land for her dower than she was entitled to.

Admeasurement of Pasture. A writ formerly brought by one commoner against another commoner alleged to have put more beasts on the common than was lawful.

Administration involves three distinct duties—collection of the assets of a deceased person, payment of the debts, and distribution of the surplus to the persons beneficially entitled. The estate is usually administered by the executor out of Court, but it may be administered in the Chancery Division, in a County Court if the total value does not exceed £500, by the Public Trustee if the gross capital value is less than £1,000, and in Bankruptcy if the estate is insolvent. See *Assets.*

Administration Action. An action or matter in the Chancery Division to secure the due administration of the estate of a deceased person.

Administration Bond. The bond which must be given by a person to whom letters of administration are granted.

Administration, Letters of. See *Letters of Administration.*

Admiral or **Lord High Admiral.** An officer entrusted by the Crown with the charge of the seas. To naval were added judicial functions in the reign of Edward III, when the Court of the Admiral was established. The criminal jurisdiction of this Court was ultimately transferred to the Central Criminal Court and the Judges of Assize, and the civil jurisdiction of the Court, which became the High Court of Admiralty, was vested in 1875 in the Probate, Divorce and Admiralty Division of the High Court. The naval functions of the Lord High Admiral have, since 1827, been exercised by the commissioners for executing the office, *i.e.*, the Admiralty.

Admiralty Action. Every action which may be tried in the Admiralty Court, now the Probate, Divorce and Admiralty Division.

The Admiralty Court had exclusive jurisdiction as to salvage; life salvage; bottomry; necessaries supplied to foreign ships, and concurrent jurisdiction with the common law and Chancery Courts as regards collision and damage, etc. By the process *in rem* the property which had given rise to the action was arrested and held by the Court.

Admiralty, Droits of. When a state of war exists, enemy goods seized in English ports go to the Crown as *droits* of Admiralty. Formerly derelict ships and wreckage on the high seas were condemned as *droits* of Admiralty: they are now dealt with under the Merchant Shipping Acts.

Admission. A statement, oral, written or inferred from conduct, made by or on behalf of a party to a suit, and admissible in evidence, if relevant, as against his interest. They are either formal or informal. (1) Formal admissions for the purpose of the trial may be made on pleadings, on a notice to admit, in answer to interrogatories, or by solicitor or counsel. (2) Informal admissions may be made before or during the proceedings, either civil or criminal. See *Confession; Bessela* v. *Stern*.

Admittance. The lord of a manor was said to admit a person as tenant of copyhold lands forming part of the manor when he accepted him as tenant of those lands in place of the former tenant, *e.g.*, on the surrender, devise, or death intestate of the former tenant. Copyholds were abolished by the Law of Property Act, 1922, with effect as from January 1, 1926.

Adolescens. A person between the ages of puberty (14 in boys, 12 in girls) and majority (25). (Roman law.)

Adoptio. Adoption is the transfer of a person from the *potestas* of one man to that of another; (1) by imperial rescript, under which a man may adopt men or women *sui juris* (*adrogatio* (*q.v.*)); (2) by the authority of a magistrate, under which a man may adopt men or women *alieni juris*. (Roman law.)

Adoption. (1) Of a contract. The acceptance of it as binding, notwithstanding some defect which entitles the party to repudiate it. (2) Of children. Prior to the Adoption of Children Act, 1926 (16 & 17 Geo. 5, c. 29), the institution of adoption was unknown to English law. By that Act the High Court, the County Court, and a Court of Summary Jurisdiction is empowered on the application of any person desirous of adopting an infant who has never been married, to make an adoption order with the consent of the infant's parents or guardians (if any). Such order extinguishes the rights, duties, obligations and liabilities of parents or guardians of an adopted child as to its custody, maintenance and education, including the right to consent or dissent to its marriage, and vests them in the adopter, as though the adopted child had been born in wedlock to the adopter. The adopted child assumes the liability of a lawful child as to maintaining its parents, with regard to its adopted parents, and two spouses stand to an adopted child as its lawful father and mother. An applicant for an adoption order must not be under twenty-five years of age and must not be less than twenty-one years older than the infant, unless they are within the prohibited degrees of consanguinity.

Except in special cases, a sole male person cannot adopt a female infant. An Adopted Children's Register will be established by the Registrar-General.

Adoptive Act. An Act of Parliament which does not become operative until adopted by a public body or a particular number of voters; *e.g.*, the Public Libraries Acts, 1892—1901.

Adrogatio. The oldest form of adoption, applicable only in adoption of persons *sui juris*. Originally it took place under the sanction of the Pontifex, and in the *comitia curiata*, as an act of legislation; superseded under the empire by the imperial rescript. (Roman law.)

Adulteration. The mixing with any substance intended to be sold of any ingredient which is dangerous to health or which makes the substance something other than that as which it is sold or intended to be sold. It is an offence under the Sale of Food and Drugs Acts, 1875—1907.

Adultery. Sexual intercourse between a married man or married woman and any person other than his or her wife or husband. Adultery by either party is a ground for judicial separation or divorce. See *Divorce*.

Advancement, Equitable doctrine of. If a purchase or investment is made by a father, or person *in loco parentis*, in the name of a child, a presumption arises that it was intended as an advancement (that is, for the benefit of the child), so as to rebut what would otherwise be the ordinary presumption in such cases of a resulting trust in favour of the person who paid the money. The doctrine also applies to a purchase made in the name of a wife. See *Dyer* v. *Dyer*.

Advancement, Power of. The power generally given to trustees or guardians to apply, for the benefit of each child during its minority, part of the capital or share of the property to which it will become entitled on attaining twenty-one.

Adverse Possession. An occupation of land inconsistent with the right of the true owner.

If the adverse possession continues for a certain period of time, it produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property; and this although the true owner is ignorant of the adverse possessor being in occupation. See *Limitation, Statutes of*.

Advertisements, offering a reward for the return of stolen property and promising that no questions will be asked, constitute an offence under the Larceny Act, 1861, s. 102. The printer and publisher are also liable (Larceny Advertisements) Act, 1870). See also *Carlill* v. *Carbolic Smoke Ball Co.*

Advocate. One who pleads the cause of another in a judicial tribunal; barristers or solicitors. Formerly, a member of the College of Advocates, with the exclusive right of practising in the Ecclesiastical and Admiralty Courts. The College of Advocates was abolished by the Court of Probate Act, 1857.

Advocate, Crown. Formerly, the second law officer of the Crown in the Court of Admiralty.

Advocate, King's. Formerly the principal law officer of the Crown in the Admiralty and Ecclesiastical Courts.

Advocate, Lord. The chief law officer of the Crown in Scotland.

Advocates, Faculty of. The body which has the exclusive right of appointing advocates or members of the Scottish Bar.

Advow, Avow, or **Avouch.** To vouch; to call on the feudal lord to defend his tenant's right.

Advowson. The right of presentation to a church or benefice. It is real property. By the Benefices Act, 1898, the bishop may refuse to institute the appointed person if a sale of the advowson is made within the year prior to the occurrence of a vacancy, unless it can be proved that the sale was not made in the expectation of a probable vacancy. No transfer can be made within one year of an institution, and every transfer must be registered.

Advowson appendant. An advowson annexed to a manor.

Advowson in gross. An advowson belonging to a person, and not annexed to a manor.

Aedificatio solo, solo cedit. What is built on the land is to be regarded as having become part of the land.

Aequitas. Equity (*q.v.*).

Affidavit. A written statement in the name of a person, called the deponent, by whom it is voluntarily signed and sworn to or affirmed. It is usually made in an action or other judicial proceeding.

Affidavit of Debt and Danger. An affidavit which must be filed in order to obtain an immediate extent (*q.v.*) against a debtor to the Crown.

Affidavit of Discovery or Documents. An affidavit of the documents in a party's possession or power relating to the matters in question in an action. See Order XXXI.

Affidavit of Finding. Made when a will has been mislaid and then found.

Affidavit of Increase. An affidavit of extra expenses incurred which do not appear upon the face of the proceedings, *e.g.*, counsel's fees.

Affidavit of Means. An affidavit that a person sought to be committed for non-payment of a judgment debt has the means to pay it.

Affidavit of Plight and Condition. An affidavit stating that a will is in the same state as when found or executed.

Affidavit of Script. An affidavit stating whether or not any script is in the possession of a party to a testamentary cause in the Probate Division. See *Script.*

Affidavit of Service. An affidavit of service of a writ or notice.

Affiliation Order. An order that a man adjudged by a Court of summary jurisdiction to be the father of the bastard child of a single woman, or married woman living apart from her husband, shall pay a weekly sum for the maintenance of the child.

Affirm. (1) To elect to abide by a voidable contract; (2) to uphold a judgment; (3) to be allowed to give evidence without taking the oath.

Affirmanti non neganti incumbit probatio. The burden of proof is upon him who affirms, not upon him who denies.

Affray. A common law misdemeanour which consists of the fighting

of two or more persons in a public place to the terror of His Majesty's subjects.

Agent. A person employed to act on behalf of another. An act of an agent, done within the scope of his authority, binds his principal. There are four kinds of agents:—

(1) *Universal.*—Appointed to act for the principal in all matters, *e.g.*, where a party gives another a universal power of attorney.

(2) *General.*—Appointed to act in transactions of a class, *e.g.*, a banker, solicitor. The scope of authority of such agent is the authority usually possessed by such agents, unless notice is given to third parties of some limitation.

(3) *Special.*—Appointed for one particular purpose. The agent's scope of authority is the actual authority given him.

(4) *Agent of necessity.*—A person who in urgent circumstances acts for the benefit of another, there being no opportunity of communicating with that other. See *G.N.R. Co.* v. *Swaffield.*

See *Del Credere Agent; Factor; Yonge* v. *Toynbee; Collen* v. *Wright; Keighley Maxsted* v. *Durant; Kelner* v. *Baxter.*

Aggravated Assault. An assault upon a child or woman of an "aggravated nature." (Section 43, Offences against the Person Act, 1861.)

Aggravation, Matter of. Matter in pleadings which only tends to increase the amount of damages and does not itself constitute a ground for action.

Agistment. Where a person takes in and feeds or depastures horses, cattle or similar animals upon his land for reward. An agister is therefore, a bailee for reward, and is liable for damage to the cattle if he uses less than ordinary diligence.

Agnati. Kinsmen related through males: persons who are so related to a common ancestor that, if they had been alive together with him, they would have been under his *potestas.* (Roman law.)

Agra Bank, Ltd. v. Barry ((1874), L. R. 7 H. L. 135). *Held,* that non-production of title deeds, where a reasonable excuse was given, did not amount to constructive notice of a prior encumbrance.

Agreement. The concurrence of two or more persons in affecting or altering their rights and duties. "An agreement is an act in the law whereby two or more persons declare their consent as to any act or thing to be done or forborne by some or one of those persons for the use of the others or other of them. Such declaration may take place by (*a*) the concurrence of the parties in a spoken or written form of words as expressing their common intention, (*b*) an offer made by some one of them and accepted by the others or other of them" (Pollock).

"The requisites of an agreement are: two or more persons, a distinct intention common to both, known to both, referring to legal relations and affecting the parties" (Anson). See *Contract.*

Agricultural Holdings Act, 1923. The consolidating Act which entitles the tenant of an agricultural holding to compensation for improvements, disturbance, etc., and to twelve months' notice to quit.

Agriculture and Fisheries, Ministry of. Created by the Ministry of Agriculture and Fisheries Act, 1919. Formerly the Board of Agriculture.

Aid by Verdict. Defects in the old common law pleadings, if not

demurred, could not be objected to after verdict, unless of a very serious kind. They were said to be aided or cured by the verdict.

Aids. Payments from feudal tenants to their lords for:—(1) Ransoming the lord's body. (2) Knighting the lord's eldest son. (3) Marrying the lord's eldest daughter. Abolished by 12 Car. 2, c. 24.

Air. The enjoyment of air is a natural right, but there is no absolute right in the owner of land to the enjoyment of an uninterrupted passage of air over the land of another, but the right to a defined current of air can be acquired as an easement (*q.v.*).

Pollution of air by another may be restrained, unless an easement has been acquired by such other. See *Webb* v. *Bird*.

Air Council. The authority which controls the Air Forces of the Crown. Created by the Air Force (Constitution) Act, 1917.

Alba firma. White rents: quit rents payable in silver or white money, in contradistinction to "black rents," *i.e.*, reserved in work, grain, etc.

Alderman (originally Ealdorman (*q.v.*)). A senior member of the governing body of a city, borough or county.

Aleatory Contract. A wagering contract.

Alexander v. Alexander ((1755), 2 Ves. 640). *Held*, that the exercise of a power may be good in part, and bad in part, the excess only being void.

Aleyn v. Belchier ((1758), 1 Eden, 132). A power of jointuring was executed in favour of a wife, but with an agreement that the wife should only receive a part as an annuity for her own benefit, and that the residue should be applied to the payment of the husband's debts. *Held*, that this was a fraud upon the power, and the execution was set aside, except so far as related to the annuity.

Alias (Alius dictus, otherwise called). A false name.

Alias Writ. A second writ, issued after a former one had proved ineffectual.

Alibi (elsewhere). A defence where an accused alleges that at the time when the offence with which he is charged was committed, he was elsewhere.

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

The immigration of aliens is regulated by the Alien Restriction Acts, 1914, 1919.

Alien ami or friend. The subject of a foreign State with which this country is at peace.

Alien enemy. The subject of a foreign State with which this country is at war. Also a person (1) in the military or naval service of the enemy, (2) in the enemy navigation, or identified with the enemy by the grant of exceptional trading facilities, (3) domiciled or resident and carrying on trade in enemy territory. See *Porter* v. *Freudenberg; Daimler Co.* v. *Continental Tyre Co.*

Alienage, Declaration of. A declaration by a British subject that

he abandons his status as such. (The British Nationality and Status of Aliens Act, 1914, ss. 14, 15.)

Alienation. The power of the owner or tenant to dispose of his interest in real or personal property. Alienation may be voluntary, *e.g.*, by conveyance or will; or involuntary, *e.g.*, seizure under a judgment order for debt.

Alienation in Mortmain. The alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal. See *Mortmain*.

Alieni juris. A person under *potestas manus* or *mancipium*. (Roman law.)

Alimony. That allowance which is made to a woman for her support out of her husband's estate under a sentence of divorce or of judicial separation. It may also be ordered during the pendency of the suit: alimony *pendente lite*.

Alio intuitu. With a motive other than the ostensible and proper one.

Aliquis non debet esse judex in propria causa quia non potest esse judex et pars. No man ought to be a judge in his own cause, because he cannot act as a judge and at the same time be a party.

Aliter. Otherwise.

Allcard v. Skinner (36 Ch. D. 145). "Delay defeats equities." The plaintiff A, of full age, was introduced by her spiritual adviser to the defendant S, the superior of a sisterhood. A became a professed member of the society in 1871. She left in 1879. During that time she made over £5,000 to S for the purposes of the society. In 1885 she claimed the return of the money. *Held*, that although no deception, unfair advantage or pressure other than that of the rules or vows had been brought to bear, the gift could have been set aside on the ground of undue influence, but by the plaintiff's conduct after she was free from all influence, she had confirmed the gift, and lapse of time barred any relief.

Allegans contraria non est audiendus. He who makes statements mutually inconsistent is not to be listened to.

Allegans suam turpitudinem non est audiendus. A person alleging his own infamy is not to be heard.

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

Allegiance. The tie which binds the subject to the King in return for that protection which the King affords the subject. It consists in a true and faithful obedience.

Local allegiance is the allegiance owed by every alien only so long as he continues within the dominions of the English Crown.

Allen v. Flood ([1898] A. C. 1). To induce a party, by means which are not unlawful, lawfully to terminate a contract with another does not give such other a cause of action, and the fact that the party so inducing is actuated by malice is immaterial. The respondents were employed by the Glengall Iron Co. in repairing the woodwork of a ship, having been formerly employed on ironwork. The appellant, the London delegate of the Boilermakers' Society, informed the iron company that, unless the respondents were discharged, all the members of the Boilermakers' Society would be "called out" or "knock off" work. The respondents were discharged with proper notice. *Held*, no action

would lie against the appellant as he had merely caused the lawful termination of a contract by means which were not unlawful, *i.e.* were neither fraudulent nor threatening.

Allocation. Appropriation of a fund to particular persons or purposes.

Allocatur. The certificate of the taxing master.

Allocutus. The demand of the Court to a prisoner convicted of treason or felony on indictment as to what he has to say why the Court should not proceed to judgment against him.

Allodium. Lands not held of any lord or superior, in which, therefore, the owner has an absolute property and not a mere estate.

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

Allotment. (1) The allocation or appropriation of property to a specific person (or persons) called the "allottee," *e.g.*, the partition of land held jointly among the several owners, or the allocation of shares in a company to applicants. (2) Small holdings allotted to the labouring poor.

Alluvio (Alluvion). An imperceptibly gradual deposit of soil from a river or the sea. (Roman law.)

Alteration. An erasure or addition. A material alteration of an instrument, *e.g.*, an alteration of the date of a bill of exchange whereby payment would be accelerated, invalidates the instrument. Alterations in deeds are presumed to have been made before execution, in wills, after.

Alternative Counts. An indictment may be divided into separate clauses, known as counts; and in each count a separate offence may be charged. (The Indictments Act, 1915.)

Amalgamation. Where two incorporated companies or societies become united by merger. (See Companies (Consolidation) Act, 1908, s. 192.)

Ambassadors. Diplomatic agents residing in a foreign country as representatives of the States by whom they are despatched. See *Exterritoriality.*

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

Ambiguitas verborum patens nulla verificatione excluditur. A patent ambiguity in the words of a written instrument cannot be cleared up by evidence extrinsic to the instrument.

Ambiguity. A double meaning. A patent ambiguity is one which is apparent on the face of the instrument, as where a blank is left. A latent ambiguity is one, not apparent on the face of the instrument, as where a testator bequeaths property to his cousin John Jones, and it is proved that he had two cousins so named. See *Ambiguitas verborum, etc.*

Amendment. The correction of some error or omission, or the curing of some defect, in judicial proceedings. In criminal proceedings, the amendment of indictments is now governed by the Indictments Act,

1915. In civil proceedings in the High Court "the Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his endorsement or pleadings, in such manner and on such terms as may be just." A statement or a counterclaim or set-off may be amended once without leave. (Order XXVIII, r. 1.) In County Courts the Judge is given wide powers of amendment under the County Courts Act, 1888, s. 87.

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

Amerciament or **Amercement.** A pecuniary punishment for an offence in respect of which the offender stood in the court of his lord, whether the King or a subject, at the mercy (*a merci, in misericordia*) of the lord. Except where the Courts were restrained by custom or legislation, an amerciament was entirely in the discretion of the Court, while a fine was fixed and certain.

Amicus Curiae. A friend of the Court. A person who calls the attention of the Court to some point of law or fact which would appear to have been overlooked.

Amnesty. A pardon for offences granted by an Act of Parliament which is originated by the Crown instead of by the House of Commons.

Amortisation. (1) The alienation of lands in mortmain. (2) Paying off the bonds, stock, etc., of a State or corporation.

Amotion. Removal from office.

Amoveas manus. A writ issuing from the King's Bench Division and commanding the restitution to a person of property belonging to him which is in the possession of the Crown.

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

Ancaster (Duke of) v. Mayer ((1785), 1 Bro. C. C. 454). *Held*, that the general personal estate is primarily liable to the payment of the debts of the testator, unless exempted by express words or by necessary implication.

Ancestor. Any person from whom real property is inherited.

Ancient Demesne. The manors which were in the actual possession of the Crown during the reigns of Edward the Confessor and William the Conqueror, and which in Domesday (*q.v.*) are styled *terrae regis* or *terrae regis Eduardi*.

The tenants in ancient demesne originally could sue or be sued on questions affecting their lands only in the Court of Common Pleas or the Court of Ancient Demesne of the manor.

Ancient Lights. The right of access of light to any building, actually enjoyed for the full period of twenty years without interruption, when the right becomes absolute and indefeasible, unless enjoyed under some express grant. (Prescription Act, 1833, s. 3.)

Ancients. The former name of the older barristers of an Inn of Court.

Anderson v. Gorrie ([1895] 1 Q. B. 668). *Held*, that no action will lie against a Judge of a superior Court of record in respect of acts done by him in his judicial capacity, even if such acts are done maliciously.

Angary, Right of. The right of a State, whether belligerent or neutral, in time of war or peace to requisition the neutral property found within its protection. (2 Pitt Cobbett, 384.)

Animals. (1) *Domitae naturae* or *mansuetae naturae*. Animals of a

tame or domesticated nature, *e.g.*, horses and cattle. The owner is not liable for any injury they may do when lawfully upon a highway unless he is negligent. If, however, they are trespassing the owner is liable for the ordinary consequences of such a trespass, *i.e.*, for such damage as the animal may from its nature be expected to do, and he is not liable for the vicious acts of an animal of an ordinarily quiet nature unless he knew that it was vicious. (1 Sm. L. C. 922.)

But the owner of a dog is liable for damage to horses, cattle, etc., without proof of knowledge of viciousness. (Dogs Act, 1906.)

(2) *Ferae naturae.* Animals of a wild nature, *e.g.*, lions, deer. The owner keeps them at his peril and is liable for any injury which they may do, unless the person to whom injury is done brings it on himself. (1 Sm. L. C. 923.) There can be no more than a qualified ownership in animals *ferae naturae*, *i.e.*, only so long as they are in possession. They could not be the subject of larceny at common law; but see now the Larceny Act, 1916, s. 1, sub-s. 3. See *Cox* v. *Burbidge; Ellis* v. *Loftus Iron Co.; May* v. *Burdett.*

Animus et factum. The combination of the intention with the act.

Animus furandi. The intention of stealing necessary to constitute the offence of larceny.

Animus manendi. The intention of remaining. One of the necessary elements of domicil (*q.v.*).

Animus quo. The intention with which.

Animus revertendi. The intention of returning. Animals accustomed to go and return—*e.g.*, pigeons in a dovecote—continue the property of their owner until they lose the *animus revertendi.*

Animus revocandi. The intention of revoking, *e.g.*, a will.

Animus testandi. The intention of making a will.

Annates. Synonymous with first fruits or *primitiae*, the first year's whole profits of every spiritual preferment; originally payable to the Pope, then by the statute 26 Hen. 8, c. 3, to the Crown, and from 1703 to the Commissioners of Queen Anne's Bounty (*q.v.*). By the First Fruits and Tenths Measure, 1926 (c. 5), as from July 16, 1926, first fruits and tenths are either extinguished or provision is made for their redemption.

Annuity. A yearly payment of a certain sum of money. If charged on real estate it is commonly called a rentcharge.

Annul. To deprive a judicial proceeding of its operation, either retrospectively or only as to future transactions.

Annus, dies et vastum. Year, day and waste (*q.v.*).

Answer. The former equivalent of the "Statement of Defence." See *Defence.*

Ante litem motam. Before litigation was in contemplation. See *Lis Mota.*

Antenatus. A child born before the marriage of its parents.

Anticipation. The act of assigning, charging or otherwise dealing with income before it becomes due. A clause restraining anticipation is generally introduced into a settlement of property on a woman, in order to protect her from the influence of her husband by preventing her from depriving herself of the benefit of the future income.

Antiqua Statuta or **Vetera Statuta.** Old statutes passed before the reign of Edward III.

Apostasy. The total renunciation of Christianity by one who has been educated in or professed that faith within this realm. It is punishable under 9 Will. 3, c. 35.

Appeal. Any proceeding taken to rectify an erroneous decision of a Court by bringing it before a higher Court.

Every appeal from a judgment or order of the High Court to the Court of Appeal is in the nature of a rehearing, and is brought by a simple motion in the Court of Appeal. Appeals can also be brought on interlocutory proceedings in chambers to the Judge in chambers. In the King's Bench Division, an appeal lies from the Judge in chambers to the Divisional Court, and thence to the Court of Appeal, while, in the Chancery Division, the Judge in chambers may either direct the matter to be argued before him in Court (after which an appeal lies to the Court of Appeal) or may give leave to appeal direct to the Court of Appeal. In matters of practice and procedure every appeal from a Judge shall be to the Court of Appeal. See the Judicature Act, 1925, ss. 30-32.

Appeal of Felony. An accusation of felony made by one person against another. The person charged had the right to trial by battle, which took place between him and the accuser, the combatants being each armed with a leather shield and a cudgel forty-five inches long, and having to fight for a day, or until one of them gave in. Clerks, infants, and those over sixty years of age were from the first allowed to employ "champions," who fought in their stead; and subsequently the right to employ champions was extended to all litigants.

The statute 59 Geo. 3, c. 46, abolished all appeals of felony and trials by battle.

Appearance. Entering an appearance is a formal step taken by a defendant to an action after he has been served with the writ of summons: its object is to intimate to the plaintiff that the defendant intends to contest his claim; or, in a friendly action, to take part in the proceedings.

Appearance is effected by delivering to the proper officer of the Court a memorandum giving the title of the action, stating that the defendant appears in person or by his solicitor, as the case may be, giving the address of himself or his solicitor and also a duplicate memorandum for sealing, and by, on the same day, giving notice of his appearance to the plaintiff. (Order XII.)

Appendant and **Appurtenant.** Incorporeal hereditaments are either appendant or appurtenant. They are appendant if they arose originally because the land over which they are enjoyed, and the land to which they are annexed, formed part of the same manor, *e.g.*, a right of common of pasture. They are appurtenant if they arose by express grant or by prescription.

Apply, Liberty to. A direction by a Judge or Master enabling parties to come to the Court again without taking out another summons.

Appointment, Power of. A power, given by deed or will, to appoint a person or persons, to take an estate or interest in property, whether real or personal.

An appointment takes effect as if the estate limited by the power had been created by the instrument which conferred the power. See *Power.*

Apportionment. Division in proportion; the assignment of a share. At common law, where the owner of land died between two dates of payment of rent, the rent was not divisible and the executors of the deceased owner were not entitled to any rent for the broken period. The rent was either not payable, or went to the reversioner. This rule was altered by the Apportionment Act, 1870, which enacted that all rents, annuities, dividends, and other periodical payments in the nature of income should, like interest on money lent, be considered as accruing from day to day, and should be apportionable accordingly.

Apportionment of Contract. The division of a contract into several distinct acts, the performance of one or more of which may give the right to enforce the contract to that extent against the other party.

Apprentice. One who binds himself to serve and learn for a definite time from a master, who on his side covenants to teach his trade or calling. See *Clements* v. *L. & N.W. Ry. Co.*

Apprenticii ad Legem. Apprentices to the law; junior barristers.

Appropriation. Making a thing the property of a person. (*a*) The setting apart of goods or moneys out of a larger quantity, as the property of a particular person, *e.g.*, appropriating goods to a contract. (*b*) Appropriation by a personal representative is the application of the property of the deceased in its actual condition in satisfaction of a legacy. (See section 41, Administration of Estates Act, 1925.) (*c*) Appropriation of payments to debts. Where a debtor owes more than one debt to a creditor any payment made can be applied in extinction of any of the debts at the option of the debtor. (See *Clayton's Case.*) (*d*) Appropriation of supplies is the legalisation of the expenditure of public money by means of the annual Appropriation Act.

Approvement. The inclosure of part of a common by the lord of the manor, sufficient being left for the commoners.

Approver. One who, when indicted and arraigned for treason or felony, confessed, before pleading, the charge against him, took an oath to reveal all treasons and felonies within his knowledge, and accused his accomplices.

Aquae et ignis interdictio. The forbidding one the use of fire and water; an indirect mode of depriving one of citizenship. (Roman law.)

Arbitration. The determination of disputes by the decision of one or more persons called arbitrators. Practically every question which might be determined by civil action may be referred to arbitration. Commercial matters are commonly referred to arbitration.

An agreement to refer a dispute to arbitration is called a submission, and if legal proceedings are instituted in contravention of the submission the defendant may, but only before delivering pleadings or taking any other step in the proceedings, apply to the Court to stay them. The decision of an arbitrator is called an award, which can be appealed against to the High Court on the ground of mistake in law. A valid award can be enforced by legal process. (See the Arbitration Act, 1889.)

Archbishop. The chief of the clergy within his province; the Primate. The two archbishops, of Canterbury and of York, are spiritual lords of Parliament.

Arguendo. In the course of his argument.

Argumentative Affidavit. An affidavit which contains arguments as to the bearing of facts on the matter in dispute.

Argumentative plea. A pleading which states a material fact by inference only.

Armistice. A temporary but total suspension of hostilities by agreement between the Governments of the belligerents. A truce is a suspension of hostilities arranged by military commanders in the field.

Armory v. Delamirie ((1722), 1 Strange, 504). Bare possession is sufficient title against a wrongdoer. The plaintiff, a chimney-sweeper's boy, having found a locket set with precious stones, took it to the defendant's shop, a goldsmith's, to know what it was worth. The assistant took the stones out and offered three-halfpence, which the plaintiff refused to take, and demanded the return of the stones, which was refused. The plaintiff sued in trover. *Held,* he was entitled to recover. As to the value of the jewel, unless the defendant did produce it, they should presume against him that it was of the first water, for *omnia præsumuntur contra spoliatorem* (*q.v.*).

Army Council. The body, created by letters patent in 1904, which administers the Army. The Secretary of State for War is its president.

Arraign. To call a prisoner to the bar of the Court to answer the matter charged against him in an indictment.

Arrangements, Deeds of. A man who is unable to pay his debts may arrange with his creditors, either privately or in the Bankruptcy Court, for discharge of his liabilities by partial payment. If he arranges privately, he must conform with the Deeds of Bankruptcy Act, 1914; if in Court, he is subject to the Bankruptcy Act, 1914.

Array, Challenge to. An objection to the persons empanelled on a jury on account of partiality or default of the sheriff who arrayed the panel.

Array, Commission of. Writs issued under the Assize of Arms, 1181, to impress men for military service for defence of the realm.

Arrest. To arrest a person is to deprive him of his liberty by some lawful authority. (*a*) Arrest on mesne process was to compel the defendant to appear in an action. (*b*) Arrest on final process was a mode of execution or enforcing judgment by means of the writ *a capias ad satisfaciendum.* (*c*) A ship or cargo may be arrested in Admiralty actions *in rem* by obtaining a warrant from the Admiralty Marshal.

A peace officer may arrest for felony on reasonable suspicion, but a private person may only arrest if a felony has actually been committed. For misdemeanours a warrant of arrest is usually required.

Arrest of Judgment. In criminal cases the accused may at any time between conviction and sentence move that judgment be not pronounced because of some technical defect in the indictment.

Arson. The felony of setting fire to a house or other building; punishable under the Malicious Damage Act, 1861.

Articled Clerk. A clerk under articles of an agreement to serve a solicitor in consideration of being initiated into the profession.

Articles. Clauses of a document; hence the word "articles" sometimes means the document itself, *e.g.*, articles of agreement, articles of partnership, etc.

Articles of Association. See *Association, Articles of.*

Articles of the Peace. The complaint on oath of a person that he

fears, with reasonable cause, that another person will do or cause to be done bodily harm to him or to his wife or child or burn his house; and the Court, if satisfied that there are reasonable grounds of fear, is bound to require sureties for the peace.

Articles of War. The rules for the government of troops on active service issued under the prerogative of the Crown, prior to the Mutiny Act, 1803. See *Military Law.*

Articuli super Chartas. The statute 28 Edw. 1, confirming Magna Charta and the *Charta de Foresta.*

Artificial Person. An association, *e.g.*, a corporation or company, which is invested by law with personality.

Ashbury Carriage Co. v. Riche ((1875), L. R. 7 H. L. 653). A company incorporated under the Companies Acts can only make such contracts as are expressly or by necessary implication authorised by the memorandum, and the shareholders cannot by ratification make any other contract valid The objects of the company according to the memorandum were to make, in the main, railway rolling stock. *Held,* a contract to build a railway was *ultra vires.*

Ashby v. White ((1704), 2 Ld. Raymond, 938). If a legal right is infringed an action will lie, even though no damage is caused. The plaintiff, being duly qualified, had tendered his vote in an election of burgesses for Parliament, and this had been refused by the defendants as returning officers. Although the candidates for whom he would have voted were duly elected, the plaintiff brought an action and obtained a verdict. On motion in the Queen's Bench in arrest of judgment on the ground that the action did not lie, judgment was given for the defendants, Holt, C.J., dissenting. Upon a writ of error in the House of Lords this was reversed on the grounds set forth by Holt, C.J., in the Court below. *Held,* that an action will lie against a returning officer for refusing the vote of a duly qualified person, and that the refusal is an injury though it be without any special damage.

Asportavit. "Did carry away." Formerly an essential allegation in an indictment for larceny at common law.

Assault. The unlawful laying of hands on another person, or an attempt or offer to do a corporal hurt to another, coupled with an apparent present ability and intention to do the act. No mere words can in any case amount to an assault. (Stephen's Digest of the Criminal Law.) Assault is both a tort and a crime punishable under the Offences against the Person Act, 1861. Common assaults may be dealt with by Courts of summary jurisdiction; the more serious forms of assault are indictable offences. See *Battery; Cockcroft* v. *Smith.*

Assay. The testing of the quality of an article, *e.g.*, bread or silver, or the accuracy of weights and measures.

Assembly, Unlawful. See *Unlawful Assembly.*

Assent of Executor. The title of a legatee or devisee is not complete until the executor has assented to the legacy or devise. "An assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given and shall operate to vest in that person the legal estate to which it relates . . ." (Section 36, sub-section 4, Administration of Estates Act, 1925.)

Assessor. One who assists the Court in trying a scientific or

technical question, but who has no voice in the decision. *E.g.*, Brethren of Trinity House may sit as assessors in the Admiralty Court, and the Bishops in the Judicial Committee of the Privy Council in ecclesiastical appeals.

Assets. Property available for the payment of debts.

Real assets are real property, and personal assets are personal property. Legal assets comprise everything which an executor takes by virtue of his office, and with which he would have been charged in an action at law. Equitable assets are such as could only be reached in a Court of equity.

From January 1, 1926, the rule is that real and personal estate, whether legal or equitable, of a deceased person, together with property over which a general power of appointment is exercised by will, are assets for payment of debts whether by simple contract or specialty. (Section 32, Administration of Estates Act, 1925.)

Realty did not vest in the personal representatives of the deceased at common law, and was not liable for debts. Personalty only was available to the creditors for the payment of debts. But if realty had been devised upon trust to pay debts, or charged with the payment of debts, then it was available in equity by means of a suit for administration. The Administration of Estates Act, 1833, made all realty available in equity, and Part I of the Land Transfer Act, 1897, vested the realty in the personal representatives. After 1925 the Administration of Estates Act, 1925, replaces these enactments.

Assets, Administration of. The order in which the assets of the deceased are applied in payment of debts, where the estate is solvent, is, after 1925 (subject to directions in the will)—

(1) Property undisposed of by will.
(2) Property not specifically devised or bequeathed, but included in a residuary gift.
(3) Property specifically appropriated or devised or bequeathed for the payment of debts.
(4) Property charged with the payment of debts.
(5) The fund retained to meet pecuniary legacies.
(6) Property specifically devised or bequeathed.
(7) Property appointed by will under a general power. (Administration of Estates Act, 1925, s. 34, Sched. I, Part II.)

Where the assets are insufficient for the payment of debts, *i.e.*, where the estate is insolvent, the debts are payable out of the proceeds of the assets in the following order, after 1925 (*i.e.*, subject to bankruptcy rules)—

(1) Funeral, testamentary and administration expenses.
(2) Debts preferred by special statutes, *e.g.*, Friendly Societies Acts.
(3) (*a*) Rates and taxes.
(*b*) Wages of a clerk or servant up to £50.
(*c*) Wages of a workman up to £25.
(*d*) The amount of any workman's compensation.
(*e*) National Health or Unemployment Insurance contributions.
(4) All other debts *pari passu*, except:
(5) Debts deferred by particular statutes, *e.g.*, Partnership Act,

1890. (Administration of Estates Act, 1925, s. 34, Sched. I, Part 1.)

Assets by descent. Land which descended to an heir charged with the debts of his ancestor. The heir was liable for specialty debts in which he was bound, to the extent of the assets descending.

Assets, Marshalling of. See *Marshalling.*

Assign. (1) To transfer property to. (2) An assignee.

Assignatus utitur jure auctoris. An assignee is clothed with the right of his principal.

Assignee. A person to whom an assignment is made. A creditor's assignee was the equivalent of the modern trustee in bankruptcy.

Assignment of Action or Matter. Under Order IX, r. 5, every action or matter in the Chancery Division is assigned by ballot to one of the Judges of that Division. But those Judges have been divided into pairs, and by Order IX, each Judge of each pair has full jurisdiction over every cause or matter which has been assigned to the other Judge of the pair.

Assignment of Choses in Action. Choses in action were not assignable at common law, but choses in action, both legal and equitable, were assignable in equity. If the chose in action were legal, the assignee could only sue in the name of the assignor, but if equitable he could sue in his own name.

Negotiable instruments became assignable by the law merchant, and policies of insurance by statute. By the Judicature Act, 1873, s. 25, all legal choses in action were made assignable by law. Now by the Law of Property Act, 1925, s. 136, (1) " Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any legal thing in action, of which express notice in writing has been given to the debtor, trustee, . . . is effectual in law (subject to equities having priority over the right of the assignee) to transfer from the date of such notice: (*a*) the legal right to such debt or thing in action; (*b*) all legal and other remedies for the same; and (*c*) the power to give a good discharge for the same without the concurrence of the assignor." (2) Provided that the debtor, trustee, etc., may call upon conflicting claimants to interplead or pay into Court.

But an assignment may still operate in equity, when the assignor must be made a party to the action, and equitable choses in action are unaffected.

Assignment of Dower. Before a widow could take possession of any of her husband's land as tenant in dower her part had to be assigned to her, either by agreement between her and the heir, or by the sheriff in execution of a judgment obtained by her.

Assisa cadera. A non-suit.

Assistance, Writ of. Issued under Order LXXII, r. 2, for the purpose of putting a receiver into possession of specific chattels, such as securities or documents.

Assize. A sitting or session of a Court of justice; later, the enactments of such a Court.

An assize passed in the reign of Henry II provided for the trial of questions of seisin and title to land by a recognition or inquiry of sixteen men sworn to speak the truth, called the Grand Assize. Hence

the proceedings, and the jurors themselves, became known as the assizes.

Magna Charta provided that assizes of novel disseisin and mort d'ancestor should be taken only in the shires where the land lay, and for this purpose justices were sent into the country once a year; hence they were called justices of assize. Afterwards, the Statute of Nisi Prius (13 Edw. 1, c. 30) enacted that the justices of assize should try the issues in ordinary actions in the counties in which they arose and return the verdict to the Court at Westminster. In addition, criminal matters are tried at assizes under commissions of oyer and terminer, gaol delivery and the peace.

The assize Judges are called commissioners of assize, and are appointed by the Crown by Letters Patent (Judicature Act, 1925, s. 70).

Assize of Darrein Presentment. (Last presentation.) A real action which lay where a man (or his ancestor under whom he claimed) had presented a clerk to a benefice, who was instituted, and afterwards, upon the next avoidance, a stranger presented a clerk, and thereby disturbed the real patron.

Assize of Mort d'Ancestor. A real action which lay to recover land of which a person had been deprived on the death of his ancestor by the abatement or intrusion of a stranger.

Assize of Novel Disseisin. A real action which lay to recover land of which a person had been recently disseised.

Assize, Petty. The assizes of darrein presentment, mort d'ancestor, novel disseisin, and utrum. Abolished by the Real Property Limitation Act, 1833.

Assize Rents. Fixed and certain rents.

Assize Utrum. A real action for trying the question whether land was a lay fee or held in frankalmoign.

Associates. Officers of the common law Courts, who were appointed by and held office at the pleasure of the Chief Justice or Chief Baron of each Court, and whose duties were to keep the records of the Court, to attend Nisi Prius sittings, make out the list of cases, conduct the jury ballot, note the judgment, make up the *postea* (or certificate of the result of trial) and deliver the record to the proper party.

By the Supreme Court of Judicature (Officers) Act, 1879, the associates were made masters of the Supreme Court.

Association, Articles of. Regulations for the management and internal arrangement of a company. The Companies (Consolidation) Act, 1908, gives in Table A a specimen set of articles applicable to the case of a company limited by shares.

Association, Memorandum of. Seven or more persons (or, for a private company, two or more persons) may by subscribing their names to a memorandum and otherwise complying with the statutory requirements as to registration, form an incorporated company with or without limited liability (Companies (Consolidation) Act, 1908, s. 2). The memorandum must state (*a*) its name, (*b*) the situation of the registered office, (*c*) its objects; and every subscriber must subscribe it with the number of shares he takes. The memorandum cannot be varied by the company itself, except in special circumstances.

Assumpsit. "He promised" or "undertook." It was a common law action which grew out of the action of trespass on the case. It was

brought for the breach of an undertaking, a cause of action analagous to deceit. It gradually supplanted the action of debt and came into general use for the enforcement of an agreement not under seal (a simple contract), and for which an action of covenant would not therefore lie.

Actions of assumpsit were divided into *indebitatus* (common or money counts) and special counts. The former were brought to recover debts arising from contract; the latter for damages for breach of contract.

It was abolished by the Judicature Acts.

Assurance. A surrender, conveyance, assignment or appointment under a power, of property.

Assure. To convey or transfer property.

Astley v. Younge ((1759), 2 Burr. 807). *Held*, that no action will lie against a defendant in a lawsuit for words "only spoken in his own defence, and by way of justification in law, and in a legal and judicial way."

Asylum. Originally a place in which there was safety from pursuit. Now a place for the reception and treatment of the insane. See the Lunacy Acts, 1890 to 1911.

Atia. Ill-will. See *De Odio et Atia.*

Atkinson v. Newcastle and Gateshead Waterworks Co., ((1877), L. R. 2 Ex. D. 441). Where a statute imposes an obligation which did not exist before and prescribes a remedy for its breach, that is the only remedy, unless the duty is for the benefit of a particular class of persons, in which case any member of the class injured by breach of such duty may recover damages, unless from the whole purview of the statute it appears that the penalty was meant to be the only penalty.

The defendants were bound to keep up a pressure of water in their pipes, the water to be used by anyone for extinguishing fires, and were subject to a penalty of £10 for breach of duty. *Held*, the penalty was the only remedy.

Attachment. To attach a person is to arrest him under a writ of attachment. It is employed in ordinary cases of disobedience to an order, judgment, etc., or other contempt of Court committed in the course of a suit. The writ is issued by leave of the Court or a Judge on notice to the person concerned, and directs the sheriff to arrest him. The contemnor then remains in prison until he has cleared his contempt or is discharged.

Attachment is also issued when no suit is pending, for disobedience to the King's writs, contempt of Court, etc. See Order XLIV.

Attachment of debts is a proceeding employed in actions in the High Court where a judgment for the payment of money has been obtained against a person to whom money is owing by another person; in such a case the judgment creditor, on application *ex parte* at chambers, may obtain an order that all debts owing or accruing from that person (who is called the garnishee) to the judgment debtor shall be attached to answer the judgment debt. The effect of this order is to bind the debt in the hands of the garnishee.

Attachment, Foreign. See *Foreign Attachment.*

Attainder. That extinction of civil rights and capacities which

formerly took place when judgment of death or outlawry was recorded against a person who had committed treason or felony. It involved the forfeiture and escheat of the land and goods belonging to the criminal, and the corruption of his blood, *i.e.*, he became incapable of holding or inheriting land, or of transmitting a title by descent to any other person. Attainder was also produced by Acts of Parliament known as Bills of Attainder. It was abolished by the Forfeiture Act, 1870.

Attaint. A person under attainder.

Attaint, Writ of. A summons to a grand jury of twenty-four, to enquire whether a petty jury of twelve had given a false verdict. If so, the petty jury lost all civil rights. Abolished by the County Juries Act, 1825.

Attempt. "An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted" (Art. 49, Stephen's Digest of the Criminal Law).

An act may be an attempt even though the crime itself may be impossible, *e.g.*, a pickpocket puts his hand in an empty pocket. The Criminal Procedure Act, 1851, enacts that any person charged with either a felony or a misdemeanour may, if the evidence proves only an attempt, be convicted of the attempt.

Attendant term. See *Term of Years*.

Attest. To witness any act or event, such as, *e.g.*, the signature or execution of a document, *e.g.*, a will (*q.v.*).

Attestation Clause. The statement that a deed or will, etc., has been duly executed in the presence of witnesses.

Attested Copy. A copy of a document which is certified correct by a person who has examined it.

Attorney. (1) A person appointed by another to act in his place or represent him. See *Power of Attorney*. (2) Formerly persons admitted to practise in the superior Courts of common law: they represented suitors who did not appear in person. Since the Judicature Act, 1873, they are entitled "Solicitors of the Supreme Court."

Attorney-General. The principal law officer of the Crown. He is appointed by patent and holds at the pleasure of the Crown.

When an action is commenced on behalf of the Crown or those who enjoy its prerogative or for a public wrong, the action is brought by the Attorney-General.

He is usually a Member of Parliament and the Cabinet.

Attorney-General v. Brown ([1920] 1 K. B. 773). By section 43 of the Customs Consolidation Act, 1876, "The importation of arms, ammunition, gunpowder, or any other goods may be prohibited by Proclamation or Order in Council." The importation of chemicals was prohibited by Proclamation, except under licence. *Held*, that the doctrine *ejusdem generis* must be applied, and that chemicals were not included in the category of prohibited goods, and the Proclamation was therefore invalid.

Attornment. The agreement by the tenant of land, *e.g.*, a lessee, to hold his land from the transferee of the owner of the fee, or reversion. He is said to attorn tenant to the new reversioner. The necessity for attornment was abolished by 4 & 5 Anne, c. 16. By

section 151, Law of Property Act, 1925, the conveyance of a reversion is valid without attornment, and attornment without the lessor's consent is void.

Auction, Sales by. The Sale of Land by Auction Act, 1867, makes it unlawful, where a sale is stated to be without reserve, for the vendor to employ a person to bid; but the vendor, may, in the particulars or conditions of sale, reserve the right to bid and employ a person ("puffer") to bid accordingly. The Sale of Goods Act, 1893, s. 58, contains similar provisions. See *Harris* v. *Nickerson.*

In the Dutch auction the property is put up at an excessive price and is offered at decreasing prices until someone closes.

Auctioneer. One who sells or offers for sale goods or lands at any sale where persons become purchasers by competition, being the highest bidders. (Section 4, Auctioneers Act, 1845.) When a bid is accepted the auctioneer becomes the agent of both parties.

Auctoritas. The authorisation of a tutor, the legal capacity in virtue of which the tutor completed the legal capacity of his pupil. (Roman law.)

Audi alteram partem. Hear the other side.

Audita querela. "Complaint having been heard." A writ given in order to afford a remedy to the defendant in an action where matter of defence (such as a release) had arisen since the judgment, and on which the defendant applied to the Court.

Auditors. Originally officers of the Exchequer; examiners of accounts.

Aula Regis. After the Conquest this was the King's Court or Curia Regis. From it all the Courts of Justice have emanated; likewise the High Court of Parliament and the Privy Council.

Aulnager or **Alnager.** An officer, first appointed in the reign of Edward III, whose duty it was to measure all woollen cloth made for sale, in order to ascertain the duty payable to the Crown.

Austerberry v. Corporation of Oldham (29 Ch. D. 750). The rule in *Tulk* v. *Moxhay* (*q.v.*) is confined to restrictive covenants and does not apply to a positive covenant, *e.g.*, to expend money or perform other acts, so as to bind a purchaser taking with notice of the covenant.

E conveyed land bounded on both sides by other lands, of which he retained the ownership, to the trustees of a road company, who entered into a covenant with E, his heirs and assigns, that they, their heirs and assigns would make and maintain the road. E sold his lands to Austerberry and the trustees sold the road to the Corporation of Oldham. Both parties had notice of the covenant. *Held*, that Austerberry could not enforce the covenant against the corporation.

Authority. Delegated power. One vested with authority is usually termed an agent.

A bare authority is an authority which exists only for the benefit of the principal, which the agent must execute in accordance with his directions; an authority coupled with an interest is where the person vested with the authority has a right to exercise it, partly or wholly, for his own benefit. A mere authority is revocable by the grantor at any time; one coupled with an interest is not.

Legal decisions and opinions of text writers of repute are "authorities" to adduce in support of a proposition of law.

Autrefois acquit. (Formerly acquitted.) A plea in bar to a criminal prosecution that the prisoner has been already tried for the same offence before a Court of competent jurisdiction and has been acquitted. If true it is a good defence.

Autrefois attaint. (Formerly attainted.) A plea in bar to a prosecution.

Autrefois convict. (Formerly convicted.) A plea in bar to a criminal prosecution, by which the prisoner alleges that he has been already tried and convicted for the same offence before a Court of competent jurisdiction. If true it is a good defence.

Auxiliary Jurisdiction of Equity. Before the Judicature Acts, the jurisdiction of equity was classified as exclusive, concurrent and auxiliary. The last named concerned cases where aid was lent to the plaintiff in a common law action, as by compelling discovery of documents.

Aver; Averment. In pleading, to aver is to allege, and an averment is an allegation.

Average. I. Used in three senses: (1) The effect of jettison, the averting, namely, of destruction from the whole adventure by sacrifice of part. (2) The loss sustained by the sacrifice. (3) The result of these, the contribution payable. (Maclachlan, Merchant Shipping.)

Particular average is loss or damage which must be borne in the ordinary way by the owner of the thing damaged, *e.g.*, leakage from a cask. General average is any loss or damage voluntarily incurred for the general safety of the ship and cargo, *e.g.*, where goods are thrown overboard in a storm for the purpose of saving the ship and the rest of the cargo. The several persons interested in the ship, freight and cargo must contribute rateably to indemnify the person whose goods have been sacrificed against all but his proportion of the general loss.

II. Some petty charges, such as towage, beaconage, etc., which the owner or consignee of goods shipped on board a vessel is bound to reimburse the master or shipowner.

III. A service of working with his beasts, which a tenant owed his lord.

Aversionem per. In lots; in the lump. (Roman law.)

Avoid. To make void. A person is said avoid a contract by setting up, as a defence in a legal proceeding taken to enforce it, some defect which prevents it from being enforceable.

Avoidance. Setting aside or avoiding or vacating. A bond is said to be conditioned for avoidance when it contains a condition providing that it shall be void on a certain event.

Avow. To admit or confess.

Avowtry. Adultery.

Avulsion. The cutting off of land from the property to which it belongs, as may happen if a river changes its course. The ownership of the land remains unchanged. Compare *Alluvio.*

Award. See *Arbitration.*

Away-going Crop. One which has been sown or planted during a tenancy, but is not ready for gathering until after its expiration. Sometimes the outgoing tenant has the right, either by agreement or by custom, to cut and take away the crop when it is ripe; sometimes

the incoming tenant is bound to buy the crop of him at a valuation. See *Emblements; Wigglesworth* v. *Dallison.*

Aylesford (Earl of) v. Morris ((1873), L. R. 8 Ch. App. 484). The plaintiff, soon after he came of age, and whilst his father was living, borrowed from the defendant, who was a moneylender, sums amounting to about £7,000, for which he gave bills, which, with interest and discount, together exceeded 60 per cent. These bills were renewed, and after the death of plaintiff's father, defendant sued plaintiff on the bills, and this suit was brought for an injunction to restrain the action on payment by the plaintiff of the sums advanced and interest at 5 per cent. *Held,* that the plaintiff was entitled to the relief sought, and that the fact of his being an actual tenant in tail in remainder, instead of being merely an expectant heir, made no difference.

Back-freight. Freight for the carriage of goods returned undischarged from the port to which consigned.

Backhouse v. Bonomi ((1865), 9 H. L. C. 503). *Held,* that in case of deprivation of support, no cause of action arises until subsidence occurs, so the Statutes of Limitation do not commence to run until such subsidence.

Backing a warrant. The indorsement by a magistrate of a warrant which has been issued by a magistrate of another district or jurisdiction, in order that it may be executed within the jurisdiction of the indorser.

Backwardation. A percentage paid by a seller of stock, deliverable upon a certain date, for the privilege of delaying delivery until some other date. Compare *Contango.*

Bail. An accused person is said at common law to be admitted to bail when he is released from the custody of officers of the law and is entrusted to the custody of persons known as his sureties, who are bound to produce him to answer, at a specified time and place, the charge against him and who, in default of so doing, are liable to forfeit such sum as is specified when bail is granted. A contract, whether by a person bailed or by a third party, to indemnify a surety is void as being against public policy and is a misdemeanour. The sureties are also said to become bail. It is in the discretion of a justice to admit to bail, except for treason, when bail can only be granted by a Secretary of State or a Judge. The justices may dispense with sureties and release the accused upon his own recognisance.

Under the Criminal Justice Administration Act, 1914, the police in general are given power to take bail, where arrest is made without warrant, and by the Criminal Justice Act, 1925, before the charge is accepted.

In Admiralty proceedings, where a ship or other property has been arrested, the owner may generally have it released on giving bail, with two sureties, to an amount equal to the value of the property.

Bail-bond. A bond with sureties entered into by a defendant to a sheriff, on arrest upon a writ of *capias ad respondendum,* conditioned for the defendant's appearance within the required period; upon which he was entitled to discharge. See *Arrest.*

Bail Court. An auxiliary Court of King's Bench, at Westminster,

wherein points connected more particularly with pleading and practice were argued and determined; also known as the Practice Court.

Bailee. A person to whom the possession of goods is entrusted for a specific purpose, but not with the intention of transferring the ownership.

A bailee who fraudulently converts to his own use, or to the use of any person other than the owner, anything capable of being stolen, which he possesses as bailee, is guilty of a felony. (Larceny Act, 1916.) A bailee can sue for conversion of the goods even though he is not himself liable for them to the bailor. See *Bailments.*

Bailiff. Formerly, an officer entrusted with the local administration of justice. Now a sheriff's officer or person employed by the sheriff to serve writs and make arrests and executions. The sheriff being responsible for their acts, his bailiffs are annually bound to him in a bond with sureties for the due execution of their office, and thence are called bound bailiffs.

For every County Court there is a high bailiff with assistants. (County Courts Act, 1888.)

Bailiwick. The area under the jurisdiction of a bailiff or sheriff.

Bailments. A bailment is the delivery of a thing by a party called the bailor to a person called the bailee for a certain purpose, on the terms that when the purpose is complete, the identical thing shall be restored. Bailments are of six kinds:—

(1) *Depositum.* Deposit of a thing for the use of the bailor.
(2) *Commodatum.* Loan for the use of the bailee.
(3) *Locatio et conductio.* Letting by the bailor and hire by the bailee.
(4) *Vadium.* Deposit as pawn or pledge for loan by bailee to bailor.
(5) *Locatio operis faciendi.* Deposit where something is to be done by bailee for reward.
(6) *Mandatum.* Deposit where something is to be done by the bailee without reward.

A bailee is liable in respect of a bailment as follows:—

(1) Where the bailment is for the benefit of the bailor alone, the bailee is liable only for gross negligence.
(2) Where it is for the benefit of the bailee alone, he is liable for the slightest negligence.
(3) Where it is for the benefit of both bailor and bailee, the bailee is only bound to use reasonable care. See *Coggs* v. *Bernard; Wilson* v. *Brett.*

Bail-piece. Formerly, the undertaking of sureties, drawn upon parchment, to go bail.

Bain v. Fothergill ((1873), L. R. 7 H. L. 158). *Held,* that upon a contract for the sale of real estate where the vendor, without his default, is incapable of making a good title, the intended purchaser is not entitled to any compensation for the loss of his bargain.

Bainbridge v. Firmstone ((1838), 1 P. & D. 2). The possibility of any benefit to the promisor or any detriment to the promisee, is sufficient consideration for a contract. The value of it is a matter for the promisor.

The defendant promised to return two boilers in good condition if allowed to weigh them. *Held,* that the mere possession of the boilers

for the purpose of weighing them was sufficient consideration to support a contract to return them.

Bainbridge v. Postmaster-General ([1906] 1 K. B. 178). An officer of the Crown is not liable for the wrongful act or default of a subordinate, as the latter is not his servant but the servant of the Crown.

The plaintiff's daughter was injured by the negligence of a subordinate official of the Post Office in laying an electric wire. *Held*, the Postmaster-General was not liable.

Balance Order. The order enforcing payment of calls in the winding-up, whether voluntary or compulsory, of a company. It is obtained on summons in Chambers by the liquidator.

Ballot. Any system of secret voting; introduced for the purpose of Parliamentary elections (other than those for universities) by the Ballot Act, 1872.

Banc, or Banco, Sitting in. Sittings which, before the Judicature Acts came into force, were held at Westminster by the Judges of the King's or Queen's Bench, the Common Pleas, and the Exchequer for the purpose of determining questions of law. These sittings were held not only during term but on certain appointed days after term. When sitting *in banc*, the Judges dealt only with questions of law, while, when sitting at Nisi Prius or on circuit, they dealt only with questions of fact. Four Judges usually sat together *in banc*, while at Nisi Prius or on circuit Judges sat singly.

Banishment. The compulsory quitting and forsaking of the realm; now only possible by authority of Parliament.

Bank Note. A promissory note, made by a banker, payable on demand, and intended to be used as money. Bank of England notes are a legal tender in England for all sums over £5, except by the Bank or its branches (Bank of England Act, 1833). The issue in England of notes of less value than £5 is prohibited by the Bank Notes Act, 1826.

Bank of England v. Vagliano ([1891] A. C. 107). Where a bill, note or cheque is payable to a fictitious or non-existent person it is payable to bearer. A fictitious or non-existent person includes a person bearing the payee's name, but to whom the drawer did not intend payment to be made.

A clerk of Vagliano's forged the name of X as drawer of bills of exchange purporting to be payable to one P, a living person, but not intending payment should be made to P. The bills were accepted by Vagliano, payable at the Bank of England. The clerk endorsed the bills with P's name and obtained the money from the Bank. *Held*, the Bank was entitled to debit Vagliano's account.

Banker. A person who receives the money of his customers on deposit, and pays it out again in a manner agreed upon.

The relation between banker and customer is that of debtor and creditor (with a superadded obligation arising out of the custom of bankers to honour the drafts of customers), not of trustee and *cestui que trust* or of principal and agent. See *London Joint Stock Bank* v. *Macmillan*.

Bankers' Books. The Bankers' Books Evidence Act, 1879, makes a copy of any entry in a banker's book *prima facie* evidence of the

contents of the entry and of the matters recorded therein, on the copy being proved to be correct.

Bankrupt. A debtor whose estate is vested in a trustee or assignee under the law of bankruptcy.

Bankruptcy. Proceedings in the High Court or County Court for the distribution of the property of an insolvent person among his creditors. It consists in the commission of an "act of bankruptcy" (*q.v.*), followed by a petition to the Court for a receiving order for the protection of the estate. The property of the debtor then vests in an Official Receiver. A meeting of the creditors is held, and the debtor must submit a statement of affairs to the Official Receiver. The debtor is publicly examined, and if no composition or scheme of arrangement is approved, he is adjudged bankrupt and his property becomes divisible among his creditors and vests in a trustee. Bankruptcy is annulled by an order of discharge. (The Bankruptcy Act, 1914.)

Bankruptcy Notice. The notice issued by a person who has obtained in any Court a final judgment or order for any amount, and non-compliance with which constitutes an act of bankruptcy (*q.v.*).

Bar. A partition across a Court of Justice. Only King's Counsel, solicitors (as officers of the Court) and parties are allowed within the bar.

At Bar means in Court. A trial at Bar is a trial by a jury before a full Court (three or four Judges) instead of before a single Judge as at Nisi Prius.

The Bar means the professional body of barristers.

In the Houses of Lords and Commons the bar forms the boundary of the House, and therefore all persons who have to address the House appear at the bar for that purpose.

To bar a right is to destroy or end it, *e.g.*, bar an entail or a debt under a Statute of Limitations, etc.

Bar Council. The General Council of the Bar, the body which is the authority on the etiquette and practice of the Bar. It has no disciplinary power, but brings matters to the notice of the Benchers of the Inns of Court.

Bar Fee. The fee payable down to 1815 by a person acquitted of felony, to the sheriff or clerk to obtain his discharge.

Bare Trustee. One who merely holds property on trust with no interest in or duty as to the trust property, except to convey it when required according to the wishes of the beneficial owner.

Bargain and Sale. A contract for the sale of any estate or interest in land, or of chattels, followed by payment of the agreed price, commonly applied only to land. The Court of Chancery held that as soon as a bargain and sale of land had been completed, the vendor held the land to the use or for the benefit of the purchaser. The Statute of Uses, 1536, executed the use in favour of the purchaser, that is to say, gave him the same estate or interest in the land as the vendor had before the bargain and sale. The effect of this was that land might be conveyed secretly. To prevent that result, the Statute of Enrolments, 1536, enacted that no bargain and sale of any freehold interest in lands should be effectual unless it were made by deed enrolled within six

months. This method of conveyance was superseded by the lease and release (*q.v.*). Abolished by the Law of Property Act, 1925, s. 51.

Barmote Courts. Courts which administer the laws and customs relating to lead mining in the districts of Derbyshire.

Barnes v. Addy ((1873), L. R. 9 Ch. 244). *Held*, that a stranger to a trust acting as agent of the trustees, may be liable as a constructive trustee if he assists with knowledge in a dishonest and fraudulent design on the part of the trustees. But an agent who assists in a breach of trust, *e.g.*, as a solicitor, who draws up a document in contemplation of a breach of the trust, is not liable as a constructive trustee if he had no reason to suspect that any fraud was contemplated.

Baron. Husband. "Baron and feme" meant husband and wife.

Before the Judicature Acts, Judges of the Court of Exchequer were called barons and the chief Judge of that Court was styled the Lord Chief Baron of the Exchequer.

Barony. The rank of a baron, the lowest rank in the peerage.

A writ of summons to Parliament, followed by an actual sitting therein, formerly created a barony. Barons are now created by letters patent.

Baronies created by writ descend to the heirs of the original baron, and are consequently occasionally held by females. Baronies by letters patent descend in accordance with the patent.

Barratry. (1) The common law misdemeanour of habitually exciting or maintaining suits or quarrels. (2) Every wrongful act wilfully committed by the master or crew of a ship to the prejudice of the owner or charterer, *e.g.*, sinking the ship or stealing the cargo.

Barratry is one of the perils of the sea generally insured against in policies of marine insurance, and a shipowner is commonly exempt under the bill of lading from liability to the charterer in respect of any act of barratry.

Barrister. A member of one of the four Inns of Court who has been called to the Bar by his Inn, with the exclusive right of audience in the High Court. His professional conduct is under the control of the benchers of his Inn. His fees are an *honorarium*, and no action lies to recover them, nor is he liable for negligence.

Base Courts. Inferior Courts, not of record, *e.g.*, the Court Baron.

Base Fee. An estate which has some qualification, and which must cease or be determined whenever such qualification is at an end: a fee descendible to the heirs in general upon which subsists a remainder or reversion in fee-simple. *E.g.*, the estate of a tenant in tail in remainder who executed and enrolled a disentailing deed, but who did not get the consent of the tenant for life in possession (the protector of the settlement). After 1925 base fees are equitable interests, and the disentailing deed need not be enrolled. (Law of Property Act, 1925, s. 130.)

Base Tenure. A tenure under which land was held by base services.

Bassett v. Nosworthy ((1673), Rep. temp. Finch, 102). The bill was filed by an heir-at-law against a person claiming as purchaser from a devisee under the will of his ancestor, to discover a revocation of the will, and the defendant pleaded that he was a purchaser for valuable

consideration *bona fide*, without notice of any revocation. *Held*, that this plea was good, and upon proof of it the bill was dismissed.

Bastard. A child born out of wedlock. At common law a bastard has no parents and cannot take property as an heir-at law or next-of-kin through them. But he can found a family of his own. He can leave real property by will. (Law of Property Act, 1925, s. 178.)

By the Legitimacy Act, 1926, he is legitimated by the subsequent marriage of his parents, and entitled to succeed to property on intestacy. See *Legitimacy*.

Bastardy Order. See *Affiliation Order*.

Bate's Case ((1606), 2 St. Tr. 371.) Bate, a merchant, refused to pay an import duty on currants, ordered by letters patent from the King, over and above the statutory poundage of 2s. 6d. per cwt. *Held*, the King can impose what he pleases. See *Bill of Rights* (3).

Battery. The actual striking of another person or touching him in a rude, angry, revengeful or insolent manner. See *Cole* v. *Turner*.

Battle, Trial by. See *Appeal of Felony*.

Beadle. A common law parish officer chosen by, and holding office at the pleasure of, the vestry.

Bearer. The person in possession of a bill of exchange or promissory note payable to bearer. (Bills of Exchange Act, 1882, s. 2.) Payment of a bearer security may be claimed by anyone who presents it.

Beatty v. Gillbanks ((1882), 9 Q. B. D. 308). The right of public meeting is not restricted by the fact that it is likely to cause others to commit a disturbance of the peace to prevent it.

Beatty was a leader of Salvation Army processions. Riots were caused by collisions of antagonists and supporters. *Held*, that Beatty was not properly convicted of unlawfully and tumultuously assembling with others to the disturbance of the peace.

Beaumont v. Reeve ((1846), 8 Q. B. D. 483). A moral obligation is no consideration. The defendant promised the plaintiff in view of past cohabitation to pay her an annuity. *Held*, there was no contract.

Bedford Level. A district in the Eastern Counties, formerly known as the Great Level of the Fens, the draining of which was begun in 1634 by Francis, Earl of Bedford. A Register was instituted for deeds relating to lands comprised in the Level.

Behn v. Burness ((1863), 3 B. & S. 751). The plaintiff, a ship-owner, sued the defendant, who had chartered a ship from him, for not loading. The charterparty stated that the ship was "now in the port of Amsterdam," when in fact it was not. *Held*, the representation was a condition and not merely a warranty, and the defendant was entitled to rescind the contract.

Belfast Ropeworks v. Bushell ([1918] 1 K. B. 210). A common carrier is one who holds himself out to all and sundry as willing to carry goods for a reasonable hire.

Bushell was an "automobile engineer and haulage contractor." If offers to carry did not suit him, he refused them. Goods entrusted to him were accidentally destroyed by fire. *Held*, he was not a common carrier and therefore not liable.

Bench. The Justices of the Court of Common Pleas were anciently known as justices of the bench.

The term is now used to denote either Judges or magistrates collectively or singularly.

Bench Warrant. A warrant issued by a Court of record for the arrest of a person against whom an indictment for treason, felony or misdemeanour has been found, or against whom articles of the peace (*q.v.*) have been exhibited, if such person does not appear to answer the indictment or articles.

Benchers, or Masters of the Bench. The governing body of each of the four Inns of Court. Benchers have complete control of the property of their Inn. Subject only to an appeal to the Lord Chancellor and the Judges of the High Court, sitting as a domestic tribunal and not as a Court of Justice, the benchers have an absolute discretion as to the admission of students, as to calls to the Bar, as to disbarring, and also as to disbenching a member of their own bench.

Benefice. An ecclesiastical living; the cure of souls of a parish.

Beneficial Owner. The owner in fact; the person who enjoys the benefit of property.

Beneficiaries. Persons for whose benefit property is held by trustees, executors, etc.; *cestuis que trust*.

Beneficium competentiae. The name given to the privilege of having the *condemnatio* limited to the extent of a person's means so that he should not be reduced to want. (Roman law.)

Beneficium inventarii. The full inventory made by the heir which, under Justinian, released him from all personal liability beyond the value of the estate. (Roman law.)

Beneficium separationis. The advantage of having a clear separation made between the property of testator and of heir. (Roman law.)

Benefit of Clergy. Exemption of the persons of clergymen from criminal process. An accused clerk was handed over by the secular Court to the Bishop to be tried in the ecclesiastical Courts. The privilege was extended to all able to read, but many statutes were passed making felonies punishable without benefit of clergy. Women originally could not claim the benefit, but it was later extended to them. Benefit of clergy could not be claimed in treason. It was abolished in 1827.

Benevolences. These were a mode of early taxation. They purported to be voluntary loans, but were in fact forced contributions not intended to be repaid. They were afterwards levied as an anticipation of the lawful revenue. In 1628, by the Bill of Rights, they were prohibited.

Benignae faciendae sunt interpretationes et verba intentioni debent inservire. Liberal interpretation should be the rule, and the words should be made to carry out the intention.

Benjamin v. Storr ((1874), L. R. 9 C. P. 400). An action will lie for a public nuisance by a person who has been affected differently from the rest of the public. The plaintiff was a coffee-house keeper in Rose Street, Covent Garden, and the access to his premises was blocked by the defendant's vans loading and unloading at the warehouse adjoining. *Held*, the plaintiff could sustain an action for damages.

Bequest. A gift of personal property by will. A residuary bequest is a gift of the residue of the testator's personal estate. A specific bequest is a bequest of property of a certain kind, *e.g.*, a watch.

Berne Convention, 1886. An international convention for the protection of literary and artistic copyright. It was revised at Berlin in 1908. The Copyright Act was passed in 1911.

Bernina, The ((1888), L. R. 13 A. C. 1). This case refuted the doctrine of "identification," *i.e.*, that a passenger in an omnibus, or on a ship, is barred from any remedy for injury sustained in an accident, or collision, due to the negligence of the driver, or master and crew, as laid down in Thorogood *v.* Bryan (8 C. B. 115).

A passenger on a ship in collision with *The Bernina* lost his life. Both vessels were to blame. The deceased had nothing to do with the negligent navigation. *Held*, his representatives could recover damages.

Bessela v. Stern ((1877), L. R. 2 C. P. D. 265). Silence may amount to an admission, when a reply is naturally expected. In an action for breach of promise it was proved that the plaintiff said to the defendant: "You always promised to marry me and you don't keep your word." The defendant made no answer. *Held*, it was an admission.

Bettini v. Gye ((1876), 1 Q. B. D. 183). The defendant agreed to employ the plaintiff as an opera singer. One term of the contract was that there should be six days for rehearsals. *Held*, that non-compliance with this term was not the breach of a condition, but of a warranty, and therefore the contract was still binding.

Bigamy. The offence committed by any person who, being married, marries any other person during the life of the former wife or husband, whether the second marriage takes place in England or elsewhere, but it is a good defence that the former wife or husband has been absent for seven years at the date of such marriage, and has not been known to be living during that time. (Offences against the Person Act, 1861, s. 57.) See *R.* v. *Tolson*; *R.* v. *Wheat*.

Bill. A letter or writing. In addition to the kinds described under subsequent titles, the word has the following meanings in law:—

A parliamentary measure which, on receiving the Royal Assent, becomes an Act of Parliament (*q.v.*).

In criminal procedure, an indictment presented to the grand jury.

The draft of a patent for a charter, commission, dignity, office, or appointment.

Bill of Attainder. A Bill formulating an accusation against a peer, or other high personage, in a matter of public importance, declaring him to be attainted and his property to be forfeited.

Bill of Complaint. A petition addressed to the Lord Chancellor praying for relief in equity.

Bill of Costs. An account of fees, charges and disbursements by a solicitor in a legal business.

Bill of Entry. The account deposited at the Custom House giving particulars of goods imported or exported.

Bill of Exceptions. A statement of the objections of a party to a suit to the decisions of the Judge on matters of law. The Bill was then argued before a Court of error.

Bill of Exchange. An unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or

determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer. (Bills of Exchange Act, 1882, s. 3.)

A bill is given by the drawer, and addressed to the drawee, who becomes the acceptor by writing his name across the face of the bill. The bill is payable to the payee. See *Protest; Honour; Dishonour; Master* v. *Miller; Miller* v. *Race; Waring, Ex parte; Bank of England* v. *Vagliano; Embiricos* v. *Anglo-Austrian Bank.*

Bill of Health. A document given to the master of a ship by the consul of the port from which he comes, describing the sanitary state of the place. It may be a clean, suspected, or foul Bill.

Bill of Indictment. The presentment to a grand jury, which becomes an indictment when a "true bill" is found.

Bill of Lading. A document signed and delivered by the master of a ship to the shippers on goods being shipped. It specifies the name of the master, the port and destination of the ship, the goods, the consignee, and the rate of freight. Copies are kept by the master, the shipper and the consignee. It is a document of title transferable by indorsement and delivery, giving the holder the right to sue thereon. (Bills of Lading Act, 1855.) See Carriage of Goods by Sea Act, 1924; *Sewell* v. *Burdick.*

Bill of Middlesex. The procedure whereby the Court of King's Bench acquired jurisdiction in civil cases between subject and subject.

The writ was issued to the sheriff of Middlesex commanding him to arrest the defendant for an imaginary trespass (in which the Court had jurisdiction) and to bring him before the Court. Then he was proceeded against for any cause of action. If the defendant was not to be found in Middlesex, the sheriff made a return of *non est inventus*; whereupon the Court issued the writ of latitat, reciting the Bill of Middlesex and the sheriff's return, and commanding the sheriff of some other county to arrest the defendant.

Bill of Pains and Penalties. A Bill introduced, generally in the House of Lords but sometimes in the House of Commons, for the punishment of a particular person without trial in the ordinary way. Such person could defend himself by counsel and witnesses.

The last Bill of Pains and Penalties was that against Queen Caroline in 1820.

Bill of Particulars. A statement in writing of what a plaintiff sought to recover in an action.

Bill of Peace. A Bill which could be filed in Chancery to restrain vexatious or unnecessary litigation by perpetual injunction.

Bill of Rights. The statute 1 Will & Mary, sess. 2, c. 2. It provided as follows:—

(1) The suspending power, when exercised by the Crown without the assent of Parliament, is illegal;
(2) The dispensing power, as of late exercised, is illegal;
(3) Levying money by prerogative is prohibited;
(4) The subjects have a right to petition the Crown, and all commitments for so petitioning are illegal;
(5) Raising or maintaining a standing army within the kingdom in time of peace is illegal, if done without the assent of Parliament;
(6) Freedom of speech in Parliament;

(7) Excessive bail, excessive fines, etc., are discouraged; and
(8) The Protestant succession to the Throne of England. See *Act of Settlement.*

Bill of Sale. A deed assigning personal property either absolutely or by way of mortgage to secure a debt. It is the only way of transferring a registered ship.

A bill of sale given as security for money must set forth the consideration for which it is given, it must be in the scheduled form, it must not be given in consideration of less than £30, it must have annexed to it a schedule of the property comprised therein, and it must be attested by a credible witness. (Bills of Sale Act (1878) Amendment Act, 1882.)

Bill of Sight. The importer of goods, if unable to make a perfect entry thereof, may make an entry by "bill of sight." (Customs Consolidation Act, 1876, ss. 58-62.) See *Entry.*

Bill of Store. A document for the entry duty free into the United Kingdom of dutiable goods which have been exported therefrom within the five years preceding their re-importation. (Customs and Inland Revenue Act, 1879, s. 6.)

Bill Quia Timet. A proceeding in the old Court of Chancery for providing against an apprehended injury. Now replaced by the injunction.

Bill to Establish Will. A proceeding in the Court of Chancery to establish the validity of wills of real estate as against the heir-at-law.

Billeting. The quartering of soldiers and their horses in the house of a subject. Billeting was restricted by the Army Act, 1881, to inns and victualling houses, but by the Army (Annual) Act of 1909, when the Territorial Force is embodied by Proclamation, soldiers of the Regular or Territorial Forces may be billeted elsewhere.

Bills in Eyre. Processes by which civil proceedings were instituted before the Eyre (*q.v.*).

Bird v. Holbrook ((1828), 4 Bing. 640). *Held,* that a person who sets spring guns on his premises and gives no notice that they are there, is liable even to trespassers injured thereby.

Bird v. Jones ((1845), 7 Q. B. 742). Any restraint of a person without reasonable cause is a false imprisonment, so long as he is thereby prevented from going in all directions, and not merely in one or more particular directions.

Part of the public footway on Hammersmith Bridge having been taken for seats to view a regatta, and separated by a temporary fence, the plaintiff, a solicitor, claiming a right to use that part, climbed over the fence but was stopped by two policemen, who told him he might go back if he pleased. He refused to do so and remained there half an hour. *Held,* there was no imprisonment.

Birkmyr v. Darnell ((1704), 1 Salkeld, 27). The defendant promised the plaintiff that in consideration of the plaintiff lending a horse to one, English, he, the defendant, would undertake that English would re-deliver the horse. It was held this was a guarantee within the Statute of Frauds, being a promise to answer for the "debt, default or miscarriage of another person" and therefore required writing. The promise must be "collateral," that is, such other

person must himself be and remain under a liability to perform the matter in question.

Birretum. The "black cap" or coif of the Judges and sergeants at law.

Bishop. An ecclesiastical dignitary; the chief of the clergy within his diocese.

Bishop, Suffragan. An assistant to or deputy for a bishop.

Black Cap. A square cap worn over the wig by a Judge of the High Court when passing sentence of death and on State occasions. See *Birretum*.

Black Rod. The Gentleman Usher of the Black Rod is the official of the House of Lords analogous to the Serjeant-at-Arms of the House of Commons. He executes the orders of the House in taking offenders into custody, and assists in ceremonies.

Blackmail. Originally this was equivalent to *niger reddítus*, rent payable in cattle, labour or produce, as distinguished from rent payable in corn. See *Alba Firma*.

Subsequently it meant the toll levied by freebooters along the Scottish border from persons exposed to their depredations who were willing to pay for immunity from plunder. At present, it means the attempt to obtain money, etc., by threats of injury to person or property, or by threats to accuse of any crime, or to expose some discreditable incident. (Larceny Act, 1916, ss. 29, 31.)

Blandy v. Widmore ((1716), 1 P. Wms. 323). In marriage articles the intended husband covenanted to leave his wife £620 if she should survive him. He died intestate, and his wife's share, under the Statute of Distributions, exceeded £620. *Held*, that the wife was not entitled to have the £620 and her distributive share; but that the distributive share must be taken as a satisfaction or performance of the covenant.

Blank, Acceptance in. An acceptance written before the bill is filled up. It is an authority to fill up the paper as a complete bill for any amount which the stamp will cover. (Bills of Exchange Act, 1882, s. 20.) See *Indorsement*.

Blank Transfer. A transfer of shares which is executed without the name of the transferee being filled in. Such a transfer, with the certificates of the shares, is frequently lodged as security for money.

Blasphemy. The common law misdemeanour of speaking matter relating to God, Jesus Christ, the Bible or the Book of Common Prayer, intended to wound the feelings of mankind or to excite contempt and hatred against the Church by law established, or to promote immorality.

Blasphemous Libel. A document containing blasphemous matter.

Blended Fund. Where a testator directs his real and personal estate to be sold, and disposes of the proceeds as forming one aggregate, this is called a blended fund.

Blockade. An act of war carried out by the warships of a belligerent detailed to prevent access to or departure from a defined part of the enemy's coast. The penalty for breach of blockade is confiscation, but it must be shown: (1) That the blockade was effective; (2) That the ship alleged to have violated the blockade had notice thereof; and (3) That she made ingress or egress in disregard of the blockade.

Blockade, Pacific. The temporary suspension of the commerce of an offending or recalcitrant State, by the closing of access to its coasts or of some particular part of its coasts, but without recourse to other hostile measures, save in so far as may be necessary to enforce this restriction.

It is commonly resorted to in practice either by way of reprisals and as a method of redress short of war, or as a measure of international police. (I Pitt Cobbett, 359.)

Blodwyte. A fine or composition for the shedding of blood. It was payable to the lord; while *wergild* (*q.v.*), or part thereof, went to the party injured or, in case of death, to his relatives.

Blood. (1) That quality or relationship which enables a person to take by descent; (2) Persons connected by blood relationship, that is, by being descended from one or more common ancestors.

One person is said to be of the whole blood to another when they are both descended from the same pair of ancestors, *e.g.*, two brothers who have the same father and mother. Persons are said to be of the half blood to one another when they are descended from one common ancestor only, *e.g.*, two brothers who have the same father but different mothers. Formerly, relations by the half blood were incapable of inheriting to one another, but this disability was removed by the Inheritance Act, 1833.

Since 1925 the half blood take on intestacy immediately after the whole blood of the same degree. (Administration of Estates Act, 1925, s. 46.)

Blower v. Great Western Railway Co. ((1872), L. R. 7 C. P. 655). "Inherent vice" of the thing carried is a defence for the carrier to an action for damage, provided he is not negligent.

The plaintiff's bullock was properly loaded and carried in a truck on the defendant's railway. During the journey it escaped from the truck on to the line, without negligence on the part of the company, and was killed. *Held*, the railway company were not liable.

Blyth v. Birmingham Waterworks Co. ((1856), 11 Ex. 781). "Negligence is 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" (*per* Alderson, B.).

An unusual frost prevented the action of a safety plug in the main water pipe of the defendant company under a street, and, in consequence, the plaintiff's house was flooded. *Held*, the defendants were not liable.

Board of Education. The Government Department charged with the administration of education. The President is usually a Member of the House of Commons and the Cabinet. (Board of Education Act, 1899.)

Board of Green Cloth. The Counting House of the King's Household. It consists of the Lord Steward, the Treasurer, the Comptroller and the Master of the Household, with their clerical assistants.

Board of Trade. "The Lords of the Committee of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations." (Interpretation Act, 1889, s. 12, sub-s. 8.) The Committee, as regulated by the Order of 1782 and subsequent

Orders in Council, still exists in theory; but it never meets, and its functions are discharged by the President of the Board of Trade. He is a member of the Cabinet, and is not disqualified for membership of the House of Commons.

The administrative powers of the Board chiefly concern merchant shipping, bankruptcy, joint stock companies and public utility companies.

Bocland; Bookland. Before the Norman Conquest this meant land held of the King by book or charter, as opposed to folcland or laenland. At first such grants were made only to ecclesiastical bodies, but subsequently they were made to laymen.

Bolton v. Prentice ((1745), Str. 1214). *Held*, that if a wife is compelled to live apart from her husband owing to his conduct, she has an irrevocable authority to pledge his credit for necessaries, even with persons whom he has forbidden to trust her.

Bona fide. In good faith, honestly, without fraud, collusion or participation in wrong-doing.

Bona notabilia. Goods situated in another diocese to that in which a deceased had died.

Bona vacantia. Goods without an apparent owner in which no one claims a property but the King, such as royal fish, shipwrecks, treasure trove. In Roman law it was property left by a deceased person who had no successor. It generally went to the *fiscus*.

In default of any person taking an absolute interest in the property of an intestate, it belongs to the Crown, or to the Duchy of Lancaster, or to the Duke of Cornwall, as the case may be, as *bona vacantia* and in lieu of any right to escheat. (Administration of Estates Act, 1925, s. 46, sub-s. 1 (vi.).)

Bond. A single bond is a contract under seal to pay a sum of money (a common money bond), or a sealed writing acknowledging a debt, present or future. A double or conditional bond is where a condition is added that if the obligor does or forbears from doing some act the obligation shall be void. The person who binds himself is called the obligor, and the person in whose favour the bond is made is called the obligee. The bond usually consists of (i) the obligation or operative part, by which the obligor binds himself to pay the money; (ii) any recitals which may be necessary to explain the nature of the transaction; and (iii) the condition, which sets out the acts on the performance of which the bond or obligation is to cease to be of effect. Voluntary bonds are bonds given without valuable consideration.

Formerly the common law rule was that on non-performance of the condition of a bond on the day fixed the penalty was recoverable by the obligee in full; but equity gave relief against penalties, and then by statute the obligee was prevented from recovering at law more than the sum or damages actually due or sustained.

A bond is also an instrument of indebtedness issued by companies and governments to secure the repayment of money borrowed by them.

Bonded Warehouse. A secure place approved by the Commissioners of Customs and Excise for the deposit of dutiable goods upon which duty has not been paid.

Bonorum emptio or **venditio.** The purchase or sale of an insolvent estate (the universal succession of a debtor), by or to one that offers

to satisfy the largest proportion of the claims of the creditors; a praetorian mode of execution. (Roman law.)

Bonorum possessio. "Possession of the property." The praetorian situation corresponding to civil law *hereditas*; an inheritance to which a universal successor succeeded in virtue of the intervention of the Praetor. (Roman law.)

Bonorum possessor. The praetorian heir. The universal successor of a deceased person in virtue of the intervention of the Praetor. (Roman law.)

Booty of War. Military arms, equipment and stores captured on land. It belongs to the Crown.

Borough. A town incorporated by Royal Charter with a common seal, the right to hold lands and the right to contract, sue and be sued in the name of the *Mayor, Aldermen and Burgesses of* ——.

It is subject to the Municipal Corporations Act, 1882.

Borough Court. An inferior Court of record for the trial of civil actions which by charter, custom or otherwise, is, or ought to be, holden in a borough, but does not include a County Court. (Municipal Corporations Act, 1882, s. 7.)

Borough English. A customary mode of descent, under which the youngest son inherited land to the exclusion of his elder brothers.

It was abolished by the Law of Property Act, 1922.

Borough Sessions. The quarter sessions of a borough.

Borstal Institution. A place in which young offenders whilst detained may be given such industrial training and other instruction, and be subject to such disciplinary and moral influences, as will conduce to their reformation and the prevention of crime. (Prevention of Crime Act, 1908, s. 4).

Bote. Compensation.

Bottomry. A bond entered into by the owner of a ship or his agent, whereby, in consideration of a sum of money advanced for the use of the ship, the borrower undertakes to repay the same with interest if the ship terminate her voyage successfully, the debt being lost in case of the non-arrival of the ship. It binds or hypothecates the ship and freight, or the cargo.

A bottomry bill is in the shape of a deed poll.

Bought and Sold Notes. Documents which are usually delivered by brokers to their principals on the conclusion of a contract of sale and purchase, the bought note being delivered to the buyer, and the sold note to the seller. The notes should contain the names of both the contracting parties, the quantity of the article bought and sold, and the price if agreed upon. They constitute the original contract between the parties.

Bounds. The trespass committed by a person who excavates minerals underground beyond the boundary of his land is called working out of bounds. The person on whose land the trespass is committed may bring an action for damages or for an injunction, and an account of the minerals taken.

Bounty. Monies payable by the Crown, either as rewards, *e.g.*, to the officers and crew of a King's ship, or as inducements to exporters, etc., or by way of charity.

Bowman v. Taylor ((1834), 2 Ald. & El. 278). *Held*, that parties

to a deed are estopped in the absence of fraud from denying statements of fact set out therein.

Boydell v. Drummond ((1809), 11 East, 142). The "memorandum or note in writing" required by the Statute of Frauds must contain, either in itself or by reference, the terms of the agreement.

The plaintiff was publishing an illustrated Shakespeare in parts, to be published in a period extending over more than a year. The defendant read a prospectus setting out the terms of subscription, and signed a book headed "Shakespeare Subscribers, their signatures," but in it there was no reference to the prospectus. *Held*, parol evidence could not be given to connect the two, and defendant was not liable.

Boyes v. Carritt (26 Ch. D. 531). B. left a will giving all his property to C, who knew that he was to hold as trustee, though he had not been told the particular trusts. After B's death a letter was found addressed to C, and stating that the property, all of which was personalty, was to be held on trust for D. The letter was not executed in testamentary form. *Held*, that the trust for D must fail, since it was neither communicated to C in the lifetime of B and accepted by him, nor declared in any testamentary instrument, and that since C admitted he was to hold the property on trust, he was a trustee for the next-of-kin of B.

Bradlaugh v. Gossett ((1884), 12 Q. B. D. 271). This was an action against the Serjeant-at-Arms, who had been directed by the House of Commons to remove the plaintiff from the House until he should engage not further to disturb the proceedings. *Held*, that the House of Commons is not subject to the control of the law Courts in matters relating to its own internal procedure only.

Bradley v. Carritt ([1903] A. C. 253). A stipulation in a mortgage deed for a collateral advantage is void if it attempts to bind the property after redemption as inconsistent with the right to redeem. A person holding most of the shares in a tea company mortgaged the shares to secure a loan, and agreed to use his best endeavours that, after the loan was paid off, the mortgagee, a broker, should continue to have the sale of the company's teas and should have a commission on other sales. *Held*, the agreement was invalid, as it restricted the power of the mortgagor to deal with his shares after the mortgage was paid off. See *Kreglinger* v. *New Patagonia Co.*

Brawling. The misdemeanour of creating a disturbance in a consecrated building or ground.

Breach. The invasion of a right, or the violation of a duty.

Breach of Close. Trespass on land.

Breach of Contract. The failure to carry out an undertaking, *e.g.*, a breach of promise of marriage. See *Contract; Damages; Lumley* v. *Gye; Hochster* v. *Delatour.*

Breach of Pound. See *Pound-breach.*

Breach of Privilege. Contempt of the High Court of Parliament, whether relating to the House of Lords or to the House of Commons, *e.g.*, resistance to the officers of the House.

Breach of Promise. The common name of the action brought for breach of promise of marriage. Exemplary damages may be recovered. The plaintiff's evidence, however, must be corroborated by some other

material evidence in support of the promise. (Evidence Further Amendment Act, 1869.)

Breach of the Peace. An offence against public order. See *Articles of the Peace.*

Breach of Trust. An improper act, neglect or default on the part of a trustee in regard to his trust, either in disregard of the terms of the trust, or the rules of equity. See *Trust.*

Breaking Bulk. To unload; to unpack. At common law there could be no larceny of goods which had originally been lawfully obtained by a person who subsequently wrongfully converted them to his own use, unless such conversion was preceded by some new act of taking, such as breaking bulk. See now Larceny Act, 1916, s. 20.

Breve. (A short thing.) A writ.

Brevia testata. Early forms of deeds of conveyance.

Breviate. A memorandum of the contents of a Bill.

Brewster Sessions. The general annual licensing meeting.

Bribery. Giving or offering any reward to any person holding public office to influence his conduct; or the receipt of such reward. See Prevention of Corruption Act, 1906.

Brice v. Stokes ((1805), 11 Ves. 319). The question in this case was whether a trustee should be charged with certain purchase-money, which, though he had joined in the receipt for conformity, had been received by his co-trustee. *Held*, that he was liable to be charged, the sale being unnecessary, and he permitting his co-trustee to keep and deal with the money contrary to the trust; but that he should not be charged in respect of the interest of one of the *cestui que trust* who had notice of the breach of trust and acquiesced therein. (Now, by section 30, sub-section 1, Trustee Act, 1925, a trustee shall be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity.)

Brief. The document containing the materials or instructions furnished by a solicitor to a barrister to enable him to represent the client in legal proceedings.

Brinsmead v. Harrison ((1872), L. R. 7 C. P. 547). *Held*, that although the liability of joint tortfeasors is joint and several, a judgment against one, even if unsatisfied, is a bar to an action against another, for the cause of action is merged in the judgment—*transit in rem judicatem* (*q.v.*).

British South Africa Co. v. Compagnie de Mocambique ([1893] A. C. 602). No action will lie in an English Court for wrongs committed to land situate abroad, *i.e.*, outside England and Wales.

British Subject. A person who is a natural-born British subject, or a person to whom a certificate of naturalisation has been granted, or a person who has become a subject of His Majesty by reason of any annexation of territory. (British Nationality and Status of Aliens Act, 1914 to 1922.) See *Nationality; Naturalisation.*

Broker. A mercantile agent for the purchase and sale of goods, stocks and shares, policies of insurance, etc. Brokerage is the commission on the price realised payable to the broker for his services.

A broker is not generally personally liable, nor can he sue on a contract, unless he signs a written memorandum with his own name.

Brothel. A disorderly house: one used for purposes of fornication by both sexes, but not one so used by one woman only.

The keeping of a brothel is a misdemeanour. (The Criminal Law Amendment Act, 1885, 1922.)

Brutum fulmen. A threat to which effect cannot be given.

Bryant v. Foot ((1868), 9 B. & S. 444). As a rule, a custom must be proved to have been in use from time immemorial continuously.

A parson of a parish claimed by custom a fee of 13s. on every marriage solemnised. *Held*, that it was impossible that 13s. could have been paid from time immemorial (*i.e.*, from 1 Richard I).

Buggery. Sodomy. See *Abominable Crimes*.

Building Lease. A lease, generally for a term of ninety-nine years, at a rent known as a ground-rent, under which the lessee covenants to erect certain specified buildings on the land demised by the lease, and to insure and keep in repair such buildings during the term. At the expiration of the term the buildings become the property of the lessor. After 1925, a mortgagee in possession may lease for nine hundred and ninety-nine years (Law of Property Act, 1925, s. 99, sub-s. 3 (ii)). See also Settled Land Act, 1925, ss. 44, 46.

Building Society. One established for the purpose of raising, by the subscriptions of some of its members, a stock or fund for making advances to others of its members upon security of freehold or leasehold estate, by way of mortgage. (Building Societies Act, 1874, s. 13.)

Burden of Proof. See *Proof*.

Burdett v. Abbott ((1811), 14 East, 1). This was an action of trespass against the Speaker of the House of Commons for breaking into the plaintiff's house and carrying him to the Tower for a breach of privilege of the House of Commons. *Held*, either House of Parliament has power to commit for contempt.

Burgage Tenure. A form of free land holding peculiar to boroughs, similar to the modern tenure in fee-simple, but subject to local custom. It was abolished by the Law of Property Act, 1922.

Burgess. Formerly, a Member of Parliament who sat for a city or borough. Now a person who is registered on the burgess roll of a borough, *i.e.*, is entitled to vote at the borough elections.

Burghmote. A borough Court.

Burglary. Breaking and entering a dwelling-house by night (*i.e.*, between 9 p.m. and 6 a.m.) with intent to commit a felony; or entering a house with like intent, and breaking out by night; or committing a felony in a house and then breaking out. (Larceny Act, 1916.)

Burial. At common law, every person may be buried in the churchyard of the parish where he dies, unless he was within certain ecclesiastical prohibitions (*e.g.*, not having been baptised), and provided that the rites of the Church of England are observed. See the Burial Acts, 1852 to 1900.

Buron v. Denman ((1848), 2 Ex. 167). If a servant of the Crown commits a wrongful act against an alien, and the Crown authorised such act, or subsequently ratifies it, it is an act of State and no action will lie in respect of it against such servant.

The defendant, a British naval commander, in execution of a treaty concluded with the King of the Gallinas, fired the premises of the plaintiff, a Spaniard, and liberated his slaves. The English Govern-

ment adopted and ratified the act. *Held*, the defendant was not liable.

Bushell's Case ((1670), Vaughan, 135). The jury had acquitted William Penn and another of a charge of preaching in a London Street, and had been fined by the Recorder forty marks each in consequence, and in default committed. A *habeas corpus* was moved for. *Held*, that finding against the evidence, or direction of the Court, is no sufficient cause to fine a jury.

Business Names. See *Registration of Business Names Act*, 1916.

Butterfield v. Forrester ((1809), 11 East, 60). A person is not entitled to say that he is injured by the negligence of another if he might by ordinary care have escaped the danger.

The defendant for the purpose of making some repairs to his house, put a pole across part of the road. The plaintiff was riding a horse violently along the road while there was light enough left to discern the obstruction at one hundred yards distance. He rode against it and was injured. *Held*, he could not recover damages.

Bye-laws. Rules made by some authority (subordinate to the Legislature) for the regulation, administration or management of a certain district, property, undertaking, etc., and binding on all persons who come within their scope. Thus every Act of Parliament incorporating a railway company gives it power to make bye-laws for the regulation of its line, subject to the sanction of the Board of Trade. Municipal corporations have a similar power. A bye-law is invalid if it is *ultra vires*.

Byrne v. Boadle ((1863), 2 H. & C. 722). *Res ipsa loquitur*. The plaintiff was walking along a street in Liverpool when a barrel of flour fell from the defendant's premises and injured him. *Held*, that the falling was *prima facie* evidence of negligence.

Byrne v. Van Tienhoven ((1880), L. R. 5 C. P. D. 344). A revocation or withdrawal of an offer is of no effect until it is communicated to the offeree, *i.e.*, until it is actually received by him. Therefore an acceptance of an offer, made between the posting and receipt of a revocation, is operative.

Bywell Castle, The ((1879), 4 P. D. 219). A ship, by faulty navigation, placed another ship in such a position that a collision was inevitable unless the utmost skill was shown, which in fact was not. *Held*, the owner of the latter ship was entitled to damages.

C.I.F. Cost, insurance and freight. A price quoted c.i.f. means that the seller pays these charges.

Cabinet. The committee or council of the Ministers of the Crown, presided over by the Prime Minister, and consisting of the political heads of the Government Departments and other officers, all of whom are members of the Privy Council. In practice it is the supreme executive in the British Constitution, but it is unknown to the law as such.

It originated in the time of Charles I as a "meeting of His Majesty's Servants."

Cadell v. Palmer ((1833), 1 Clark & Finelly, 372). *Held*, that a limitation by way of executory devise, which is not to take effect until

after the determination of a life or lives in being, and a term of twenty-one years (as a term in gross and without reference to the infancy of any person), is a valid limitation; an additional period for gestation to be allowed in those cases in which it actually exists, but not otherwise.

Cadit quæstio. The matter admits of no further argument.

Caeteris paribus. Other things being equal.

Calendar. A list of prisoners to be tried at the assizes or Central Criminal Court, and of the offences with which they are charged.

Call. A demand upon the holder of partly paid up shares in a company for payment of the balance, or an instalment of it, by the company itself, or, if the company is in liquidation, by the liquidator.

Callisher v. Bischoffsheim ((1870), L. R. 5 Q. B. 449). *Held*, that a forbearance to sue, as in a compromise, is valuable consideration, if the party *bona fide* believes he has a cause of action.

Calvin's Case ((1608), 4 Rep. 1). Calvin was a *postnatus* of Scotland, *i.e.*, one born after the union of the Crowns of Scotland and England in James I of England. *Held*, that the *postnati* being born in the allegiance of the King were not aliens and might inherit land in England.

Calye's Case ((1604), 8 Coke, 32). *Held*, that if a man comes to a common inn and delivers his horse to the hostler, and requires him to put him to pasture, which is done, and the horse is stolen, the innkeeper shall not answer for it. To charge an innkeeper for the loss of goods: (1) The inn ought to be a common inn. (2) The party ought to be a traveller or passenger. (3) The goods must be in the inn (and for this reason the innkeeper is not bound to answer for a horse put out to pasture). (4) There must be a default on the part of the innkeeper or his servants in the safe keeping of his guest's goods. (5) The loss must be to moveables, and therefore if a guest be beaten at an inn, the innkeeper shall not answer for it.

Camera. See *In camera.*

Camera Stellata. The Star Chamber (*q.v.*).

Campbell v. Hall ((1774), Lofft, 655). This was an action against the collector of customs in the island of Grenada to recover money paid as duty upon exports, on the ground that the duty had been illegally imposed. In 1763 the Crown had delegated to the Governor in council power to legislate. *Held*, that the Crown once having delegated the power of legislation, including taxation, to a local assembly, cannot afterwards exercise the power of levying taxes there.

Campbell v. Spottiswoode ((1863), 3 B. & S. 769). A party is not liable for defamatory matter which is a fair comment, without malice, on a matter of public interest. Fair comment and malice are questions for the jury, and public interest for the Judge. *Per* Cockburn, C.J., "You have no right to impute to a man base, sordid, dishonest and wicked motives . . . unless you have honestly entertained some mistaken belief . . . well founded and not without cause."

Campbell's Act, Lord. The Fatal Accidents Act, 1846, under which, and the amending Act, the Fatal Accidents Act, 1864, provision is made for compensating the families of persons killed by accident. See *Bastard; Actio personalis moritur cum persona.*

Campbell's Libel Acts, Lord. The Libel Acts, 1843 and 1845.

Campden Charities, Re ((1881), L. R. 18 Ch. D. 310). The *cy-près* doctrine is applied to charitable gifts when it is no longer beneficial or desirable to carry out exactly the intention of the donor. The Court will not interfere with a scheme settled by the Charity Commissioners unless the Commissioners have exceeded their jurisdiction or gone wrong in principle or in law. In 1643 a testatrix gave a sum of money to buy land of the annual value of £10 for the benefit of the parish of Kensington; of this sum £5 was for the apprenticing of one poor boy or more being of the said parish. In 1881 the annual income from the land was more than £2,000. *Held*, that considering the enormous increase of the population of Kensington and the change of habits, particularly the fact that apprenticeship had been superseded by education, the Charity Commissioners were justified in applying a considerable portion of one half the income towards educational purposes.

Cancellaria curia. The Court of Chancery.

Cancellation. The drawing of lines across an instrument with the purpose of depriving it of effect.

Cancellation of a will does not revoke it, unless it is accompanied by a declaration executed by the testator in the manner in which wills are required to be executed. (Wills Act, 1837, s. 20.)

Canon. A rule of the canon law, or ecclesiastical law. It is sometimes used as meaning a rule of the ordinary law, *e.g.*, the canons of descent.

Canon Law. A body of Roman ecclesiastical law, compiled from the opinions of the ancient Latin fathers, the decrees of general councils, and the decretal epistles and bulls of the Holy See. It was codified in the 12th century by Gratianus, and added to by subsequent collections, and known as the *Corpus Juris Canonica*. There is also a kind of national canon law adapted only to this country. It was enacted in 1533 that a review should be had of the canon law, and till then the existing canon law should be valid and binding. No such review has been made.

Canute, Laws of. A code promulgated at Winchester, with the consent of the Witan (*q.v.*), apparently between 1028 and 1035, by King Canute.

Capias. That you take.

Capias ad audiendum judicium. A writ to summon a defendant in a criminal prosecution to Court to hear judgment pronounced against him.

Capias ad respondendum. A writ which may be issued for the arrest of a person against whom an indictment for a misdemeanour has been found, in order that he may be arraigned. It was the writ by which an ordinary civil action was commenced; the defendant was required to appear and put in bail.

Capias ad satisfaciendum, or *ca. sa.*; a writ for the arrest of the defendant in a civil action when judgment has been recovered against him for a sum of money and has not been satisfied.

Capias extendi facias. A writ of execution issuable against a debtor to the Crown, which commands the sheriff to "take" or arrest the body, and "cause to be extended" the lands and goods of the debtor. See *Extent*.

Capias in withernam. A writ formerly used in cases where the defendant in an action of replevin had obtained judgment for the re-delivery of the goods, and the sheriff had returned *elongata, i.e.*, that the goods had been removed to unknown places. The writ commanded the sheriff to take other goods of the plaintiff to the value of the goods replevied, and deliver them to the defendant to be kept by him until the latter goods were returned.

Capias pro fine. A writ issued for the arrest of one who had been fined for an offence against a statute. The writ authorised his imprisonment until the fine was paid.

Capias utlagatum. A writ for the arrest of an outlaw.

Capita. See *Per Capita.*

Capital Punishment. Punishment of death, awarded for treason, and the capital felonies, *viz.* :—(1) Murder, for which sentence of death must be passed by the Judge (Offences against the Person Act, 1861, ss. 1—3), unless the convict be under sixteen (Children Act, 1908, s. 103). (2) Assault with attempt to murder or act endangering life committed in connection with attempted piracy (Piracy Act, 1837, c. 88). (3) Destruction, or attempted destruction, of royal arsenals, dockyards, magazines, stores or ships (Dockyards, etc., Protection Act, 1772, s. 1).

Under the Navy Discipline Acts, 1866 and 1884, and under the Army Act, sentence of death may be passed by courts martial on offenders serving in the Navy and Army respectively for specified offences.

Capitale crimen. An accusation affecting the *caput* of the accused. (Roman law.)

Capite, Tenure in. Tenure in chief. The holding of land direct from the King.

Capitis deminutio. A loss or diminution of *caput* (*q.v.*). (Roman law.)

Capitula. Articles.

Capitulations. Agreements, concluded between Christian States on the one hand and non-Christian countries on the other hand, under which certain immunities and privileges are secured to subjects of the Christian State while in the territories of the non-Christian State. These subjects form an extra-territorial community subject to the laws of their own country, and outside the jurisdiction of the local law.

Caption. The formal heading of a legal document, stating before whom it was taken or made.

Capture. (1) A mode of acquiring property; *e.g.*, a *res nullius.* (2) The seizure of enemy property in war.

Caput. The three elements—freedom, citizenship and family rights. (Roman law.)

Cargo. Goods shipped for carriage.

Carlill v. Carbolic Smoke Ball Co. ((1893), L. R. 1 Q. B. 256). An offer made generally must be accepted by definite persons. Acceptance of an offer must generally be communicated to the offeror, but from the nature of the transaction, acting on the offer with the intention of accepting it may be sufficient acceptance.

The defendants advertised a reward to anyone who should catch cold

after using their smoke ball remedy. The plaintiff complied with the conditions. *Held,* she was entitled to recover.

Carnal Knowledge. The penetration to any the slightest degree . . . by the male organ of generation. (Offences against the Person Act, 1861, s. 63).

Carrier. One who has received goods for the purpose of carrying them from one place to another for hire, either under a special contract, *i.e.*, as a bailee for reward, or as a common carrier.

Carrier, Common. One who, by profession to the public, undertakes for hire to transport from place to place, either by land or water, the goods of such persons as may choose to employ him. He is bound to convey the goods of any person who offers to pay his hire, and he is an insurer of goods entrusted to him, that is, he is liable for their loss or injury, in the absence of a special agreement or statutory exemption, unless the loss or injury was caused by the act of God or the King's enemies. See *Belfast Ropeworks* v. *Bushell; Readhead* v. *Midland Ry. Co.; Nugent* v. *Smith; Blower* v. *G. W. Ry. Co.*

Carrier's Act, 1830, provided (1) that no carrier by land is to be liable for loss of or injury to certain valuable descriptions of property (coin, jewellery, pictures, etc.) beyond the value of £10, unless their value was declared at the time of delivery; (2) that any carrier may require an increased rate of charge for such articles over the value of £10 by a notice affixed in his receiving house, and all persons delivering such articles are bound by the notice, without proof of its having come to their knowledge.

Cartel. An agreement between States as to the exchange of prisoners during war.

Cartel Ship. A ship sailing during a state of war under a safe-conduct which protects her from molestation or capture when voyaging for the purpose of the exchange of prisoners under a cartel.

Carucage (*Caruca,* plough). A tax anciently levied upon land.

Case Stated. The statement of the relevant facts in a case for the opinion or judgment of another Court. After the hearing and decision of a case by justices or magistrates a party may require a case to be stated for the opinion of the Divisional Court of the High Court of Justice. (Summary Jurisdiction Act, 1857, s. 2.) A case may be stated to the High Court by an arbitrator for the decision of a point of law.

Cassetur billa. Let the bill be quashed.

Cassetur breve. Let the writ be quashed: in the old common practice, a method of discontinuing an action.

Casting Vote. The deciding vote which a returning officer or chairman has power to give when there is an equality of votes.

Castrique v. Imrie ((1870), L. R. 4 H. L. 414.) A judgment of a foreign Court of competent jurisdiction unless obtained by fraud, operates as an estoppel against the party against whom it is given. An English Court will not act as a Court of Appeal from a foreign Court even on the ground of a mistake in law.

Casual Ejector. Down to 1852, the nominal defendant, Richard Roe, in an action of ejectment was called the casual ejector, because by a legal fiction he was supposed casually, or by accident, to come upon the land or premises and turn out the lawful possessors. See *Ejectment.*

Casus belli. An act justifying war.

Casus omissus. A matter which should have been, but has not been, provided for in a statute or in statutory rules.

Catching Bargain. Originally a contract for a loan, made on oppressive terms, with an expectant heir (*q.v.*). Equity granted relief on the ground of constructive fraud, *i.e.*, that the parties were not on equal terms, of which unfair advantage had been taken, and a hard bargain made. The onus was placed on the person seeking to enforce the contract to show that the transaction was fair and reasonable. The doctrine has been extended to all cases where parties do not meet on equal terms, or where one is under pressure without adequate protection; *e.g.*, a contract between solicitor and client.

But no purchase in good faith without fraud of any reversionary interest in real or personal property shall be liable to be set aside merely on the ground of undervalue. (Law of Property Act, 1925, s. 174.) See *Chesterfield* v. *Janssen; Aylesford* v. *Morris.*

Causa causans. The immediate cause: the last link in the chain of causation. It is to be distinguished from *causa sine qua non*, which means some preceding link but for which the *causa causans* could not have become operative.

Causa falsa. An untrue ground or motive; a cause or title wrongly thought to be just or legal. (Roman law.)

Causa justa. A true or just cause, means, motive, or ground; a legal title; a fact in conclusive proof. (Roman law.)

Causa liberalis. An *actio praejudicialis* brought to try whether a man was or was not free. Prior to Justinian an *assertor libertatis* (claimant for freedom) acted for the person whose freedom was in question, but Justinian gave the action directly to the person claiming his freedom. (Roman law.)

Causa lucrativa. A ground that is purely gainful. A mode of acquisition without valuable consideration. (Roman law.)

Causa proxima non remota spectatur. The immediate, not the remote, cause is to be considered.

Cause. An ordinary civil proceeding; an action.

Cause Lists. Lists of the actions and matters to be heard in the Supreme Court.

Cause of Action. The fact or combination of facts which give rise to a right of action.

Cautio juratoria. A guarantee by oath (under Justinian); a promise on oath made by a defendant sued in his own name that he will remain in the power of the Court up to the end of the suit. (Roman law.)

Caution. Under the Land Registration Act, 1925, any person interested in land may lodge a caution with the Land Registrar, requiring him to notify any proposed dealings with the land.

Caveat. A warning. An entry made in the books of the offices of a registry or Court to prevent a certain step being taken without previous notice to the person entering the caveat (who is called the caveator).

Caveat emptor. "Let the buyer beware." At common law, when a buyer of goods had required no warranty he took the risk of quality upon himself, and had no remedy if he had chosen to rely on the bare representation of the vendor, unless he could show that representation

to have been fraudulent. But some warranties were implied. See now the Sale of Goods Act, 1893, ss. 12 and 14.

Caveat venditor. Let the seller beware. (Roman law.)

Central Criminal Court. (The Old Bailey.) A Court having jurisdiction to try all offences committed within the City of London, the county of Middlesex, and certain suburban parts of Essex, Kent and Surrey. The Judges are the High Court Judges, the Recorder of London, and the Common Sergeant, together with the Lord Mayor and Aldermen of the City, and other nominal Judges.

Ceorl. A small freeholder or freeman. (Anglo-Saxon.)

Cepi corpus. (I have taken the body.) When a writ of *capias* (*q.v.*) or attachment (*q.v.*) is directed to the sheriff for execution, if he has taken the defendant and has him in custody, he returns the writ together with an indorsement on the back stating that he has taken him; called a return of *cepi corpus*.

Certificate. A statement in writing by a person having a public or official status concerning some matter within his knowledge or authority.

Certificate, Land. A certificate under the seal of the Land Registry containing a copy of the registered particulars of a certain piece of land.

Certificate of Master. When a question in an action or suit in the Chancery Division is referred to chambers, as where accounts or inquiries are directed, the result of the proceedings is stated in the Master's certificate, which is in the nature of a report to the Court.

Certificate, Trial by. A mode of trial which is now practically obsolete, where the fact in issue was a matter of special knowledge, *e.g.*, a custom of the City of London. It is now replaced by reference to arbitration.

Certified Copy. A copy of a document, signed and certified as a true copy by the officer to whose custody the original is entrusted, and admissible as evidence when the original would be admissible.

Certiorari. A writ directed to an inferior Court of record, commanding it to "certify" to the King in the High Court of Justice some matter of a judicial character. It is used to remove civil causes or indictments from inferior Courts of record into the High Court, that they may be better tried, or if there has been abuse or error, re-tried.

Certum est quod certum reddi potest. That which is capable of being made certain is to be treated as certain.

Cessante ratione legis, cessat ipsa lex. The reason of the law ceasing, the law itself ceases.

Cessavit. An action for the recovery of land, where a man who held land by rent or services, ceased to perform his services for two years. Abolished by Real Property Limitation Act, 1833.

Cesser. The cesser of a term, annuity, etc., takes place when it determines or comes to an end. A proviso for cesser was a provision in a settlement creating a long term of years to secure a sum of money, that the term should determine when the objects of the trust were fulfilled; rendered unnecessary by the Satisfied Terms Act, 1845.

Cessio bonorum. The surrender by a debtor of his property to his creditors in lieu of execution against his body. It did not release the debtor from his debts if he afterwards acquired property from which he could pay them without leaving himself in want. (Roman law.)

Cession. A mode of acquisition of territory. The transfer of

territory by one State to another, under pressure of war or by arrangement.

Cestui que trust. A person for whom another is trustee: a beneficiary.

Cestui que use. A person to whose use or benefit lands or other hereditaments were held by another person; cf. *cestui que trust.*

Cestui que vie. Where a person is entitled to an estate or interest in property during the life of another, the latter is called the *cestui que vie.*

Challenge of Jurors. An objection to persons returned to be jurors in a civil or criminal proceeding. Challenges are tried and determined by triors appointed by the Court, or by the Court itself.

1. A challenge to the array is an exception to the whole jury in respect of some partiality or default of the sheriff or other officer.

2. Challenges to the polls (that is, to particular jurors) are made orally and are of five kinds: (1) A peremptory challenge, without showing any cause; (2) *propter honoris respectum,* as where a lord of Parliament is empanelled on a jury; (3) *propter defectum,* for some want or default in the individual juror; (4) *propter affectum,* for suspicion of partiality; (5) *propter delictum,* for some crime or misdemeanour.

Chamberlain, Lord. An officer of the King's Household, who changes with the Ministry of the day. He is the censor of plays.

Chamberlain, Lord Great. The officer in charge of the Houses of Parliament, with ceremonial duties.

Chambers. (1) Rooms attached to the Courts in which sit the Judges, the Masters and Registrars for the transaction of legal business which does not require to be done in Court. See Order LIV and Order LV. (2) Counsels' private offices, *e.g.,* in the Temple or Lincoln's Inn.

Champarty, or **Champerty.** A species of maintenance (*q.v.*) which consists in the purchasing of an interest in the thing in dispute with the object of maintaining and taking part in the litigation. It is not champerty if the parties have a common interest.

Chancellor. The judicial officer of a King, Bishop, or University, etc.

Chancellor, Lord High. The chief judicial officer in the British Constitution. He is appointed by the delivery of the Great Seal, of which he is the keeper. He is a Privy Counsellor and acts as Speaker of the House of Lords, where he sits on the Woolsack. He is the President of the House of Lords sitting as the final Court of Appeal, of the Chancery Division, and of the Court of Appeal. He appoints the justices of the peace and the County Court Judges, and nominates the Judges of the High Court except the Lord Chief Justice. He is a Cabinet Minister; his salary is £10,000 per annum, with a pension of £5,000 per annum. Originally he was an ecclesiastic who acted as King's Secretary. He is accordingly keeper of the King's conscience, the patron of the King's livings, visitor of colleges and hospitals of Royal foundation, and the guardian of infants and lunatics. He may not be a Roman Catholic.

Chancellor of the Duchy of Lancaster. A member of the Cabinet with only nominal duties.

Chancellor of the Exchequer. An officer originally appointed to act as a check on the Lord Treasurer, and a Judge of the Court of Exchequer sitting as a Court of Equity. Now he is the Cabinet Minister at the head of the Treasury.

Chance-medley. An assault in the course of a sudden brawl or quarrel, followed by the killing of the aggressor; excusable homicide.

Chancery. See *Court of Chancery.*

Chancey's Case ((1725), 1 P. Wms. 408). Testator, during his lifetime, and before making his will, gave his servant a bond for £100 for wages due. He afterwards made his will and bequeathed her £500, and directed that all his debts and legacies should be paid. *Held,* that the legacy was not a satisfaction of the debt, because it was attended with particular circumstances varying it from the common rule.

Chandelor v. Lopus ((1604), Cro. Jac. 4). An innocent misrepresentation inducing a party to enter into a contract will not render the party making it liable in damages unless it is a warranty. The defendant sold to the plaintiff a stone which he affirmed to be a Bezoar stone, but which proved not to be so. *Held,* that no action lay against him, unless he either knew that it was not a Bezoar stone, or warranted it to be a Bezoar stone.

Chapman v. Pickersgill ((1762), 2 Wilson, 145). *Held,* that to institute bankruptcy proceedings against a party maliciously and without reasonable cause, whereby he suffers damage to his fame or property, is actionable.

Charge. An obligation or liability. As applied to property, it signifies that it is security for the payment of a debt or performance of an obligation. In criminal law it means an accusation. A charge to a jury is the address of the presiding Judge with regard to the duties of the jury.

After 1925, the only charges capable of subsisting at law are (1) A rentcharge in possession charged on land, being either perpetual or for a term of years absolute; (2) A charge by way of legal mortgage; (3) Land tax, tithe rentcharge or similar charge on land not created by an instrument. (Law of Property Act, 1925, s. 1, sub-s. 2.)

Charge By Way of Legal Mortgage. Introduced by the Law of Property Act, 1922. It is a charge which has the same effect as a legal mortgage. (See section 87, Law of Property Act, 1925.)

Chargé d'Affaires. A subordinate diplomatic agent, accredited to the Foreign Minister of the State where he resides.

Charging Order. An order that any stock or fund standing in the name of, or the property of, a judgment debtor, shall stand charged with the payment of the judgment debt in favour of the judgment creditor, which prevents the transfer of the stock, etc.

Charity Commissioners. A body constituted by the Charitable Trusts Acts, 1853 to 1914, to administer charities and charity property.

Charter. Any deed relating to hereditaments, especially deeds of feoffment, but it is now always used in the sense of a royal charter, which is a grant by the Crown, in the form of letters patent under the Great Seal, to persons therein designated, of specified rights and privileges.

Charterparty. (*Carta partita,* a deed cut in two.) A written agreement by which a shipowner lets an entire ship, or a part of it, to a

merchant for the conveyance of goods, binding himself to transport them to a particular place for a sum of money which the merchant undertakes to pay as freight for their carriage. The principal stipulations refer to the places of loading and delivery, the mode and time of paying the freight, the number of laying days (that is, the time allowed the freighter for loading and unloading), and the rate of demurrage (*q.v.*).

The charterparty may operate as a demise or lease of the ship itself with or without the services of the master and crew. The charterer then becomes for the time the owner of the vessel, and the master and crew become his agents or servants. The test is, "Has the owner parted for the time with the whole possession and control of the ship?" (Lord Esher in Baumvoll *v.* Gilchrist, [1893] A. C. 8.)

Chase. A district of land privileged for wild beasts of chase with the exclusive right of hunting therein.

Chasemore v. Richards ((1859), 7 H. L. C. 349). A landowner has no right to percolating water until it reaches his land.

The plaintiff was the proprietor of a water-mill on the river Wandle. The local Board of Health for Croydon built some waterworks which caused so much diminution in the river that it would no longer work the mill. *Held*, the plaintiff had no claim.

Chattels. (Latin; *Catalla*, Cattle.) Any property other than freehold land. Leasehold and other interests in land less than freehold are termed chattels real, as they savour of the realty. Chattels personal are moveable, tangible articles of property.

Cheat. The misdemeanour of fraudulently obtaining the property of another by any deceitful practice not amounting to felony, but of such a nature that it may directly affect the public at large.

Cheque. A cheque is a bill of exchange (*q.v.*) drawn on a banker, payable on demand (Bills of Exchange Act, 1882, s. 73). The person making the cheque is called the drawer, and the person to whom it is payable is called the payee. When the cheque bears across its face the words "and Company," or any abbreviation thereof, between two parallel transverse lines, it is said to be crossed generally, and when it bears across its face the name of a banker, it is said to be crossed specially. (Section 76.) A generally crossed cheque can be paid only through a bank, and a specially crossed cheque only through the bank specified. A holder of a cheque crossed "not negotiable" cannot give a transferee a better title than he himself has. (Section 81.) See *London Joint Stock Bank* v. *Macmillan*.

Chesterfield (Earl of) v. Janssen ((1751), 2 Ves. 125). Spencer, at the age of 30, had borrowed £5,000 of defendant on the terms of paying £10,000 if he survived his grandmother, from whom he had large expectations, and who was then of the age of 78 years, and nothing if he did not. He did survive her, and after her death gave a bond for payment of the £10,000, and paid a part. Mr. Spencer having since died, his executor brought this suit to be relieved against this contract as usurious and unconscionable. *Held*, not usurious, and (without deciding whether relief would have been given against the original transaction) no relief could now be given, Mr. Spencer having by his acts after his grandmother's death ratified the transaction.

Chief Baron of the Exchequer. The Judge who presided in the Court of Exchequer, which under the Judicature Act, 1873, ss. 3, 16,

became part of the Supreme Court and under section 34 was consolidated with the King's Bench Division.

Chief Clerks. The old Masters in Chancery (*q.v.*). The Judicature Act, 1873, transferred them to the Supreme Court and in 1897 they were entitled Masters of the Supreme Court. (See Order LV.)

Chief Justice of the Common Pleas. The Judge who presided, before the Judicature Act, 1875, in the Court of Common Pleas, and subsequently in the Common Pleas Division.

Chief, Tenants in. See *Capite, Tenure in.*

Chief-rent. A small fixed annual rent payable by freeholders of a manor.

Chiltern Hundreds. The hundreds of Stoke, Desborough and Burnham in Bucks. A member of the House of Commons cannot resign his seat, but the acceptance of an office of profit under the Crown obliges him to vacate it, but may leave him eligible for re-election. The stewardship of the Chiltern Hundreds is considered such an office, and is granted to any member who wishes to retire.

Chirograph. Anciently a deed of two parts which were written on the same paper or parchment, with the word *chirographum* in capital letters between the two parts: the paper or parchment was then cut through the middle of the letters, and a part given to each party. If the cutting was indented, the deed was an indenture.

Chirographum apud debitorem reportum praesumitur solutum. A deed or bond found with the debtor is presumed to be paid.

Chose. A thing; a chattel personal. A chose in possession is a moveable chattel in the custody or under the control of the owner; *e.g.*, furniture, horses.

Chose in Action. A right of proceeding in a Court of law to procure the payment of a sum of money (*e.g.*, a bill of exchange, a policy of insurance), or to recover pecuniary damages for the infliction of a wrong or the non-performance of a contract. A legal chose in action is a right of action which could be enforced in a Court of law; an equitable chose in action is a right which could only be enforced in the Court of Chancery, *e.g.*, an interest in a trust fund or legacy. See *Assignment of Choses in Action.*

Churchwardens. Parochial officers and guardians of the property of the Church.

Cinque Ports. The five harbours of Hastings, Romney, Hythe, Dover and Sandwich, and two other towns, Winchelsea and Rye, subsequently added to their number. Lying more immediately exposed to attacks from the French coast, they were placed under the especial custody of a Lord Warden, who had a local jurisdiction in relation to civil suits and proceedings. (Cinque Ports Act, 1855.)

Circuits. Divisions of the country for judicial business. For the purpose of holding assizes (*q.v.*), the country is divided into seven circuits, namely, the Northern, North-eastern, Midland, South-eastern, Oxford, Western, and North and South Wales, the last being divided into two divisions. The county of Surrey is not included in any circuit, but commissions for the discharge therein of civil and criminal business are issued not less than twice a year.

County Court circuits were created by the County Courts Act, 1846.

Circuity of Action was where two or more proceedings were taken to

effect the same result as might be effected by one. It has been abolished in practice by the right to raise a counterclaim at the trial of an action.

Citation. The operation of calling upon a person who is not a party to an action or proceeding to appear before the Court in that action or proceeding.

City. A borough which has or has had a bishop, or which by letter patent has been created a city by prerogative of the Crown.

City of London Court. A Court having a local jurisdiction within the City of London: practically a County Court. See *Mayor's and City of London Court.*

Civil is opposed to (i) ecclesiastical; (ii) criminal; (iii) military.

Civil Law. Roman law; the *Corpus Juris Civilis.*

Civil List. Each sovereign since George II has at his or her accession surrendered to the nation the hereditary revenues (the profits of Crown lands, etc.), and thereupon Parliament has made pecuniary provision for each sovereign for the period of his or her reign by an Act known as the Civil List, granting an annual sum for the support of the royal dignity and household. The Civil List Act, 1910, fixes the sum at £470,000, which is not liable to income tax. Of this £110,000 only is for the Privy Purse.

Civiliter mortuus. Civilly dead. See *Death, Civil.*

Claim. The assertion of a right.

Claim of Liberty. A suit or petition to the King in the Court of Exchequer to have liberties and franchises confirmed there by the Attorney-General.

Clam, vi, aut precario. By stealth, violence, or entreaty.

Clarendon, Constitutions of, (1164). Enactments passed to secure the jurisdiction of the King's Courts in certain matters of dispute between laymen and the Church.

Clark v. Chambers ((1878), L. R. 3 Q. B. D. 327). One who places a dangerous obstruction in a highway is liable for the consequences. A person who does an act likely to cause injury to others, is liable for injury resulting from that act, although not immediately caused by it.

The defendant placed upon the highway a spiked hurdle which was removed to the footpath by another person. The plaintiff in the dark ran into it and put out his eye. *Held,* the defendant was liable.

Clark v. Molyneux ((1877), L. R. 3 Q. B. D. 237). *Held,* that in an action for libel where qualified privilege is proved, the burden of proof of actual malice lies on the plaintiff. If the defendant believed his defamatory statement to be true, the fact that the belief is unreasonable will not defeat his privilege.

Clausum fregit. Breach of Close (*q.v.*).

Clayton v. Blakey ((1789), 8 T. R. 3). *Held,* that though by the Statute of Frauds it is enacted that all leases by parol for more than three years shall have the effect of estates at will only, such a lease may be made to enure as a tenancy from year to year.

Clayton v. Le Roy ([1911] 2 K. B. 103). *Held,* that in actions for detinue and trover, there must be a demand for the chattels by the owner, and a wrongful refusal to deliver them before the writ is issued.

Clayton's Case ((1816), 1 Mer. 572). In regard to a banking

account, the sums first paid in are assumed to be exhausted by the sums first paid out.

Clayton had a banking account with a partnership firm and had a balance at the death of a partner. Later the firm failed. Clayton claimed that the estate of the deceased partner was liable to the extent of the balance at the date of his death. *Held*, that that balance had been exhausted by subsequent drawings, irrespective of subsequent payments in.

Clear Days. Complete days; exclusive of named first or last days.

Clearance. A certificate issued by the Customs to the effect that a ship has complied with the Customs requirements and is at liberty to put to sea.

Clements v. London & North Western Ry. Co. ([1894] 2 Q. B. 490). Contracts with infants not falling within the provisions of the Infants Relief Act, 1874, are binding on the infant if they are for his benefit. An infant railway servant, as a condition of his employment, joined an insurance society, to whose funds the railway company contributed, and agreed to accept compensation on a certain scale from the society in lieu of any claim under the Employers' Liability Act, 1880. *Held*, the contract being for the infant's benefit, it was binding.

Clerk. Anciently, a priest or deacon, in Holy Orders or not.

Clerk of Arraigns. An assistant of the clerk of assize (*q.v.*).

Clerk of Assize. The principal officer attached to the assizes. He takes charge of and reads the commission, and performs on the civil side duties analogous to those of a master or associate; the corresponding duties on the Crown side are performed by the clerk of arraigns. (See Judicature Act, 1925, s. 79.)

Clerk of the Crown. This officer performs the duties of the Clerk of the Hanaper and the Clerk of the Petty Bag, including all duties and powers with regard to letters patent and writs passed under the Great Seal. He is Clerk of the Court of the Lord High Steward, and Accountant-General (*q.v.*) of the Supreme Court.

Clerk of the Hanaper (*Hanaperis*, a hamper). Formerly an officer on the common law side of the Court of Chancery who registered the fines that were paid on every writ, and saw that the writs were sealed up in bags (or hampers), in order to be opened afterwards and issued. It was also his duty to take an account of all patents, commissions and grants that passed the Great Seal.

Clerk of the House of Commons is appointed by the Crown as underclerk of the Parliaments to attend upon the Commons. He signs all orders of the House, indorses the bills sent or returned to the Lords, and reads whatever is required to be read in the House. He has the custody of all records and other documents.

Clerk of the Parliaments. One of the chief officers of the House of Lords. He is appointed by the Crown, by letters patent. On entering office he makes a declaration to make true entries and records of the things done and passed in the Parliaments, and to keep secret all such matters as shall be treated therein. He indorses on every Act the date on which it receives the Royal Assent.

Clerk of the Peace. Anciently, an officer appointed by the Custos Rotulorum (*q.v.*), to keep the county records and to assist the justices of the peace in quarter sessions not only in drawing indictments,

entering judgments, issuing process, etc., but also in administrative business.

The Local Government Act, 1888, converted the clerk of the peace into clerk to the county council, except in the county of London.

Clerk of the Petty Bag. An officer of the Court of Chancery whose duty it used to be to record the return of all inquisitions out of every shire; to make out patents, summonses to Parliament, etc.

Clerks of Records and Writs. Officers formerly attached to the Court of Chancery, whose duties consisted principally in sealing bills of complaint and writs of execution, filing affidavits, keeping a record of suits, and certifying office copies of pleadings and affidavits. By the Judicature (Officers) Act, 1879, they were transferred to the Central Office of the Supreme Court, under the title of Masters of the Supreme Court.

Clog on Equity of Redemption. The doctrine of equity that no mortgage deed may contain any stipulation or provision fettering or impeding the mortgagor's right to redeem, *e.g.*, which unduly delays the time for redemption, or which is unfair or unconscionable or which is inconsistent with or repugnant to the right to redeem. Collateral stipulations were formerly void as an evasion of the usury laws, but they are now valid provided they do not clog the equity. See *Kreglinger* v. *New Patagonia, etc., Co.*; *Bradley* v. *Carritt*; *Noakes* v. *Rice*.

Close. A piece of land. A trespass on a man's land was formerly described as a breach of his close, or trespass *quare clausum fregit*.

Close Rolls and Close Writs. Certain letters of the King sealed with his Great Seal and directed to particular persons, and not being proper for public inspection, are closed up and sealed on the outside. They are thence called writs close, and are recorded in the close rolls.

Club. A club is a voluntary association of persons for social or other purposes. It is not a partnership. Members are only liable to the extent of their subscriptions (Wise *v.* Perpetual Trustee Co., [1903] A. C. 139). In a proprietary club the expenses are borne by a contractor, who receives the subscriptions of the members and makes his profit out of the difference.

A club is regulated by the rules agreed to by the members and for the time being in force. If a member is expelled from a club by a decision which has been arrived at without giving him an opportunity of being heard in his own defence, the Court may grant an injunction, or give damages.

Coast-guard. The force stationed on the coasts to prevent smuggling and invasion, and to assist navigation and ships in distress. By the Coast-guard Act, 1925, the force was transferred from the Admiralty to the Board of Trade as a coast-watching force.

Cockcroft v. Smith (2 Salk. 642). An assault committed in self-defence is not actionable if only reasonable force be used.

Code. A consolidation of the statute law, or a statute collecting all the law relating to a particular subject.

Codicil. A codicil is an instrument executed by a testator for adding to, or altering or explaining a will previously made by him. It becomes part of the will, and must be executed with the same formalities as a will. (Wills Act, 1837, ss. 1, 9.)

Coercion. Formerly there was a presumption of law that a wife

who committed an offence in the presence of her husband acted under his coercion and was not guilty of an offence.

This doctrine is abolished by the Criminal Justice Act, 1925, s. 47, but which also provides that on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence of and under the coercion of the husband.

Coggs v. Bernard ((1703), 2 Ld. Raymond, 909). The defendant had promised to take up several hogsheads of brandy then in a certain cellar and lay them down again in another cellar, safely and securely, and by the default of the defendant one of the casks was staved and a quantity of brandy spilt. Verdict for plaintiff on a plea of not guilty and on motion in arrest of judgment. *Held*, that if a man undertakes to carry goods safely and securely he is responsible for any damage they may sustain in the carriage through his own neglect, though he was not a common carrier, and was to have nothing for his pains.

Cognati. Persons connected with each other by blood. (Roman law.)

Cognitor. An agent appointed to act for another in an action. He was appointed by a set form of words in the presence of the opposite party. He need not be present at the ceremony, but he did not become *cognitor* unless and until he consented to take up office. (Roman law.) See *Procurator*.

Cognovit Actionem. A written confession by a defendant in an action in the King's Bench Division that he has no defence, on condition that he shall be allowed a certain time for the payment of the debt or agreed damages. Now superseded by orders of the Court made by consent for the entry of judgment or for the issue of execution at a future date.

Cohaeredes sunt quasi unum corpus, propter unitatem juris quod habent. Co-heirs are regarded as one person on account of the unity of title which they possess.

Coif. A white silk cap which serjeants-at-law were supposed to wear in Court.

Cole v. Langford ([1898] 2 Q. B. 36). *Held*, that where a judgment has been obtained by fraud, the Court has jurisdiction, in a subsequent action brought for that purpose, to set aside the judgment.

Cole v. Turner ((1705), 6 Mod. 149). Both in assault and in battery hostile intention is necessary.

Per Lord Holt, C.J.:

(1) The least touching of another in anger is a battery.

(2) If two or more meet in a narrow passage and, without any violence or desire of harm, the one touches the other gently, it will be no battery.

(3) If either of them use violence against the other to force his way in a rude, inordinate manner, it will be a battery; or any struggle about the passage to that degree that may do hurt will be a battery.

Collateral. By the side of. A collateral assurance, agreement, etc., is one which is independent of, but subordinate to, an assurance or agreement affecting the same subject-matter. A collateral security is

one which is given in addition to the principal security. Thus a person who borrows money on mortgage (which is the principal security) may deposit shares with the lender as collateral security.

Collateral Consanguinity. See *Consanguinity.*

Collatio bonorum. Bringing into hotchpot (*q.v.*). (Roman law.)

College. A corporation created for the promotion of learning and, in many cases, for the support of persons who devote themselves to learning.

College of Arms. See *Heralds' College.*

Collen v. Wright ((1857), 8 E. & B. 647). If an agent makes a contract beyond the scope of his authority he is himself liable for damage so caused, on a breach of warranty of authority.

The defendant contracted as agent for X to lease to the plaintiff a farm of X's. The defendant had no authority to make such contract, though he believed he had. *Held,* he was liable to the plaintiff on a warranty of authority.

Collins v. Blantern ((1767), 2 Wilson, 34). Illegality may be pleaded as a defence to an action on a bond. The plaintiff sued on a bond executed by certain parties, of whom the defendant was one. The defendant pleaded that the consideration, though not appearing on the face of the bond, was illegal. Certain parties had been prosecuted for perjury, and had pleaded not guilty. The plaintiff had given his promissory note to the prosecutor to forbear further prosecuting, and the bond on which plaintiff sued had been executed to indemnify him. *Held,* that the plea was good.

Collision. Where ships are in collision caused by the negligence of both vessels, each is liable to make good the loss or damage in proportion to the degree in which she was in fault. (Maritime Convention Act, 1911.)

Colls v. Home and Colonial Stores, Ltd. ([1904] A. C. 179). A party who has enjoyed light for twenty or more years is not entitled, as of right, to more light than is ordinarily necessary.

The respondents had a long room only lighted from the front. It required, and had had for twenty years, more light than an ordinary room. The appellants proposed to build in such a way as to diminish the amount of light, but to leave enough light for all ordinary purposes, *Held,* respondents were not entitled to an injunction.

Collusion. The arrangement of two persons, apparently in a hostile position or having conflicting interests, to do some act in order to injure a third person or deceive a Court.

Colonies. As a general rule, a colony acquired by discovery and occupation is to be governed by the laws of England; and if acquired by conquest, or by cession, then by its own laws, so far as they are not contrary to morality, and until this country sees fit to change them.

Colour. Any appearance, pretext or pretence: thus a person is said to have no colour of title when he has not even a *prima facie* title.

Colour is an obsolete term of pleading, meaning the fictitious allegation of an apparent or *prima facie* right.

Colourable. That which is in appearance only, and not in substance, what it purports to be.

Combination, Unlawful. Combinations in restraint of trade are unlawful at common law. But combinations of workmen for the pur-

pose of raising wages, etc., *i.e.*, trade unions, have been legalised by statute. See the Trade Union Act, 1871; *Trade Disputes Act*, 1906.

Comitia Calata. Special meetings of the *Comitia Curiata*, summoned twice a year, and presided over by the Pontiff. (Roman law.)

Comity of Nations. That body of rules which the States observe toward one another from courtesy or convenience, but which are not binding as rules of international law.

Commendation. The act of an owner of land in placing himself and his land under the protection of a lord, so as to constitute himself a vassal or feudal tenant.

Commercial Cause. Causes arising out of the ordinary transactions of merchants and traders, those relating to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking and mercantile agency and mercantile usages. Such causes are transferred into the Commercial List and tried in a simple and expeditious manner.

Commercial Court. The Court in the King's Bench Division in which commercial causes are heard.

Commission. An order or authority to do an act or exercise powers, *e.g.*, an authority to an agent to enter into a contract, or the authority of a Judge to sit at the assizes.

The term is also applied to the body charged with a commission, *e.g.*, the Charity Commission, the Royal Commission on Income Tax.

Commission, Examination of Witnesses on. When a person, whose evidence is required in a cause, is out of the jurisdiction, or when his attendance in Court ought for any sufficient cause to be dispensed with, a commission may be issued authorising a person or persons therein named to take his evidence on oath by interrogatories or *viva voce*, and the depositions are read at the trial. (Order XXXVII, rr. 1, 5.)

Commission of the Peace. One by which the Crown appoints or "assigns" a number of persons to act as justices of the peace within a certain district.

Commission-day. The opening day of the assizes at a particular town.

Commissioners for Oaths. Solicitors and other fit persons appointed by the Lord Chancellor to administer oaths (including affirmations and declarations) to persons coming before them. (Commissioners for Oaths Act, 1889, ss. 1, 11.)

Committal. The sending of a person to prison, generally for a short period, or temporary purpose, *e.g.*, for trial or for contempt of Court.

Committee. A person to whom the custody of the person or the estate of a lunatic is committed or granted by the Lord Chancellor.

Committee of Inspection. A committee consisting of not more than five or less than three persons representing the creditors, for the purpose of superintending the administration of the bankrupt's property by the trustee. (Bankruptcy Act, 1914, s. 20.)

Committee of the Whole House. A parliamentary committee consisting of the whole House of Commons, sitting without the Speaker in the Chair, to consider Bills which have been read a second time preparatory to reporting them to the House proper. The Committee of Ways and Means and the Committee of Supply are committees of the whole

House for considering the raising of revenue and its allocation respectively.

Commixtio. The mixing together of materials belonging to different owners, the product being held in common or divided in proportion to the shares contributed. (Roman law.)

Common. A right of common is the right of taking some part of any natural product of the land or water belonging to another man in common with him. It may be created by grant or claimed by prescription. It is an incorporeal hereditament and a species of *profit à prendre.*

A common is a piece of land subject to rights of common.

See *Estovers*; *Fishery*; *Pasture*; *Turbary, Common of.*

Common Assurances. Conveyances by which the property in things is made or changed.

Common Bench. The Court of Common Pleas (*q.v.*).

Common Counts. Counts (*q.v.*) for money lent, for work done, etc.

Common Employment. The common law rule is that a master is not liable to his servant for injuries resulting from the negligence of a fellow-servant in the course of their common employment unless there be on the part of the master want of care in selecting his servants, or personal negligence, or omission to take reasonable precautions to ensure his servants' safety. The master does not warrant the servant against risks incidental to the employment; *volenti non fit injuria.* The rule was modified by the Employers' Liability Act, 1880, which placed a workman in certain cases in the same position as that of a stranger. A statutory liability was imposed by the Workmen's Compensation Acts (*q.v.*). See *Priestley* v. *Fowler.*

Common Informer. A person who sues for a penalty under a statute which entitles any person to sue for it.

Common Law. That part of the law of England formulated, developed and administered by the old Common Law Courts, based on the common custom of the country, and originally unwritten. It is opposed to equity, the body of rules administered by the Court of Chancery; to statute law, the law laid down in Acts of Parliament; to special law, the law administered in special Courts, such as ecclesiastical law, and the law merchant; and to the civil law, the law of Rome.

It is "the commonsense of the community, crystallised and formulated by our forefathers."

Common Lodging-house. A house in which persons are lodged for hire, for less than a week at a time, and sleeping or eating in a common room.

Common Pleas. Common law actions between subject and subject. See *Court of Common Pleas.*

Common Recovery. See *Recovery.*

Common Serjeant. A judicial officer of the City of London, next below the Recorder, and a Judge of the Central Criminal Court.

Common Vouchee. The crier of the Court vouched to warranty in the common recovery. See *Recovery.*

Commorientes. Persons dying together on the same occasion, where it cannot be ascertained which died first. By section 184 of the Law

of Property Act, 1925, death is presumed to have taken place in order of seniority.

Communis error facit jus. Common mistake sometimes makes law.

Commutation. The conversion of the right to receive a variable or periodical payment into the right to receive a fixed or gross payment.

Company. An association of persons formed for the purpose of some business or undertaking carried on in the name of the association, each member having the right of assigning his shares to any other person, subject to the regulations of the company.

An incorporated company is a corporation formed for the purpose of carrying on a business for profit. Such companies are incorporated either (1) by charter; (2) by special Act of Parliament; or (3) by registration under one of the public general Acts relating to companies.

Companies are limited or unlimited, according as the liability of their shareholders is or is not limited. In the case of an unlimited company, each shareholder is liable to contribute to the debts of the company to the full extent of his property.

Joint stock companies are those having a joint stock or capital which is divided into numerous transferable shares, or consist of transferable stock.

A private company is one which (*a*) restricts the right to transfer its shares; (*b*) limits the number of its members to fifty; and (*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company. Any two or more persons may form or carry on a private company, whereas it takes seven to form or carry on a public company.

The law relating to companies is codified in the Companies (Consolidation) Act, 1908.

Compensatio. Set-off; when the defendant brings up his claims against the plaintiff in order to have them reckoned in reduction of the plaintiff's demand. (Roman law.)

Complaint. A statement of the facts of a case made by the person aggrieved in commencing proceedings before justices of the peace to obtain an order for the payment of money.

Compos mentis. Of sound mind.

Composition. An arrangement between two or more persons for the payment by one to the other or others of a sum of money in satisfaction of an obligation to pay another sum differing either in amount or mode of payment; or the sum so agreed to be paid.

Compound. To agree to accept a composition.

Compounding a Felony. The misdemeanour of entering into an agreement for valuable consideration, not to prosecute a person for felony, or to show him favour in a prosecution, as where a person takes back goods which have been stolen from him upon agreement not to prosecute.

Compromise. An agreement between parties to a dispute to settle it out of Court. See *Stapilton* v. *Stapilton; Callisher* v. *Bischoffsheim.*

Comptroller. One who controls or checks the accounts of others originally by keeping a counter-roll or register.

Comptroller in Bankruptcy. An officer whose duty it was to receive from the trustee in each bankruptcy his accounts and periodical statements showing the proceedings in the bankruptcy.

Compurgation. " Wager of law." A method by which the oaths of a number of persons as to the character of an accused person in a criminal case, or of a defendant in a civil case, were accepted as proof of his innocence in the one case or as proof in the other case that the claim made against him was not well founded; and the persons who made such oaths were known as compurgators. It began to decline in the reign of Henry II, but continued available in the old actions of debt, detinue and account, until it was abolished by the Civil Procedure Act, 1833.

Compute, Rule to. A reference by the Court to the Master to compute the amount of principal and interest due to a plaintiff who had an interlocutory judgment. See now Order XXXVI, r. 57.

Concealment. Non-disclosure of a fact by a party to a contract. If active, and therefore fraudulent, it is a ground for rescission, but not otherwise, except in contracts *uberrimae fidei*, *e.g.*, a policy of insurance.

Concilium magnum regni. The Great Council (*q.v.*).

Conclusion. A former name for estoppel by deed or record.

Concord. An agreement for the compromise of a right of action arising out of a trespass. It also signified a part of a fine (*q.v.*).

Concubinatus. Concubinage; the permanent cohabitation of one man and one woman which did not give the father *potestas* over the children born to him by the concubine. (Roman law.)

Concurrent Jurisdiction of the Court of Chancery was that part of equity which dealt with cases in which the Common Law Courts recognised the right but granted no complete and adequate remedy, and where equity gave a better; *e.g.*, specific performance and injunction.

Concurrent Writ. Copies of the original writ, sealed with the word " concurrent," for use, *e.g.*, outside the jurisdiction. See Order VI, r. 2.

Condemnation. The adjudication of a Prize Court on a captured vessel that it has been lawfully captured, which divests the owner of the vessel of his property and vests it in the captor.

Condictio. (Formal notice.) The general term for a personal action; an action where the plaintiff alleges against another that something ought to be given to or done for him. Originally a formal notice to be present on the thirtieth day to choose a *judex*. (Roman law.)

Condition. A provision which makes the existence of a right dependent on the happening of an event; the right is then conditional, as opposed to an absolute right. A true condition is where the event on which the existence of the right depends is future and uncertain. An apparent condition is where the event is merely unascertained, or is not in its nature uncertain.

An express condition is one set out as a term in a contract or deed. An implied condition is one created by the law irrespective of the wishes of the parties.

A condition precedent is one which delays the vesting of a right until the happening of an event; a condition subsequent is one which destroys or divests the right upon the happening of an event. See *Warranty*; *Behn* v. *Burness*; *Smith* v. *Marrable*.

Conditions of Sale. The terms on which the purchaser is to take property to be sold by auction. Under section 46, Law of Property

Act, 1925, the Lord Chancellor has issued the Statutory Form of Conditions of Sale, which apply also to contracts by correspondence.

Condonation. Forgiveness of a conjugal offence, with full knowledge of all the circumstances, which bars the right to any remedy.

Conduct Money. Money given to a witness to defray his expenses of coming to, staying at, and returning from the place of trial.

Confession. An admission of guilt, made at any time, by a person charged with a crime. It is admissible only if free and voluntary, *i.e.*, if it is not preceded by any inducement to make a statement, or threat, held out by a person in authority. It must not be made under hope of reward (other than spiritual) or fear of punishment in relation to the proceedings. (See Criminal Justice Act, 1925, s. 12.)

Confession and Avoidance. A pleading which confesses (*i.e.*, admits) the truth of an allegation of fact contained in the preceding pleading, but avoids it (*i.e.*, deprives it of effect) by alleging some new matter by way of justification.

Confidential communications. Communications between a party and his solicitor, or between the solicitor and the counsel, made during and with reference to judicial proceedings, or in anticipation or for the purposes of such proceedings. If in writing, they are privileged from production; if verbal, they are privileged communications; and the contents of written communications are privileged from discovery. See *Privilege*.

Confirmatio cartarum. The statute 25 Edw. 1. See *Articuli super Chartas*.

Confirmation. A conveyance of an estate or right, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased.

Confiscation. The seizure and appropriation by a State of property belonging to another State or its subjects, as a punishment for breach of international law.

Conflict of Laws. See *International Law, Private*.

Confusio. The mixing of liquids belonging to different owners. The product was held in common or divided in proportion to the shares contributed. (Roman law.)

Congé d'Elire. (Permission to elect.) A licence from the Crown to the dean and chapter of a bishopric to elect a bishop, accompanied by a letter missive containing the name of the person to be elected.

Conjugal Rights. See *Restitution of Conjugal Rights*.

Connivance. Where a person knows that a wrongful act is being done, and either assists or, being under a duty to interfere, does not interfere to prevent it. It may take the form of fraud or conspiracy.

Connubium. The legal power of contracting marriage.

Conditions: The parties must (1) have citizenship; (2) not be within the prohibited degrees of relationship; (3) have the consent of their *paterfamilias*. (Roman law.)

Consanguinity. Relationship by descent, either lineally, as in the case of father and son, or collaterally, by descent from a common ancestor: thus, cousins are related by collateral consanguinity, being descended from a common grandparent.

Consensus ad idem. "Agreement as to the same"; the common consent necessary for a binding contract.

Conservators of the Peace. Officers appointed to maintain the public peace, *e.g.*, the Judges and sheriffs; justices of the peace (*q.v.*).

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 (1875), L. R. 10 Ex. 162.)

An executed consideration is some value already given; executory consideration, value to be given in the future. Good consideration is not valuable, but based on natural love or relationship. See *Rann* v. *Hughes*; *Beaumont* v. *Reeve*; *Collins* v. *Blantern*; *Eastwood* v. *Kenyon*; *Haigh* v. *Brooks*; *Lampleigh* v. *Brathwait.*

Consilium. A public body that, *inter alia*, considered proposals for *manumission* under the *Lex Aelia Sentia.* It met on certain days at Rome, and it held regular sessions in the provinces, on the last day of which *manumission* proposals were examined. (Roman law.)

Consistory Court. The Court of a diocese for enforcing discipline amongst the clergy.

Consolidated Fund. The fund formed by the public revenue and income of the United Kingdom.

Consolidation of Actions. If several actions are pending in the same Division with reference to the same subject-matter, the Court may order them to be tried together. See Order XLIX, r. 8.

Consolidation of Mortgages. The equitable doctrine that a mortgagee who held several mortgages by the same mortgagor could insist on the redemption of all, if the mortgagee sought to redeem any of them. The doctrine is now excluded by section 93, Law of Property Act, 1925, unless a contrary intention is expressed in the deeds. See *Vint* v. *Padget*; *Jennings* v. *Jordan.*

Conspiracy. The agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means, whether the act is committed or not. It is a misdemeanour, and if to murder, is punishable by ten years' penal servitude. Conspiracy is also a tort for which the injured person has an action for damages. See *Gregory* v. *Duke of Brunswick.*

Constables. Inferior officers of the peace. High constables were appointed at the Courts leet of the franchise or hundred over which they presided. Their duty seems to have been to keep the peace within the hundred. Petty or parish constables were appointed by the justices in petty sessions for the preservation of the peace within their parish or township, and the service of the summonses and the execution of the warrants of the justices of the peace. They have been superseded by the establishment of borough and county police.

Constituent. A person who appoints another to do some act for him by power of attorney or by parliamentary election.

Constitution. Formerly, a law or ordinance; now, the form in which a State is organised.

A constitution may be (*a*) unwritten, resting mainly on custom and convention; (*b*) written, drawn up in legal form; (*c*) flexible, capable of being altered by ordinary legislative act; (*d*) rigid, capable of being altered only by special procedure.

The British Constitution is unwritten and flexible; that of the United States is written and rigid.

Constitutional Law. "All rules which directly or indirectly affect the distribution or exercise of the sovereign power." (Dicey.) "So much of the law as relates to the designation and form of the legislature, the rights and functions of the several parts of the legislative body, the construction, office and jurisdiction of Courts of Justice." (Paley.) See *Luby* v. *Lord Wodehouse*; *Macbeath* v. *Haldimand*; *Madrazo* v. *Willes*.

Construction. The process of ascertaining the meaning of a written document. "Construction of law" is a fixed or arbitrary rule, by which a result follows from certain acts or words without reference to the intention of the parties.

Constructive. A right, liability or status created by the law without reference to the intention of the parties; *e.g.*, a constructive trust or constructive notice. See *Total Loss*.

Consuetudo est altera lex. A custom has the force of law.

Consuetudo est optimus interpres legum. Custom is the best interpreter of the laws.

Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis. Custom and common usage overcome the unwritten law, if it be special; and interpret the written law if it be general.

Consuls. Agents appointed to watch over the commercial interests of the State or its nationals in foreign parts, but who are not, save in exceptional cases, entitled to diplomatic privileges or immunities.

Contango. A percentage paid by a buyer of stock, of which delivery is to be taken on a certain date, for being allowed to delay taking delivery until some other date. See *Backwardation*.

Contempt of Court. Failure to comply with an order of a superior Court, or an act of resistance or insult to the Judges, or conduct likely to prejudice the fair trial of an accused person; punishable by fine or imprisonment.

Contempt of Parliament. Whatever obstructs the due course of proceeding of either House of Parliament, or grossly reflects on the character of a member of either House is a breach of privilege, punishable by commitment. See *Sheriff of Middlesex's Case*; *Burdett* v. *Abbott*.

Contenticus. Proceedings instituted for the trial of a claim or establishment of a right, as opposed to friendly litigation.

Contingent Remainder. "A remainder limited so as to depend on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate." (Fearne.) By the Law of Property Act, 1925, Sched. 1, part 1, all existing contingent remainders and all to be created subsequently are converted into equitable interests. See *Remainder*.

Continuando. An allegation in the old action of trespass, of an injury, continuing from day to day.

Continuation Clause. A clause in a marine policy that the insurance shall continue in effect after twelve months, if then the voyage is not completed.

Continuous Voyage. The doctrine that goods which would be contraband if carried to an enemy port can be dealt with as contraband

even though they are being carried to a neutral port, provided that they are intended to be forwarded either by land or by sea from the neutral port to an enemy country.

Contra formam collationis [*or* **feoffamenti**]. Against the form of the gift [*or* feoffment].

Contra formam statuti. "Against the form of the statute"; formerly a necessary ending to an indictment.

Contra pacem. See *Peace.*

Contraband of War. Such articles as may not be carried by a neutral to a belligerent, because they are calculated to be of direct service in carrying on war.

Contract. "An agreement enforceable at law. An essential feature of contract is a promise by one party to another, or by two parties to one another, to do or forbear from doing certain specified acts. The offer of a promise becomes a promise by acceptance" (Anson). For a contract to be valid and legally enforceable there must be capacity to contract, intention to contract, *consensus ad idem*, valuable consideration, legality of purpose, sufficient certainty of terms, and in some cases the contract or evidence of it must be in a prescribed form. There are the following kinds of contract:—

(1) Of record, entered into through the machinery of a Court of Justice, *e.g.*, a recognisance.
(2) Specialty, by deed, *i.e.*, writing, sealed and delivered.
(3) Simple or parol, *i.e.*, other kinds either in writing or verbal.
(4) Implied contracts, founded by law on the assumed intention of the parties.
(5) Quasi (*q.v.*), founded by law on the circumstances, irrespective of the wishes of the parties.

See *Frustration; Illegal; Immorality; Mistake; Writing; Frost* v. *Knight; Harvey* v. *Facey; Hochster* v. *Delatour; Hussey* v. *Horne-Payne; Imperial Loan Co.* v. *Stone; Matthews* v. *Baxter; Tolhurst* v. *Associated Portland Cement Manufacturers.*

Contracts re. Real contracts arising from the delivery by one person to another of the subject-matter of the contract with intention of imposing obligations. They were: *Mutuum, Commodatum, Depositum* and *Pignus*, and sometimes *Indebiti solutio.* (Roman law.)

Contribution. The payment of a proportionate share of a liability which has been borne by one or some only of a number equally liable. See *Merryweather* v. *Nixan.*

Contributory. A person who, on the winding-up of a company, is bound to contribute to its assets for the payment of its debts (Companies (Consolidation) Act, 1908, s. 124). Existing members form the A list, and if their contributions are insufficient, members within the year preceding the winding-up, form the B list. In a limited liability company the only liability to contribute is to the extent of the amount unpaid in shares.

Contumacy. Refusal to obey the order of an ecclesiastical Court.

Conusance. Acknowledgment; jurisdiction.

Conversion. I. In equity, conversion is the national change of land into money, or money into land. See *Reconversion; Fletcher* v. *Ashburner; Ackroyd* v. *Smithson; Richerson, Re.*

II. At common law, conversion is that tort which is committed by a

person who deals with chattels not belonging to him in a manner which is inconsistent with the rights of the lawful owner. See *Fouldes* v. *Willoughby*; *Hollins* v. *Fowler*.

Conveyance. A mode of transfer of property; the deed or instrument other than a will whereby an interest in property is assured by one person to another. See *Fraudulent Conveyance*; *Voluntary*.

Convict. One sentenced to death or penal servitude for treason or felony.

Conviction. The finding of a person guilty of an offence after trial. A summary conviction is one made by magistrates or justices of the peace.

Convoy. Ships of war protecting and escorting merchant ships.

Coparcener; Coparcenary. The descent of land on intestacy to several daughters as co-heirs, who are called coparceners or tenants in coparcenary. The tenure is abolished by the Law of Property Act, 1925.

Copy. See *Exemplification; Certified Copy; Examined Copy; Office Copy*.

Copyhold. Lands held by copyhold tenure; lands forming part of a manor, originally granted by the lord for tenancies at will merely, which by immemorial custom became converted into estates independent of the will of the lord in everything but name, and of various degrees of duration, according to the custom of the particular manor. Copyholds are so called because the evidence of the title to such lands consists of copies of the court roll of the manor, a book in which all dealings with the land are entered. All copyhold land was subject to two estates, namely, that of the lord, which is a freehold estate, and that of the tenant, which is a customary estate.

Copyhold tenure is abolished by the Law of Property Act, 1922, and existing copyholds enfranchised.

Copyright. The exclusive right of printing or otherwise multiplying copies of a published literary work, that is, the right of preventing all others from doing so. The infringement of this right is called piracy.

The Copyright Act, 1911, is a code on the subject.

Co-respondent. A person called upon to answer a petition or proceeding jointly with another; *e.g.*, in divorce.

Coroner. A royal officer with the duty of inquiring as to the manner of death of any person who is slain or dies in suspicious circumstances, or in prison. The inquest is held before at least twelve jurymen, *super visum corporis* (after viewing the dead body).

Other duties are inquiring into treasure trove, and fires in the city north of the river, and acting as sheriff's substitute.

By the Coroner's Amendment Act, 1926, there is power to hold an inquest without a jury, unless death was occasioned by crime or accident or occurred in prison. An inquest may be held where the body is destroyed or irrecoverable, and it may be adjourned till the conclusion of criminal proceedings arising out of the death. A coroner may commit for trial any person charged with murder, manslaughter, etc., by the inquisition.

Corporation. A succession or collection of persons having in the estimation of law an existence and rights and duties distinct from those

of the individual persons who from time to time form it. It has perpetual succession, a name and a common seal.

A corporation sole consists of only one member at a time in succession, *e.g.*, a bishop. A corporation aggregate consists of a number of persons, *e.g.*, incorporated companies and municipal corporations.

Corporeal Hereditament. See *Hereditament.*

Corpus cum causa. This writ of *Habeas Corpus cum Causa* formerly issued out of the Court of Chancery to remove into the King's Bench both the body and the record of a man lying in execution upon a judgment of debt.

Corpus juris canonici. See *Canon Law.*

Corpus juris civilis. The body of Roman law contained in the Institutes, Digest, and Code compiled by order of Justinian, together with the Novellæ, or constitutions promulgated after the compilation of the Code.

Corroboration. See *Accomplice.*

Corrupt Practice. Treating, undue influence, personation or the procuring thereof, bribery, or making a false declaration as to election expenses in connection with a parliamentary or other election.

Corruption of Blood. See *Attainder.*

Corsned. "The accursed morsel." A piece of barley bread, weighing about one ounce, which an accused person, after certain quasi-religious invocations, was set to swallow. If he succeded, he was held innocent: failure was proof of guilt.

Cosinage. Consanguinity.

Cost Book Mining Company. A partnership formed for working a mine under local customs, *e.g.*, in Derbyshire, Devon and Cornwall.

Costs. (1) As between solicitor and client. The charges which a solicitor is entitled to make and recover from the client as his remuneration for professional services, subject to taxation to protect the client. (2) As between party and party. The expenses which a successful litigant is entitled to recover from the other side by reason of his being a party to legal proceedings. They include court fees, stamps, etc., and the reasonable charges and fees of the solicitor and counsel.

A verdict is said to carry costs when the party for whom it is given becomes entitled to the payment of his costs. Under Order LXV, r. 1, every verdict carries costs, unless the Judge for good cause certifies refusing the successful party his costs, even when only farthing damages are recovered.

By the Costs in Criminal Cases Act, 1908, the Court may order the costs of the prosecution or defence to be paid out of public funds or by the other side.

The Crown neither gives nor receives costs.

Cotton v. Wood ((1860), 8 C. B. (N.S.) 568). *Held*, that in an action for negligence the onus is on the plaintiff to prove that there existed some duty of care from the defendant to him, and that there was a breach of such duty whereby he was injured. In the absence of evidence of these matters, the case must not be left to the jury.

Council of the North. A Court instituted, under the Royal Prerogative, by Henry VIII, in 1537, to administer justice in Yorkshire and the four other northern counties.

Counsel. A barrister: a term usually applied to practising barristers.

Count. Paragraphs in an indictment, each containing and charging an offence. Also paragraphs in a declaration in civil pleadings.

Counterclaim. If the defendant in an action has a claim against the plaintiff, which he might have asserted by bringing a separate action, he may raise it in the existing action as a counterclaim by adding to his statement of defence a statement of the facts on which he bases his claim, and of the relief which he claims against the plaintiff, either alone, or jointly with others. (Order XIX, r. 3; Order XXI, r. 10).

Country. "Trial by the country" meant trial by jury. See *Jury*.

County Borough. Boroughs of not less than 50,000 inhabitants, which are administrative counties for local government purposes. See the Local Government Act, 1888.

County Council. The elective bodies for the administration of the local government of the counties. See the Local Government Act, 1888.

County Courts. Statutory local and inferior Courts of record for the trial of claims to debt or damages not exceeding £100, and to claims in equity, where the subject-matter does not exceed £500. Actions are generally to be tried without a jury, except in claims in respect of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage, where any party may require a jury. (Administration of Justice Act, 1925, s. 19.)

The old County Court (or shiremote) was presided over by the sheriff; the suitors (*i.e.*, the freemen of the county) were the Judges. It had jurisdiction over all pleas (except pleas of the Crown) which arose within the shire. The County Courts were the principal civil Courts until the system of assizes was introduced.

County Palatine. A county the owner of which formerly had *jura regalia* (*q.v.*) or royal franchises and rights of jurisdiction similar to those possessed by the Crown in the rest of the kingdom; thus he had the power of pardoning crimes and appointing judges and officers within his county. Three counties palatine—Chester, Durham and Lancaster—still exist, but they have long been united to the Crown.

Court. (1) A place where justice is administered; (2) the Judge or Judges who sit in a Court; and (3) an aggregate of separate Courts or Judges, as the Supreme Court of Judicature.

Court Baron. A civil Court held in a manor, in which the free tenants or freeholders of the manor are the Judges, and the steward of the manor is the registrar. It entertained all suits concerning lands held of the manor.

The Customary Court Baron dealt with matters concerning the rights of copyholders.

Court for Crown Cases Reserved. Created by the Crown Cases Act, 1848, for the decision of questions of law arising on the trial of a person convicted of crime, and reserved by the Judge or justices at the trial for the consideration of the Court. For this purpose, the Judge or justices stated and signed a case setting forth the question and the facts out of which it arose. The jurisdiction was transferred to the Court of Criminal Appeal by the Criminal Appeal Act, 1907.

Court for Divorce and Matrimonial Causes. Established by the Matrimonial Causes Act, 1857, which transferred to it all jurisdiction then exercisable by any Ecclesiastical Court in England in matters matrimonial. By the Judicature Act, 1873, s. 3, the jurisdiction of the Court was transferred to the Supreme Court of Judicature.

Court Leet. The Court of criminal jurisdiction over the tenants and resiants (or persons resident within the manor) in all matters in which the sheriff's tourn had jurisdiction; it also had the "view of frank pledge." It was a Court of record; the steward of the manor was the Judge, and the jury was formed from the inhabitants. Abolished by the Law of Property Act, 1922.

Court Martial. A Court convened by or under the authority of the Crown to try an offence against military or naval discipline, or against the ordinary law, committed by a soldier or sailor in His Majesty's service.

Court of Ancient Demesne. The Court Baron of land in ancient demesne (*q.v.*).

Court of Appeal. See *Supreme Court of Judicature.*

Court of Arches. The Ecclesiastical Court of Appeal of the Archbishop of Canterbury.

Court of Chancery. This was the Court of equity presided over by the Lord Chancellor, assisted by the Master of the Rolls, and Judges of first instance, known as Vice-Chancellors.

There was always a common law Court and offices in Chancery which dealt with enrollments of deeds, the issue and sealing of writs and commissions, etc. Since the Judicature (Officers) Act, 1879, they have formed part of the Central Office of the Supreme Court.

The Court of Chancery was merged in the High Court of Justice by the Judicature Act, 1873, and is now known as the Chancery Division. There still exist the Chancery Courts of the County Palatines of Durham and Lancaster.

Court of Chivalry. The obsolete Court of the Constable and Marshal in matters of honour and heraldry.

Court of Common Pleas. One of the Courts into which the *Curia Regis* was divided. It was originally the only superior Court of record having jurisdiction in ordinary civil actions between subject and subject.

It consisted of a Lord Chief Justice and five puisne justices. It was transferred to the High Court of Justice by the Judicature Act, 1873.

Court of Criminal Appeal. Created by the Criminal Appeal Act, 1907. It consists of the Lord Chief Justice and the Judges of the King's Bench Division.

Court of Exchequer. One of the Courts into which the *Curia Regis* was divided. By the year 1200 it had a separate existence; but it continued to collect revenue in addition to trying cases, until the first Chief Baron was appointed in 1312. It was originally a Court having jurisdiction only in matters concerning the public revenue, *e.g.*, in suits by the Crown against its debtors; but it afterwards acquired, by the use of fictitious pleadings, jurisdiction in actions between subject and subject. It was formally subdivided into a Court of common law and a Court of equity; but its equitable jurisdiction (except in revenue

matters) was transferred to the Court of Chancery. Under the Judicature Acts the jurisdiction of the Court of Exchequer was transferred to the High Court of Justice, Exchequer Division, to which all causes which would formerly have been within the exclusive cognisance of the Court of Exchequer were assigned, until, in 1880, the three "common law" divisions of the High Court were merged into one. See *Quo Minus*.

Court of Exchequer Chamber. A Court of Appeal from each of the three superior Courts of common law, which consisted of the Judges of the two Courts other than that whose decision was being appealed against. By the Judicature Acts the Exchequer Chamber was abolished and its jurisdiction was transferred to the Court of Appeal.

Court of Hustings. The oldest of the City of London Courts; now disused.

Court of King's Bench. The Court originally held in the presence of the King. It was one of the superior Courts of common law, having, ultimately, in ordinary civil actions concurrent jurisdiction with the Courts of Common Pleas and Exchequer. Its principal Judge was styled the Lord Chief Justice of England. It also had special jurisdiction over inferior Courts, magistrates and civil corporations by the prerogative writs of *mandamus*, *prohibition* and *certiorari*, and in proceedings by *quo warranto* and *habeas corpus*. It was also the principal Court of criminal jurisdiction in England: informations might be filed and indictments preferred in it in the first instance. The King's Bench accordingly had two "sides," namely, the "plea side," for civil business, and the "Crown side," or "Crown Office," for the criminal and extraordinary jurisdiction. The Court was merged in the Supreme Court by the Judicature Act, 1873, of which it is now the King's Bench Division. See *Bill of Middlesex*.

Court of Last Resort. A Court from which there is no appeal.

Court of Passage. An inferior Court of record, possessing a very ancient jurisdiction over causes of action arising within the borough of Liverpool.

Court of Pie Poudre. The Court of the Dusty Feet or the Court of the Pedlars. It was a Court which anciently decided summarily and on the spot disputes which arose in fairs and markets. Such Courts are obsolete, except the Bristol Court of Pie Poudre, which is still held before the recorder of that city.

Court of Policies of Assurance. A Court of the City of London constituted by the statute 43 Eliz. c. 12, for the summary decision, subject to appeal to the Court of Chancery, of all disputes as to policies of assurance.

Court of Probate. Formed by the Court of Probate Act, 1857, to take over the jurisdiction of church and other Courts in the matter of wills. Transferred by the Judicature Act, 1873, to the Supreme Court of Judicature, where it forms part of the Probate, Divorce and Admiralty Division.

Court of Record. A Court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has authority to fine and imprison for contempt of its authority.

Court of Requests. A minor Court of equity, originally a committee of the King's Council, presided over by the Lord Privy Seal and two

Masters of Requests. It heard poor men's causes and those of the King's servants. It fell into desuetude during the Protectorate.

Court of the Marshalsea. A Court with jurisdiction within twelve miles of the King's residence, where one at least of the parties was a member of his household.

Court of Wards and Liveries. Established in 1541 for the purpose of providing the King with an effectual means of asserting his rights with regard to the incidents of tenure by knight service, wardships, liveries, etc. Abolished 1660.

Courts, Inferior. Courts which are subject to the control of the High Court, *e.g.*, County Courts and local Courts. When an inferior Court refuses to exercise its jurisdiction, it may be compelled to do so by *mandamus*, and if it exceeds its jurisdiction it may be restrained by prohibition.

Courts of Conscience. Courts for the recovery of small debts held by members of various corporations who, without the intervention of professional advocates, decided such cases as came before them.

Courts of Request. Inferior Courts having local jurisdiction in claims for small debts, established in various parts of the kingdom by special Acts of Parliament. Abolished 1846.

Courts, Superior. Courts which are not subject to the control of any other Court, except by way of appeal.

Couturier v. Hastie ((1856), 5 H. L. C. 673). If the subject-matter with reference to which parties contract has ceased to exist at the date of the contract, without the parties' knowledge, the contract is void.

A cargo of corn coming from Salonica was sold, but at the time of the sale the corn had been sold as unfit at a foreign port. *Held*, the contract was void.

Covenant. An agreement creating an obligation, contained in a deed. It may be positive, stipulating the performance of some act or the payment of money, or negative or restrictive, forbidding the commission of some act. Covenants may be used to serve the purpose of a bond (*q.v.*).

A covenant is said to run with the land, or with the reversion, when either the liability to perform it, or the right to take advantage of it, passes to the assignee of the land, or the reversion, as the case may be. At common law covenants ran with the land, but not with the reversion; but the statute 32 Hen. 8, c. 34, provided that both the burden and benefit of covenants should run with the reversion.

To run with the land, covenants must "touch and concern" the thing demised, and must not be collateral or personal. An assignee of a lease is bound by negative covenants, and by positive covenants as to things actually in existence on the land, but not by covenants as to things not in existence, unless the original lessee covenanted for himself and his assigns. The Law of Property Act, 1925, s. 79, provides, however, that a covenantor shall be deemed to bind his successors.

In equity, negative or restrictive covenants run with the land, except against a *bona fide* purchaser for value without notice. After 1925 restrictive covenants must be registered as land charges. Positive covenants do not run with the land. See *Austerberry* v. *Corporation of Oldham*; *Tulk* v. *Moxhay*.

Covenant, Action of. The action which down to 1875 lay where a party claimed damages for breach of covenant.

Covenant to stand seised. A covenant by a person seised of land in possession, reversion, or vested remainder in consideration of his natural love and affection, to stand seised of the land to the use of his wife, child or kinsman. By the Statute of Uses the use was converted into a legal estate, and the covenant operated as a conveyance.

Covenant, Writ of. A writ which lay for one claiming damages for breach of covenant.

Covenants for Title. The covenants entered into by a vendor in a conveyance of land on sale, as to his title, giving the purchaser the right to an action for damages if the title subsequently proves to be bad. Formerly they were set out at length in conveyances, but by the Conveyancing Act, 1881, s. 7, they are implied by law by the use of the appropriate words. For example, if a person conveys, and is expressed to convey, "as beneficial owner," the following covenants are implied:—

(1) The right to convey.
(2) Quiet enjoyment for the purchaser.
(3) Freedom from encumbrances.
(4) Further assurance (*i.e.*, to do all necessary acts to transfer the land to the buyer).

See now, Law of Property Act, 1925, s. 76, and Sched. II.

Covert-baron. A married woman.

Coverture. The condition of being a married woman.

Covin. A secret assent determined in the hearts of two or more to the defrauding and prejudice of another. (Coke.)

Cox v. Burbidge ((1863), 13 C. B. (N.S.) 430). The owner of an animal *domitiæ naturæ* is not liable for damage done by it, unless the knows that it has mischievous propensities (*scienter*).

The plaintiff, a young child, was playing on the highway, and a horse, the property of the defendant, was straying on the highway and kicked the child. *Held*, the defendant was not liable, as the act was not in accordance with the ordinary instinct of the horse, which was not proved to be vicious.

Cox v. Hickman ((1860), 8 H. L. C. 268). The true test of partnership is not sharing profits, but the existence of such a relation between persons sharing profits that each of them is a principal and each of them an agent for the others.

A firm, Smith & Co., became insolvent and executed a deed of arrangement with their creditors, by which Smith & Co. assigned their property to trustees to carry on the business as the Stanton Iron Co., and pay the creditors out of the net profits. One of the trustees accepted a bill drawn on the Stanton Iron Co. in connection with the business. *Held*, the creditors were not constituted partners by the deed of arrangement, and were not liable on the bill, as the business was carried on on behalf of the Stanton Iron Co., whose agents the trustees were.

Creditor. A person to whom a debt is owing. A secured creditor is a person who holds a mortgage charge or lien on the property of his debtor.

In bankruptcy a secured creditor may either give up his security

and prove for the whole debt, or realise it, or give credit for it, and prove for the balance. (Bankruptcy Act, 1914.)

Crime. Acts or defaults which tend to the prejudice of the community, and forbidden by law on pain of punishment inflicted at the suit of the Crown.

Crimes are arbitrarily divided into treasons, felonies and misdemeanours.

Crimen Læsæ majestatis. "The crime of injured majesty." Treason and lesser offences against the Sovereign, *e.g.*, insult.

Criminal Conversation (crim. con.). The common law action which lay at the suit of a husband to recover damages against an adulterer.

Crosby v. Wadsworth ((1805), 6 East, 602). An agreement for the sale of growing grass (*fructus naturales*) to be cut by the purchaser at a future date is an agreement relating to an interest in land, and must be in writing, under section 4 of the Statute of Frauds.

Cross-action. The bringing by a defendant in an action of another action against the plaintiff in respect of the same subject-matter. See *Counterclaim.*

Crown. See *Sovereignty*; *Petition of Right.* As to liability of servants of the Crown, see *Bainbridge* v. *Postmaster-General*; *Buron* v. *Denman*; *Lane* v. *Cotton.* As to rights of the Crown see *Bate's Case*; *Campbell* v. *Hall.*

Crown Office. The office in which all the ministerial business of the Court of King's Bench in respect of its prerogative and criminal jurisdiction was transacted. Now part of the Central Office of the Supreme Court.

Crown Side. The prerogative and criminal jurisdiction of the King's Bench Division.

Cuddee v. Rutter ((1720), 5 Vin. Ab. 530, pl. 21). *Held*, that a bill in equity will not lie for specific performance of an agreement to transfer a certain sum of South Sea Stock, for there is no difference between that and any other like sum of stock, and no damage occasioned by the non-performance of the agreement specifically, if the difference is paid.

Cuenod v. Leslie ([1909] 1 K. B. 880). *Held*, that a husband judicially separated from his wife is not liable for his wife's torts.

Cui in vitâ. An action by which a widow could recover her lands if they had been aliened during the coverture by her husband.

Cujus est dare ejus est disponere. He who gives anything can also direct how the gift is to be used.

Cujus est instituere ejus est abrogare. He that institutes may also abrogate.

Cujus est solum ejus est usque ad cœlum. Whose is the soil, his is also that which is above it.

Culpa. Wrongful default. "*Magna negligentia culpa est.*" (Paul.) (Roman law.)

Culpa lata. Incurred by extreme negligence; negligence so gross that it cannot but seem intentional. It amounts to *dolus* (fraud). (Roman law.)

Culpa levis. Incurred when a person falls short either of the care of a *bonus paterfamilias* (*in abstracto*) or the care that he ordinarily gives to his own affairs (*in concreto*). (Roman law.)

Cum liber erit. The appointment of another man's slave as tutor is void, unless made with the condition "when he becomes free." Ulpian says that it is to be implied, if not inserted. (Roman law.)

Cum testamento annexo. "With the will annexed." See *Letters of Administration.*

Cumber v. Wane ((1719), 1 Strange, 426). *Held,* that giving a note for £5 cannot be pleaded in satisfaction of £15. If one party die while the Court is considering its judgment, a judgment may be entered *nunc pro tunc.*

Cundy v. Le Cocq ((1884), L. R. 13 Q. B. D. 207). The Licensing Act, 1872, made it an offence for any licensed person to sell intoxicating liquor to a drunken person. *Held,* that knowledge of the condition of the person to whom the liquor was sold was not necessary to constitute the offence.

Cundy v. Lindsay ((1878), L. R. 3 A. C. 459). If a person intends to contract with one party, and by mistake contracts with another, the contract is void. Blenkarn wrote to Lindsay & Co. and ordered goods of them. They mistook his order for that of Blenkiron, a respectable firm, and delivered the goods to Blenkarn, who resold to Cundy and did not pay Lindsay & Co. for them. *Held,* that Cundy had no title to the goods as, owing to the mistake, the property in the goods never passed to Blenkarn.

Cura; Curatio. The office or function of the curator. (Roman law.)

Curator. A guardian appointed to a person past the age of puberty to manage his affairs, when from any cause he is unfit to manage them himself. (Roman law.)

Curator bonorum distrahendorum. A curator appointed for the purpose of selling a debtor's property and distributing among the creditors the amount realised. (Roman law.)

Curia advisari vult (Cur. adv. vult). "The Court wishes to be advised." It means that judgment was not delivered immediately.

Curia regis. The King's Court. See *Aula regis.*

Cursitors (clerici de cursu). Clerks in the Chancery office whose duties consisted in drawing up those writs which were "of course."

Curtesy of England, Tenure by. See *Tenure by Curtesy of England.*

Custode admittendo; Custode removendo. Writs which anciently lay for the appointing or removing of a guardian.

Custodiam Lease. Anciently, a grant by the King, under the Exchequer Seal, by which Crown lands were demised or granted to some person as custodian or lessee thereof.

Custodian Trustee. A trustee who has the custody and care of trust property, but not its management. See Public Trustee Act, 1906.

Custom. A rule of conduct, obligatory on those within its scope, established by long usage. A valid custom has the force of law. "Custom is to society what law is to the State" (Salmond).

A valid custom must be of immemorial antiquity, certain and reasonable, obligatory, not repugnant to statute law, though it may derogate from the common law.

General customs are those of the whole country, as, *e.g.*, the general customs of merchants. Particular customs are the usage of particular trades. Local customs are customs of certain parts of the country. See

Consuetudo, etc.; *Tucker* v. *Linger*; *Wigglesworth* v. *Dallison*; *Bryant* v. *Foot*.

Customary Freeholds. A superior kind of copyholds. The tenants hold by copy of court roll according to the custom of the manor, but not at the will of the lord. Abolished by the Law of Property Act, 1922.

Customs. The duties or tolls payable upon merchandise exported from and imported into the country.

Custos brevium et recordorum. The keeper of the writs and records. Abolished by Superior Courts Offices Act, 1837.

Custos rotulorum. Keeper of the rolls or records. The first justice of the peace and first civil officer of the county for which he is appointed.

Cutter v. Powell ((1795), 6 T. R. 320). No claim on a *quantum meruit* can succeed if it is inconsistent with the terms of an express contract.

The defendant gave to Cutter a note as follows: "Ten days after the ship *Governor Parry*, myself master, arrives at Liverpool I promise to pay to Mr. T. Cutter the sum of thirty guineas, provided he proceeds, continues, and does his duty as second mate in the said ship from hence to the port of Liverpool. Kingston, July 31, 1793." Cutter died during the voyage, and this action was brought by his representatives. *Held*, that deceased not having proceeded, continued and done his duty for the whole voyage, nothing could be recovered by his representatives.

Cy-près. The doctrine that if the wishes of a testator cannot be carried out literally, they will be carried out as nearly as possible in the way desired. See *Campden Charities, Re.*

Daimler Co., Ltd. v. Continental Tyre Co., Ltd. ([1916] 2 A. C. 327). The Court may look beyond the legal status of an English registered company and, by applying the doctrine of control, hold it to be of enemy character. *Per* Lord Parker: The acts of a company's organs, its directors, managers, secretary and so forth, functioning within the scope of their authority, are the company's acts, and may invest it definitely with enemy character: as where they are resident in enemy territory, or wherever resident, if they adhere to the enemy, or are under the control of the enemy.

Dalby v. India and London Life Assurance Co. ((1854), 15 C. B. 365). An insurable interest in the life of another need only exist at the time when the policy is taken out.

The Anchor Life Assurance Co. had insured the life of the Duke of Cambridge in four policies—two for £1,000 and two for £500, granted by the company to one Wright; they reinsured with the defendants to the extent of £1,000. Wright subsequently surrendered his policies in consideration of the grant of an annuity, but the company continued to pay the premiums on the re-insurance until the duke's death. *Held*, they were entitled to recover on the policy, as an insurable interest need only exist at the date of effecting the policy, and life insurance is not a contract of indemnity.

Dalton v. Angus ((1881), 6 A. C. 740). *Held*, that a right to support from adjoining land of land weighted with buildings may be acquired by prescription in twenty years.

Damage-feasant. "Doing damage." See *Distress*.

Damages. Compensation or indemnity for loss suffered owing to a breach of contract or tort. Damage from the same cause must be recovered once and for all. Damages are assessed by the jury, and the Court will not interfere unless they are such that twelve reasonable men could not possibly have awarded them, or are obviously based on a misconception. The test by which the amount of the damages is ascertained is called the measure of damages. Nominal damages are of trifling amount awarded contemptuously, or for the mere invasion of a right without damage. Exemplary damages are awarded not only by way of compensation, but as a punishment to the offender. See *Remoteness*; *Hadley* v. *Baxendale*; *Smith* v. *L. & S.W.R.*; *Wilkinson* v. *Downton*; *Ashby* v. *White*.

Damnosa hereditas. An inheritance which was insolvent. (Roman law.)

Damnum absque injuriâ. Loss without wrong: for which there is no legal remedy.

Damnum sentit dominus. The lord suffers the damage: the loss falls on him who is in law the owner.

Damnum sine injuriâ esse potest. There may be damage or loss inflicted without any act being done which the law deems an injury. See *Chasemore* v. *Richards*; *Mogul S.S. Co.* v. *McGregor*; *Holmes* v. *Mather*.

Danegeld. A tax on land levied to meet the expenses of the Danish invasions.

Danelage. The laws of the Danish part of the kingdom in the 10th century.

Darley Main Colliery Co. v. Mitchell ((1886), L. R. 11 A. C. 127). *Held*, that in case of deprivation of support a fresh cause of action arises on every fresh subsidence.

Darrein Presentment. See *Assize of Darrein Presentment*.

Darrell v. Tibbitts ((1880), L. R. 5 Q. B. D. 560). A contract of fire insurance is a contract of indemnity, and the assured is not entitled to recover more than the amount of the loss he has suffered.

Premises were held on a lease containing a covenant, under which the lessee was liable for damage caused by gas explosion. The lessor insured the premises with the plaintiff against fire. A gas explosion having damaged the premises, the tenant repaired them. The plaintiff, in ignorance, paid the insurance money. *Held*, the plaintiff was entitled to recover it back.

Davies v. Mann (10 M. & W. 546). The plaintiff's contributory negligence is no defence to an action for negligence, if the defendant could by ordinary care have avoided injuring the plaintiff.

The plaintiff tethered the forefeet of his donkey and turned it on to the highway to graze. The defendant's servant by negligent driving injured the donkey. *Held*, the defendant was liable.

Dawkins v. Paulet ((1870), 9 B. & S. 768). An action will not lie against a party's superior officer for acts done in the course of his duty.

The plaintiff, a captain in the Foot Guards, sued the major-general commanding the brigade for an alleged libel contained in a report on the defendant. *Held*, that even though there was malice and absence of reasonable and probable cause, the defendant was not liable.

Days of Grace. Days allowed for making a payment or doing some other act after the time limited for that purpose has expired.

Three days of grace are allowed for the payment of a bill of exchange.

De bene esse. To act provisionally or in anticipation of a future occasion, *e.g.*, to take evidence for future use while it is available.

De bonis asportatis. Of goods carried away. See *Trespass*.

De bonis non. "Of goods not administered": an administrator appointed to succeed a deceased administrator to complete the administration of an intestate's estate.

De Die in Diem. From day to day.

De Donis (Conditionalibus). The Statute of Westminster II. See *Estate*.

De ejectione firmæ. The writ which originated the old action of ejectment (*q.v.*).

De executione facienda. Writs of execution.

De facto. In fact.

De homine replegiando. A writ which formerly lay to bail out one wrongfully imprisoned.

De ingressu. A writ of entry.

De injuria. An averment in pleading that the defendant of his own wrong and without the alleged cause had done the acts alleged as a defence.

De jure. By right.

De Keyser's Royal Hotel, Ltd., In re ([1919] 2 Ch. 197). The hotel was taken over by the War Office for administrative purposes. The receiver for the debenture holders who had been carrying on the business, rejected a reference to arbitration and claimed full compensation.

Provision is made in the Defence Act, 1842, for the requisitioning of private property for the public service. The Crown contended that it had a prerogative right to take property for the national defence.

Held, that once a matter within the Royal Prerogative is dealt with by statute the prerogative is merged in the statute, and that the property not being required for the actual conduct of hostilities, the Defence Act, 1842, applied and compensation was due accordingly.

De medietate linguæ. A jury, one half of which consisted of aliens, before which aliens were formerly tried.

De minimis non curat lex. The law does not concern itself with trifles.

De non apparentibus, et non existentibus, eadem est ratio. Of things which do not appear and things which do not exist, the rule in legal proceedings is the same.

De odio et atia. (Of malice and ill-will.) A writ which lay for a man committed to prison upon suspicion of murder, which commanded the sheriff to inquire whether the committal was upon just cause of suspicion or only upon malice and ill-will. If the latter then another writ issued commanding the sheriff to bail him.

De recto. A writ of right (*q.v.*). Those writs relating to dower were abolished by the Common Law Procedure Act, 1860, s. 26, and the others by s. 36 of the Real Property Limitation Act, 1833.

De seisina habenda. "For having seisin." The writ by which the King anciently enforced his right to year, day and waste (*q.v.*).

De son tort demesne. Of his own wrong.

De tallagio non concedendo. The statute 25 Edward I, which enacts that no tallage or aid shall be levied without the assent of the realm.

De ventre inspiciendo. Where the widow of an owner of land is suspected of feigning herself with child in order to produce a supposititious heir to the estate, the heir presumptive may have a writ *de ventre inspiciendo*, to examine whether she be with child or not; and if she be, to keep her under proper restraint until delivered. Obsolete.

Dead Freight. Freight payable by a charterer in respect of cargo not shipped.

Dearle v. Hall ((1823), 3 Russ. 1). *Held*, if a chose in action is assigned to two or more persons in succession, the one who first gives notice to the debtor will be entitled to the debt, provided that at the date when he took his assignment he had no notice of any prior assignment.

By the Law of Property Act, 1925, s. 137, the rule in *Dearle* v. *Hall* is extended to equitable interests in land and capital money. See *Notice*.

Death, Civil. Loss of legal personality, as on banishment or profession of religion, when the possessions of the person devolved as on actual death or were forfeited.

Death Duties. Estate duty, succession duty and legacy duty, payable on property passing at death.

Death, Presumption of. See *Commorientes*; *Nepean* v. *Doe*.

Debenture. (1) A certificate of right to drawback (*q.v.*).

(2) An instrument usually under seal, issued by a company or public body as security for a loan of money. It contains a promise to pay the amount mentioned in it, and creates a charge on the property of the company or public body.

Debenture Stock. A stock or fund representing money borrowed by a company or public body, and charged on the whole or part of its property. "Borrowed capital consolidated into one mass for the sake of convenience" (Lindley). It is almost invariably secured by a trust deed and the rights of the stockholders are primarily against the trustees of the deed.

Debitor. One against whom another possesses a personal right; one that can be compelled to perform an obligation. (Roman law.)

Debitor non præsumitur donare. A debtor is not presumed to give.

Debt. A sum of money due from one person to another. Debts are (1) of record, *e.g.*, recognisances and judgment debts; (2) specialty debts, created by deed; (3) simple contract debts; (4) Crown debts; (5) secured debts, those for which security has been taken; (6) preferential debts, those payable in full in bankruptcy prior to other debts, *i.e.*, rates and taxes for one year, national insurance contributions, workmen's compensation and wages or salaries due to clerks and

servants, etc. (Bankruptcy Act, 1914, s. 33.) See *Imprisonment for Debt.*

Debtor Summons. The former equivalent of bankruptcy notice (*q.v.*).

Deceit. (1) The writ for a deceitful act practised on the Court during the conduct of a case. (2) An action upon the case which lay to recover damages caused by the fraud or false affirmance by the defendant of a thing within his knowledge. See *Pasley* v. *Freeman; Edgington* v. *Fitzmaurice; Smith* v. *Chadwick.*

Declaration. (1) A formal statement intended to create, preserve, assert or testify to a right. (2) The decision of the Court or Judge on a question of law or rights. (3) A statement of claim in pleading. See *Higham* v. *Ridgway*; *Price* v. *Torrington.*

Declaration of Use or Trust. A statement or admission that property is to be held to the use of or upon trust for a certain person. The ordinary mode of creating a trust when the trust property is already vested in the intended trustee.

Declaratory Statute. One which declares or formally states what the existing law is on a given subject, so as to remove doubts.

Decree. An order of a Court pronounced on the hearing of a suit. The term is included in "judgment."

Decree nisi. A provisional decree of dissolution of marriage which cannot be made absolute until the expiration of a certain time, *e.g.*, six months.

Dedication. Granting a right of way to the public over private property.

Dedititii. Certain manumitted slaves, who in consequence of grave misconduct committed in the state of slaves, were subjected to certain perpetual disabilities. (Roman law.)

Deed. "A writing or instrument written on paper or parchment, sealed and delivered, to prove and testify the agreement of the parties whose deed it is, to the things contained in the deed" (Sheppard). A deed generally consists of the following parts—the premises, the habendum, the tenendum, the reddendum, the conditions, and the covenants. See *Reservation*; *Garnons* v. *Knight.*

Deed of Covenant. A covenant by a separate deed, *e.g.*, to produce title deeds.

Deed Poll. A deed which is not indented; unilateral, used, *e.g.*, for publishing a change of name.

Defamation. The disparagement of an individual. A defamatory statement is one exposing him to hatred, ridicule or contempt, or which causes him to be shunned or avoided, or which has a tendency to injure him in his office, profession, or trade. It may constitute libel or slander (*q.v.*).

In order to determine whether a statement is defamatory it must be construed in its natural and ordinary meaning; if not defamatory in such meaning it must be construed in the special meaning, if any, in which it was understood by the person by and to whom it was published.

It is for the Judge to say whether the words are reasonably capable of a defamatory meaning, but for the jury to say whether under the circumstances of the case they in fact bear that meaning.

No action can be maintained for libel or slander unless there be a

publication, *i.e.*, a communication by the defendant of the words complained of to some person other than the plaintiff. See *Privilege*.

Default. Non-appearance in Court; the failure to take any step required by the rules of procedure.

Default Summons. A summary means of recovering a debt or liquidated demand in the County Court.

Defeasance. A condition relating to a deed, but contained in a separate instrument, on which being performed, the deed is made void.

Defeasible. An estate or interest in property, which is liable to be defeated by the operation of a condition subsequent or conditional limitation.

Defence. A pleading delivered in an action in the High Court in reply to the statement of claim. It answers the allegations in the statement of claim by admissions or denials, and may set out fresh facts in the form of a counterclaim delivered with the defence.

In a commercial cause the "points of defence" corresponds to the statement of defence. See Order XXI.

Defendant. A person against whom an action, information, or other civil proceeding (other than a petition) is brought, or against whom summary proceedings are brought, before magistrates and justices for the recovery of penalties.

Defensor. An unauthorised defender; one that without a mandate undertook the defence of another person who had failed to appear in his own defence. (Roman law.)

Defensores. An inferior class of magistrates in provincial towns. (Roman law.)

Deforcement. The wrongful holding of lands to which another is entitled.

Degree. A step in the line of descent or consanguinity.

Dehors. Without.

Del Credere Agent. An agent for the sale of goods who, in consideration of a higher reward than is usually given, guarantees the due payment of the price of all goods sold by him.

Delegatus non potest delegare. "A delegate cannot delegate." A person to whom powers have been delegated cannot delegate them to another. But trustees may appoint agents to do trust business, and shall not be responsible for their default, if employed in good faith (Trustee Act, 1925, s. 23). See *Speight, Re.*

Delivery of a Deed is generally effected by the grantor saying at the time of signing and sealing the deed, "I deliver this as my act and deed."

Delivery as an escrow is delivery by the grantor to a third person not a party to it, the deed to be delivered up to the grantee upon the performance of a condition, as the payment of money or the like.

Delivery Order. An order addressed by the owner of goods to a person holding them on his behalf, requesting him to deliver them to a person named in the order.

Delivery, Writ of. A writ of execution under Order XLII, r. 6, to enforce a judgment for the delivery of chattels.

Demandant. The actor in a real action, corresponding to "plaintiff."

Demesne. "Own" (Norman French). The part of the manor in the occupation of the lord.

Demise. Originally any transfer or succession of a right; now to grant a lease of lands or other hereditaments.

Demise of the Crown. That change in the succession which takes place when the royal dignity is transferred from one king to his successor.

Demur, To. In pleading, to raise an objection by demurrer (*q.v.*).

Demurrage. (1) The detention of a ship beyond the number of days—called lay days—allowing for loading or unloading, and (2) the sum fixed by the contract of affreightment (the charterparty) as payable to the shipowner for such detention.

Demurrer. A pleading by which one of the parties alleged that the preceding pleading of the other party showed no good cause of action or defence. Abolished by Order XXV, which substituted raising a point of law (r. 2), and applying to strike out the Statement of Claim (r. 4).

It is still possible in criminal proceedings to demur to the indictment, *i.e.*, allege some substantial defect in it.

Denizen. Originally a natural-born subject of a country; now a person who is an alien born, but who has obtained from the Crown letters patent, called letters of denization, to make him an English subject.

Deodand. Formerly if a personal chattel was the immediate and accidental cause of the death of any reasonable creature it was forfeited to the Crown under the name of a deodand (*Deo*, to God, and *dandam*, to be given). Abolished by the statute 9 & 10 Vict. c. 62.

Departure. In pleading, departure is where the second plea contains matter not following the former plea, or a variation from it; which is forbidden.

Deponent. A person who makes an affidavit or deposition.

Deportatio in insulam. Confinement for life within specified bounds. The person so punished was regarded as civilly dead: a *peregrinus*, no longer a *civis*. He might be recalled and pardoned by the emperor. (Roman law.)

Deposit of Title Deeds, as security for money advanced, creates an equitable charge. By the Law of Property Act, 1925, s. 2, sub-s. 3, an equitable interest protected by a deposit of title deeds relating to the legal estate, is not overreached by a conveyance to a purchaser. Also the priority of an equitable mortgage so protected is not altered by the Act (section 13).

Deposition. A statement on oath of a witness in a judicial proceeding: the evidence of witnesses before a magistrate or justices taken down in writing. See Criminal Justice Act, 1925, ss. 12, 13.

Dereliction. The act of abandoning a chattel or moveable; the exposure of dry land by the shrinkage of the sea.

Dering v. Earl of Winchelsea ((1787), 1 Cox, 318). Two different bonds had been given to the Crown for the due performance by one Thomas Dering of a certain office, and he becoming in arrear to the Crown, one of the bonds was put in suit, and judgment recovered on it. This suit was then instituted by the surety who had been sued against those who had given the other bond, claiming a contribution. *Held*, that though the sureties were bound by different instruments,

they must contribute, for the doctrine of contribution amongst sureties is not founded in contract, but is the result of general equity, on the ground of equality of burden and benefit.

Derogate. To destroy, prejudice or evade a right or obligation. "No one can derogate from his own grant."

Derry v. Handley ((1867), 16 L. T. R. 263). *Held*, that if A slanders B to C and C repeats it, A is responsible for damage resulting naturally from the repetition, if to his knowledge B was under a duty, legal or moral, to repeat the slander.

Derry v. Peek ((1889), L. R. 14 A. C. 337). For a misrepresentation to amount to fraud it is necessary that the party who made it either knew it was false, or made it recklessly, not caring whether it was false or true.

The plaintiff was induced to subscribe for shares in a tramway company, of which the defendant was director, by a statement in the prospectus that the company had a right to use steam power. In fact the company had such right only with the consent of the Board of Trade, which they believed would be given as a matter of course, but which was not given. *Held*, there was no fraud, as the statement was believed to be true.

Descent. The title of a person to whom land or realty passed on the death of the owner intestate by virtue of consanguinity. The existing rules or canons of descent were abolished by the Administration of Estates Act, 1925, s. 45. See *Intestate Succession*.

Descent Cast. The doctrine that where a person who had acquired land by disseisin, abatement or intrusion, died seised of the land, the descent of it to his heir took away the real owner's right of entry, so that he could only recover the land by an action.

Desertion. Where a husband voluntarily and without reasonable cause leaves his wife against her wish, or similarly where the wife leaves her husband. It is a matrimonial offence.

Detainer, Writ of. A writ authorising the detention of a man (already in custody for debt, etc.) upon a cause of action other than that upon which he had been arrested originally.

Determinable Life Estates. Where land is given for a definite period of time of uncertain duration, *e.g.*, during widowhood, after 1925, a settlement is created, and an equitable interest conferred, with the powers of a tenant for life.

Determine. To come to an end, as, *e.g.*, an estate in land.

Detinue. The action which was the remedy where a person claimed the specific return of goods wrongfully detained from him or their value. See *Clayton* v. *Le Roy*.

Deus solus hæredem facere potest non homo. God alone, and not man, can make an heir.

Devastavit. "He has wasted [the assets]." Any violation or neglect of duty by a personal representative which makes him personally responsible to persons having claims on the assets, *e.g.*, creditors and legatees. The personal representative of a deceased defaulter is liable to the extent of the available assets. (Administration of Estates Act, 1925, s. 29.)

Deviation. The intentional departure from the due course of a voyage, which discharges the underwriters of a voyage policy of marine

insurance, on the ground of the alteration of the nature of the risk. The carrier is not liable for damage resulting from deviation to save life or property. (Carriage of Goods by Sea Act, 1924, Art. IV, s. 4.)

Devise. Properly a gift of land or other realty by will, either specific or residuary. The recipient is termed the devisee.

Devise, Executory. A devise limited to take effect in the future, on the fulfilment of a condition, *e.g.*, on attaining twenty-one years of age, or on marriage.

Dickinson v. Dodds ((1876) L. R. 2 Ch. D. 463). *Held*, that although a mere mental revocation of an offer unknown to the offeree, is ineffective, yet if the offeree learns from any source whatever, that the offeror no longer intends to be bound by his offer, he cannot afterwards accept such offer, even though the offeror has agreed not to revoke it for a certain period, unless there is consideration for such promise.

Dictum. See *Obiter Dictum.*

Diem clausit extremum. "He has died." A special writ of *extendi facias*, or extent in chief, issuing after the death of the King's debtor, against his lands and chattels. See *Extent.*

Dies fasti. Days on which the Prætor could lawfully exercise his general powers. (Roman law.)

Dies nefasti. Days on which the Prætor could not pronounce any of the words *Do, Dico, Addico*; days on which the Court did not sit. (Roman law.)

Dies non (juridicus). A day on which no legal business can be transacted, *e.g.*, Sunday.

Dies utiles. Days not *nefasti* after the applicant knew of his right and was not unavoidably prevented from going on with his case. (Roman law.)

Digest. A collection of rules of law on concrete cases, as opposed to a code, which consists of abstract rules of law.

The Digest of Justinian was a compliation of the Roman law from the writings of the jurists (A.D. 533).

Dignity. A title of honour, which is in law an incorporeal hereditament.

Diligentia. Diligence, care. There were two grades: (1) *Exacta*, all possible diligence; such care as would be taken by a good or most thoughtful *paterfamilias*. (2) *Quantum in suis rebus adhibere solitus est*, the diligence or care a man usually employs in his own affairs. (Roman law.)

Diplomatic privilege. The exemption from ordinary law of an accredited representative of a foreign Sovereign. See *Exterritoriality.*

Directions, Summons for. The plaintiff in an action, after appearance by the defendant, must take out a summons for directions, upon the hearing of which orders may be made with respect to the conduct and course of the proceedings in the action. See Order XXX.

Director of Public Prosecutions. His duty is, subject to the superintendence of the Attorney-General, to institute, undertake, carry on or give advice or assistance in criminal proceedings which appear to be of importance or difficulty. (Prosecution of Offences Act, 1879.)

Directory. A statute or rule which is not imperative, but specifies the way in which a thing should be done.

Disability. Legal incapacity, either general or special. Outlaws

and convicts are under a general disability, and cannot maintain an action at law. Infants are under a special disability, they have not full freedom to contract.

Disabling Statute. One which restricts a pre-existing right.

Disbar. To expel a barrister from his Inn and deprive him of his status as such.

Discharge. To deprive a right or obligation of its binding force; to release a person from an obligation; thus payment discharges a debt. Rescission, release, accord and satisfaction, performance, judgment, composition, bankruptcy and merger are varieties of discharge.

Disclaimer. A renunciation: the refusal, usually by deed, of a proposed trustee to accept the trust. A power, whether coupled with an interest or not, may be disclaimed by deed. (Law of Property Act, 1925, s. 156.)

Discontinuance. (1) Where the plaintiff in an action voluntarily puts an end to it. The effect is that the plaintiff has to pay the defendant's costs, but may commence another action for the same cause. See Order XXVI.

(2) Formerly, where a man wrongfully aliened certain lands or tenements and died, whereby the person entitled to them was deprived of his right of entry and was compelled to bring an action to recover them.

Discovert. A woman who is unmarried or a widow.

Discovery. The obtaining by one party to an action or suit of information on oath from another party. It is of two kinds—(1) discovery, by interrogatories, of facts relevant to the issue in the action, and within the knowledge of the party interrogated; and (2) discovery of documents relating to the matters in question in the action, and in the possession of the party. See Order XXXI.

Disentailing Deed. An assurance by which a tenant in tail bars his estate tail so as to convert it into an estate in fee, either absolute or base. The enrolment of such deed, made after 1925, is not necessary. (Law of Property Act, 1925, s. 133.)

Dishonour. A bill of exchange is dishonoured if the drawee refuses to accept it, or having accepted it fails to pay it. (See Bills of Exchange Act, 1882, s. 47.)

Dismissal of Action. The penalty for want of prosecution, *i.e.*, non-appearance or omission to take proper steps in the proceedings. (Order XXVII, r. 1.)

Disparagement. The bestowing by a lord of an heir in an unsuitable marriage.

Dispensing Power. The claim of the Tudors and Stuarts to exempt persons from the operation of Acts of Parliament. See *Bill of Rights*; *Thomas* v. *Sorrell*; *Godden* v. *Hales*.

Disseisin. "The wrongful putting out of him that is actually seised of a freehold" (Coke).

Distrain. To seize goods by way of distress (*q.v.*).

Distress. The act of taking moveable property out of the possession of a wrongdoer, to compel the performance of an obligation, or to procure satisfaction for a wrong committed: a mode of legal "self help," *e.g.*, distraining for rent due, or cattle damage feasant, *i.e.*, straying on land and doing damage.

Distribution. The division of the personal property of an intestate among his next-of-kin, the rules for which were laid down in the Statute of Distribution (22 & 23 Car. 2, c. 10), now replaced by the Administration of Estates Act, 1925. See *Intestate Succession.*

District Council. Urban and rural district councils were created by the Local Government Act, 1894.

District Registries. Branch offices in the provinces of the Supreme Court of Judicature, in which proceedings may be instituted. See Order XXXV.

Distringas. A writ so called from its commanding the sheriff to distrain on a person for a certain purpose, *e.g.*, to enforce appearance to an indictment, information or inquisition in the King's Bench Division.

Distringas, Notice in Lieu of. The commonest species of *distringas* was that formerly issued by the Courts to prevent a public company from permitting the transfer of a sum of stock in their books, or from paying the dividends on it, without previously giving notice to the person who had obtained the writ.

Now no writ is issued, but a notice in lieu of the writ. See Order XLVI.

Disturbance. Infringement of a right to an incorporeal hereditament, *e.g.*, obstructing an ancient light.

Ditcham v. Worrall ((1880), L. R. 5 C. P. 410). A party who on majority makes a fresh promise on a fresh consideration to do that which as an infant he had contracted to do, is liable in respect of such promise.

The defendant, when an infant, became engaged to the plaintiff. After he came of age he asked her to fix the wedding day, which she did. *Held*, the defendant was liable for breach of promise.

Diversity. A plea by a prisoner that he was not the person previously attainted.

Divest. To take away an estate or interest which has already vested.

Divi fratres. The Emperors Marcus Aurelius Antoninus and Lucius Aurelius Verus, who reigned together A.D. 161-169. (Roman law.)

Dividend. The interest payable on the public funds; the payment made out of profits to the shareholders in a company; or the amount payable upon each pound of a bankrupt's liabilities.

Divine Service. The tenure of an ecclesiastical corporation which is subject to the duty of saying prayers on a certain day, etc.

Divisional Courts. Two or more Judges of the High Court sitting together to hear appeals from inferior courts; *e.g.*, County Courts, Quarter and Petty Sessions. See Order LIX.

Divorce. Dissolution of marriage, which was, prior to the Matrimonial Causes Act, 1857, in the jurisdiction of the Ecclesiastical Courts. Divorce *a mensa et thoro* was " from bed and board," now represented by a judicial separation, and divorce *a vinculo matrimonii* " from the bond of marriage," is now represented by a decree of nullity.

A petition for divorce may be presented to the High Court (a) by a husband on the ground of his wife's adultery; (b) by a wife on the ground of her husband's rape, sodomy or bestiality, or (since the

Matrimonial Causes Act, 1923), his adultery. (Judicature Act, 1925, s. 176.) See *Russell* v. *Russell.*

Divorce Court. See *Court for Divorce and Matrimonial Causes.*

Dixon v. Bell ((1816), 5 M. & S. 198). *Held,* that a person having in his possession a dangerous instrument such as a loaded gun, is bound to keep it with care, and if damage ensues as the natural and probable consequence of the want of such care, he is liable, even though the damage was caused by the intervention of a third party.

Dock Defence. The direct instruction of counsel without the intervention of a solicitor, by a prisoner in the dock.

Dock Warrant. A document of title issued by a dock company stating that certain goods therein mentioned are deliverable to a person therein named or to his assigns by indorsement.

Docket. An epitome or abstract of a judgment, decree, order, etc.

Doctors' Commons. The buildings in which the Ecclesiastical and Admiralty Courts, and the College of Advocates practising in those Courts, were formerly held.

Document of Title. A document which enables the possessor to deal with the property described in it as if he were the owner, *e.g.*, a bill of lading, dock warrant. (See Factors Act, 1889, s. 1, sub-s. 4.)

Doe d. Rigge v. Bell ((1793), 5 T. L. 471). *Held,* that although a lease may be void by the Statute of Frauds (29 Car. 2, c. 3, s. 1) and therefore the tenant holds not under the lease, but as tenant from year to year, yet such holding is governed by the terms of the lease in other respects.

Dolus. Fraud, wilful injury. (Roman law.)

Domesday Book. The great survey of the kingdom, compiled by order of William the Conqueror (1086).

Domicil. The country in which a person is, or is presumed to be, permanently resident; the place of a person's permanent home. It depends on the physical fact of residence plus the intention of remaining.

Domicil may be (1) of origin or birth; (2) by operation of law; (3) of choice. The civil status of a person, or his legal rights and duties, including capacity to marry, are determined by the law of his domicil. His political status, or nationality, is independent of domicil.

Dominium. Ownership; lordship.

Dominus litis. The principal in a suit; opposed to his procurator. (Roman law.)

Domitæ Naturæ. Of tame disposition. See *Animals.*

Domus Procerum. The House of the Nobles; the House of Lords.

Domus sua cuique est tutissimum refugium. To every one his house is his surest refuge; every man's house is his castle. See *Semayne's Case.*

Dona clandestina sunt semper suspiciosa. Clandestine gifts are always to be regarded with suspicion.

Donatio. Gift. A *donatio inter vivos* (a gift between living persons) when completed was irrevocable except, *e.g.*, for ingratitude of the donee. Under Justinian a *donatio* was completed as soon as the donor manifested his intention, whether in writing or not. (Roman law.)

Donatio mortis causa. A gift of personal property in anticipation of death. To be a valid gift it must be made in contemplation of the

donor's death, be intended to take effect on his death from his existing illness, and be completed by the delivery at the time to the donee.

Donatio propter nuptias. A settlement made on the wife by the husband of a nature corresponding to the *dos*. (Roman law.)

Donee. A gratuitous recipient.

Donor. A giver.

Doom: Dome. A judgment.

Dormant Funds. Funds in Court unclaimed for fifteen years.

Dos. Dower. The property contributed by a wife, or by anyone else on her behalf to her husband, to enable him to support the expenses of the marriage. (Roman law.)

Double plea. See *Duplicity*.

Dovaston v. Payne ((1795), 2 H. Bl. 527.) *Held*, the property of a highway is in the owner of the soil, subject to an easement for the benefit of the public. So that cattle may be lawfully using the highway for passing and repassing, or they may be trespassing.

Dower. "That portion of lands or tenements which the wife hath for term of her life of the lands or tenements of her husband after his decease, for the sustenance of herself and the nurture and education of her children." (Coke.) Where a man was seised of land for an estate of inheritance (otherwise than as joint tenant), and died leaving a widow, she was entitled to hold the third part of such land and tenements as were her husband's at any time during the coverture, as tenant in dower for the term of her life. Dower was abolished by the Law of Property Act, 1922.

Dower, Writ of. When a widow had no dower assigned to her within the proper time, she had a remedy by "writ of dower *unde nihil habet*." If she had only part of her dower assigned to her, she had a remedy by "writ of right of dower." Both were abolished by the Common Law Procedure Act, 1860.

Draft. (1) An order for the payment of money, *e.g.*, a cheque. (2) A rough copy of a legal document.

Drawback. The refund of duty made on the exportation of goods for which customs duties have been paid on importation.

Drawee. The person to whom a bill of exchange is addressed.

Drawer. One who signs a bill of exchange as the maker.

Droit. Right or law. (Norman-French.)

Droits of Admiralty. See *Admiralty, Droits of*.

Duchess of Kingston's Case ((1776), 20 St. Tr. 537). Any judgment obtained by fraud may be impeached. In a prosecution for bigamy, counsel for the prosecution can show that a sentence of a Spiritual Court in a suit of jactitation of marriage that the marriage is null and void was brought about by fraud and collusion, and thus destroy its effect.

Duchy Court of Lancaster. A Court formerly held before the Chancellor of the Duchy, concerning all matters of equity and revenue relating to lands holden of the King in right of the Duchy of Lancaster. It is distinct from the county palatine of Lancaster.

Duke. The highest rank in the peerage (*q.v.*).

Dum bene se gesserit. During good conduct.

Dum casta vixerit. While she lives chastely.

Dum fuit infra ætatem. While he was within age.

Dum fuit non compos mentis. While he was not of sound mind.

Dum sola. While she remains unmarried.

Duplicatio. (Doubling.) An equitable allegation by a defendant in answer to a *replicatio*. (Roman law.)

Duplicity. A pleading is double, or open to the objection of duplicity, when it contains more claims, charges or defences than one. It is liable to be struck out as embarrassing.

Durante absentia. During absence. See *Letters of Administration.*

Durante bene placito. During the pleasure of the Crown.

Durante minore ætate. During minority. See *Letters of Administration.*

Durante viduitate. During widowhood.

Duress. Constraint by injury or imprisonment, or by threats. (Duress *per minas*, by menace.) An act done under duress is generally invalid.

Dyer v. Dyer ((1788), 2 Cox 92). Dyer paid the purchase-money for certain property, and took the conveyance to himself, his wife Mary, and a son William, jointly. Dyer survived his wife, and then died, devising all his interest in these premises to the plaintiff, who filed his bill against the son William, insisting that as the purchase-money was all paid by Dyer, his son William, the defendant, was but a trustee. *Held*, that though if no relationship existed there would be a resulting trust in favour of the person paying the purchase-money, yet the circumstance of the nominee being the child of the purchaser operated to rebut the resulting trust, and the defendant took the property beneficially as an advancement from his father.

Dying Declaration. A statement admissible in evidence, in trials of homicide, made by the deceased person whose death is the subject of the charge, as to the cause and circumstances of the death, the deceased having at the time abandoned all hope of recovery. See *R.* v. *Jenkins.*

Ealdorman. An elder. An official who, along with the sheriff and the bishop, was one of the three chief officers of each county.

Earl. The title third in the peerage (*q.v.*).

Earl Marshal. The Earl Marshal and the Lord High Constable were the two chief officers of the feudal forces under the Norman kings. They jointly presided over the Court of Chivalry (*q.v.*).

Earmark. Property is said to be earmarked when it can be identified or distinguished from other property of the same nature; when it can be followed and recovered. A sum of money may be earmarked for a certain purpose.

Earnest. A nominal sum given to a vendor as a token that the parties are in earnest in concluding a contract of sale.

Easement. A servitude; a right enjoyed by the owner of land over the lands of another. Examples are rights of way and rights of light. Easements are created by express grant or prescription (*q.v.*). The dominant tenement is the land owned by the possessor of the easement, and the servient tenement is the land over which the right is enjoyed.

Easements are still capable of existing as legal interests (Law of

Property Act, 1925, s. 1, sub-s. 2 (a)). See *Colls* v. *Home and Colonial Stores.*

Eastwood v. Kenyon ((1840), 11 Ad. & El. 438). "Past consideration is no consideration." The plaintiff had been guardian of the defendant's wife, and agent of her property during her infancy, and had voluntarily incurred expense in that behalf. After marriage the defendant promised to pay the plaintiff the amount of his expenses. *Held,* there was no consideration for the promise.

Eat inde sine die. Let him go without a day; the dismissal of a defendant from a suit.

Ecclesiastical Commissioners. Established by the Ecclesiastical Commissioners Act, 1836, to administer Church property and revenue.

Ecclesiastical Courts. The chief are the two Provincial Courts of Canterbury and York, and the Diocesan Courts of each diocese.

Edgington v. Fitzmaurice ((1885), L. R. 29 Ch. D. 459). A prospectus of a company inviting subscriptions for debentures stated that the money was required to purchase horses and vans, etc., and to develop the business of the company, whereas it was wanted to pay off pressing liabilities. *Held,* there had been a misrepresentation of fact in respect of which the directors were liable in an action of deceit.

Egerton v. Brownlow ((1853), 4 H. L. C. 1). A condition which is contrary to public policy is void.

A by will left estates to B, with a condition that if B died without being made a duke, the estates should go to C. B died without being made a duke and C claimed the estates. *Held,* C failed as the condition was void.

Ei qui affirmat, non ei qui negat, incumbit probatio. The burden of proof lies on him who affirms a fact, not on him who denies it.

Ejectment. Originally the action of ejectment was a remedy applicable to a leaseholder wrongfully dispossessed, but owing to the cumbrousness of the old real actions for trying the right to the freehold, it was extended to freeholds by means of legal fictions. There was an imaginary lease by the person claiming the freehold to an imaginary "John Doe" who was assumed to be ejected by an imaginary "Richard Roe" (the casual ejector). The claimant, to substantiate the lease, endeavoured to prove his title and the person in possession was allowed to defend on admitting the fictions, and thus the freehold title was put in issue. An action was entitled, *e.g.,* Doe d. Rigge *v.* Bell (= Doe, on the demise or lease of Rigge *v.* Bell). It was abolished by the Common Law Procedure Act, 1852, and now replaced by the action for recovery of land.

Ejusdem generis. Of the same kind or nature. A rule of construction applicable where particular words are followed by general words; the general words are limited to the same kind as the particular words. See *Attorney-General* v. *Brown.*

Elder Brethren. The Masters of the Trinity House (*q.v.*).

Election. Choice. The equitable doctrine of election is to the effect that he who takes a benefit under an instrument, must accept or reject the instrument as a whole; he cannot approbate and reprobate. If there is in the will of X, a gift of A's property to B, and a gift to A, A can only take the gift by giving his own property or its value to

B. Otherwise he can elect to keep his own property and reject the gift. See *Vardon's Trusts, Re.*

Election Petitions. Petitions for inquiry into the validity of elections of members of Parliament, when it is alleged that the return of a member is invalid for bribery or any other reason. These petitions are heard by a Division Court of the King's Bench Division. (Order LIX, r. 1 (b); Judicature Act, 1925, s. 67.)

Elegit. A writ of execution by which a judgment creditor may obtain possession of the debtor's land, and hold it until the debt is satisfied, either out of the rents and profits, or otherwise.

Elibank v. Montolieu ((1801), 5 Ves. 737). *Held,* that a married woman may, by her next friend, maintain a suit in the Court of Chancery to assert her equity to a settlement on herself and children out of property to which she is entitled; and here the settlement on marriage being inadequate, a further settlement was decreed in favour of Lady Elibank.

Elisors. Persons appointed to return a jury for the trial of an action when the jury returned by the sheriff and that returned by the coroner have been successively challenged to the array for partiality or default. See *Challenge of Jurors.*

Ellis v. Loftus Iron Co. ((1874), L. R. 10 C. P. 10). The owner of animals is liable if they trespass on the land of another, and do damage which might naturally be expected to result.

The defendant's stallion bit the plaintiff's mare through a wire fence, and trespassed on the plaintiff's land in so doing. *Held,* defendant was liable.

Ellison v. Ellison ((1802), 6 Ves. 656). *Held,* that there is this distinction as to volunteers, *viz.*, the assistance of the Court cannot be had, without consideration, to constitute a party *cestui que trust,* as upon a voluntary covenant to transfer stock, etc.; but if the legal conveyance is actually made constituting the relation of trustee and *cestui que trust,* as if the stock is actually transferred, etc., though without consideration, the equitable interest will be enforced.

Elmore v. Stone, ((1809), 1 Taunt. 458). For the purpose of section 17 of the Statute of Frauds, now section 4 of the Sale of Goods Act, 1893, a constructive delivery to the purchaser is sufficient.

The plaintiff, a livery stable keeper, sold two horses, then in his stables, to the defendant for £180, and, at the defendant's request, kept the horses in his stables, but moved them out of his sale stable into his livery stable. *Held,* this was delivery to the purchaser.

Emancipatio. Freedom from power. (1) By the ancient process of three fictitious sales, each followed by a manumission: abolished by Justinian. (2) By imperial rescript registered by a magistrate (Anastasius). (3) The parent went direct before a Judge or magistrate and let his descendant go free from his power (Justinian). (Roman law.)

Embargo. The provisional seizure or detention by a State of ships or property, generally in its own ports. If only applied by a State to its own ships by virtue of municipal law, it is termed civil embargo; if not, it is hostile embargo, which is a method of international redress short of war.

Embezzlement. The conversion to his own use by a clerk or servant of property received by him on behalf of his master. (Larceny Act, 1916, s. 40.)

Embiricos v. Anglo-Austrian Bank ([1905] 1 K. B. 677). The transfer of a bill of exchange or other similar instrument is governed, like a transfer of chattels, by the law of the place where such instrument is when the transfer takes place.

The plaintiffs sued the defendants for damages for conversion of a cheque drawn on an English bank, which had been stolen from them, and transferred in Vienna by a forged indorsement, and ultimately came into the hands of the defendants, who cashed it in London. *Held*, defendants were not liable, as such transfer gave a good title by Austrian law.

Emblements. The right to emblements is the right in certain circumstances of an away-going tenant or his executors to gather the crop sown before his estate determined.

Embracery. The common law misdemeanour committed by a person who by any means whatever, except the production of evidence and argument in open Court, attempts to influence or instruct any juryman.

Embrey v. Owen ((1851), 6 Ex. 353). *Held*, that every riparian owner has a right to take a reasonable quantity of water for the benefit of his riparian estate so long as he does not seriously interfere with the rights of the lower riparian owners to a similar user.

Eminent Domain. The right of a Government to take private property for public purposes. In international law the State is regarded not only as having a power of disposition over the whole of the national territory, but also as the representative owner of both the national territory and all other property found within its limits. (I Pitt Cobbett, 108.)

En autre droit. In the right of another.

En ventre sa mere. An unborn child.

Enclosure. See *Inclosure.*

Encroachment. The unauthorised extension of the boundaries of land.

Encumbrance. A charge or liability, *e.g.*, a mortgage.

Endowment. (1) Giving a woman right to dower. (2) Making permanent provision for charity, etc.

Enfeoff. To invest a person with land by means of a feoffment.

Enfranchise. To make free or to confer a liberty. For example, to confer the right to vote: to enlarge copyhold land into freehold.

English Information. See *Information.*

Engrossing. (1) Copying a deed at length in readiness for execution. (2) Buying in quantity corn, etc., to sell again at a high price: an offence abolished by 7 & 8 Vict. c. 24.

Enjoyment. The exercise of a right.

Enlargement. Increasing an estate, *e.g.*, when a base fee becomes united with the reversion or remainder in fee, the base fee is enlarged to the fee-simple.

Enrolment. To enrol is to enter (or copy) a document on an official record. The Enrolment Office was in the Court of Chancery; later transferred to the Central Office of the Supreme Court.

The enrolment of disentailing deeds is no longer necessary. (Law of Property Act, 1925, s. 133.)

Entail. An estate tail. Barring an entail converts the interest into a fee simple if the tenant in tail is in possession If he is not in possession, the consent of the protector of the settlement must be obtained; if it is not obtained, an equitable interest equivalent to a base fee is created. See *Estate.*

Entering Short. If a bill which is not yet due is lodged by the holder with his bankers, the bankers may enter it short, that is to say, merely note it as having been received for collection in due course, and credit it only when paid.

Entick v. Carrington ((1765), 19 St. Tr. 1030). *Held* that a general warrant to seize the papers of a named person is illegal.

Entire. A contract or claim, of which each part is so connected with the rest that it cannot be separated into several distinct contracts or claims; as opposed to a severable or apportionable contract, etc.

Entireties. If lands were given to a husband and wife they were each seised of the whole estate, and were said to be tenants by entireties, as man and wife were one person in law. By the Married Women's Property Act, 1883, they were made joint tenants. By the Law of Property Act, 1925, a tenancy in entireties is abolished, and for the purposes of property a husband and wife are made two persons (section 37).

Entry. (1) The act of going on land with the intention of asserting a right in it. (2) Forcible entry is the offence of entering in a violent manner. (3) The declaration to the Customs of the nature and quantity of a ship's cargo.

Entry, Writs of. Real actions which lay for one from whom lands were wrongfully withheld. The writ was said to be *in the quibus* when it was against the person who had actually committed the wrong; *in the per* when it was against the heir or grantee of such person; *in the per and cui* where there had been two descents, two alienations or a descent and an alienation since the original commission of the wrong; and *in the post* when the original wrong was still more remote. It was abolished by the Real Property Limitation Act, 1833, s. 36.

Enure. To operate or take effect.

Eo instanti. At that instant.

Eodem modo quo quid constituitur, eodem modo destruitur. A thing is made and is destroyed by one and the same means.

Equitable. (1) That which is fair; (2) that which arises from a liberal construction or application of a legal rule or remedy; (3) that which is in accordance with, or regulated, recognised, or enforced by the rules of equity, as opposed to those of the common law.

Equity. Primarily fairness or natural justice. "A fresh body of rules by the side of the original law, founded on distinct principles, and claiming to supersede the law in virtue of a superior sanctity inherent in those principles" (Maine). In England equity is the body of rules formulated and administered by the Court of Chancery to supplement the rules and procedure of the common law.

By the Judicature Act, 1873, the Court of Chancery was amalgamated with the Supreme Court, and rules of equity are to be administered

in all divisions of the Court, and where there is any conflict between the rules of law and equity, equity is to prevail.

Equity, Maxims of.

(1) Equity is a Court of conscience acting *in personam.*
(2) Equity will not suffer a wrong to be without a remedy.
(3) Equity follows the law.
(4) Equity looks to the intent rather than the form.
(5) Equity looks on that as done which ought to be done.
(6) Equity imputes an intent to fulfil an obligation.
(7) Equitable remedies are discretionary.
(8) Delay defeats equities.
(9) He who comes into equity must come with clean hands.
(10) He who seeks equity must do equity.
(11) Equity regards the balance of convenience.
(12) Where there are equal equities the law prevails.
(13) Where there are equal equities the first in time prevails.

Equity of Redemption. The right of a mortgagor to redeem the mortgaged property (*i.e.*, clear it of the mortgage debt) by paying off the principal and interest. Six months' notice to the mortgagor, or six months' interest in lieu of notice, was required. The equity to redeem could only be lost by foreclosure (*q.v.*) or under the Statute of Limitations where a mortgagee remained in possession for twelve years without acknowledging the title of the mortgagor.

By the Law of Property Act, 1925, the equity of redemption is in effect abolished, as the mortgagor retains the legal estate, and creates a long term of years, or a charge in favour of the mortgagee, with a proviso for cesser, or redemption, respectively. See *Clog on Equity of Redemption; Howard* v. *Harris.*

Equity to a Settlement. The right of a wife to have a settlement on herself of part of her equitable property, which her husband was claiming by suit in a Court of equity. See *Elibank* v. *Montolieu*; *Murray* v. *Elibank.*

Since the Married Women's Property Act, 1882, a married woman holds her property separately from her husband, and has no need to invoke this doctrine.

Error. Some mistake in the foundation, proceeding, judgment or execution of an action in a Court of record, requiring correction either by the Court in which it occurred (in case of error of fact), or by a superior Court or Court of error (in case of error in law.) To "bring error" was to apply for the rectification required.

Error, Writ of. It lay for substantial defects appearing on the face of the record of a criminal trial. It brought the proceedings from an inferior Court to a superior Court for review.

Ertel Bieber & Co. v. Rio Tinto Co., Ltd. [(1918] A. C. 260). The appellants, a German firm, had entered into an agreement with the respondents, an English company, that the latter would supply the former with cupreous sulphur from 1911 to 1919. The contract contained a clause that if deliveries were prevented by (*inter alia*) war, the obligation to deliver should be suspended during the continuance of the war, and for a reasonable time afterwards. *Held*, the outbreak of war with Germany terminated the contract, and that the suspensory clause made no difference.

Escape. The misdemeanour committed by a person who permits any person in his lawful custody to regain his liberty otherwise than in due course of law.

Escheat. The reversion of land to the lord of the fee or the Crown on failure of heirs of the owner dying intestate. It is derived from the feudal rule, that where an estate in fee-simple comes to an end, the land reverts to the lord by whose ancestors or predecessors the estate was originally created. Escheat was abolished by the Law of Property Act, 1922, and the right of the Crown to take as *bona vacantia* was substituted (Sched. 12).

Escheator. The officer anciently appointed to enforce the right of escheat on behalf of the Crown.

Escrow. A writing sealed and delivered to a stranger (*i.e.*, a person not a party to it) to be held by him until certain conditions be performed, and then to be delivered to take effect as a deed.

Escuage. A variety of tenure by knight's service. It imposed on the tenant the duty of accompanying the King to war for forty days, or of sending a substitute, or of paying a sum of money which was assessed by Parliament after the expedition.

Esposito v. Bowden ((1857), 7 El. & Bl. 763). If performance of a contract becomes illegal by English law the contract is discharged.

The defendant, a British subject, chartered a ship and agreed to load wheat at Odessa. War broke out between England and Russia. *Held*, this was a good defence to an action for not loading.

Esquire. The degree next below that of knight. A barrister-at-law is an esquire by virtue of his office.

Essence of the Contract. An essential condition or stipulation in a contract without which the contract would not have been entered into, unless a different intention appears from the terms of the contract. Time of payment is not of the essence of the contract of sale. (Sale of Goods Act, 1893, s. 10.)

Essoin ; Essoign. An excuse made for non-appearance in an action or suit. It was in the nature of an application for time or for an adjournment, made on the first day of term—essoin day.

Estate. An interest in land. An *absolute* estate is one granted without condition or termination. A *conditional estate* is one liable to divest on the fulfillment of a condition. A *contingent estate* is one the right to the enjoyment of which will accrue on the happening of some event; and a *determinable estate* one that is liable to determine on the happening of some event. An *estate in expectancy* is one which cannot be enjoyed until some future time.

An *estate in possession* is one which gives the right of present enjoyment, and a *vested estate* is one the right to the enjoyment of which has accrued. An *estate in severalty* is one held by a person singly, and an *estate in common* is one held by several persons jointly in undivided shares. A *customary estate* is one that existed in manors and boroughs by virtue of local custom: now abolished by the Law of Property Act, 1922.

An *estate in fee-simple* is one that is granted to "a man and his heirs," and is the greatest estate a subject of the Crown can possess. An *estate of freehold* is one originally held by a freeman and subject to free services, and of uncertain duration, *e.g.*, for life, or for the life

of another. An *estate of inheritance* is one capable of descending to a man's heirs, *i.e.*, an estate in fee-simple, fee-tail or in frankalmoign.

An *estate tail* is one created by the grant of land to "a man and the heirs of his body" or to a man and specified heirs of his body, *e.g.*, the issue of his first wife. The estate tail is derived from the Statute of Westminster II, *De Donis Conditionalibus*, before which a gift of land to a man and the heirs of his body created an estate in fee conditional on his having issue; as soon as the condition was performed the estate became absolute. The statute enacted that in such cases the terms of the gift should be carried out and the land should go to the issue of the donee, and on failure of such issue should revert to the donor. The Fines and Recoveries Act, 1833, instituted a disentailing deed for barring the entail, which since the Law of Property Act, 1925, need not be enrolled. (Section 133.) After 1925, the estate tail can be barred by will (*ibid.*, section 176), and will take effect as an equitable interest (*ibid.*, section 130). See *Entail; Recovery.*

A *legal estate* is one valid against all the world (except specified persons); it is the estate capable of subsisting or being created and conveyed at common law. By the Law of Property Act, 1925, s. 1, the only legal estates capable of subsisting are (1) an estate in fee-simple absolute in possession; (2) a term of years absolute; (3) certain legal interests or charges. All other estates, interests and charges are to take effect as equitable interests. See *Charge*; *Interest*; *Wild's Case.*

An *equitable estate* is one created and recognised only by a Court of equity, *i.e.*, the Court of Chancery.

Estate Clause. The clause inserted in conveyances after the grant of parcels, conveying "all the estate, right, interest," etc., of the owner. Rendered unnecessary by the Conveyancing Act, 1881.

Estate Contract. A contract by an estate owner to convey or create a legal estate. (Land Charges Act, 1925, s. 10.)

Estate Duty. The tax imposed by the Finance Act, 1894, s. 1, upon the principal value of property, whether real or personal, settled or not, which passes on the death of any person dying after August 1, 1894. It is payable as a percentage on the total value of the estate.

Estate Owner. The owner of a legal estate. See *Estate.*

But an infant is not capable of being an estate owner.

Estates of the Realm. The Lords Temporal, the Lords Spiritual and the Commons.

Estoppel. The rule of evidence or doctrine of law which precludes a person from denying the truth of some statement formerly made by him, or the existence of facts which he has by words or conduct led others to believe in.

(1) *Estoppel by record.* A person is not permitted to dispute the fa ts upon which a judgment against him is based.

(2) *Estoppel by deed.* A person cannot dispute his own deed; he cannot deny the truth of recitals contained in it.

(3) *Estoppel in pais.* Estoppel by conduct, *e.g.*, a tenant, having accepted a lease, cannot dispute his lessor's title.

(4) *Equitable estoppel.* If a person by representation induces another to change his position, he cannot afterwards deny the truth of his representation.

Estovers, Common of. The right of taking from the woods or

waste lands of another person a reasonable portion of his timber or underwood.

Estrays. Valuable animals found straying without an owner. After proclamation and a year and a day they belong to the Crown; or by special grant to the lord of the manor.

Estreat. (Old French, *estrait*; extract.) A copy of a record of a Court; now used only in connection with fines, forfeitures and recognisances.

Evidence. "All the legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation" (Taylor).

(1) *Oral.* "Statements made by witnesses in Court under a legal sanction" (Stephen).
(2) *Documentary.* "Documents produced for the inspection of the Judge" (Stephen).
(3) *Conclusive.* "Evidence of a fact which the Court must take as full proof of such fact and which excludes all evidence to disprove it" (Stephen).
(4) *Direct.* Evidence of a fact actually in issue; evidence of a fact actually perceived by a witness with his own senses.
(5) *Circumstantial.* Evidence of a fact not actually in issue, but legally relevant to a fact in issue.
(6) *Real.* Evidence supplied by material objects produced for the inspection of the Court.
(7) *Extrinsic.* Oral evidence given in connection with written documents.
(8) *Hearsay.* Evidence of a fact not actually perceived by a witness with his own senses, but proved by him to have been stated by another person.
(9) *Indirect.* Circumstantial or hearsay evidence.
(10) *Original.* "Evidence which has an independent probative force of its own" (Best).
(11) *Derivative.* "Evidence which derives its force from some other source" (Best).
(12) *Parol.* Oral, extrinsic, evidence.
(13) *Prima facie.* Evidence of a fact which the Court must take as proof of such fact, unless disproved by further evidence.
(14) *Primary.* Evidence which itself suggests that it is the best evidence, and which is required to be produced if available.
(15) *Secondary.* "Evidence which itself suggests the existence of better evidence, and which is rejected if primary evidence is available" (Cockle).

Ewing v. Orr-Ewing (9 A. C. 34; 10 A. C. 453). Equity acts *in personam*, *i.e.*, it has jurisdiction if the persons concerned are within the jurisdiction.

A testator domiciled in Scotland left personal estate in Scotland and in England, and appointed Scotch trustees and executors. The will was confirmed in Scotland and probate sealed in England. An infant legatee resident in England brought an action for the administration of the estate. All the English personalty was removed into Scotland. *Held*, that the English Court had jurisdiction as to the whole estate,

but in the circumstances it would be more convenient to administer in Scotland.

Ex contractu. Arising out of contract.

Ex debito justitiæ. A remedy which the applicant gets as of right, *e.g.*, a writ of Habeas Corpus.

Ex delicto. Arising out of wrongs; actions in tort.

Ex diuturnitate temporis omnia præsumuntur esse rite et solennitur acta. From lapse of time, all things are presumed to have been done rightly and regularly.

Ex dolo malo non oritur actio. No right of action can have its origin in fraud.

Ex gratia. As of favour.

Ex maleficio non oritur contractus. A contract cannot arise out of an illegal act.

Ex nudo pacto non oritur actio. No action arises from a nude contract, *i.e.*, a contract entered into without consideration.

Ex officio. By virtue of his office.

Ex parte. An application in a judicial proceeding made: (1) by an interested person who is not a party, (2) by one party in the absence of the other.

Ex post facto. "By a subsequent act." An *ex post facto* statute is one that is retrospective.

Ex provisione viri. An estate tail of a wife in lands of her husband or his ancestors. Obsolete.

Ex turpi causâ non oritur actio. An action does not arise from a base cause.

Exaction. The taking, by an officer of the law, of any fee or reward where none was due.

Examination. The interrogation of a person on oath. In Court, the evidence of a witness is obtained by oral examination called the examination-in-chief; he is then examined on behalf of the opposite party in order to diminish the effect of his evidence, called the cross-examination. Then he is again examined by the party calling him in order to give him an opportunity of explaining or contradicting any false impression produced by the cross-examination, called the re-examination, and is necessarily confined to matters arising out of the cross-examination.

Examined Copy. A copy sworn to be a true copy by a person who has compared it with the original.

Examiner. A person appointed by a Court to take the examination of witnesses in an action, that is, to take down the result of their interrogation by the parties or their counsel. An examiner is generally appointed where a witness is in a foreign country, or is too ill or infirm to attend before the Court. See Order XXXVII.

Exception. A saving clause in a deed so that the thing excepted does not pass by the grant.

In procedure, to except to a thing was to object to or challenge it.

Excess Profits Duty. A duty of inland revenue imposed from 1915 to 1921.

Exchange. Mutual transfer or conveyance of property.

Exchequer. A public office, formerly consisting of two divisions, the Exchequer of Receipt, and the Court of Exchequer (*q.v.*).

The former managed the royal revenues, receiving and keeping the moneys due to the Crown, and seeing that the payments out were made on proper authority. These functions are now discharged by the Bank of England, the Treasury, and the Comptroller and Auditor-General.

The Exchequer was anciently known as the *Scaccarium*, or chess board, from the cloth covering the table. See *Chancellor of the Exchequer*.

Exchequer Bills. Bills issued by the Government for the purpose of raising temporary loans, generally in anticipation of the supplies granted by Parliament. They are negotiable instruments.

Excise. A duty of inland revenue chargeable on the manufacture or sale of intoxicating liquors, tobacco, etc.

Exclusive Jurisdiction. The jurisdiction of the Court of Chancery in cases where no relief was obtainable at law, *i.e.*, where both the right and the remedy were purely equitable, *e.g.*, breach of trust.

Exeat. Let him go.

Execution. The act of completing or carrying into effect, particularly of a judgment, effected by writs of execution, orders and notices, which compel the defendant to do or to pay what has been adjudged. The term execution has in criminal procedure come to mean the carrying out of a sentence of death by hanging.

Executor. An executor is the person to whom the execution of a will, that is, the duty of carrying its provisions into effect, is confided by the testator. The duties of an executor are to bury the deceased, to prove the will; to collect the estate, and, if necessary, convert it into money; to pay the debts in their proper order, to pay the legacies, and distribute the residue among the persons entitled. He may bring actions against persons who are indebted to the testator, or are in possession of property belonging to the estate. When several executors are appointed, and only some of them prove the will, these are called the proving or acting executors.

An executor is allowed a year to realise the testator's estate before being bound to distribute it. See The Administration of Estates Act, 1925.

Executor de son tort. "Of his own wrong." One who, being neither executor nor administrator, intermeddles with the goods of the deceased. When a man has so acted, he renders himself liable, not only to an action by the rightful executor or administrator, but also to be sued by a creditor or legatee of the deceased. He has all the liabilities, though none of the privileges, which belong to an executor. (See section 28, Administration of Estates Act, 1925.) See *Devastavit*.

Executory. That which remains to be carried into effect.

Executory Interest. A future estate in lands or personalty which does not depend upon the determination of prior particular estates. An executory devise is an executory interest created by will. An executory interest created under the Statute of Uses is either a springing use, *i.e.*, one that comes into being after the happening of some event; or a shifting use, *i.e.*, one that shifts from one person to another on the happening of some event. See *Use*.

Exemplification. An official copy of a document made under the seal of a Court or public functionary.

Exequatur. A permission by a Government to the consul of another

State to enter upon the discharge of his functions. Its issue is entirely discretionary.

Exhibit. When it is wished to put a document or moveable thing in evidence by affidavit, a reference to it is made in the affidavit, as being marked in some way for identification, and as having been produced to the deponent at the time of his swearing the affidavit. (Order XXXVIII, r. 23.)

Exigent, or **Exigi facias.** A writ used in obtaining the outlawry of a person; it required the sheriff to call on the defendant to appear and answer the plaintiff; if he made default after being exacted (called) five times, he was outlawed.

Exitus. (1) Issue or offspring; (2) the yearly rents and profits of lands and tenements; and (3) a joinder of issue or close of pleadings.

Exoneration. Relief from liability; the relieving of one part of the estate of a testator of liability, by throwing it on another part, either by direction of the testator or by operation of law. See *Locke King's Act.*

Expatriation. Loss of nationality by renunciation of allegiance, and the acquisition of a foreign nationality.

Expectant Heir. "Everyone who has either a vested remainder or a contingent remainder in a family property, including a remainder in a portion, as well as a remainder in an estate, and everyone who has the hope of succession to the property of an ancestor, either by reason of being the heir-apparent or presumptive, or by reason merely of the expectation of a devise or bequest on account of the supposed or presumed affection of his ancestor or relation. More than this, the doctrine as to expectant heirs has been extended to all reversioners and remaindermen" (*per* Jessel, M.R., Beynon *v.* Cook, L. R. 10 Ch. 391). See *Catching Bargain.*

Expedit reipublicæ ut finis sit litium. It is in the public interest that the decision of cases should be final.

Expensæ Litis. Expenses of the cause; costs.

Expensilatio. See *Literarum obligatio.*

Expiring Laws Continuance Act. An Act passed every year to continue, generally until the end of the following year, a number of Acts which otherwise would have expired.

Exposure, Indecent. A common law misdemeanour. Under the Vagrancy Act, 1824, and the Town Police Clauses Act, 1847, it is punishable summarily. See Criminal Justice Act, 1925, s. 42.

Express. Direct communication, as opposed to communication by implication; *e.g.*, an express trust.

Expressio unius personæ vel rei, est exclusio alterius. The express mention of one person or thing is the exclusion of another.

Expressum facit cessare tactium. When there is express mention of certain things, then anything not mentioned is excluded.

Expropriation. Compulsorily depriving a person of a right of property belonging to him in return for a compensation.

Extendi facias, Writ of. "That you cause to be extended." The Writ of Extent.

Extent. The writ to recover debts of record due to the Crown, directed to the sheriff, who proceeded to make a valuation of the pro-

perty of the debtor by means of a statement on oath of a jury. An *extent in chief* is a proceeding by the Crown for the recovery of a debt of record due to it. An *extent in aid* is one sued out at the instance and for the benefit of a debtor to the Crown, for the recovery of a debt due to himself, the Crown being merely the nominal plaintiff. An *immediate extent* is one which issues in urgent cases without the usual preliminary of a *scire facias* (*q.v.*), on proof that the debt is in danger of being lost. Writs of extent were occasionally issued as writs of execution for private persons.

Exterritoriality. A legal fiction by which certain persons and things are deemed for the purpose of jurisdiction and control to be outside the territory of the State in which they really are, and within that of some other State. Its principal applications are :—

(1) Sovereigns, whilst travelling or resident in foreign countries.
(2) Ambassadors and other diplomatic agents.
(3) Public vessels whilst in foreign ports or territorial waters.
(4) The armed forces of a State when passing through foreign territory.
(5) Foreigners of European or American extraction, when resident in certain Eastern States.
(6) The Pope in Italy. (I Pitt Cobbett, 258.) See *Mighell* v. *Sultan of Johore; Parlement Belge.*

Extinguishment. The cesser of a right or obligation, particularly by operation of consolidation or merger. The right to a sum of money is extinguished when a debt is paid. An easement is extinguished when the dominant and servient tenements become united in the same person.

Extortion. The misdemeanour committed by a public officer, who, under colour of his office, wrongfully takes from any person any money or valuable thing.

Extradition. The delivery up of a person who has committed a crime in another country by the authorities of the country in which he has taken refuge, to the authorities of the country where the crime was committed.

The law on the subject as regards this country is contained in the Extradition Acts, 1870, 1873, 1895 and 1906. No criminal can be extradited for a " political " offence.

Extrajudicial. Outside judicial procedure, *e.g.*, distress ; a dictum.

Eyre. (Latin, *iter* a journey.) The justices in eyre were regularly established in 1176, with a delegated power from the King's Great Court or *Aula Regia*, and they made their circuit round the kingdom once in seven years, for the purpose of trying causes, and reviewing the whole working of the local government. They were directed by Magna Carta to be sent into every county once a year; but " as the power of the justices of assize increased so these justices itinerant vanished away " (Coke).

Eyre v. Countess of Shaftesbury ((1722), 2 P. Wms. 103). An infant's mother procured the marriage of a ward of Court without the consent of the guardian. *Held*, that the mother was liable for a contempt of Court, although the marriage was in other respects proper.

F. O. B. Free on board; a price quoted for goods including the cost of placing on board ship.

Fabric Lands. Lands given to repair or maintain the fabric or structure of a church.

Factor. A mercantile agent; "a person who, in the usual course of his business, has possession of the goods, or the documents of title to goods, of his principal, with authority to sell, pledge, or raise money on security of the same." (Factors Act, 1889, s. 1, sub-s. 1.) The principal is bound by such sale or pledge even though he has forbidden it, unless there is notice of such prohibition. The principal is not bound in respect of a past advance except to the extent of any lien the factor may have on the goods of the principal. See *George* v. *Clagett.*

Factum. An act or deed.

Factum probanda. Facts which require to be proved.

Factum probantia. Facts which are given in evidence to prove other facts in issue.

Faculty. A licence to do an otherwise unlawful act. (Ecclesiastical law.)

Faggot Voter. One who voted in respect of property nominally sufficient to give the franchise, *e.g.*, the forty-shilling freehold.

Failure of Record. The unsuccessful plea of a defendant who alleged matter of record in defence.

Fair Comment. See *Campbell* v. *Spottiswoode.*

Fait. A deed.

Falsa demonstratio non nocet. A false description does not vitiate a document.

False Imprisonment. The confinement of a person without just cause or excuse. There must be a total restraint of the person; and the onus of proving reasonable cause is on the defendant. See *Bird* v. *Jones.*

False Pretence. A false representation of fact. Obtaining goods, money, etc., by false pretences with intent to defraud is a misdemeanour, the maximum punishment for which is five years' penal servitude. (Larceny Act, 1916, s. 32.)

False Representation. See *Misrepresentation.*

False Return. An action of damages lies against a person who makes a false return to a writ.

Falsify. Where an account is being investigated in the Chancery Division, and the party shows that an item of payment or discharge contained in it is false or erroneous, he is said to falsify it.

Familia. Family. It may include: (1) All those persons who were subject to the potestas of the same individual, whether his children, grandchildren, etc., or unconnected in blood, *e.g.*, slaves. (2) All descendants of the same ancestors. (3) All persons connected by agnation. (4) The slaves of a *paterfamilias*, or (5) The property of a *paterfamilias.* (Roman law.)

Famosus libellus. A scandalous libel.

Fast Days. Days of general fast may be declared by Royal Proclamation. Such a day is not a business day.

Fealty. A service which every free tenant (except tenant in frankalmoign) is in theory bound to perform to his feudal lord. It consisted in the tenant taking an oath of fidelity to the lord.

Fee. Originally a feudal benefice; land granted to a man and his

heirs in return for services to be rendered to the grantor. Now land, or an interest in land, which is capable of descending to an heir. (See *Estate.*)

Fee-farm Rent. A perpetual rent issuing out of lands held in fee-simple, reserved when the lands were granted, and payable by the freeholder.

Feigned Issue. A mode of deciding questions of fact, by stating that the parties interested in the matter had made a wager upon the truth or falsehood of the propositions, setting out the fact or facts in dispute, and then having the issue tried by a jury.

Felo de se. "Self-murder." Suicide.

Felony. At common law, every species of crime, a conviction for which occasioned the forfeiture of the lands or goods of the offender, and to which a punishment might be added. Forfeiture was abolished, however, by the Forfeiture Act, 1870. Now felonies are a category of crimes, ranking in seriousness below treason and above misdemeanours. Felonies, created by statute and for which no other punishment is prescribed, are punishable by penal servitude for not less than three or more than seven years, or imprisonment for not more than two years, with or without hard labour. (Penal Servitude Act, 1891, s. 1.)

Felthouse v. Bindley ((1862), 7 L. T. 835). There must be an actual acceptance of an offer in order to make a binding contract. F. wrote to N. "If I hear no more I shall consider the horse mine at £30." N. told the auctioneer the horse was sold, but the auctioneer forgot and sold the horse. F. sued the auctioneer for conversion. *Held*, the auctioneer was not liable as there was no contract, and therefore the property in the horse never passed to F.

Feme Covert. A married woman; *feme sole*, an unmarried woman.

Feodum. A fee (*q.v.*).

Feoffee to Uses. A person to whom a feoffment was made to the use of a *cestui que use.* This vested the legal estate in the feoffee, who held on behalf of the beneficial owner, the *cestui que use.* The Statute of Uses, 1535, turned the use into the legal estate, and the *cestui que use* therefore became the legal owner. The feoffee to uses henceforth merely served as a conduit pipe, diverting the flow of the legal estate. The Statute of Uses is repealed by the Law of Property Act, 1925.

Feoffment. Originally, merely the overt or public delivery of the possession of land by the owner (the feoffor) to the grantee or purchaser (the feoffee), consisting of the ceremony called livery of seisin (*q.v.*). It became usual to put the terms of the conveyance in writing, as a record of the transaction, which was called the charter or deed of feoffment. By the Real Property Act, 1845, s. 3, a feoffment was avoided unless made by deed. The tortious operation of a feoffment was the granting of a larger estate to the feoffee than the feoffor himself possessed. Abolished by the Real Property Act, 1845, s. 4.

Feræ Naturæ. Of a wild nature. See *Animals.*

Ferry. The right to a ferry is a franchise which can be created only by grant from the Crown, by prescription, or by statute.

Feud. (1) A fee (*q.v.*). (2) An enmity or a quarrel.

Feudal System. The system of political organisation of States in the Middle Ages, based on land tenure. The King was the ultimate lord of all land. He granted land to his lords in return for military

services, and they in their turn made further similar grants, the process known as subinfeudation. The unit of land in the system was the manor, each under its lord, who had a right to services in labour and in kind from the villeins, the servile tenants of the manor, over whom he exercised full jurisdiction. The lord in return owed them a duty of protection. The King had an overriding authority and claimed allegiance both from lords and their tenants.

Fiat. "Let it be done." The certificate of the Attorney-General giving leave to take some proceedings for which the consent of the Crown is necessary.

Fiat justitia. "Let justice be done." The endorsement of the Home Secretary on a petition of right, without which it cannot be proceeded with. (Petition of Right Act, 1860, s. 2.)

Fictio legis non operatur damnum vel injuriam. A legal fiction does not work loss or injustice.

Fiction, Legal. "Any assumption which conceals, or affects to conceal, the fact that a rule of law has undergone alteration, its letter remaining unchanged, its operation being modified" (Maine). In English law fictions have played a considerable part. They may be said to be statement or suppositions which are known to be untrue, but which are not allowed to be denied, in order that some difficulty may be overcome, and substantial justice secured. See, *e.g.*, *Ejectment*.

Fideicommissarius. The *cestui que trust*, the person to whom, by way of trust, the heir is required to give up the whole inheritance, or a share of it. (Roman law.)

Fideicommissum. A trust imposed upon the legal heir for the execution of the last wishes of a deceased person. (Roman law.)

Fidejussor. A surety; one that binds himself for the promiser. A *fidejussor* might be added in every kind of obligation. (Roman law.)

Fiduciary. The relationship of one person to another, where the former is bound to exercise rights and powers in good faith for the benefit of the latter, *e.g.*, as between trustee and beneficiary. See *Fox* v. *Mackreth*.

Fieri facias, or **Fi. Fa.** "Cause to be made." A writ of execution directing the sheriff to whom it is addressed to levy from the goods and chattels of the debtor a sum equal to the amount of a judgment debt and interest. The sheriff makes a seizure and institutes a sale by auction.

Fieri feci. The return by a sheriff to the writ of *fieri facias* that he has levied the sum named.

Filacers. Officers of the Court who filed original writs.

Filiusfamilias, Filiafamilias. Son: daughter. Any persons under the *patria potestas* of another. (Roman law.)

Finding. A conclusion upon an inquiry of fact.

Fine. (1) A sum of money ordered to be paid to the King by an offender, as a punishment for his offence.

(2) A money payment made by a feudal tenant to his lord, *e.g.*, from a copyholder to the lord of the manor on being admitted to the copyhold estate. But the incidents of copyhold tenure were abolished by the Law of Property Act, 1922.

(3) A premium paid for the grant or renewal of a lease.

(4) A judicial proceeding used for conveying land. A fictitious suit

was instituted and compromised with the consent of the Court, and an agreement entered into between the parties as to the disposal of the land in question. A note of the proceedings was drawn up by an officer called the chirographer, and a document, called the " chirograph " or " foot " of the fine, which recited the whole proceedings, was enrolled in the records of the Court and delivered to the purchaser as a deed of title.

Fines were abolished by the Fines and Recoveries Act, 1833.

Finis finem litibus imponit. A fine puts an end to legal proceedings.

Firm. Persons who have entered into partnership with one another. The name under which their business is carried on is called the firm name. (Partnership Act, 1890, s. 4.)

An action may be brought by or against a firm in the name of the firm. (Order XLVIIIA, r. 1.)

Firma. Victuals, rent, or a farm.

First Fruits. Annates (*q.v.*).

First Impression. A case which presents to a Court of law for its decision a question of law for which there is no precedent.

Fish Royal. Whale and sturgeon, which, when either thrown ashore or caught near the coast, are the property of the Sovereign.

Fishery or **Piscary.** (1) A *Royal fishery* is the exclusive right of the Crown of fishing in a public river.

(2) A *public or common fishery* is the right of the public to fish in the sea and in public navigable rivers as far as the tide flows.

(3) A *several fishery* is an exclusive right of fishing in a particular water, and vested either in the owner of the soil or in someone claiming under him.

(4) *Common of fishery* is the right of fishing in another man's waters (*e.g.*, the lord of the manor) in common with him. It is a profit *à prendre*.

(5) A *free fishery* is either a royal fishery granted to a subject (Blackstone) or a common of fishery (Coke).

Fitch v. Rawling ((1795), 2 H. Bl. 393). *Held*, that local customs can only be claimed for inhabitants of the locality.

Fixtures. " Anything annexed to the freehold " (2 Sm. L. C. 204). Whatever is so annexed, as a general rule, becomes part of the realty, and the property in it immediately vests in the owner of the soil.

Tenant's fixtures are chattels annexed to land or houses, which are removeable by the tenant. They are not distrainable for rent, but they may be seized in execution. They are (1) articles either ornamental or of domestic convenience, of the nature of fittings rather than additions to the house itself, and which can be removed entire without substantial damage to the fabric. (2) Trade fixtures, *i.e.*, fixtures erected for the purpose of carrying on some trade, business or manufacture. They may be removed although damaging the fabric, together with covering erections.

Fixtures affixed to an agricultural holding by a tenant not under an obligation, and for which no compensation is received, may be removed, subject to conditions. See Agricultural Holdings Act, 1923, s. 22.

Flagrante delicto. While the offence is flagrant, *e.g.*, in the act of adultery.

Fleet Registers. Records of marriages clandestinely celebrated in or

about the Fleet Prison (abolished in 1842). They are inadmissible in evidence.

Fleta. A commentary on the Laws of England of Edward I.

Fletcher v. Ashburner ((1779), 1 Bro. C. C. 497). Equity looks on that as done which ought to be done. "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; and this in whatever manner the direction is given—whether by will, by way of contract, marriage articles, settlement, or otherwise, and whether the money is actually deposited, or only covenanted to be paid; whether the land is actually conveyed, or only agreed to be conveyed. The owner of the fund, or the contracting parties, may make land money or money land" (*per* Sewell, M.R.).

Real estate was devised on trust for sale. *Held*, it devolved as personalty.

Fletcher v. Rylands. See *Rylands* v. *Fletcher*.

Floor of the Court. That part between the Judge's bench and the front row of counsel.

Flotsam. Goods lost by shipwreck or cast overboard, which remain afloat. If unclaimed they belong to the Crown. They are "wreck" under the Merchant Shipping Acts.

Fœnus nauticum. The interest charged for money secured by what corresponded to our bottomry bond. (Roman law.)

Folcland; Folkland. Land held of the King without written title under customary law. (Anglo-Saxon.)

Folcmote; Folkmoot. Any assembly of the people, other than the *witenagemot*, for either judicial or legislative purposes. (Anglo-Saxon.)

Folcright; Folkright. The laws of England in later Anglo-Saxon times; the basis of the common law.

Foldage. The right of the lord of a manor of having his tenant's sheep to feed on his fields, so as to manure the land, in return for which the lord provides a fold for the sheep.

Foldcourse. The right the lord of the manor had of feeding a certain number of sheep on the lands of the tenant during certain times of the year.

Folio. So much of a document as contains seventy-two words: so much of a will or copy as contains ninety words.

Foot of a Fine. See *Fine*.

Forbes v. Cochrane ((1815), 2 B. & C. 448). *Held*, that no action would lie against an officer who received escaping slaves into a British vessel and refused to give them up, as English law prevailed there, by which they became free.

Forcible Detainer. The misdemeanour committed by a person who, having wrongfully entered upon any lands or tenements, detains them with violence or threats.

Forcible Entry. See *Entry*.

Foreclosure. When a mortgagor has failed to pay off the mortgage debt within the proper time, the mortgagee is entitled to bring an action in the Chancery Division by writ or originating summons asking that a day may be fixed on which the mortgagor is to pay off the debt, and that in default of payment on that day the mortgagor may be

foreclosed of his equity of redemption (*q.v.*). The Court may make an order for foreclosure *nisi* (*q.v.*) for payment of the principal with interest and costs, usually within six months, failing which an order absolute will be made, the land thereupon becoming the property of the mortgagee. By section 88, sub-section 2, Law of Property Act, 1925, an order absolute vests the legal estate in the mortgagee.

Foreign. Relating to any country out of the jurisdiction of the English Courts, *e.g.*, Scotland.

Foreign Attachment. A process whereby a defendant was compelled to appear in the Mayor's Court of the City of London, or elsewhere, by attaching property of the debtor in the hands of a third party within the jurisdiction of the Court, known as the garnishee. Now obsolete.

Foreign Enlistment Act, 1870. The Act making it an offence, punishable with fine and imprisonment, for any British subject, without the licence of the Crown, to serve in the military or naval service of any foreign State at war with any State which is at peace with England, or to build or equip any ship for the service of any such State, etc.

Foreign Jurisdiction Act, 1890. The consolidating Act which provided (following the preamble that by treaty, capitulation, grant, usage, sufferance, etc., the Crown has jurisdiction in countries and places outside its dominions) that it should be lawful for the Sovereign to exercise any jurisdiction possessed within a foreign country in the same manner as if the jurisdiction had been acquired by cession or conquest of territory, and that every act done in pursuance of such jurisdiction was to be as valid as if it had been done according to the local law then in force in that country. Orders in Council made under the Act are laid before both Houses of Parliament.

Foreign Office. The Government Department of which the Secretary of State for Foreign Affairs is the head.

Foreign Plea. A plea (*q.v.*) to the jurisdiction of the Court.

Foreman. The member of a jury who acts as spokesman.

Forensic Medicine. Medical jurisprudence: "that science which teaches the application of every branch of medical knowledge to the purposes of the law" (Taylor).

Foreshore. That part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides. The property in the foreshore is *prima facie* vested in the Crown.

Forest. The exclusive right of keeping and hunting wild beasts and fowls of forest, chase, park, and warren in a certain territory, with laws and officers of its own, established for the protection of the game. Obsolete.

Forestall. To obstruct a person's way with force and arms; also to raise the price of certain goods by holding up supplies, etc.

Forfeiture. The loss of property as a penalty for some act or omission. Formerly a dealing with his estate by a feudal tenant in derogation of the right of his lord, *e.g.*, a feoffment by a tenant for life, was formerly a ground of forfeiture; the denial of the landlord's title is so still. A forfeiture clause in a lease provides that on the breach of certain covenants the lease shall be at an end and the lessor may re-enter. Equity relieved against forfeitures designed to secure the performance of some collateral act, *e.g.*, the payment of rent, when the Court could give by way of compensation all that was required.

The Conveyancing Act, 1881, s. 14, re-enacted by the Law of Property Act, 1925, s. 146, provided that a lessor cannot enforce a proviso for forfeiture and re-entry unless he serves on the lessee a notice specifying the breach and requiring its remedy, and in any case requiring compensation in money. Breach of a covenant not to deal with or dispose of the land leased formerly operated as a forfeiture, but, after 1925, in such case the tenant may apply to the Court for relief.

Formerly the goods and chattels of a person convicted of felony were forfeited to the Crown; abolished by the Forfeiture Act, 1870. Forfeiture for outlawry still, in theory, exists.

Forgavel. A quit rent.

Forgery. At common law the fraudulent making or alteration of a writing to the prejudice of another man's rights. By section 1, subsection 1, Forgery Act, 1913, "The making of a false document in order that it may be used as genuine, and in the case of the seals and dies mentioned in this Act, the counterfeiting of a seal or die."

The forgery of a passport is a misdemeanour. (Criminal Justice Act, 1925, s. 36.)

Forinsecus. Outside.

Forjudge. To deprive a person of a thing or right by a judgment.

Formedon. Writs brought by persons who claimed land under a gift in tail when it was in the possession of a person not entitled to it. Abolished by the Real Property Limitation Act, 1833.

Fortuna. Treasure trove.

Forum. A place; a Court.

Foster v. Mackinnon ((1869), L. R. 4 C. P. 704). The defendant had been induced to indorse a bill of exchange by a representation that it was merely a guarantee, and he had not been guilty of negligence. *Held*, the bill was invalid, as the mind of the indorser did not accompany his act.

Fouldes v. Willoughby ((1841), 8 M. & W. 540). *Held*, that for an interference with the goods of another to constitute conversion or trover it must amount to a wrongful assumption of powers of ownership.

Four Seas. (1) The Atlantic; (2) the North Sea; (3) the German Ocean; and (4) the English Channel. Within the four seas meant within the United Kingdom.

Four-day Order. See Order XLI, r. 5, known as a "four-day order."

Fox v. Bishop of Chester ((1824), 6 Bing. 1). Whilst the incumbent of a church living was *in extremis*, but before he died, the next presentation was sold, but without the privity of, and without any intention to present, a particular clerk to the church when vacant. *Held*, that this sale was not void on the ground of simony.

Fox v. Mackreth ((1788), 2 Cox, 320). The defendant, Mackreth, being a trustee for the plaintiff, Fox, of certain property, agreed to buy such property of him for a sum of £39,500, and such agreement was duly carried out by conveyances being subsequently executed. Mackreth immediately afterwards sold the property to Page for £50,500, and the plaintiff, discovering this, filed his bill to have advantage of it. *Held*, that Mackreth having purchased the estate from his *cestui que trust* while the relation of trustee and *cestui que trust* con-

tinued to subsist between them, and without having communicated to the *cestui que trust* the value of the estate acquired by him as trustee, he must be declared a constructive trustee for Fox as to the sum produced by the sale to Page.

Fractionem diei non recipit lex. The law does not recognise any fraction of a day.

Franchise. A liberty or privilege.

(1) At common law, a franchise is a royal privilege or branch of the Crown's prerogative, subsisting in the hands of a subject, either by grant or by prescription. It is an incorporeal hereditament. It not only authorises something to be done, but gives the owner the right of preventing others from interfering. Examples are the right to hold a market or maintain a ferry.

(2) The right to elect a Member of Parliament.

Frankalmoign. Tenure by free alms, the tenure by which church lands are for the most part held. It was originally free of military services, but subject to religious services.

Frank-fee. Freehold land.

Frankmarriage (freemarriage). A dowry or gift free from services to a woman about to marry.

Land given "in frankmarriage" created an estate in tail special if it was given to a husband and wife by some blood relation of the wife. It was held by the husband and wife to them and their issue to the fourth degree free of services to the donor.

Frankpledge. The system of preserving the peace in force at the time of the Conquest by the compulsory association of men into groups of ten, each member of which was a surety for the others. The "view of frankpledge," was the duty of seeing that these associations were kept in perfect order and number, and was vested in the local Courts, especially the Courts Leet. See *Headborough*.

Frank-tenement. Freehold.

Fraud. In general, fraud is the obtaining of a material advantage by unfair or wrongful means: it involves moral obloquy. Fraud must be proved to sustain the common law action of deceit. "Fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false" (*Derry* v. *Peek*, 14 A. C. 337) (*q.v.*). To obtain damages for deceit it must be proved the defendant intended that the plaintiff should act on the fraudulent misrepresentation, that he did act on it, and suffered damage in consequence.

Fraud renders a contract voidable at the option of the injured party. See *Pasley* v. *Freeman*.

Fraud, Constructive. Cases in which equity gives relief against acts and contracts, although untainted by any actual evil design, on the ground of general public policy or on some fixed policy of the law. They fall under three main heads: (1) Contracts which no man in his right senses would make (James *v.* Morgan, 1 Lev. 111). (2) Contracts which it is against conscience to enforce as taking advantage of the weakness or necessities of another; *e.g.*, a catching bargain (*q.v.*). (3) Underhand bargains tending to the prejudice of third parties, *e.g.*, marriage brocage contracts, fraudulent preference, etc. (Lord Hardwicke in *Chesterfield* v. *Janssen* (*q.v.*).)

Fraud on a Power. The failure to exercise a power of appointment *bona fide* to the end intended by the donor. For example, a father having power to appoint an estate to any of his children, appoints it to one on the point of death, he being the child's heir (Hinchinbroke *v.* Seymour, 1 Bro. Ch. 395). A fraudulent exercise of a power will be set aside. Where an appointment is made in favour of a person at least twenty-five years of age, who is entitled to a share in default of appointment, a purchaser for value without notice of fraud is protected, after 1925, to the extent of that share. (Law of Property Act, 1925, s. 157.) See *Aleyn* v. *Belchier*.

Frauds, Statute of. See *Statute of Frauds*.

Fraudulent Conveyance. By the statute 13 Eliz. c. 5 (repealed and replaced by Law of Property Act, 1925, s. 172), conveyances of landed estates or of goods, made for the purpose of delaying, hindering or defrauding creditors, are void as against them unless made for valuable consideration and *bona fide* to a person not having notice of the fraud.

By the Bankruptcy Act, 1914, s. 1, a fraudulent conveyance, gift, delivery or transfer by a debtor of his property or any part thereof, is an act of bankruptcy. See *Twyne's Case*.

Fraudulent Preference. Any payment, conveyance or other advantage given by a debtor to a creditor within three months prior to his bankruptcy, with a view of giving that creditor a preference over the other creditors, is void as against the trustee in bankruptcy. (Bankruptcy Act, 1914, s. 44.)

Fraus omnia vitiat. Fraud vitiates everything.

Free Entry. A customs entry for free (*i.e.*, non-dutiable) goods.

Freebench. An estate analagous to dower, which, by the custom of most manors, the widow of a copyholder had in the land of which her husband was tenant. Freebench was abolished by the Law of Property Act, 1922.

Freehold Tenure. At the time of the Conquest land was held by military tenure, socage tenure, or copyhold tenure. Both military and socage tenures were freehold tenures; they were held in return for services which a free man might not think it derogatory to perform. In 1660, military tenure was abolished and the land became socage tenure. See *Estate*; *Leaseholds*.

Freeman. One who possesses the freedom of a borough or city and the accompanying rights and privileges. Honorary freedom is bestowed on persons of distinction as an honour.

Freight. The reward payable to a carrier by sea for the safe carriage and delivery of goods. See *Dead Freight*.

Fresh Suit. (Pursuit.) The following of a thing or person at once with the intention of reclamation.

Friendly Societies. Societies established to provide by the voluntary subscriptions of their members, for the relief or maintenance of the members and their families during sickness or old age, and their widows and orphan children. They must be registered. (Friendly Societies Act, 1896.)

Friendly Suit. A suit brought between parties by mutual arrangement in order to obtain a decision upon some point in which both are interested.

Frontager. A person owning or occupying land which abuts on a highway, river, or seashore.

Frost v. Knight ((1872), L. R. 7 Ex. 111). An anticipatory breach of contract may be sued on where the acts and conduct of the party evince an intention no longer to be bound by the contract. The defendant had promised to marry the plaintiff on the death of his father, and he afterwards, during his father's life, announced his absolute determination never to fulfil his promise. *Held*, the plaintiff might sue at once.

Frustra legis auxilium quærit qui in legem committit. He who offends against the law vainly seeks the help of the law.

Frustration. The discharge of a contract rendered impossible of performance by external causes beyond the contemplation of the parties. *E.g.*, in Metropolitan Water Board v. Dick Kerr, [1917] 2 K. B. 1, work under a contract to build a reservoir was completely stopped by an order of the Minister of Munitions. *Held*, the contract was discharged.

Fugam fecit. He has made flight.

Full Age. See *Infant*.

Functus officio. Having discharged his duty.

Fundus cum instrumento. A farm with its stock and implements of culture including everything on a farm placed there for the purpose of its cultivation and necessary for the cultivation. (Roman law.)

Fundus instructus. A farm with furnishings, as well as stock and implements. (Roman law.)

Further Assurance. See *Covenants for Title*.

Further Consideration. Where, on motion for judgment made in an action, the Court has not before it the materials for finally determining all the questions in dispute and disposing of the action, it may reserve the further consideration of the action, and give further directions. (Order XL, r. 10.)

Furtum conceptum. Where in a man's house before witnesses something that has been stolen is sought and found. An *actio concepti* lies against the occupier. (Roman law.)

Furtum oblatum. Where something that has been stolen is brought to a man's house with the intention that it shall be found there and is so found on formal search in his house. The occupier has an *actio oblati* against the bringer. (Roman law.)

Gage. A pledge or pawn. See *Mortgage*.

Gager de Deliverance. To give surety for the delivery of the goods which were in dispute in the action of replevin.

Gale. Gavel (*q.v.*).

Game. Wild animals, the hunting or taking of which is a sport. In the Game Laws, game consists of hares, pheasants, partridges, grouse, heath or moor game, black-game and bustards.

The right to kill game upon any land is vested in the occupier, unless he holds it under a lease or agreement by which the right is reserved to the landlord. But every person killing or taking game with the exception of Ground Game (which includes hares and rabbits), is required to take out a yearly excise licence.

Poaching, the unlawful taking of game, is an offence punishable with fine and imprisonment, and if with arms, penal servitude.

Gaming. To play at any game of chance, whether lawful or unlawful, for money or money's worth. At common law money won at any game could be recovered by action. By the Gaming Act, 1845, all contracts by way of gaming or wagering are null and void; and money so lost cannot be recovered. Money or valuables lent for the purpose of gaming or betting are not recoverable. Negotiable instruments given in payment of money so lost are given for an illegal consideration and cannot be sued on. See *Wager; Tatam* v. *Reeve.*

Gaol Delivery. One of the commissions given to the Judges or commissioners of assize. It authorises them to try, and (if acquitted) to deliver from custody, every prisoner who shall be in gaol for some alleged crime when they arrive at the circuit town. See *Assize.*

Gardner v. Sheldon ((1671), Vaughan, 259). *Held,* that a devise to B after the death of A gives A an estate for life by implication if B be heir-at-law of the testator; but no estate if he be not heir-at-law. An heir-at-law cannot be disinherited except by necessary implication.

Garnish. (1) To warn. (2) To exact money from prisoners.

Garnishee. A person in whose hands a debt has been attached. See *Attachment.*

Garnishee Order. An order served on a garnishee attaching a debt in his hands. See *Attachment.*

Garnons v. Knight ((1826), 5 B. & C. 671). *Held,* that where a party to any instrument seals it and declares in the presence of witnesses that he delivers it as his deed, but keeps it in his own possession, and there is nothing to show that the executing party did not intend it to operate immediately, it is a valid and effectual deed.

Garrotting. Choking, in order to rob, etc. Punishable under the Offences against the Person Act, 1861, s. 21, and the Garrotters Act, 1863.

Garter, Order of. The most distinguished order of knighthood. (K.G.)

Garth. An enclosure; a yard; a weir or dam.

Garth v. Cotton ((1750), 1 Ves. 524, 546). Garth, the father of the plaintiff, was tenant of lands for ninety-nine years, if he should so long live, without impeachment of waste, except voluntary waste; remainder to trustees during his life to preserve contingent remainders; remainder to his first and other sons in tail; remainder to defendant in fee. Garth (before the birth of a son) and the defendant came to an agreement under which they cut down timber and divided the profits between them. The plaintiff was afterwards born, and, having suffered a recovery, brought this bill against defendant to refund his share of the profits of the timber received by him. *Held,* that he was so entitled to recover from the defendant.

Gavel. Payment of tribute to a superior; rent.

Gavelkind. A variety of customary land tenure in Kent. Its principal incidents were (*a*) the land descended on intestacy to all the sons of the tenant equally; (*b*) the right of the widow or widower of a deceased tenant to have half the land for dower or curtesy until a second marriage, the widower taking by the curtesy whether issue had been born of the marriage or not; (*c*) the right of an infant tenant to alien his land by feoffment at the age of fifteen years; (*d*) non-liability

to forfeiture on conviction for murder. Gavelkind was abolished by the Law of Property Act, 1922.

Gazette. "The London Gazette" is the official organ of the Government for intimating appointments to public offices, and publishing Royal Proclamations, Orders in Council, statutory rules and orders, dissolutions of partnership, proceedings in bankruptcy, etc. It is admissible in evidence for many purposes.

Geld. A tax, payment, tribute or a pecuniary penalty.

Gemote; Moot. A meeting or assembly. (Anglo-Saxon.)

General Issue. See *Issue*.

General Sessions. A Court of record held by two or more justices of the peace for the trial of offenders; *e.g.*, quarter sessions, Middlesex Sessions.

General Ship. A ship which carries the goods of merchants generally under bills of lading, as opposed to a chartered ship which is let to particular persons only under a charterparty.

General Warrant. A warrant issued by the Secretary of State for the arrest of such persons as were, for instance, the authors of a seditious libel. No persons were named in such a warrant. In 1765 they were held to be illegal. See *Leach* v. *Money; Wilkes* v. *Wood; Entick* v. *Carrington*.

General Words. Descriptive words added to the parcels clause in a conveyance, to transfer all the rights in the property of the grantor; now rendered unnecessary by the Conveyancing Act, 1881; re-enacted with a variation by section 62, Law of Property Act, 1925.

Generale tantum valet in generalibus quantum singulare in singulis. When words are general they are to be taken in a general sense, just as words relating to a particular thing are to be taken as referring only to that thing.

Generalia specialibus non derogant. General things do not derogate from special things.

Generalibus specialia derogant. Special things derogate from general.

Geneva Convention. An international agreement entered into at Geneva in 1864 for the purpose of ameliorating the condition of sick and wounded soldiers in war. It was superseded by the Geneva Convention of 1906. It is under these conventions that the "Red Cross" has been used.

George v. Clagett ((1797), 7 T. R. 359). *Held*, that if a factor sells goods as his own, and the buyer knows nothing of any principal, the buyer may set off any demand he may have on the factor against the demand for the goods made by the principal.

Gestation. The time which elapses between the conception and birth of a child. It is usually about nine months of thirty days each. The time is added, where necessary, to the period allowed under the rule against perpetuities.

Gidley v. Lord Palmerston ((1822), 3 Brodr. & B. 275). This was an action against the defendant as Secretary of State for War, by the executor of a War Office clerk for arrears of retired allowance, which the defendant was authorised to pay out of moneys provided by Parliament. *Held*, that an action will not lie against a public agent for anything done by him in his public character or employment.

Gift. A gratuitous grant or transfer of property. If not by deed, for a valid gift there must be an intention to give and such acts as are necessary to give effect to the intention, *e.g.*, delivery. See *Donatio; Irons* v. *Smallpiece.*

Gilda mercatoria. A guild merchant. The association of merchants of a town with the royal grant of the exclusive right of trading and of levying tolls on " foreign " traders.

Gilds. Voluntary associations in towns in mediæval England for religious and benevolent, or economic purposes. The chief were the Craft and Merchant Gilds. Survivors to-day are the City Companies.

Glebæ ascriptitii. Villeins who could not be removed from their holdings provided they performed the prescribed service. See *Villein.*

Glebe. Land attached to a benefice as part of its endowment.

Glenorchy v. Bosville ((1733), Cas. temp. Talbot, 3). Executory trusts are construed so as best to carry out the testator's general intention. Pershall devised real estates to trustees upon trust, upon the happening of the marriage of his granddaughter Arabella, to convey the said estates with all convenient speed to the use of the said Arabella for life, remainder to her husband for life, remainder to the issue of her body, with remainder over. *Held,* that though Arabella would have taken an estate tail had it been the case of an immediate devise, yet that the trust, being executory, was to be executed in a more careful and accurate manner, and that a conveyance to Arabella for life, remainder to her husband for life, with remainder to their first and every other son, with remainder to the daughters, would best serve the testator's intent.

Gloucester Grammar School's Case ((1411), Y. B. 11 Hen. 4, f. 47, pl. 19). If an act or omission cause injury to another, but no legal right is infringed, no action will lie, it being *damnum sine injuria.*

Two masters of the Grammar School brought an action of trespass against another master. They stated they were appointed to have the government of the scholars of the school, and to teach children and others there. But the defendant set up another school in the midst of the town, and thereby the plaintiffs who had been used to obtain either forty pence or two shillings for the quarter's schooling of a pupil could now obtain only twelve pence. *Held,* no action lay.

Glover v. London & South Western Railway Co. ((1867), L. R. 3 Q. B. 25).

A tortfeasor is only liable for the necessary consequences of his acts.

The defendants' servants used force to remove the plaintiff from one of their railway carriages, on the false assumption that he had not paid his fare. The plaintiff left his field glasses behind and lost them. *Held,* the defendants were not liable.

Godden v. Hales ((1686), 2 Shower, 475). The plaintiff sued the defendant for neglecting to take the oaths of supremacy and allegiance, etc., in breach of the Test Act (25 Car. 2). The defendant pleaded a dispensation from the King by letters patent under the Great Seal. *Held,* the dispensation constituted a good bar to the action. See *Bill of Rights* (2).

God's Penny. Earnest (*q.v.*).

Going through the Bar. The old practice of the Judge of asking,

in order of seniority, each barrister who was in Court whether he had anything to move.

Good Behaviour. A person charged with an offence may be ordered to find sureties for good behaviour. A sum is forfeited to the Crown unless such person is of good behaviour for a certain period.

Goods. Personal property, the equivalent of chattels, except that "goods" refers to moveables, while "chattels" is sometimes applied to leasehold estates in land.

"The expression 'goods' means anything which is the subject of trade, manufacture, or merchandise" (Merchandise Marks Act, 1887, s. 3).

Goodwill. A variety of incorporeal personal property. It consists of the benefit or advantage which a business has in its connection with its customers. It is based on the probability that old customers will continue to resort to the old place of business, or continue to deal with the firm of the same name. See *Trego* v. *Hunt.*

Goodwin v. Robarts ((1875), L. R. 10 Ex. 76). Trade or mercantile usage need not be existent from time immemorial. By the usage of trade, scrip issued here by the agents of a foreign Government had been treated for a long time as negotiable. *Held,* it was negotiable.

Goodwright v. Davids (2 Cowp. 803). *Per* Lord Mansfield, C.J.: "Cases of forfeiture are not favoured in law, and when the forfeiture is once waived, the Court will not assist it."

Gordon v. Street ([1899] 2 Q. B. 641). "Whenever the consideration of the person with whom I am willing to contract enters as an element into the contract which I am willing to make, error with regard to the person destroys my consent, and consequently annuls the contract" (Pothier). The defendant, a notorious moneylender of evil repute, induced the defendant to borrow money from him by using the name of Addison. *Held,* the defendant could avoid the contract.

Gorris v. Scott ((1874), L. R. 9 Ex. 175). A statute passed for a specific purpose cannot be deemed to impose an additional liability in other respects.

Sheep were lost at sea by being washed overboard, owing to neglect of statutory requirements as to the provision of pens for sanitary purposes. *Held,* defendant was not rendered liable thereby.

Governor, Colonial. The representative of the Crown charged with the administration of the government of a colony or dominion.

A Governor's authority is expressly limited to the terms of his commission. He can be sued in his own Courts or the High Courts for acts committed while in office, but he cannot be held liable for Acts of State done within the scope of his authority. See *Hill* v. *Bigge; Mostyn* v. *Fabrigas; Phillips* v. *Eyre.*

Grace. See *Act of Grace; Days of Grace.*

Grand Assize. See *Assize.*

Grand Coustumier du Pays et Duchè de Normandie. A collection of the ancient laws and customs of Normandy, the basis of the laws of the Channel Islands.

Grand Jury. See *Jury.*

Grand Serjeanty. A variety of land tenure resembling knight's-service, where certain honorary services were rendered to the person of the King, such as carrying his banner or acting as his marshall. These

incidents were retained when knight's-service was abolished in 1660, and are preserved by the Law of Property Act, 1922.

Grant. (1) The assurance or transfer of the ownership of property, as distinguished from the delivery or transfer of the property itself. A conveyance is a deed of grant.

It was the appropriate word for the conveyance of incorporeal hereditaments incapable of livery of seisin. By the Real Property Act, 1845, all corporeal hereditaments were deemed to lie in grant as well as in livery. By the Conveyancing Act, 1881, the use of the word " grant " was rendered unnecessary, and by the Law of Property Act, 1925, s. 51, all land lies in grant and is rendered incapable of being conveyed by livery.

(2) The allocation of rights, powers, monies, etc., by the Crown or other authority, to particular persons or for particular purposes.

Gray's Inn. One of the Inns of Court (*q.v.*).

Great Council. The *Magnum Concilium*. The assembly of the lords of the kingdom after the Conquest in place of the Anglo-Saxon Witenagemot, from which developed the House of Lords.

Great Northern Railway Co. v. Swaffield ((1874), L. R. 9 Ex. 132). An agent of necessity can recover his expenses incurred on behalf of the principal.

A horse was consigned to Sandy, but the address was unknown, and expenses were incurred by placing the horse in livery stables to await the owner. *Held*, the railway company could recover the charges from the owner of the horse.

Great Northern Railway Co. v. Witham ((1873), L. R. 9 C. P. 16). *Held*, that a continuing offer such as a tender may be accepted until revoked.

Great Seal. By the Union with Scotland Act, 1706, it is provided that there shall be one Great Seal for the United Kingdom, to be used for sealing writs to elect and summon the Parliament, and for sealing all treaties with foreign States, and all public acts, instruments and orders of State which concern the whole United Kingdom, and in all other matters relating to England, as the Great Seal of England was used before the union. It is in the custody of the Lord Chancellor.

Gregory v. Duke of Brunswick ((1843), 1 C. & K. 24). Held, that it is a tort for persons to cause an actor to be dismissed from his employment by conspiring to hire, and hiring, persons to drive him off the stage by hissing and hooting him, irrespective of the merits of his performance.

Gretna Green. After Lord Hardwicke's Act it was impossible to contract a valid marriage in England without either banns or special licence; but in Scotland it continued to be the law that consent of the parties in the presence of witnesses was sufficient to constitute a valid marriage. Elopements were made to Gretna Green, where the village blacksmith read the English marriage service, and the consent of the parties was expressed by their concurrence in this *quasi*-ceremony.

But the Marriage (Scotland) Act, 1856, s. 1, provided that no irregular marriage contracted in Scotland after December 31, 1856, should be valid unless at least one of the parties usually resided or had for the twenty-one preceding days been in Scotland. See *Marriage*.

Griffiths v. Vere ((1803), 9 Ves. 127). *Held*, that a trust by will for

accumulation during a life, contrary to the Thellusson Act (39 & 40 Geo. 3, c. 98), is good for twenty-one years by that statute.

Ground Rent. See *Rent.*

Groundage. Harbour dues.

Groves v. Wimborne ([1898] 2 Q. B. 402). A breach of a statutory duty gives an injured party a cause of action, unless the statutory penalty is intended to be the only remedy. The defendant was under a statutory obligation to fence dangerous machinery, on pain of a penalty of £100 for injury. *Held,* that an employee injured in consequence of a breach could recover damages at common law.

Guarantee. The person to whom a guaranty (*q.v.*) is given.

Guarantor. The person who binds himself by a guaranty; one who promises to answer for another.

Guaranty. A collateral promise to answer for the debt, default or miscarriage of another, as distinguished from an original and direct contract for the promisor's own act. By the Statute of Frauds, s. 4, every guaranty must be in writing, but the consideration need not be stated (Mercantile Law Amendment Act, 1856, s. 3).

Guardian. A person having the right and duty of protecting the person, property or rights of one who is without full legal capacity or otherwise incapable of managing his own affairs.

(1) *Guardianship in chivalry* was the right of the lord to hold the land of an infant tenant until majority.

(2) *Guardianship in socage* was the right of the next of blood to whom the inheritance could not descend, to the wardship of the land while the heir was under the age of fourteen.

(3) *Guardianship by nature* was that exercised by a father over the person of his son and heir apparent.

(4) A *guardian by election* is one chosen by an infant himself.

(5) A *guardian by statute* is one appointed by will pursuant to the statute 12 Car. 2, c. 24.

(6) A *guardian ad litem* is a person appointed to defend an action or other proceeding on behalf of an infant or lunatic not so found. (Order XVI, rr. 17—18.)

Matters arising out of the wardship of infants and the care of infants' estates are consigned to the Chancery Division (Judicature Act, 1925, s. 56, sub-s. 1). See *Eyre* v. *Countess of Shaftesbury.*

By the Guardianship of Infants Act, 1925, in proceedings before any Court in questions relating to the custody, upbringing, etc., of infants, the welfare of the infant is to be the paramount consideration. Equal rights of applying to the Court are given to mother and father. On the death of the father of an infant, the mother, if surviving, shall be guardian of the infant, either alone or jointly with any guardian appointed by the father, or the Court may appoint a guardian to act jointly with the mother. Corresponding provisions apply on the death of a mother. A father or mother may by deed or will appoint a guardian to act jointly with the surviving parent. In cases of difficulty or dispute the Court may make such order as it thinks fit. The consent required for the marriage of an infant must be given by both parents if surviving or by the parent with the custody of the child if they are separated, otherwise by the surviving parent or a guardian.

Guardians of the Poor. The authority charged with the administra-

tion of the Poor Laws in areas formed by the union of parishes, under the general superintendence of the Ministry of Health. They are responsible for the maintenance of workhouses, infirmaries, and the grant of poor relief. They are elected by the vote of ratepayers and property owners or occupiers in the area.

By the Boards of Guardians Default Act, 1926, the Minister of Health may, in cases of default by Boards of Guardians, reconstitute the Board from persons who need not be ordinarily eligible for election as such.

Habeas Corpora juratorum. A writ upon which trial of causes at *nisi prius* was had in the Court of Common Pleas. It commanded the sheriff to have before the Court at Westminster, or before the Judges of assize and *nisi prius*, the bodies of the jurors named in the panel to the writ as having been summoned to make a jury for the trial. It was abolished by the Common Law Procedure Act, 1852.

Habeas Corpus. A prerogative writ directed to a person who detains another in custody and commands him to produce or "have the body" of that person before the Court.

(1) *Habeas corpus ad subjiciendum* commands the person to whom it is directed to produce the body of the person detained with the day and cause of his caption and detention, *ad faciendum, subjiciendum et recipiendum*, "to do, submit to and receive," whatever the Court shall direct. Its use is for testing the legality of an imprisonment.

The Habeas Corpus Act, 1679, made the granting of a *habeas corpus* compulsory in the case of a person imprisoned without a legal cause being assigned in the warrant of committal, and provided for the speedy trial of persons imprisoned for treason or felony. The Habeas Corpus Act, 1816, provided for the issue and return of a *habeas corpus* in vacation as well as in term, and for examining into the truth of the facts stated in any return to a *habeas corpus*. The Habeas Corpus Act, 1862, enacts that no *habeas corpus* shall issue out of England into any colony or foreign dominion of the Crown where there is a Court having authority to issue the writ; subject to this limitation, the writ of *habeas corpus* runs into all parts of the dominions of the Crown.

(2) Obsolete forms of the writ:—(*a*) *Ad respondendum*, to bring up a prisoner confined by the process of an inferior Court, to charge him with a fresh action in the Court above; (*b*) *ad satisfaciendum*, used with a similar object when judgment had been given in the inferior Court against the prisoner; (*c*) *habeas corpus cum causa* (or *ad faciendum et recipiendum*), to remove, from an inferior Court to the Court above, an action in which the defendant had been arrested; (*d*) *ad prosequendum, testificandum, deliberandum, etc.*, to bring up a prisoner to bear testimony in any Court, or to be tried in the proper jurisdiction.

Habendum. The clause in a conveyance which indicates the estate to be taken by the grantee. Formerly it commenced "To have (*habendum*) and to hold (*tenendum*)."

Habere facias possessionem. "That you cause to have possession." The writ by which the claimant in the old action of ejectment obtained possession of land.

Habere facias seisinam. "That you cause to have seisin." A writ which was formerly addressed to the sheriff requiring him to give seisin of a freehold estate recovered in an action.

Habere facias visum. "That you cause to have the view." A writ which formerly issued in real actions where it was necessary that a view should be had of lands.

Habitual Criminal. A person who, after attaining the age of sixteen years, has been three or more times convicted of certain crimes and who is proved to have been persistently leading a dishonest or criminal life. Such person may be sentenced to a term of preventive detention of from five to ten years to follow a sentence of penal servitude. (Prevention of Crimes Act, 1908.)

Hadley v. Baxendale ((1854), 9 Ex. 341). Where two parties have made a contract, which one of them has broken, the damages which the other party ought to receive should be such as may fairly and reasonably be considered either arising naturally, *i.e.*, according to the usual course of things, from the breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it.

The plaintiffs, the owners of a flour mill, sent a broken iron shaft to an office of the defendants, who were common carriers, to be conveyed by them, and the defendants' clerk, who attended at the office, was told that the mill was stopped, that the shaft must be delivered immediately, and that a special entry, if necessary, must be made to hasten its delivery. The delivery of the broken shaft to the consignee, to whom it had been sent by the plaintiffs as a pattern by which to make a new shaft, was delayed for an unreasonable time, in consequence of which the plaintiffs did not receive the new shaft for some days after the time they ought to have received it, and they were consequently unable to work their mill and incurred loss. *Held*, that the loss could not be recovered from the defendants as common carriers.

Hæres legitimus est quem nuptiæ demonstrant. The lawful heir is he whom wedlock shows so to be.

Hague Conventions. The agreements signed by the Powers in conference at The Hague as to the rules of international law by which they shall be bound. They are:—

1899.—(1) Pacific Settlement of International Disputes; (2) Laws and Customs of War on Land; (3) Adaptation of Principles of Geneva Convention to Maritime War.

1904.—Hospital Ships.

1907.—(1) Pacific Settlement of International Disputes; (2) Employment of Force for Recovery of Contract Debts; (3) Opening of Hostilities; (4) Laws and Customs of War; (5) Rights and Duties of Neutral Powers in War on Land; (6) Status of Enemy Merchant Ships on Outbreak of Hostilities; (7) Conversion of Merchant Ships into Warships; (8) Laying of Submarine Contact Mines; (9) Bombardment by Naval Forces in Time of War; (10) Adaptation of the Principles of the Geneva Convention to Maritime War; (11) Restriction on the Exercise of the Right of Capture in Maritime War; (12) Establishment of the International Prize Court; (13) Rights and Duties of Neutral Powers in Maritime War; (14) Declaration Prohibiting the

Discharge of Projectiles and Explosives from Balloons; (15) Final Act.

Haigh v. Brooks ((1840), 10 A. & E. 309). *Held*, that a surrender of a worthless document supposed to be valid may be a sufficient consideration in the absence of fraud.

Half Blood. See *Blood.*

Hall v. Odber ((1809), 11 East, 118). *Held*, that a foreign judgment does not operate as a merger, but creates only a simple contract debt.

Hallett's Estate, Re (13 Ch. D. 696.) *Held*, if a person who holds money as a trustee, pays it to his account at his banker's, and mixes it with his own money, and draws out sums by cheques in the ordinary manner, the rule in *Clayton's Case* (*q.v.*) does not apply, and that the drawer must be taken to have drawn out his own money in preference to the trust money.

Hallimote; Hallmote. The Anglo-Saxon Court equivalent to the Court Baron.

Hamilton v. Pandorf ((1887), 12 A. C. 518). "*Causa proxima non remota spectatur*" (*q.v.*).

Rats gnawed part of a ship so as to cause sea water to come in and damage the cargo. *Held*, the loss was due to a peril of the sea, which was the proximate cause, and not to vermin.

Handsale. A sale of chattels concluded by the shaking of hands.

Handsel. Earnest (*q.v.*) money.

Hanseatic Laws of the Sea. The maritime law of the Hanse towns collected and published as a code by the Hanseatic League in 1591, and accepted as authoritative throughout northern Europe.

Hard Labour. An additional punishment to imprisonment without the option of a fine, introduced by statute in 1706, and unknown to the common law.

Harding v. Glynn ((1739), 1 Atk. 469). A testator by his will gave personal property to his wife, but did desire her, at or before her death, to give the same unto and among such of his own relations as she should think most deserving and approve of. *Held*, that the wife was only intended to take beneficially during her life, and that so much of the property as the wife did not dispose of in accordance with the power, ought to be divided equally amongst such of the relations of the testator as were his next-of-kin at the time of his wife's death.

Harris v. Nickerson ((1873), L. R. 8 Q. B. 286). *Held*, that an offer to sell by auction is generally only an offer to receive offers, or a declaration of an intention to sell; there is no obligation to sell.

Harrison v. Bush ((1856), 5 El. & Bl. 344). The defendant, an elector and inhabitant of a borough, sent to the Home Secretary a memorial complaining of the conduct of a Justice of the Peace. *Held*, the communication was privileged.

Harrison v. Duke of Rutland ([1893] 1 Q. B. 142). An improper user of a highway may be a trespass.

The plaintiff considered he had a grudge against the defendant. On several occasions he walked up and down a highway over the moors where the defendant was shooting grouse, waving his umbrella to frighten the birds. The defendant's servants on one occasion sat on him till the shoot was over. The plaintiff sued the defendant for

damages for assault. *Held*, the plaintiff could not recover as he was a trespasser on the highway.

Harvey v. Facey ([1893] A. C. 552). A statement of the lowest price at which one will sell property is not an offer to sell it.

H telegraphed, "Will you sell us Bumper Hall Pen? Telegraph lowest cash price." F replied, "Lowest price £900." H replied, "We agree to buy." *Held*, no contract.

Hawker. A travelling seller of goods. See the Hawkers' Act, 1888, s. 1.

Head v. Tattersall ((1871), L. R. 7 Ex. 7). If a contract of sale provides that if the thing sold does not answer to a warranty given with respect to it, the purchaser may return it within a specified time, he may do so, and is not liable for injury occurring to it while in his possession but without his default.

Headborough. The chief of the ten men who made up a frankpledge; replaced in the fourteenth century by the petty constable. See *Constables*.

Hearing. A trial or motion for judgment

Heaven v. Pender ((1883), L. R. 11 Q. B. D. 503). The plaintiff, a painter, was injured owing to defective staging while painting the hull of a ship. *Held*, that the defendant who erected the staging had invited the plaintiff to use the staging, and as the plaintiff's injury had resulted from the negligence of the defendant, the defendant was liable.

Hebdon v. West ((1863), 3 B. & S. 579). *Held*, that where there are several policies of assurance effected with different offices, the insured can recover no more from the insurers, whether on one policy or many, than the amount of his insurable interest.

Heir or **Heir-at-Law.** He who succeeds by right of blood to the real property of an ancestor on intestacy. The general rules of descent were laid down in the Inheritance Act, 1833. (1) A customary heir or special heir is one who inherits by virtue of a custom, such as gavelkind or borough-English; (2) an heir general is one who takes by descent as fixed by law, as opposed to (3) an heir special or heir in tail, who claims as issue in tail according to the nature of the estate tail.

By the Administration of Estates Act, 1925, s. 45, all existing modes, rules and canons of descent are abolished, and real estate is assimilated to personal property, and both devolve as laid down by section 46. By the Law of Property Act, 1925, s. 132, a limitation of real or personal property in favour of the heir, either general or special, which would have conferred on the heir an estate before the Act, shall confer a corresponding equitable interest on the person who would have been heir but for the Act. See *Intestate Succession*.

Heir Apparent. A person who will be heir to his ancestor if he survives him. Properly he is not heir until after the death of his ancestor, for "*nemo est haeres viventis.*"

Heir Presumptive. A person who would be an heir if the ancestor died immediately, but who is liable to be displaced by the birth of a nearer heir; *e.g.*, an only daughter.

Heirlooms. Such goods and personal chattels as, contrary to the nature of chattels, go by special custom to the heir or devisee of the

owner, along with the inheritance, and not to his executor. A tenant for life may sell heirlooms, and the money arising from the sale is capital money. (Settled Land Act, 1925, s. 67). See *Pusey* v. *Pusey*.

Heralds' College, or the College of Arms. Incorporated by Richard III in 1483. It is under the jurisdiction of the Earl Marshal and has a jurisdiction as to armorial bearings and matters of pedigree.

Hereditament. Real property which on an intestacy might have devolved on an heir. Corporeal hereditaments are visible and tangible objects such as lands and houses. Incorporeal hereditaments are intangible objects such as tithes, easements, profits *à prendre*.

Hereditas. Inheritance. The succession in virtue of civil law rights to the whole legal position of a deceased person. (Roman Law.)

Heres. The universal successor of a deceased person in virtue of his rights under the *jus civile*. He might be appointed by will or take *ab intestato*. (Roman Law.)

Heres fiduciarius. A heir that has a *fidei commissum* entrusted to him to carry out. (Roman law.)

Heresy. An ecclesiastical offence, consisting in the holding of a false opinion repugnant to some point of doctrine essential to the Christian faith. It was formerly punishable by death, but the writ *de haeretico comburendo* was abolished by the statute 29 Car. 2, c. 9, and it is now punishable only by excommunication or other censure.

Heriot. The horses and arms of a tenant, or, if he were a villein, the best beast to which the lord was entitled by custom on the death of his tenant.

Heriot service consists of the right of heriot where the tenant dies seised of an estate of inheritance, and can only exist as incident to a freehold tenure created before the statute *Quia Emptores*. Suit heriot is where the right is reserved on a grant or lease of freeholds made in modern times.

Heriots have survived chiefly as an incident of copyhold tenure, but are abolished as a manorial incident subject to compensation by the Law of Property Act, 1922, s. 128.

Hermann v. Charlesworth ([1905] 2 K. B. 123). A marriage brokage contract, *i.e.*, the promising for money to bring about a marriage, is void, and money paid under such a contract may be recovered before the marriage takes place.

The plaintiff paid the defendant £52 to introduce gentlemen to her with a view to matrimony. Four months later she sued for the return of the money. *Held*, she could succeed.

High Commission. The Court established in 1583, to inquire into all offences against the Acts of Supremacy (1 Eliz. c. 1) and Uniformity (1 Eliz. c. 2) and other offences of wide scope. It was abolished by 16 Car. 1, c. 11.

High Court of Justice. See *Supreme Court of Judicature*.

High Seas. The seas or open salt water beyond the distance of three miles from the coast of any country. The majority of States claim territorial jurisdiction over the seas within three miles of their coasts, but beyond that limit the high seas are said to be free. But there are qualifications to the doctrine. Each State assumes jurisdiction over its own ships, pirates, foreign vessels which have or are

about to violate its law, and in time of war to exercise the right of visit and search over neutral ships.

High Treason. See *Treason.*

Higham v. Ridgway ((1808), 10 East, 109). If a person have peculiar means of knowing a fact, and make a written entry of that fact which is against his interest at the time, it is evidence of the fact as between third persons after his death.

An entry was made by a man midwife who had delivered a woman of a child, of his having done so on a certain day, referring to his ledger in which he had made a charge for his attendance which was marked as paid. *Held,* the entry was evidence upon an issue as to the age of such child.

Highway. A road or way open to the public as of right for the purpose of passing and repassing. The ownership of the soil may be private. A highway may be founded on prescription, statute, or by dedication to the public by the owner. See *Dovaston* v. *Payne.*

Hill v. Bigge ((1841), 3 Moo. P. C. C. 465). The appellant, the Governor of Trinidad, was sued in the Civil Court of the island for a debt incurred in England before his appointment. *Held,* that an action will lie against the Governor in the Court of his colony. The authority of a Governor is only delegated from the Sovereign, and is strictly limited by the terms of his commission; the Crown itself may be sued though in a particular manner; and the Judges of the Courts in this country are liable to be sued in their own Courts.

Hire-purchase Agreement. An agreement by which the owner of a chattel lets it out on hire and undertakes that it shall become the property of the hirer when the hirer has paid the last of a certain number of payments specified in the agreement. Until then no property in the chattel passes to the hirer; and the agreement therefore does not need to be registered as a bill of sale.

Hochster v. Delatour ((1853), 2 E. & B. 678). If one party to a contract states his intention not to perform the whole or a substantial or vital part thereof, the other party may treat the contract as discharged and sue for damages without being under any obligation to perform his part, and though the day for performance has not arrived.

The defendant engaged the plaintiff as a courier in April, the service to commence in June. In May the defendant wrote to the plaintiff that he would not require his services. *Held,* the plaintiff could sue at once.

Holder in Due Course. One who takes a bill of exchange, complete and regular on the face of it, before it is overdue and without notice of dishonour, in good faith and for value, without notice of any defect of title of the transferor. (Bills of Exchange Act, 1882, s. 29.)

Holding Over. Where a tenant under a lease continues in possession of land after the determination of his tenancy. Ordinarily, the effect is either to make the tenant liable to an action for damages, or to continue the tenancy against his wish.

Hollins v. Fowler ((1874), L. R. 7 H. L. 757). *Held,* that any person who, however innocently, obtains possession of the goods of a person who has been fraudulently deprived of them, and disposes of them, whether for his own benefit or that of any other person, is guilty of conversion.

Holmes v. Mather ((1875), 10 Ex. 261). A person causing injury by an act which is neither wilful nor negligent is not liable.

The defendant's horses were startled by a dog barking and ran away. Notwithstanding the efforts of the defendant's servant, an efficient driver, the plaintiff was injured. *Held*, the defendant was not liable.

Homage. (1) The tenants of a manor assembled in a customary Court. (2) "A most honourable and humble service of reverence," which every free tenant for an estate in fee simple or fee tail was bound to perform to his feudal lord by kneeling and saying, "I become your man of life and limb." Homage created an obligation of assistance by the tenant to his lord, and of protection by the lord to his tenant. It was abolished by 12 Car. 2, c. 24.

Home Secretary. The Secretary of State at the head of the Home Office. He is the medium of communication between the Crown and its subjects. He is responsible for the maintenance of the public peace, and for the general administration of the criminal law, the police and prisons, and advises the Sovereign in the exercise of the prerogative of mercy. He exercises control over aliens and administers the various Factory and Workshop Acts.

Homicide. The killing of a human being.

(1) Felonious Homicide. (*a*) Death caused by an act done with the intention of causing death or bodily harm, or known to be likely to cause death or bodily harm, without legal justification or excuse; (*b*) Death caused by an omission, amounting to culpable negligence, to discharge a duty tending to the preservation of life, whether accompanied by an intention to cause death or bodily harm or not; (*c*) Death caused accidentally by an unlawful act.

(2) Excusable Homicide. Where the person by whom the homicide is committed is not free from blame, but is not criminally responsible. It is either *per infortunium*, *i.e.*, by misadventure, or *se* or *sua defendo*, *i.e.*, in self-defence.

(3) Justifiable Homicide. Where homicide is committed without blame, in the execution of a legal duty, or in furtherance of a legal purpose, *e.g.*, putting a person to death in pursuance of a legal sentence.

Honorary Services. The services incident to tenure in grand serjeanty.

Honour. (1) A seignory *in capite* of which several inferior lordships or manors depend; and the land or district included therein. An Honour cannot be created since the statute *Quia Emptores*, except by Act of Parliament. (2) To honour a bill of exchange is to pay it, or to accept it, as may be due.

Hooley v. Hatton ((1773), 1 Bro. C. C. 389, n). Lady Finch, by her will, gave the plaintiff a legacy of £500, and afterwards, by a codicil, a legacy of £1,000; and the question was whether the last legacy alone passed or the legatee should have both. *Held*, that the plaintiff was entitled to both legacies; but that if a legacy of the same amount is given twice for the same cause and in the same act, and in the same or nearly the same words, then it will not be double; but where in different writings there is a bequest of equal, greater, or less sums, it is an augmentation.

Hostile Witness. See *Witness.*

Hotchpot. A medley of ingredients; a fund derived from several sources. Where a fund is appointed to be divided amongst a class and one of the class has already received a special or appointed share, that person may be required to add his special share to the fund before it is distributed, and he is then said to bring his special share into hotchpot.

House of Commons. The Lower House of Parliament, consisting of representatives of the counties, cities, boroughs and universities; 615 in all. See *Committee of the Whole House.*

House of Lords. The Upper House of Parliament; the assembly of the lords, spiritual and temporal. The lords spiritual are the two archbishops and the senior bishops of the Church of England. The lords temporal are (1) the peers of England, of Great Britain and of the United Kingdom; (2) the representative peers of Scotland and Ireland; (3) life peers: the six lords of Appeal in ordinary. The Lord Chancellor is Speaker and President of the House.

The House of Lords exercise judicial authority (1) in the trial of peers for treason or felony; (2) in claims of peerage; (3) in disputed elections of representative peers; and (4) as a Supreme Court of Appeal from the Court of Appeal in England, and the Superior Courts of Scotland and Northern Ireland.

Housebreaking. Breaking and entering a dwelling or other house and committing any felony therein, or committing a felony in any such house and then breaking out. (Larceny Act, 1916, s. 26.)

Household Fire Insurance Co. v. Grant ((1879), L. R. 4 Ex. D. 216). *Held,* that when an offer is made by post, the posting of a letter of acceptance is a complete acceptance, although the letter may never arrive.

Houses of Correction. A species of prison, originally designed for the confinement of vagrants and paupers refusing to work. Abolished.

Howard v. Harris ((1683), 1 Vern. 190). "Once a mortgage, always a mortgage." *Held,* that no agreement in a mortgage can make it irredeemable, either after the death of the mortgagor or upon failure of issue male of his body.

Howe v. Earl of Dartmouth, Rule in ((1802), 7 Ves. 137.) "Where personal estate is given in terms amounting to a general residuary bequest, to be enjoyed by persons in succession, the interpretation the Court puts upon the bequest is that the persons indicated are to enjoy the same thing in succession; and in order to effectuate that intention, the Court, as a general rule, converts into permanent investments so much of the personalty as is not so invested, and also reversionary interests. The rule did not originally ascribe to testators the intention to effect such conversions, except in so far as a testator may be supposed to intend that which the law will do; but the Court, finding the intention of the testator to be that the objects of his bounty shall take successive interests in one and the same thing, converts the property, as the only means of giving effect to that intention" (1 Lead. Cas. Eq. 78).

Hue and Cry. The old common law process of pursuing, with horn and with voice, all felons and such as have dangerously wounded another. All those who join in a hue and cry are justified in apprehending the person pursued, even though it should turn out that he is

innocent. Maliciously or wantonly to raise a hue and cry is a misdemeanour and grounds for a civil action.

Hugh Stevenson & Sons, Ltd.'s Case ([1918] A. C. 239). The appellant company carried on business in England in partnership with a German firm. After the outbreak of the war with Germany, the appellant company continued to carry on the business and to use the partnership machinery. *Held*, that the German firm were entitled to a share of the profits made after the outbreak of war by the English partner in carrying on the business with the aid of the German partner's share in the capital.

Hughes v. Cornelius ((1682), 2 Shower, 232). *Held*, the sentence in a foreign Court of Admiralty decreeing a ship to be lawful prize, is conclusive; and therefore, though erroneous, the owner cannot recover the ship back.

Huguenin v. Basely ((1807), 14 Ves. 273). The plaintiff, Mrs. Huguenin, whilst a widow, constituted the defendant her agent, and he undertook the management of her property and affairs; and she afterwards executed a voluntary settlement in favour of him and his family. Mrs. Huguenin having remarried, this suit was brought by her and her husband for the purpose of setting aside the settlement. *Held*, that the settlement should be set aside as obtained by undue influence and abused confidence in the defendant, as an agent undertaking the management of her affairs; upon the principles of public policy and utility, applicable to the relation of guardian and ward.

Hulme v. Tenant ((1778), 1 Bro. C. C. 16). A bill was filed by the obligee of a bond entered into by the defendants (husband and wife) against the husband and wife, and her surviving trustee, to recover the sums secured out of his wife's separate estate. *Held*, that the bond of a married woman jointly with her husband shall bind her separate property.

Hulton & Co. v. Jones ([1910] A. C. 20). In defamation it need not be proved that the defendant meant to defame a person; it is sufficient if persons who knew the plaintiff understood that the statement referred to him.

The appellants, in their newspaper, published in an article defamatory matter of one described as Artemus Jones, a churchwarden of Peckham, and married. The article was written as fiction, and was not intended to refer to the plaintiff who bore that name, but was not a churchwarden and was unmarried. The plaintiff's friends understood the article to refer to him. *Held*, that defendants were liable.

Humphries v. Brogden ((1850), 12 Q. B. 739). *Held*, that a landowner has a right at common law to have his land supported in its natural state, *i.e.*, unweighted by buildings, by the land adjacent or subjacent thereto.

Hundred. A district forming part of a county, originally so called because each consisted of a hundred freeholders, or ten tithings. Each hundred formerly had its Court, and was governed by a high constable or bailiff.

Hundred Court. The Court of the Hundred. It was similar to the old County Court in jurisdiction and procedure. Judgment was given by the suitors.

Hundredor. One of the inhabitants of a hundred who was liable to serve on a jury trying an issue regarding land situate therein.

Hurst v. Picture Theatres, Ltd. ([1915] 1 K. B. 1). A licence to enter premises given for value cannot be revoked except for reasonable cause.

The plaintiff, who had purchased a ticket for a seat at a cinema, was turned out by direction of the manager, and without good cause. *Held*, he was entitled to damages for assault and breach of contract.

Husband and Wife. The old rule was "Husband and wife are one in law." At common law a husband became on his marriage absolutely entitled to all *choses in possession* belonging to his wife in her own right (including those acquired after marriage), and to the whole of the rents and profits of her lands during the continuance of the marriage, except in so far as such property was the separate estate of the wife. A wife's *choses in action* did not vest in the husband unless he reduced them into possession. The Matrimonial Causes Act, 1857, protected property acquired by a wife whilst living apart from her husband under a decree for judicial separation or a protection order. The Married Women's Property Act, 1882, provided by section 1 that a married woman shall be capable of holding, acquiring and disposing of property whether real or personal, and of contracting and of suing and being sued as if she were a *feme sole* (*q.v.*). It, however, still leaves a husband liable for his wife's torts and for her breaches of trust; but a wife who has separate property is liable for his maintenance (section 20) and for that of her children and grandchildren (section 21) if he or they become chargeable to the parish. A husband and wife may sue each other in contract but not in tort. See *Necessaries; Dower; Tenure by Curtesy of England; Entireties; Intestate Succession; Seroka* v. *Kattenburg; Jolly* v. *Rees; Mainwaring* v. *Leslie; Manby* v. *Scott; Montague* v. *Benedict; Paquin* v. *Beauclerk; Scott* v. *Morley; Seaton* v. *Benedict.*

Hush Money. Money paid to induce a person to compound a felony or to stifle a prosecution, or to refrain from giving evidence or information.

Hussey v. Horne-Payne ((1879), L. R. 4 A. C. 311). *Held*, that when a contract is alleged to have been made by correspondence, the whole of it must be looked at. The inclusion of a stipulation, otherwise implied, that the title to property shall be approved by the purchaser's solicitor, does not of itself render the contract incomplete.

Hyde v. Wrench ((1840), 3 Beav. 334). *Held*, that the refusal of an offer or the making of a counter offer puts an end to it, and it cannot be afterwards accepted so as to bind the offeror.

Hypothecation. (1) Pledging a ship or her freight or cargo for the payment of money borrowed by the master. It is either bottomry or *respondentia* (*q.v.*); (2) a charge on property as security for the payment of a sum of money where the property remains in the possession of the debtor.

IOU (I owe you). A written acknowledgment of a debt. It is not a negotiable instrument.

Idiot. A person so deeply defective in mind from birth or from an

early age as to be unable to guard himself from ordinary physical dangers. (Mental Deficiency Act, 1913, s. 1.)

Ignorantia eorum quæ quis scire tenetur non excusat. Ignorance of those things which everyone is bound to know, does not constitute an excuse.

Ignorantia facti excusat; ignorantia juris non excusat. Ignorance of the fact excuses; ignorance of the law does not excuse.

Ignorantia juris quod quisque scire tenetur non excusat. Ignorance of the law which everybody is supposed to know does not afford excuse.

Illegal. An act which the law directly forbids, as to commit a murder, or to obstruct a highway. But an act is not illegal in the strict sense simply because it is not recognised by the law as capable of giving rise to rights. Thus a contract made *ultra vires* is void, but not illegal; and a cheque given in payment of a bet is given for an illegal consideration and the payee cannot sue thereon, but it is not illegal to give the cheque. See *Windhill Local Board* v. *Vint.*

Illegal Practices. Prohibited acts in regard to elections. See the Corrupt and Illegal Practices Prevention Acts, 1883, 1895.

Imbecile. Persons in whose case there exists from birth or from an early age mental deficiency not amounting to idiocy, yet so pronounced that they are incapable of managing themselves or their affairs, or, in the case of children, being taught to do so. (Mental Deficiency Act, 1913, s. 1.)

Immemorial. Beyond legal memory: prior to 1 Ric. 1.

Immorality. Contracts based on an immoral consideration, *e.g.*, illicit cohabitation, are void and unenforceable. See *Pearce* v. *Brooks.*

Impanel. To enter the names of a jury in the panel (*q.v.*).

Impeachment. A solemn accusation of a great public offence, especially against a minister of the Crown. The House of Commons first found the crime, and then as prosecutors supported their charge before the House of Lords, who tried and adjudicated upon it.

Impeachment is practically obsolete, the last being that of Lord Melville in 1804.

Impeachment of Waste. Liability for committing waste upon lands See *Waste.*

Imperial Loan Co. v. Stone ([1892] 1 Q. B. 599). *Held,* that a contract made with a party who is insane, is binding on him unless he can prove that at the date of the contract his insanity was known to the other party.

Impertinence. The introduction of unnecessary or immaterial allegations into a pleading. The plaintiff is liable to pay the costs occasioned thereby. See Order XIX.

Implead. To prosecute or take proceedings against a person.

Implication. The inference from acts done or facts ascertained of the existence of an intention or state of things which may or may not exist, but which is presumed by the law to exist. Examples: an implied warranty, trust or authority; a life estate by implication, etc.

Impossibility. Impossibility of performance of a contract or a condition *ab initio* renders the contract or condition void, *e.g.*, a condition attached to a legacy which it is impossible to fulfil, is void. A contract for the sale of specific goods which have perished at the time

without the seller's knowledge is void. (Sale of Goods Act, 1893, s. 6.) As also where they cease to exist. (See *Taylor* v. *Caldwell.*) A contract for personal services, *e.g.*, to play the piano, is discharged if prevented by the death or illness of the party (Robinson *v.* Davidson (1871), 6 Ex. 269). Supervening illegality discharges a contract. (See *Esposito* v. *Bowden; Ertel Bieber* v. *Rio Tinto; Hugh Stevenson's Case.*)

Specific performance of a contract which it is impossible to perform, or the terms of which it is impossible for the Court to enforce, will not be decreed.

Impotentia excusat legem. Impotency excuses law. To an obligation imposed by law, impossibility of performance is a good excuse.

Impound. To put distrained cattle or other goods in a pound or to keep them as security; to seize.

Impressment. A power possessed by the Crown of compulsorily taking persons or property to aid in the defence of the country. It was usually exercised until 1815 to obtain seamen for the King's ships.

Imprest. Money advanced by the Crown for its use.

Imprimatur. Let it be printed.

Imprisonment for Debt. Abolished by the Debtor's Act, 1869, except in the case of a debtor to the Crown, a defaulting trustee, and a judgment debtor who is able but refuses to pay.

Impropriator. A lay rector. See *Tithe.*

Improvement of Land Acts, 1864 and 1899, provide that certain persons in the possession or receipt of the rents or profits of land may, with the sanction of the Ministry of Agriculture and Fisheries, borrow or advance money for the execution of certain improvements on the land, and obtain an order charging the amount, with interest, on the inheritance or fee of the land.

Impubes. A person below the legal age of puberty. A male under fourteen or a female under twelve. (Roman Law.)

In æquali jure melior est conditio possidentis. Where the rights of the parties are equal, the claim of the actual possessor is the stronger.

In ambiguis orationibus maxime sententia spectanda est ejus qui eas protulisset. In dealing with ambiguous words the intention of him who used them should especially be regarded.

In Anglia non est interregnum. In England there is no interregnum. "The King never dies."

In autre droit. "In the right of another." An executor holds property in the right of his testator.

In camera. The hearing of a case in private, *e.g.*, in Court, the public being excluded; or in the Judge's private room. Criminal cases may not be heard so, but divorce causes and civil causes may be heard in camera if necessary to secure due administration of justice. It is a usual course in the Chancery Division, where private family matters are involved.

In capite. See *Capite, Tenure in.*

In casu extremæ necessitatis omnia sunt communia. In cases of extreme necessity, everything is in common.

In conjunctivis oportet utrumque, in disjunctivis sufficit alteram partem esse veram. In conjunctives both must be true; in disjunctives it is sufficient if one of them be true.

In consimili casu, consimile debet esse remedium. In similar cases there should be like remedies. See *Action on the Case.*

In contractis tacite insunt quæ sunt moris et consuetudinis. The clauses which are in accordance with custom and usage are an implied part of every contract.

In conventionibus contrahentium voluntas potius quam verba spectari placuit. In construing agreements the intention of the parties, rather than the words actually used, should be considered.

In custodia legis. In the custody of the law.

In esse. Actually existing.

In forma pauperis. In the character of a pauper. See *Poor Person.*

In futuro. In the future.

In gremio legis. In the bosom of the law.

In Gross. A right that is not appendant, appurtenant, or otherwise annexed to land.

In invitum. Against a reluctant person.

In jure non remota causa, sed proxima spectatur. In law the proximate, and not the remote, cause is to be regarded.

In loco parentis. "In the place of a parent." The assumption of the parental liability for providing for an infant.

In pais. "In the country"; without legal proceedings or documents. Trial *per pais* means trial by the country, *i.e.*, trial by jury. See *Estoppel; Jury.*

In pari delicto, potior est conditio possidentis. Where both parties are equally in fault, the condition of the possessor is the best.

In pari materia. In an analogous case.

In personam. An act, proceeding or right done or directed against or with reference to a specific person, as opposed to *in rem* (*q.v.*). The right of a beneficiary is a right *in personam* against his trustee.

In posse. A thing which does not actually exist, but which may exist.

In præsenti. At the present time.

In propria persona. In his own proper person.

In re. In the matter of.

In rem. An act, proceeding or right available against the world at large, as opposed to *in personam.* A right of property is a right *in rem.* An admiralty action is a proceeding *in rem* when the ship itself is arrested and adjudicated upon.

In statu quo. In the former position.

In terrorem. A condition in a will or gift which is intended to frighten or intimidate: it is void.

Incendiarism. Arson (*q.v.*).

Incerta persona. A person that is not a specific living individual; an indeterminate person. A legatee was held to be indeterminate when the testator added him with an indeterminate notion in his mind, as, *e.g.*, the man who comes first to my funeral. (Roman Law.)

Incest. Sexual intercourse between persons who are within prohibited degrees of consanguinity. See Punishment of Incest Act, 1908; Criminal Law Amendment Act, 1922, s. 5.

Incident. "A thing appertaining to or following another." Thus, fealty is incident to every tenure, and cannot be separated from it; so

a rent may be incident to a reversion, though it may be separated from it, that is, the one may be conveyed without the other.

Incitement. Incitement to commit a crime is a common law misdemeanour, even though the crime be not committed. If the crime be actually committed, the person inciting is an accessory before the fact in the case of felony, and equally guilty, in the case of treason or misdemeanour, with the person who commits the crime.

Inclosure. Inclosure is the act of freeing land from rights of common, commonable rights, and all rights which obstruct cultivation by vesting it in some person as absolute owner. Inclosure may be effected by the lord of the manor, or the tenants by special custom, by prescription, by agreement, or by Act of Parliament. Since the Inclosure Act, 1845, inclosures may be effected by the Inclosure Commissioners, now the Ministry of Agriculture and Fisheries.

Inclusio unius est exclusio alterius. The inclusion of one is the exclusion of another.

Income Tax. A tax on the annual profits arising from the ownership or occupation of land or property, from dividends and interest on investments and from the exercise of trades, professions and employments as set out in Schedules A, B, C, D and E.

The law was consolidated by the Income Tax Act, 1918, and is annually amended by the Finance Acts.

Incorporation. Merging together to form a single whole ; conferring legal personality upon an association of individuals, or the holder of a certain office, pursuant to Royal Charter or Act of Parliament.

Incorporeal Hereditaments. See *Hereditaments.*

Indebitatus assumpsit. See *Assumpsit.*

Indecency is a misdemeanour at common law. See the Criminal Law Amendment Act, 1885, s. 11; Vagrancy Act, 1824; Criminal Justice Act, 1925, s. 42.

Indecent Assault. Indecent assault is punishable with not more than two years' imprisonment (Offences against the Person Act, 1861, ss. 52, 62). See the Criminal Law Amendment Act, 1922, s. 1.

Indemnify. To make good a loss which one person has suffered in consequence of the act or default of another. See Mercantile Law Amendment Act, 1856, s. 5.

Indemnity. A collateral contract or security to prevent a person from being damnified by an act or forbearance done at the request of another. See *Act of Indemnity.*

Indenture. A document written in duplicate on the same parchment or paper, and divided into two by cutting through in a waving line. The two parts could be fitted together to prove their genuineness.

A deed between parties to effect its objects has the effect of an indenture though not indented or expressed to be an indenture, and any deed, whether or not being an indenture, may be described as a deed simply. (Law of Property Act, 1925, s. 56, sub-s. 2, s. 57.)

Indermaur v. Dames ((1866), L. R. 1 C. P. 274 ; 2 C. P. 311). The occupier of a building owes a duty to persons resorting thereto in the course of business upon his invitation, express or implied. Such invitees, using reasonable care on their part for their own safety, are entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger.

The plaintiff accompanied his master to inspect some work which the latter had done on the defendant's premises, and while there fell down an imperfectly fenced shaft, which he could not see owing to the darkness. *Held*, the defendant was liable.

Indictment. A written accusation of one or more persons of a crime, presented on oath by a grand jury. Indictments were highly technical in form, but the Indictments Act, 1915, provided that particulars should be set out in ordinary language in which the use of technical terms should not be necessary. The indictment is preferred (*i.e.*, laid before) the grand jury as a bill and must be found by them a "true bill."

Indivisum. That which is held by two persons in common without partition.

Indorsement. A writing on the back of an instrument. Indorsement is a mode of transference of bills of exchange, bills of lading, etc., consisting of the signature of the person to whom the instrument is payable on the back of the instrument and delivery to the transferee (called an indorsement in blank). A special indorsement specifies the name of the transferee. See *Writ of Summons*.

Inducement, Matters of. Introductory statements in a pleading.

Industrial Insurance Company. One that grants life assurances for sums less than £20, and collects the premiums at a greater distance than ten miles at less periodical intervals than two months. (See the Collecting Societies and Industrial Assurance Companies Act, 1896; Insurance Companies Act, 1909, ss. 36, 38).

Industrial School. A school for the industrial training of children in which children are lodged, clothed and fed as well as taught. (Children Act, 1908, s. 44.)

Ine, Laws of. The earliest laws of the Kingdom of Wessex, probably promulgated between 688 and 694.

Infamous Crime. An abominable crime. See now the Larceny Act, 1916, s. 29.

Infamy. A disability which debarred a person from giving evidence. It was incurred at common law by a person on conviction of forgery, perjury, etc.

Infans. Strictly a child not yet able to speak. Later a child under the age of seven. (Roman Law.)

Infant. A person under the age of twenty-one years; an infant has not full legal capacity. He becomes of full age from the first moment of the day preceding the twenty-first anniversary of his birth.

The Infants' Relief Act, 1874, provided that contracts entered into by infants for the repayment of money lent or goods supplied other than necessaries, and all accounts stated shall be null and void and incapable of ratification on the attainment of full age. See *Ditcham* v. *Worrall*.

By the Betting and Loans (Infants) Act, 1892, a promise after majority to repay money borrowed during minority is void as against all parties thereto, except to the extent of any money actually lent after majority. Other contracts are voidable by the infant unless for necessaries (*q.v.*) or for his benefit. See *Clements* v. *L.N.W. Ry. Co.* Contractual obligations attaching to property of which an infant becomes possessed are binding so long as he possesses the property, but he may repudiate the property and with it the obligations within a reasonable

time after attaining majority (London & North Western Ry. *v.* M'Michael (1850), 5 Ex. 114). An infant may take up shares in a limited company, and may repudiate all liability on attaining majority (Hamilton *v.* Vaughan Sherrin Co., [1894] 3 Ch. 589), but the infant cannot recover money paid for them unless there has been a total failure of consideration (Steinberg *v.* Scala (Leeds), Ltd., [1923] 2 Ch. 452). If an infant has paid for property and has consumed it or altered its condition, he cannot recover money paid for it (Valentini *v.* Canali (1889), 24 Q. B. D. 166). The other party to a contract, if adult, is bound (Holt *v.* Ward (1732), 2 Str. 937).

An infant is liable in tort, but where a tort arises out of a contract, which is itself not enforceable, the infant is not liable (Jennings *v.* Rundall (1799), 8 T. R. 335). Where an infant induces another to contract with him by representing that he is of full age he is liable to return or account for any property obtained under the contract (Lempriere *v.* Lange (1879), 12 Ch. D. 675) other than money. See *Leslie* v. *Shiell.*

Infanti proximus. A child that can speak but not with understanding (*intellectus*). A child that has not yet passed his seventh year. (Roman Law.)

Infanticide. The killing of a newly-born child. The Infanticide Act, 1922, provides that where a woman causes the death of her newly-born child before she has fully recovered from the effect of child-birth and while the balance of her mind is still disturbed, then she shall be guilty of infanticide and punishable as for manslaughter, if before the Act she might have been convicted of murder.

Inferior Court. Any Court other than the High Court, the Central Criminal Court, or the Chancery Courts of Lancaster and Durham. The inferior Courts are amenable to the writs of *certiorari*, *mandamus* and *prohibition* (*q.v.*).

Information. A pleading; a step by which certain civil and criminal proceedings are commenced. In Chancery proceedings on behalf of the Crown the information was the statement of facts offered by the Attorney-General to the Court (see Order I, r. 1). In the Exchequer Division there was a proceeding under the equitable jurisdiction of the Court (now the Revenue side of the King's Bench Division) to recover damages or money due to the Crown and known as the English Information. In criminal procedure informations are brought to enforce a penalty or forfeiture under a penal statute. They may be filed by the Attorney-General in the King's Bench Division in respect of crimes affecting the Government, or by the Master of the Crown Office upon the relation of a private subject in respect of public misdemeanours.

Informations are the normal method of instituting criminal proceedings before Justices of the Peace.

Informer. A person who brings an action or takes some other proceeding for the recovery of a penalty of which the whole or part goes to him. A common informer is a person who sues for a penalty which is given to any person who will sue for it.

Infortunium, per. By misadventure. See *Homicide.*

Infringement. Interference with, or the violation of, the right of another, particularly the right to a patent or copyright. The remedy

is an injunction to restrain future infringements, and recovery of the damages caused or profits made by the past infringements.

Ingenuus. A free born man; a man free from the moment of his birth; being born in wedlock the son of parents either freeborn or made free. (Roman Law.)

Inheritance. An estate in land which descends from a man to his heirs.

Inhibition. (1) A prohibition from proceeding in a cause or matter. (2) An order or entry on the register forbidding for a given time, or until further order, any dealing with lands or charges registered. (Land Registration Act, 1925, ss. 57, 61.)

Injunction. An order or decree by which a party to an action is required to do, or refrain from doing, a particular thing. Injunctions are either restrictive (preventive) or mandatory (compulsive). As regards time, injunctions are either interlocutory (or interim) or perpetual. A perpetual injunction is granted only after the plaintiff has established his right and the actual or threatened infringement of it by the defendant; an interlocutory injunction may be granted at any time after the issue of the writ to maintain the *statu quo*.

Injuria. A legal wrong.

Injuria non excusat injuriam. One wrong does not justify another.

Inner Temple. One of the Inns of Court (*q.v.*).

Innkeeper. One who holds himself out as being prepared to receive and entertain travellers, and who is bound to receive and entertain every traveller who presents himself for that purpose and is ready to pay his expenses, provided there be sufficient room in the inn, and no impropriety of conduct in the traveller himself. He has a lien on the goods of his guest for his charges. See Innkeepers' Liability Act, 1863; *Calye's Case.*

Inns of Chancery. These were legal seminaries attached to the greater bodies, the Inns of Court, to whom their senior students migrated, and from whom they received Readers, or instructors in law. From about 1650 they were entirely in the hands of the attorneys, who did not maintain them for educational purposes, and during the nineteenth century the Inns ceased to exist as such.

Inns of Court. The four Inns of Court, Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn, are unincorporated voluntary associations with the exclusive right of Call to the Bar. They have been described as a "judicial university." They were established in the fourteenth century as hostels and schools of Law, outside the walls of the City of London. Serjeants Inn, from the members of which the Judges were appointed, existed from the time of Henry VI till the nineteenth century.

"The four Inns of Court stand upon a footing of equality. No precedence, priority or superior antiquity is conceded to, or claimed by, one Inn beyond another." (See "The Story of our Inns of Court," by Sir Dunbar Plunket Barton and others, and "Early Holborn and the Legal Quarter of London," by E. Williams.)

Innuendo. That part of an indictment or pleading in proceedings for libel which connects the alleged libel with its subject, or explains the meaning of words which are not on the face of them libellous. It usually commences with the words "meaning thereby . . ."

Inofficious Testament. A will which wholly passes over, without assigning sufficient reason, those having strong and natural claims on the testator. Such a will might be set aside. (Roman Law.)

Inops consilii. Without advice.

Inquest. An inquisition. An inquiry held by a jury before a coroner as to the death of a person who has been slain, or has died suddenly, or in prison, or under suspicious circumstances. If the jury find a person guilty of murder or other homicide, it is equivalent to an indictment.

Inquest of Office. An inquiry made by a jury before a sheriff, coroner, escheator, or other officer of the Crown, concerning any matter that entitled the Crown to the possession of lands or tenements, goods or chattels, *e.g.*, by reason of an escheat, forfeiture, idiocy, etc.

Inquiry. In actions in the High Court, if an inquiry is ordered, it is made in Chambers by the Master or other officer who investigates the evidence adduced by the parties, and embodies the result in his certificate.

Inquiry, Writ of. One of the modes of assessing damages when interlocutory judgment (*e.g.*, by default in appearance or pleading) has been obtained by the plaintiff in an action for unliquidated damages. It is usually executed by the sheriff or under-sheriff and a jury of twelve, much in the same manner as an ordinary trial. (See Order XXXVI, r. 56.)

Inquisitio. Inquiry; made in certain cases by the *Praetor* (or *Praeses*) as preliminary to the confirmation of persons appointed tutors or curators. (Roman Law.)

Inquisition. (1) An inquiry by a jury, held before an officer or commissioner of the Crown (inquisitor); (2) a formal document recording the result of the inquiry.

Insanity. Disease of the mind. An insane person has no legal capacity, or responsibility for his acts. But a lunatic (*q.v.*) can make a will in a lucid moment. When an accused person is found guilty of an offence, but insane, the jury bring in a verdict of "guilty, but insane," and the accused is detained during His Majesty's pleasure. A person found to be insane after conviction is not executed. See *R.* v. *McNaghten*.

Insolvency. The inability to pay debts in full. Prior to the Bankruptcy Act, 1861, bankruptcy only applied to traders, and other persons in a similar condition were said to be insolvent.

Inspection of Documents. When a party to an action, or other proceeding in the High Court, has by his pleadings or by an affidavit of documents admitted that he has in his possession any documents relating to the matters in question between the parties, any other party to the proceeding may give him notice to produce them for inspection (Order XXXI, r. 15). If he fails to comply with the notice, the party requiring production may apply to the Judge for an order for inspection (*ibid.*, r. 18) which may be enforced by attachment, by dismissal of action for want of prosecution, or by striking out the defence (r. 21).

Inspection of Property. The High Court may make an order for the detention, preservation, or inspection of any property being the subject of an action, and for that purpose may authorise any person to enter on or into any land or building. (Order L, r. 3.)

Inspectorship Deed. A deed embodying an agreement that the business of a debtor should be carried on under the inspection of the creditors' agents: obsolete.

Instance Court of Admiralty. The Court of Admiralty sitting in matters other than that of Prize, and by virtue of a different commission.

Instrument. A formal legal document in writing, *e.g.*, a deed of conveyance. A "vesting instrument" means a vesting deed, a vesting assent, or a vesting order, and a "trust instrument" means the instrument whereby the trusts of the settled land are declared. (Settled Land Act, 1925, s. 117 (xxxi).)

Insufficiency. The failure of an affidavit to give answers to the extent required. See Order XXXI, r. 11.

Insurance. A contract whereby a person called the insurer, agrees in consideration of money paid to him, called the premium, by another person, called the assured, to indemnify the latter against loss resulting to him on the happening of certain events. The policy is the document in which is contained the terms of the contract. Insurance is a contract *uberrimae fidei* (of the utmost good faith) and of indemnity only, except in the case of life and accident insurance, when an agreed sum is payable. See *Dalby* v. *India, etc., Assurance Co.*; *Ionides* v. *Pender*; *Hebdon* v. *West*; *Darrell* v. *Tibbitts*; *Leslie* v. *French*.

Intendment of the Law. A legal presumption.

Intention. The general rule of law is that a person is presumed to intend the natural, reasonable and probable consequences of his acts, whether in fact he intended them or not.

In the criminal law there must be an intention to do some act before a person can be guilty of crime: A sleepwalker cannot commit a crime. "The intent and act must both concur to constitute a crime" (Lord Kenyon). A wrongful intention or guilty mind (*mens rea*) is not essential in every crime. The mental elements of crimes differ widely, and must be ascertained from the definitions of particular crimes. In most indictable offences, however, *e.g.*, homicide and bigamy, a wrongful intention is necessary to constitute a crime; but in many acts prohibited by statute, especially those of an administrative character, there is imposed an absolute liability and the absence of a wrongful intent is no excuse, *e.g.*, breaches of laws and regulations dealing with the revenue, public health and order, etc. See *R.* v. *Beard*; *R.* v. *Prince*; *R.* v. *Tolson*; *R.* v. *Wheat*; *Cundy* v. *Le Cocq*; *Sherras* v. *De Rutzen*.

Interdicta. Formulæ framed and used by the *Praetor*, by which he ordered or forbade something to be done, chiefly in disputes about possession or quasi-possession. (Roman Law.)

Interesse termini. "Interest of a term." The interest which a lessee under a lease at common law had before he entered or took possession of the land demised. By the Law of Property Act, 1925, s. 149, the doctrine of *interesse termini* is abolished, and leases are to take effect from the date fixed for the commencement of the term without actual entry.

Interest. A person is said to have an interest in a thing when he has rights, titles, advantages, duties, liabilities connected with it,

whether present or future, ascertained or potential, provided they are not too remote.

Any direct interest in the subject-matter of legal proceedings disqualifies anyone from acting in a judicial capacity and will invalidate the proceedings if such person so acts, unless such interest is announced to or known by the parties and they waive the right to object.

Interest also signifies a sum payable in respect of the use of another sum of money, called the principal.

After 1925 the only interests in land capable of subsisting at law, other than a fee simple, term of years absolute, or charge, are (1) an easement equivalent to an estate in fee simple absolute in possession or a term of years absolute. (2) Rights of entry in respect of a legal term of years absolute or annexed to a legal rentcharge. (Law of Property Act, 1925, s. 1, sub-s. 2.)

Interest reipublicæ ne maleficia remaneant impunita. It is a matter of public concern that wrongdoings are not left unpunished.

Interest reipublicæ ne sua re quis male utatur. It concerns the State that no one should make a wrongful use of his property.

Interest reipublicæ ut sit finis litium. It concerns the State that lawsuits be not protracted.

Interlocutory Proceeding. One taken during the course of an action and incidental to the principal object of the action, namely, the judgment. Thus, interlocutory applications in an action include all steps taken for the purpose of assisting either party in the prosecution of his case; or of protecting or otherwise dealing with the subject-matter of the action, or of executing the judgment when obtained.

International Law. The sum of the rules accepted by civilised States as determining their conduct towards each other, and towards each other's subjects.

International law is law of imperfect obligation; there is no sovereign superior to enforce it, but each injured party has to resort to self-help to seek redress. But the signatory Powers of the Covenant of the League of Nations have voluntarily restricted their right to wage war.

In order to prove an alleged rule of international law it must be shown either to have received the express sanction of international agreement or it must have grown to be part of international law by the frequent practical recognition of States in their dealings with each other. (I Pitt Cobbett, 4, 5.) See *West Rand Co.* v. *R.*

International Law, Private. The body of rules for determining questions of jurisdiction and questions as to the selection of the appropriate law, in civil cases which present themselves for decision before the Courts of a State or country but which involve a "foreign element," *i.e.*, which affect foreign persons or things, or transactions that have been entered into wholly or partly in a foreign country, or with reference to some foreign system of law. It is called by Dicey, "Conflict of Laws." (I Pitt Cobbett, 242.)

Interpleader. When a person is in possession of property in which he claims no interest, but to which two or more other persons lay claim, and he, not knowing to whom he may safely give it up, is sued by one or both, he can compel them to interplead, *i.e.*, to take proceed-

ings between themselves to determine who is entitled to it. See Order LVII.

Interpretatio chartarum benigne facienda est ut res magis valeat quam pereat. The construction of deeds is to be made liberally, that the thing may rather avail than perish.

Interpretation Clause. A clause in an Act of Parliament or deed setting out the meaning which is to be attached to particular expressions.

Interrogatories. Written questions put by one party to an action to the other, on matters arising in the action, to be answered by affidavit. See Order XXXI.

Intervener. A person who voluntarily interposes in an action or other proceeding in the Probate, Divorce and Admiralty Division with the leave of the Court.

Intestate. Without leaving a will. Partial intestacy is the leaving of a will which validly disposes of part only of the property.

Intestate Succession. By the Administration of Estates Act, 1925, s. 46, the residuary estate of an intestate dying after 1925 is to go as follows:—

(1) If the intestate leaves a husband or wife, he or she takes the personal chattels (*e.g.*, furniture) absolutely; £1,000 with interest at 5 per cent. per annum from the date of death, free of death duties; and the income of the whole residue for life if the intestate leaves no issue; or the income of half the residue for life if the intestate leaves issue; the income of the other half of residue to go to the issue on the statutory trusts.

(2) If the intestate leaves issue but no husband or wife: to the issue on the statutory trusts.

(3) If the intestate leaves no issue: to both parents in equal shares. If only one parent survives, to that one absolutely.

(4) If the intestate leaves no issue or parents:

(*a*) to the brothers and sisters of the whole blood on the statutory trusts;

(*b*) to the brothers and sisters of the half-blood on the statutory trusts;

(*c*) to the grandparents; if more than one, in equal shares;

(*d*) to the uncles and aunts of the whole blood on the statutory trusts;

(*e*) to the uncles and aunts of the half-blood on the statutory trusts;

(*f*) to the surviving husband or wife absolutely;

(*g*) as *bona vacantia* (*q.v.*).

By section 47 (*ibid.*) the statutory trusts are: for all the children of the intestate, or for all the members of the other class of relative, as the case may be, who are living at the death of the intestate, and attain twenty-one or marry, in equal shares, but if any of them die before the intestate, all the deceased's issue who survive the intestate and attain twenty-one or marry, take *per stirpes* the share of the deceased.

Intestatus. A man dies intestate if he has not made a will at all, or if he has made it wrongly, or if the will he had made has been broken or become null, or if no one is heir under it. (Roman Law.)

Intimidation. The misdemeanour of using violence or threats to

a person, his wife or children, to compel such person to do or abstain from doing any act which he has a legal right to do or abstain from doing. See the Conspiracy and Protection of Property Act, 1875.

Intra vires. Within the power of.

Intrusion. Where the tenant for life of an estate dies, and before the heir of the reversioner or remainderman enters, a stranger enters or "intrudes" on the land, the heir's remedies are entry or an action for recovery of the land.

Investiture. The delivery of corporal possession of land granted by a lord to his tenant; livery of seisin (*q.v.*).

Invito beneficium non datur. A benefit is not conferred upon anyone against his consent. (Roman Law.)

Ionides v. Pender ((1874), L. R. 9 Q. B. 531). Contracts of insurance are *uberrimae fidei*.

The plaintiff grossly overvalued goods the subject-matter of a marine insurance, and the jury found that it was material to the underwriter to know that the valuation was excessive, though they did not find the plaintiff guilty of fraud. *Held*, the policy was avoided.

Ipso facto. By the mere fact.

Irons v. Smallpiece ((1819), 2 B. & A. 551). For a valid gift, a chattel must be delivered to the donee, or the ownership of it be vested in him by way of deed of transfer.

The plaintiff claimed two colts from his father's executrix under a verbal gift made by his father a year before his death. The colts had remained with the father until his death. *Held*, the plaintiff's claim failed as there was no delivery.

Irregularity. The departure from, or neglect of, the proper formalities in a legal proceeding. See Order LXX.

Irremovability. The status of a pauper who cannot be legally removed from the parish or union in which he is receiving relief, notwithstanding that he has not acquired a settlement there.

Issuable. A pleading which raised a substantial question of fact or law, a judgment or verdict on which would determine the action on its merits.

Issue. (1) The issue of a person consists of his children, grandchildren, and all other lineal descendants. (2) "Issues" is the technical name for the profits of land taken in execution under a writ of distringas (*q.v.*). (3) When the parties to an action have answered one another's pleadings in such a manner that they have arrived at some material point or matter affirmed on one side and denied on the other, the parties are said to be "at issue"; the last pleading is called a joinder in issue, and the question thus raised is the issue in the action.

A "general issue" was a plea used where the defendant wished to deny all the allegations in the declaration or the principal fact on which it was founded; such was a plea of not guilty to an indictment.

Jactitation of Marriage. Where a person boasts or gives out that he or she is married to someone, whereby a common reputation of their marriage may ensue; in such a case the person aggrieved may present a petition praying a decree of perpetual silence against the jactitator. See *Duchess of Kingston's Case*.

Janson v. Driefontein Consolidated Mines, Ltd. ([1902] A. C. 484). On the outbreak of war rights of action of those who thereby become alien enemies accrued before the outbreak are only suspended until peace is re-established. *Semble,* provided they involve no intercourse with the enemy.

The respondents were a corporation incorporated in the Transvaal Republic and had insured gold with the appellants. Shortly before war broke out between Great Britain and the Transvaal Republic, the latter seized the gold. *Held,* that after the re-establishment of peace the respondents could recover from the appellants on the policy.

Jennings v. Jordan (6 A. C. 698). The Court does not favour the extension of the doctrine of consolidation of mortgages.

T T mortgaged land to M; then settled the equity of redemption of a part of it on his daughter's marriage. He then mortgaged other land to J T. The two mortgages became vested in Jennings. *Held,* that Jennings had no right to consolidate the two mortgages as against the persons entitled under the settlement.

Jeofail. (*J'ay faillé.*) A mistake in pleading. Obsolete.

Jetsam. Where goods are cast into the sea and there sink and and remain under water.

Jettison. The throwing overboard of goods from necessity to lighten the vessel in a storm, or to prevent capture.

Joinder of Causes of Action. In actions in the High Court the plaintiff may unite in the same action several causes of action, which can conveniently be tried together; but no cause of action can (unless by leave) be joined with an action for the recovery of land, except claims for mesne profits or arrears of rent, or for breach of contract in respect of the same property; provided however that there may be a joinder of a claim for possession in an action for foreclosure or redemption. (Order XVIII, rr. 1, 2.)

Joinder of Parties. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative; and the same rule applies to the defendants. See Order XVI, rr. 1—4.

Joint Account. The rule that where two or more persons advance money and take the security to themselves jointly, each is in equity deemed to be separately entitled to his proportion of the money, so that on his death it passes to his personal representatives and not to his surviving co-lenders, made it usual, in cases where money was advanced by trustees, to insert in the mortgage deed, etc., a declaration that the money belonged to the lenders on a joint account in equity as well as at law, and that the receipt of the survivors or survivor, or his personal representatives, should be a full discharge for any monies due on the security. The Conveyancing Act, 1881, s. 61, re-enacted by the Law of Property Act, 1925, s. 111, made it sufficient to say merely that the money is advanced by the lenders out of money belonging to them on a joint account.

Joint and Several Obligation. An obligation entered into by two or more persons, jointly and severally, so that each is liable severally, and all liable jointly, and a creditor or obligee may sue one or more severally or all jointly at his option.

Joint Obligation. A bond or covenant or other liability entered into

by two or more persons jointly, so that all must sue or be sued upon it together. The discharge of or obtaining judgment against one joint obligor releases all the joint obligors. But one joint obligor who pays a joint debt is entitled to contribution from the others.

Joint Stock Company. See *Company.*

Joint Tenancy. The ownership of land in common by several persons where there is a right of survivorship, *i.e.*, where on the death of one joint owner the land as a whole vests in the survivors, and can only be disposed of by will by the last surviving owner. Every joint tenant is seised or possessed of the joint property *per my et per tout*, that is, by every part and by the whole. The four unities of joint tenancy which must exist, or the tenancy will be in common, are:—

(1) *Possession.* Each joint tenant must be entitled to the possession of the whole of the land.

(2) *Interest.* Each joint tenant must have the same estate or interest in the land.

(3) *Title.* Each joint tenant must have the same title, *i.e.*, take in virtue of the same instrument.

(4) *Time.* Each joint tenant must have an estate for the same time.

By section 36, Law of Property Act, 1925, where a legal estate, not being settled land, is beneficially limited to, or held in trust for, any persons as joint tenants, it shall be held on trust for sale. See *Morley* v. *Bird.*

Jointress. A woman entitled to a jointure.

Jointure. A provision made by a husband for the support of his wife after his death. Originally an estate in joint tenancy of a husband and wife, granted to them before marriage, as provision for the wife.

A legal jointure was " a competent livelihood of freehold for the wife of lands or tenements, etc., to take effect presently in possession or profit after the decease of her husband for the life of the wife at the least " (Coke).

An equitable jointure is a rentcharge or annuity payable by the trustees of a marriage settlement to the wife for her life if she should survive her husband, the rentcharge or annuity being generally secured by powers of distress and entry, and by the limitation of the settled lands to trustees for a long term of years. See *Aleyn* v. *Belchier.*

Jolly v. Rees ((1863), 15 C. B. (N.S.) 628). In 1851 the defendant prohibited his wife from pledging his credit for clothing for herself and daughters, and paid her a yearly sum for the purpose, which the jury held was insufficient. The plaintiffs in 1860 and 1861 supplied the wife with necessary clothing on credit, having no notice of the prohibition. *Held,* the defendant was not liable.

Journals of Parliament. The records made in the House of Lords from 1509 and the House of Commons from 1547 of business done, but not of speeches made. The journals of the House of Lords, but not those of the House of Commons, are public records.

Judge. A Judge is an officer of the Crown who sits to administer justice according to law. The Judges of the High Court are appointed from practising barristers, and hold office during good behaviour. They can be removed on address by both Houses of Parliament. Their salary

is charged on the consolidated fund. (Act of Settlement, 12 & 13 Will. 3, c. 2.) They cannot be members of the House of Commons.

A Judge is not liable to an action for a judicial act or omission, except the refusal of a writ of *habeas corpus* in vacation. (Habeas Corpus Act, 31 Car. 2, c. 2, s. 10.)

As to qualification of Judges, tenure of office, vacancies, etc., see Judicature Act, 1925, ss. 9-17.

Judge Advocate General. The adviser of the Secretary of State for War in reference to courts martial and other matters of military law.

Judge Advocate of the Fleet. An analogous post to that of the Judge Advocate General.

Judge Ordinary. The President of the Probate, Divorce and Admiralty Division.

Judgment. The decision or sentence of a Court in a legal proceeding. Also the reasoning of the Judge which leads him to his decision, which may be reported and cited as an authority, if the matter is of importance, or can be treated as a precedent. See *Cole* v. *Langford*.

Judgment Creditor. One entitled to enforce a judgment for a sum of money.

Judgment Debtor. One against whom judgment is given for a sum of money, and for which his property is liable to be taken in execution.

Judgment Summons. The process used to procure the committal (*q.v.*) of a judgment debtor.

Judicatum solvi stipulatio. A stipulation whereby a plaintiff took security at the beginning of a suit for satisfaction of the judgment.

(1) Before Justinian. In a real action commenced by *formula petitoria* the defendant was required to give the *cautio judicatum solvi*—a security with sureties. In a personal action, the defendant sued in his own name did not give security.

(2) Under Justinian. The defendant if sued in his own name was required to give security that he would appear personally and remain in Court to the end of the trial. (Roman law.)

Judici officium suum excedenti non paretur. Effect is not given to the decision of a Judge delivered in excess of his jurisdiction.

Judicia publica. Public prosecutions. So called, because generally it was open to any citizen to institute them and carry them through (Roman law.)

Judicial Committee of the Privy Council. Created by the Judicial Committee Act, 1833. It consists of the President and ex-Presidents of the Privy Council, the Lord Chancellor, Lords of Appeal in Ordinary, Judges of the Supreme Court, and not more than seven Judges of the superior Courts of the self-governing colonies or British possessions, and not more than two Judges of any High Court in India.

The Judicial Committee has jurisdiction in (1) Appeals from Courts in the colonies or dependencies of the United Kingdom. (2) Appeals from the Admiralty and Ecclesiastical Courts of this country.

Judicial Proceedings (Regulation of Reports) Act, 1926, provides (1) That it shall not be lawful to print or publish in relation to any judicial proceedings any indecent matter calculated to injure public morals. (2) In any judicial proceeding in regard to marriage there may be published only particulars of the parties, witnesses and counsel,

and a concise statement of the case and the judgment. The Act does not apply to volumes of Law Reports or technical books.

Judicial Separation. A decree of judicial separation may be pronounced by the Probate, Divorce and Admiralty Division on the petition of either husband or wife (1) in all cases in which a divorce *a mensa et thoro* might have been obtained in the Ecclesiastical Courts, (2) on the ground of adultery or cruelty, desertion without reasonable cause for two years or upwards, or failure to comply with a decree for restitution of conjugal rights (Judicature Act, 1925, s. 185). The decree puts an end to cohabitation, and places the wife in the position of a *femc sole*, but does not dissolve the marriage.

Judicial Trustee. A trustee appointed by the Court under the Judicial Trustees Act, 1896.

Judicium Dei. The judgment of God, that is to say, trial by ordeal.

Junior Barrister. A barrister who is not a King's Counsel.

Jura eodem modo destituuntur quo constituuntur. Laws are abrogated by the same means by which they were made.

Jura publica anteferenda privatis. Public rights are to be preferred to private.

Jura regalia. Sovereign rights. Such rights were exercised under royal grant by the Lords Marchers (*q.v.*).

Jurat. A memorandum at the end of an affidavit stating where and when the affidavit was sworn, followed by the signature and description of the person before whom it was sworn. (Order XXXVIII, r. 5.)

Juratores sunt judices facti. Juries are the judges of fact.

Juris utrum. A writ or action by an incumbent to recover possession of land held by him in right of the church.

Jurisdiction. (1) The power of a Court or Judge to entertain an action, petition or other proceeding. (2) The district or limits within which the judgments or orders of a Court can be enforced or executed (territorial jurisdiction). See Order XI, r. 1; *Machado* v. *Fontes; British S. Africa Co.* v. *Co. de Moçambique.*

Jurisprudence. The science of law. "The philosophical aspect of the knowledge of law" (Cicero). "The knowledge of things human and divine, the science of the just and the unjust" (Ulpian).

Jurisprudence as a formal science was developed in England by Hobbes, Bentham and Austin. Sir Henry Maine instituted the study of the natural history of law.

Modern developments are in the direction of the study of comparative jurisprudence; "to aim at discovering the principles regulating the development of legal systems, with a view to explain the origin of institutions and to study the conditions of their life" (Vinogradoff). See *Law.*

Jurisprudentia. Law learning, the learning of the *jurisprudentes* (men skilled in the law). (Roman law.)

Jury. (Lat. *jurare*, to swear.) A body of sworn men summoned to decide questions of fact in a judicial proceeding. The jury in origin was "a body of neighbours summoned by some public officer to give, upon oath, a true answer to some question" (Maitland). The jury is "the principal criterion of truth in the law of England" (Blackstone). They were, or represented, "the country." They testified to and

decided issues of fact of their own knowledge. With the introduction of sworn witnesses the jury became exclusively the judges of fact.

The sworn inquest was introduced by the Normans into England from the procedure of the Carlovingian Kings of France. The inhabitants of a district were summoned by a royal officer to testify and to declare or decide matters of fact relating to property and offences. In England in Anglo-Saxon times judgment was pronounced by the suitors to the communal Courts, who sat under the presidency of the sheriff or other officer.

Henry II inaugurated the assize (*q.v.*) in lieu of trial by battle for deciding disputed questions of property. It was summoned to answer certain specific questions only. The *jurata*, or jury proper, replaced battle, the ordeal, and compurgation as a method of proof.

The grand jury was set up by the Assize of Clarendon to present offenders from the neighbourhood. It consists of twelve to twenty-three persons, and is summoned at assizes and quarter sessions to consider bills of indictment. If a "True Bill" is found, the indictment is removed into Court and the prisoner is tried by a petty jury of twelve. If "No Bill" is found, the prisoner may be discharged, or the bill may be presented to a further grand jury.

Civil cases are tried ordinarily before a common jury of twelve. Important cases may be tried before a special jury of twelve, consisting of persons of superior status. See *Peine forte et dure; Trial; Bushell's Case.*

Jus. In its widest sense includes moral as well as legal obligations. It means (1) "law" as opposed to *lex* (a statute); (2) a right; (3) relationship; (4) the Court of a magistrate. (Roman law.)

Jus accrescendi. The right of accrual. (Roman law.)

Jus accrescendi inter mercatores pro beneficio commercii locum non habet. The right of survivorship among merchants, for the benefit of commerce, does not exist.

Jus aedilicium. The rules of law as stated in the edicts published by the *curule aediles* and administered by them. It was included in the *jus honorarium.* (Roman law.)

Jus Civile. (1) The law peculiar to a particular State, *e.g.*, Rome. (2) The old law of Rome as opposed to the later *jus praetorium.* (Roman law.)

Jus disponendi. The right of disposing; the right of alienation. (Roman law.)

Jus ex injuria non oritur. A right does not arise out of a wrong.

Jus gentium. The law of nations. The law common to all peoples (Roman law.)

Jus honorarium. The *Jus Praetorium* and the *jus aedilicium.* (Roman law.)

Jus liberorum. The special rights granted to the mother of three or four children; or to the father. (Roman law.)

Jus mariti. The right of a husband. That right to the chattels of a woman which her husband acquired on their marriage, and by virtue of which he is entitled to her undisposed-of personal estate on her death.

Jus naturale. "The law that nature has taught all living things" (Justinian). The law supposed to be constituted by right reason, com-

mon to nature and to man; the principles deducible from the *jus gentium*. (Roman law.)

Jus non scriptum. The unwritten law: "the law that use has approved" (Justinian). (Roman law.)

Jus potestatis. See *Patria Potestas*.

Jus Praetorium. The rules of law as stated in the *Praetor's* edict and administered by the *Praetor*. Part of the *jus honorarium*. (Roman law.)

Jus Privatum. That part of the law which related to causes between private individuals; divided into three parts, according as it related to persons, things, or actions. (Roman law.) See *Jus tripertitum*.

Jus Publicum. That part of the law concerning public affairs, that which dealt with causes between the State and private individuals. It comprised ecclesiastical law, constitutional law, and criminal law. (Roman law.)

Jus scriptum. The written part of the law consisting of statutes, decrees of the *plebs* and of the senate, decisions of emperors, edicts of magistrates and answers of jurisprudents. (Roman law.)

Jus spatiendi et manendi. The right to stray and remain.

Jus tertii. The right of a third person. A wrongdoer cannot plead the *jus tertii, i.e.*, he cannot plead that the plaintiff is not entitled to possession against the wrongdoer because a third party is the real owner.

Jus tripertitum. The threefold law. *E.g.*, *jus privatum* was *tripertitum*, as composed of the *jus naturale, jus gentium* and the *jus civile*. (Roman law.)

Justices. The name given to the Judges of the old common law Courts, and now given to all Judges of the High Court.

Justices of the Peace. Persons appointed by the Crown to be, or who are *ex officio*, justices within a certain district (*e.g.*, a county or borough) for the conservation of the peace, and for the execution of other duties. They are said to act ministerially in cases of felony or misdemeanour, where they merely initiate the proceedings by issuing a warrant of apprehension, taking the depositions, and committing for trial. They act judicially in quarter sessions, and in all cases where they have summary jurisdiction, whether criminal or civil.

Justiciar. The chief political and legal officer of the Norman and Plantagenet kings. He was *ex officio* regent when the King went overseas, and presided over the Curia Regis (*q.v.*). The office ceased to exist during the reign of Henry III.

Justicias facere. To hold pleas; to exercise judicial functions.

Justification. (1) The plea in defence of an action which admits the allegations of the plaintiff but pleads that they were justifiable or lawful. For example, in libel a plea of justification admits the publication of the defamatory words, but pleads that they are true in substance and in fact. And see *Homicide*.

(2) In procedure, bail or sureties for the defendant in an action were said to justify when they satisfied the plaintiff or the Court that they were sufficient.

Justitia. Justice. "The constant and perpetual wish to give each man his due" (Justinian). (Roman law.)

Juvenile Offenders. A Court of summary jurisdiction can dispose summarily of anyone under sixteen who is charged with any indictable offence other than homicide, unless a trial by jury is demanded, and commit such offenders to reformatories or industrial schools instead of to prison. See Summary Jurisdiction Act, 1879 and 1899, Criminal Justice Administration Act, 1914, Children Act, 1908, and Criminal Justice Act, 1925, s. 46.

Keech v. Sandford ((1726), Select Cas. in Chancery, 61). The lease of Rumford Market had been bequeathed to B in trust for an infant. B before the expiration of the term applied to the lessor for a renewal of the lease for the benefit of the infant, and this was refused. B then got a lease made to himself. *Held*, that B was a trustee of the lease for the infant, and must assign the same to him.

Keeping House. Confining oneself to one's house. It is an act of bankruptcy.

Keighley, Maxsted & Co. v. Durant ([1901] A. C. 240). A principal cannot ratify his agent's unauthorised act, unless the latter purported to act as his agent.

R was authorised by K to buy wheat on the joint account of himself and K at a certain price. R purchased at a higher price as principal. The next day K agreed with R to take the wheat. *Held*, K was not bound by this ratification.

Keighly v. Bell ((1866), 4 F. & F. 763). *Held*, that a soldier acting honestly in the discharge of his duty, *i.e.*, acting in obedience to the orders of his commanding officers, is not liable for what he does, unless it be shown that the orders were such as were obviously illegal.

Kelner v. Baxter ((1866), L. R. 2 C. P. 174). A contract made by a party purporting to act as agent for a principal who is not in existence cannot be ratified by such principal when he comes into existence.

The defendant, a company promoter, entered into a contract ostensibly as the agent of a company not yet formed. *Held*, the defendant was liable, as the contract could not be ratified by the company when formed.

Kemble v. Farren ((1829), 6 Bing. 141). Money payable on breach of any of several stipulations of varying importance, or one of which is for the payment of a smaller sum, is a penalty

The defendant agreed to act for the plaintiff at his theatre, the plaintiff to pay the defendant £3 6s. 8d. for every night the theatre should be open. The contract also provided that if either party committed any breach he should pay the other £1,000 as liquidated damages. *Held*, the sum was a penalty.

Keys, House of. The Legislative Assembly of the Isle of Man.

King's Bench. See *Court of King's Bench.*

King's Chambers. Those portions of the British territorial waters which are inclosed within headlands so as to be cut off from the open sea by imaginary straight lines drawn from one promontory to another.

King's Coroner and Attorney. Originally this officer was concerned with deaths in the King's Bench Prison (now abolished). In 1892 the office was merged in that of Master of the Crown Office.

King's Counsel. Barristers "learned in the law" appointed counsel to His Majesty. They wear silk gowns, sit within the bar, and take precedence in Court over "utter barristers" (*i.e.*, outer barristers). They must not be employed in any cause against the Crown (*e.g.*, in defending a prisoner) without special licence.

King's Evidence. A prisoner who, instead of being put upon trial, is permitted by the Crown to give evidence against those associated with him in crime, is said to turn king's evidence.

King's Proctor. The Treasury Solicitor who represents the Crown in the Probate, Divorce and Admiralty Division. His function, in a proper case, is to intervene in order to prevent a decree *nisi* from being made absolute. See Judicature Act, 1925, s. 181.

King's Regulations and Orders for the Army are issued by the Crown, through the Army Council, for the government of the Army. The command of the Army is a branch of the Royal Prerogative.

King's Remembrancer performed duties connected with recoveries of penalties and debts due to the Crown; he kept in his office the documents relating to the passing of lands to and from the Crown; and he had functions in connection with English Bills (see *Bill of Complaint*). Under the Judicature (Officers) Act, 1879, ss. 6, 8, he was transferred to the Central Office and made a Master of the Supreme Court. His duties as King's Remembrancer now consist mainly of certain functions connected with the selection of sheriffs (*q.v.*) and swearing in of the Lord Mayor of London. The duties are now performed by the Senior Master. (Judicature Act, 1925, s. 122.)

King's Widow. The widow of a tenant *in capite* of the King.

Knight. The lowest title of dignity. Originally a man-at-arms. It is not hereditary. Knights are of the following orders: Garter, Thistle, St. Patrick, Bath, St. Michael and St. George, Star of India, Indian Empire, Royal Victorian, British Empire and lastly Knights Bachelor.

An obsolete order is that of Knight Banneret, who, created by the King in the field, ranked after a baronet.

Knight's Service, Tenure by. Where a man held land of another or of the Crown by military service, of which the principal varieties were escuage, grand serjeanty, castleward and cornage. It had five incidents, namely, aids, relief, wardship, marriage and escheat; the King's tenants *in capite ut de corona* were further liable to primer seisin and fines for alienation. Tenure by knight's service was converted into common socage by the statute 12 Car. 2, c. 24.

Kreglinger v. New Patagonia Meat and Cold Storage Co. ([1914] A. C. 25). A stipulation in a mortgage for a collateral advantage is not invalid provided it imposes a purely personal obligation.

A firm of woolbrokers made a loan to a company carrying on business as meat preservers upon the security of a floating charge upon the undertaking of the company. The agreement provided that for five years from the date thereof the company should sell its sheepskins only to the lenders and should pay them a commission upon sales to others. *Held*, that the stipulation was a collateral bargain and a condition of the loan and was not invalid as a clog on the equity of redemption.

Labour, Ministry of. Established pursuant to the New Ministries and Secretaries Act, 1916. That Act transferred to this Ministry the powers and duties of the Board of Trade under the Conciliation Act, 1896, the Labour Exchanges Act, 1909, the Trade Boards Act, 1909, and the National Insurance (Unemployment) Acts, 1911 to 1916. The Minister of Labour can sit in the House of Commons and is a member of the Cabinet.

Labourers, Statute of. The statute 23 Edw. 3, passed in 1349 after about half the population had died of the Black Death. It enacted that everyone under sixty, except traders, craftsmen, those with private means and landowners, should work for anyone willing to employ them at the wages paid from 1340 to 1346. It was repealed by the Statute Law Revision Act, 1863.

Laches. Negligence or unreasonable delay in asserting or enforcing a right. The equitable doctrine that delay defeats equities, or that equity aids the vigilant and not the indolent. "A Court of equity has always refused its aid to stale demands, where a party has slept upon his rights and acquiesced for a great length of time. Nothing can call forth this Court into activity but conscience, good faith and reasonable diligence; when these are wanting the Court is passive and does nothing." (Lord Camden; Snell, 16.) See *Allcard* v. *Skinner*.

Lagan. "When goods are cast into the sea as jetsam, and afterwards the ship perishes, and such goods are so heavy that they would sink to the bottom, and the mariners, to the intent to have them again, tie to them a buoy or cork or such other thing as will not sink so that they may find them again." (Sir Henry Constable's Case (1601), 5 Co. Rep. 106*a*.)

Lake v. Gibson ((1729), 1 Eq. Cas. Ab. 294, pl. 3). Five persons purchased West Thorock Level from the Commissioners of the Sewers, and the conveyance was to them as joint tenants in fee, but they contributed ratably to the purchase, which was made with the intent of draining the level. Several of them died. *Held*, that they were tenants in common in equity.

Lammas. August 1.

Lammas Lands are held by a number of holders in severalty during a portion of the year. After the severalty crop has been removed they are commonable also to other classes of commoners. The date of opening them is now August 12.

Lampleigh v. Brathwait ((1615), Hobart, 105). A past consideration may possibly support a subsequent promise if such consideration moved at the precedent request of the promisor.

The plaintiff, at the request of the defendant, went to much trouble and expense to obtain a pardon for the defendant, who had feloniously killed another. The defendant subsequently promised to pay the plaintiff £100 in consideration thereof. *Held*, the promise was actionable.

Land. "Comprehendeth any ground, soile, or earth whatsoever. It legally includeth also all castles, houses and other buildings; also water "(Coke).

"'Land' includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any

other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, or over, or derived from land; but not an undivided share in land." (Law of Property Act, 1925, s. 205, sub-s. 1 (ix).)

Land Charges. Under the Land Charges Act, 1925, the following registers will be kept in the Land Registry: (1) A register of pending actions in which any proceeding pending in Court relating to land and a petition in bankruptcy may be registered. An unregistered pending action will not bind a purchaser without express notice, and an unregistered bankruptcy petition will not prejudice a purchaser for value of a legal estate without notice of an act of bankruptcy. (2) A register of annuities which have been already registered under former Acts. (3) A register of writs and orders in which judgments and writs of elegit, including those in favour of the Crown, orders appointing a receiver or sequestator and receiving orders in bankruptcy may be registered. Such writs and orders will be void as against a purchaser unless registered, but as regards a receiving order, only in the case of a purchaser for value in good faith of a legal estate without notice of an act of bankruptcy. (4) A register of deeds of arrangement. They will require to be re-registered every five years. (5) A register of land charges of the following classes:—

(A) and (B) A rent or annuity or principal money payable by instalments or otherwise, with or without interest, being a charge upon land created (a) under the provisions of any Act for securing to any person either the money spent or costs incurred under that Act, *e.g.*, Improvement of Land Act, 1864, or (b) under other statutes such as the Agricultural Holdings Act, 1923, and the Tithe Acts.

(C) A puisne mortgage, a limited owner's charge, a general equitable charge, and an estate contract.

(D) A death duties charge, a restrictive covenant, and an equitable easement.

(E) An annuity created before 1926 and unregistered.

Such charges are in general void against a purchaser if arising after 1925 and unregistered, or if not registered within twelve months of the first conveyance after 1925.

Land Registration. The Land Registry, London, was established by by the Land Registry Act, 1862. The Land Transfer Act, 1875, provided for the voluntary registration of title to freeholds and leaseholds, and for the compulsory registration of writs, deeds, notices and charges relating to land.

Registers of deeds and wills relating to land have been kept in Middlesex, Yorkshire and the Bedford Level.

Under the Land Transfer Act, 1897, the registration of title to land was made compulsory for the city and county of London.

In the Land Registration Act, 1925, there are provisions for the extension of the compulsory area, and the law relating to land registration is amended and codified.

Instruments which do not affect the legal estate need not be registered. (Law of Property Act, 1925, s. 11.)

Land Tax. A tax payable annually in respect of the beneficial ownership of land. The tax applies to land generally, with some

exceptions *e.g.*, of certain educational and charitable institutions. If land subject to the tax is in lease, the tenant is primarily liable to pay the whole tax, but he is entitled (unless he has expressly agreed to pay it himself) to deduct from the rent so much of the tax as the landlord ought to bear in respect of the rent, so that if the rent is a rack-rent the landlord bears the whole tax. The tax was originally levied in 1692 under the statute 4 Will. and Mary, c. 1, and was made redeemable by the Land Tax Perpetuation Act, 1798.

Land Values Duties. Duties imposed by the Finance (1909-10) Act, 1910, pt. 1. The Finance Act, 1920, s. 57, abolished all except the mineral rights duty.

Landlord and Tenant. The relation of landlord and tenant is created by the landlord allowing the tenant to occupy the landlord's house or land for a consideration termed rent, recoverable by distress.

In the absence of express agreement, *e.g.*, a lease, the landlord impliedly contracts with the tenant to give him possession and guarantee him against eviction by any person having a title paramount to that of the landlord. The tenant impliedly contracts with the landlord to pay the rent, not to commit waste, and to give up possession at the end of the tenancy.

Lands Clauses Acts. These Acts form a code under which land can be compulsorily acquired for public or *quasi*-public purposes, but only by way of the incorporation of the Acts with a special Act passed for a particular purpose.

Lane v. Cotton ((1701), 1 Salkeld, 17). The defendant was appointed Postmaster-General by letters patent. The plaintiff sued for the loss of some Exchequer Bills, owing to the alleged negligence of the defendant. *Held*, that a public officer is not liable for the negligence or defaults of his subordinates.

Lane v. Cox ([1897] 1 Q. B. 415). A lessor of premises is not liable to a party injured inside them through their defective condition, unless he is under a duty to such party to keep them in repair, as where the party is his tenant and the lessor is under an obligation to repair either by covenant or Act of Parliament.

Langridge v. Levy ((1837), 2 M. & W. 519). A seller is liable for a fraudulent misrepresentation made to a buyer whereby a third person is injured, if the seller knew the article was to be used by the third person. A purchased a gun from L, informing him it was for the use of himself and his son. L misrepresented the make of the gun, and the son was injured by the gun bursting while he was using it. *Held*, L was liable for his fraudulent misrepresentation.

Lapse. As a general rule, when a person to whom property has been devised or bequeathed dies before the testator, the devise or bequest fails or lapses, and the property falls into residue. But if land is given to a person in tail who dies before the testator, leaving issue capable of taking under the entail, the land goes as if the devisee had died immediately after the testator. (Wills Act, 1837, s. 32.) And if a testator bequeaths (or devises) property to a child or other descendant of himself, and such descendant dies leaving issue who survive the testator, the legacy (or devise) does not lapse but takes effect as if the person to whom the gift was made had died immediately after the testator (*ibid.* section 33). But this rule does not apply if

land is devised to children as joint tenants, or to children as a class, or to children by reason of a special power of appointment. Also a lapsed share of residue does not fall into residue, but devolves as upon an intestacy. See *Viner* v. *Francis.*

Larceny. The wrongful or fraudulent taking and carrying away without colour of right, of the personal goods of another from any place, with a felonious intent to convert them to the taker's own use, and make them his own property, without the consent of the owner. The Larceny Acts, 1861 and 1916, codified the law.

Lata culpa dolo æquiparatur. Gross negligence is equivalent to fraud. (Roman law.)

Latitat. See *Bill of Middlesex.*

Law. A law is an obligatory rule of conduct. The term is applied to observed uniformities of action, as in the law of gravitation. But its proper use is in the sphere of jurisprudence.

There are different views as to the nature of law. Hobbes defined law as "The commands of him or them that have coercive power." Austin followed with, "A law is a rule of conduct imposed and enforced by the Sovereign." Salmond substituted, "Law is the body of principles recognised and applied by the State in the administration of justice."

On the other hand, Blackstone maintained that a rule of law made on a pre-existing custom exists as positive law apart from the legislator or Judge, and Maine pointed out there is law in primitive societies. Savigny regarded law as itself subject to evolution and as no arbitrary expression of the will of the law giver.

Jhering found the end of law in the "delimitation of interests," and Vinogradoff saw law as "A set of rules imposed and enforced by a society with regard to the attribution and exercise of power over persons and things."

De Montmorency analyses law ultimately as the rules which bind men together in society in its struggle against natural environment. "Adaptation to environment is the condition of survival. Custom was the method by which man adapted himself to environment. To break custom was to face death." He adds, "Coercion is a weapon of law which law has forged, but it is not the basis of law."

The difficulty is solved if it is seen that although the nature of law is a constant, its promulgation and enforcement vary according to the stage of political development reached by a society. Anson disposes for all time of the difficulties of Austin "When the State has attained to regularity in definition and enforcement of rules of conduct, then we get the positive law with which Austin delighted to torment himself and his readers."

Law List. An annual publication containing lists of barristers and solicitors. The inclusion of a solicitor's or conveyancer's name therein is *prima facie* evidence that he holds the prescribed certificate for the current year.

Law Merchant. The custom of merchants as settled by judicial decisions. It originated the law of negotiable instruments, etc. See *Goodwin* v. *Robarts.*

Law of Nations. International law or public international law.

It is a literal translation of the Latin phrase *jus gentium*, which meant, however, those rules of law which are common to all civilised nations.

Law of Nature. The *jus naturale*. The Roman conception of a hypothetical law of a bygone state of nature or golden age, and believed to exist in part in all then existing bodies of law; to be ascertained by segregating the principles common to many or all of them, *i.e.*, the *jus gentium*.

"The Jus Naturale or Law of Nature is simply the Jus Gentium or Law of Nations seen in the light of a particular theory—Stoic Philosophy" (Maine).

Law of Property Acts. The name given to the following group of Acts: Law of Property Acts, 1922, 1925; Administration of Estates Act, 1925; Land Charges Act, 1925; Land Registration Act, 1925; Settled Land Act, 1925; Trustee Act, 1925; Universities and College Estates Act, 1925.

The Law of Property Act, 1922, was drafted by a committee set up by Lord Birkenhead when Lord Chancellor to reform the law and rid it of the traces of the feudal system, and is consequently known as Lord Birkenhead's Act. It was due to come into operation on January 1, 1925, but was postponed, and finally only came into effect as amended by the Law of Property (Amendment) Act, 1924, with regard to the abolition of copyhold tenure, as from January 1, 1926.

The rest of the Act was split up into Acts dealing with particular subjects, as above, with effect from January 1, 1926.

Law Officers of the Crown. The Attorney-General and the Solicitor-General.

Law Report. A published account of a legal proceeding, giving a statement of the facts, the arguments on both sides, and the reasons the Court gave for its judgment. Reports by barristers are cited in argument as precedents. Regular law reporting appears to have commenced in the thirteenth century with the Year Books (*q.v.*). In 1865 the Council of Law Reporting commenced a series of reports covering all the superior Courts, known as the Law Reports. See *Judicial Proceedings (etc.) Act*, 1926.

Law Society. Formed in 1825, incorporated in 1831, and entrusted with the custody of the roll of solicitors, 1888.

Since 1877 no person can be admitted as a solicitor unless he has obtained from the society a certificate that he has passed certain examinations. It issues the annual certificate without which a solicitor cannot practise. Under the Solicitors Act, 1919, s. 5, the committee investigates complaints against solicitors and can itself strike a solicitor off the roll, the offender having a right of appeal to the Court.

Lawford v. Billericay Rural Council ((1903), L. R. 1 K. B. 779). *Held*, that if a corporation has accepted the benefit of necessary work done, or necessary goods supplied, it is liable to pay for the same, although the contract is not under seal.

Lay Days. The days which are allowed by a charterparty for loading and unloading the ship. If the vessel is detained beyond the period allowed, demurrage becomes payable.

Lay-fee. Lands held in fee of a lay lord, as distinguished from lands held in frankalmoign.

Le Neve v. Le Neve ((1747), Amb. 436). Lands in Middlesex were

settled by a deed which was not registered. Many years afterwards they were settled on a second marriage, and the settlement was duly registered; but the agent of the person taking the lands under the second settlement had notice of the former. *Held*, that the object of the Register Act being only to secure subsequent purchasers and mortgagees against prior secret conveyances and fraudulent conveyances, the former settlement should be preferred because of the notice, and that notice to an agent or trustee is notice to the principal.

Leach v. Money ((1765), 3 Burr. 1692). *Held*, that a general warrant to seize some person not named is illegal.

Leading Case. A judicial decision or precedent settling the principles of a branch of law. Thus *Coggs* v. *Bernard* is the leading case on the law of bailments. See Smith's Leading Cases on the Common Law, and White and Tudor's Leading Cases in Equity.

Leading Questions. Questions which directly or indirectly suggest to a witness the answer he is to give; such are questions embodying a material fact and admitting of the answer "Yes" or "No." The general rule is that leading questions are allowed in cross-examination, but not in examination-in-chief.

Lease. A conveyance or grant of the possession of property to last during the life of a person, or for a term of years or other fixed period, or at will, and usually with the reservation of a rent. The person who grants the lease is called the lessor, the person to whom it is granted being the lessee. A lease must be for a less estate or term than the lessor has in the property, for if it comprises his whole interest it is a conveyance or assignment and not a lease.

Where a person who is himself a lessee grants a lease of the same property to another person for a shorter term, it is properly called an underlease or sublease or a derivative lease.

Leases may be created verbally or in writing, or by deed. By the Statute of Frauds a lease must be in writing, unless it is for not more than three years, and by the Real Property Act, 1845, it must be by deed.

By the Law of Property Act, 1925, s. 54, sub-s. 1, interests in land created by parol have the force and effect of interests at will only, but the creation by parol of leases taking effect in possession for a term not exceeding three years at the best rent obtainable is preserved. See *Forfeiture*; *Walsh* v. *Lonsdale*.

Lease and Release. A mode of conveying freehold land which was in common use from 1536 to 1841. It was used to evade the Statute of Enrolments (27 Hen. 8, c. 16) passed to prevent land from being conveyed secretly by bargain and sale (*q.v.*). The Act required only bargains and sales of estates of inheritance or freehold to be enrolled, and therefore it soon became the practice on a sale of land for the vendor to execute a lease to the purchaser for a year by way of bargain and sale, which under the Statute of Uses (27 Hen. 8, c. 10), gave him seisin of the land without entry or enrolment, and then the vendor released his reversion to the purchaser by a deed known as a release, thus vesting in him the fee-simple in possession without entry or livery of seisin. The lease and the release were executed on the same day, the release being dated for the following day and being executed after the lease. The consideration for the lease was a nominal sum of five or ten

shillings, which was never paid, the real consideration being stated in the release. In 1841 the statute 4 Vict. c. 21, made a release effectual without the preliminary lease for a year, and in 1845 the Real Property Amendment Act, 1845, made a deed of grant sufficient for the conveyance of all corporeal hereditaments.

A release is still used (1) between joint tenants and coparceners; (2) for the conveyance, to the owner of land, of rights over the land held by a person other than the owner; (3) for the purpose of merging a remainder or reversion in the prior estate.

Lease by Estoppel. If a person makes a lease of land in which he has no interest, and he afterwards acquires the land, he is estopped or precluded from denying the existence of the lease.

Leaseholds. Lands held under a lease for years. They are personal estate, being chattels real. Leaseholds are transferable by assignment and the assignee is liable to the lessor on the covenants in the lease which run with the land so long as he holds under the lease. (See *Covenant.*) But the original lessee remains liable to the lessor on the covenants, notwithstanding any assignment, and is entitled to be indemnified by the assignee. In a conveyance of leaseholds for valuable consideration by a beneficial owner, a covenant as to the validity of the lease is implied. After 1925 a mortgage of leaseholds can only be by sub-demise of a term shorter by one day that the term of the lessee, or by a deed of charge by way of legal mortgage. (Law of Property Act, 1925, s. 86.)

Leaseholds, on the death of the lessee, vest in his personal representatives. Before 1926 the personal representatives were liable on the covenants of the lease until they assigned it, unless the deceased was the original lessee, in which case the personal representatives were liable on the covenants to pay rent to the extent of the deceased's assets, and were liable on the other covenants if they took possession of the property, unless they prepared to meet both accrued liabilities and future claims, and assigned to a purchaser. By the Trustee Act, 1925, s. 26, this protection is extended to the cases of transfer to a legatee, devisee, or other person entitled.

Where there is a residue unexpired of not less than two hundred years of a term originally created for at least three hundred years, unaffected by a trust or right of redemption in favour of a reversioner, and subject to no rent of money value, the term may be enlarged into a fee simple by deed; provided it is not liable to be determined by re-entry for condition broken, and is not a sub-demise out of a superior term itself incapable of enlargement. (Law of Property Act, 1925, s. 153.)

Under a contract to grant or assign a term of years out of freehold or leasehold land, the intended lessee or assign shall not have the right to call for the title to the freehold or leasehold reversion, as the case may be. (*Ibid.*, s. 44.)

Leave and Licence. In an action for trespass it is a good defence to plead that the act complained of was done with the "leave and licence," *i.e.*, the permission, of the plaintiff.

Leave to Defend. The leave granted to a defendant on a summons for judgment under Order XIV, who can show he has a good defence on the merits.

Lechmere v. Lechmere ((1735), Cas. t. Talb. 26). By marriage

articles Lord Lechmere covenanted to lay out £30,000 within one year after marriage in purchase of fee-simple lands in possession with consent of trustees, and settle the same as therein provided. The covenantor was seised of some lands in fee-simple at the time of his marriage; and after his marriage he purchased some estates for lives, some reversionary estates in fee-simple, and after the year, and without the consent of the trustees, some fee-simple lands in possession. None of these properties were ever settled, but the covenantor simply died possessed of them, and the question was, whether these lands, or any and which of them, were to be taken as passing under the settlement by reason of the doctrine of performance, or whether they went to the heir-at-law. *Held,* (1) That the purchase made before the covenant could not go in performance of the subsequent covenant, as it could not have been so intended. (2) That the estates for lives, and reversionary estates in fee simple, purchased after the marriage, could not go in performance of the covenant, not being fee-simple lands in possession within the meaning of the covenant. (3) That the purchase of lands in fee-simple made after the marriage, though not purchased within a year after the marriage, or with the consent of the trustees, or settled, must be intended to have been made in part performance of the covenant to lay out £30,000.

Leeman's Act. The Banking Companies (Shares) Act, 1867, which renders contracts for the sale of bank shares void unless the numbers of the shares sold are set out in the contract. A custom of the Stock Exchange to ignore the Act is not binding on an outsider unless he knows of it. (Seymour *v.* Bridge, 14 Q. B. D. 460.)

Legacy. A gift of personal property by will. The person to whom the property is given is called the legatee, and the gift or property is called a bequest. The legatee's title to the legacy is not complete until the executor has assented to it.

(1) A specific legacy is a bequest of a specific part of the testator's personal estate.

(2) A demonstrative legacy is a gift of a certain sum directed to be paid out of a specific fund.

(3) A general legacy is one payable only out of the general assets of the testator. See *Abatement of Legacies.*

Legacy Duty. An *ad valorem* duty on all legacies of personal property other than leaseholds imposed by the statute 20 Geo. 3, c. 28, s. 1; and by the Legacy Duty Act, 1796, s. 1, as amended by subsequent Finance Acts.

Legal Estate. See *Estate.*

Legal Fiction. See *Fiction, Legal.*

Legatarius partiarius. A legatee to whom the testator had in his will instructed his heir to give a definite share of his universal succession (*hereditas*), called a legacy of partition (*legatum partitionis*) because the legatee divided the inheritance with the heir. (Roman law.)

Legatum. Legacy. Any gift from a deceased person. (Roman law.)

Legatum generis. A legacy of a thing in general terms as belonging to a class, *e.g.*, a slave. (Roman law.)

Legatum nominis. A legacy of a debt. (Roman law.)

Legatum optionis. A legacy of choice, where the testator directs the

legatee to choose from among his slaves or other property. (Roman law.)

Legatum partitionis. A legacy where the legatee divided the inheritance with the heir. See *Legatarius partiarius.* (Roman law.)

Legatum pœnæ nomine. A legacy by way of penalty, to constrain the heir to do or not to do something. (Roman law.)

Leges posteriores priores contrarias abrogant. Later laws abrogate prior contrary laws.

Legitimacy. The condition of being born in lawful wedlock. Under the Judicature Act, 1925, s. 188, a natural-born subject of Great Britain may apply to the Probate, Divorce and Admiralty Division for a declaration that he is legitimate, or that his parents or grandparents were validly married, or that he himself is validly married, or that he is a natural-born subject of the King. A judgment made on such a petition is *in rem*, that is binding on all the world.

By the Legitimacy Act, 1926, where the parents of an illegitimate person marry or have married one another, if the father was at the date of the marriage domiciled in England and Wales, it shall render that person, if living, legitimate from the commencement of the Act, or from the date of the marriage, unless the father or mother was married to a third person when the illegitimate child was born. The Act also entitles a legitimated person to take property after the date of legitimation as if he had been born legitimate.

An illegitimate child and the mother become entitled to succeed to each other's property on intestacy.

Legitimatio. Children of concubinage could be legitimated:—

(1) *Per subsequens matrimonium*; by the subsequent marriage of the parents.

(2) By offering to the *curia* (*per oblationem curiæ*), *i.e.*, by making a son a *decurio*, a member of the magisterial class.

(3) By rescript of the emperor. (Justinian.) (Roman law.)

Lemaitre v. Davis ((1881), 19 Ch. D. 281). *Held*, that where ancient buildings belonging to different owners adjoin each other, there is a right of support from the building as well as from the land, and the right of support can arise from prescription.

Leroux v. Brown ((1852), 12 C. B. 801). The form in which a contract is made must comply with the requirements of the law of the place where the contract is made, unless form is a matter of evidence, when the requirements of the *lex fori* must be complied with.

The plaintiff made a verbal agreement at Calais to enter the service of the defendant for one year from a future day. Although valid by French law, the contract was unenforceable by English law without writing under the Statute of Frauds. *Held*, in an action on the contract in England, that as the Statute applied to procedure, it was a good defence, and the contract was unenforceable.

Leslie v. French (23 Ch. D. 552.) A stranger or a part owner of a policy of life insurance cannot acquire a lien on the proceeds of the policy for premiums paid by him, except (1) by contract, (2) as trustee, (3) as mortgagee, (4) by subrogation.

A widow after effecting a policy on her own life for £5,000 married Leslie and handed over the policy. Subsequently Leslie covenanted to pay £6,000 on the death of his wife to trustees of his daughter's

marriage settlements and assigned the policy to the trustees as security and covenanted to pay the premiums during the life of his wife. Leslie, and later his executors, paid the premiums. *Held*, that his estate was not entitled to a lien on the policy for the premiums so paid.

Leslie v. Shiell ([1914] 3 K. B. 607). *Held*, that if an infant obtains a loan of money by fraudulently representing that he is of age, he cannot be compelled to refund.

Lester v. Foxcroft ((1701), Colles' P. C. 108). A certain parol contract had been made for the pulling down by plaintiff of certain houses and the building up of others, and the granting of a lease thereof to him, and he had, in pursuance and part performance of such parol contract, pulled down the houses and built some of the others. The plaintiff brought this bill for specific performance of the contract. *Held*, that the plaintiff was entitled to a decree for specific performance, notwithstanding the Statute of Frauds, because of the acts of part performance by him.

Letter of Credit. An authority by one person to another to draw cheques or bills of exchange (with or without a limit as to amount) upon him, with an undertaking to honour the drafts on presentation. An ordinary letter of credit contains the name of the person by whom the drafts are to be negotiated or cashed: when it does not do so, it is called an open letter of credit.

Letter of Licence. An agreement between a debtor and his creditors that the latter should for a specified time suspend their claims, and allow the debtor to carry on his business at his own discretion. Down to the virtual abolition by the Debtors Act of arrest for debt, it also contained an agreement by the creditors not to arrest the debtor.

Letters of Administration. Where a person possessed of property, whether real or personal, dies intestate, or without an executor, the Probate, Divorce and Admiralty Division will grant to a proper person an authority under the seal of the Court, called letters of administration, by which the grantee, the administrator, becomes clothed with powers and duties similar to those of an executor. In addition to the oaths taken by the administrator, he enters into a bond.

If no executor is appointed under the will, the Court will grant letters of administration with the will annexed (*cum testamento annexo*) to a person interested in the estate; *e.g.* a devisee, legatee, or the trustees of a settlement of land made previously to the death. After 1925, probate or administration may not be granted to more than four persons in respect of the same property, and if there is a minority, or a life interest arises, administration is to be granted either to a trust corporation (*e.g.*, the Public Trustee) with or without an individual, or to not less than two individuals. A trust corporation may be granted probate or administration, and either solely or jointly with any other person.

Where the deceased dies wholly intestate, administration shall, except in special circumstances, *e.g.*, insolvency, be granted to persons interested in the residuary estate, on application made by them, or to trustees of a settlement made previously to the death in respect of the settled land.

Administration may be granted *pendente lite* to an administrator who shall be subject to the control of the Court, and who shall not have

the power of distributing residue. If a personal representative to whom a grant has been made resides abroad for twelve months after the death, special administration may be granted to a creditor or other person interested. Where an infant is sole executor, administration with the will annexed is to be granted to his guardian or other person until majority. (Judicature Act, 1925, ss. 160-167.) Probate and letters of administration are capable of transferring a legal estate to personal representatives. (Law of Property Act, 1925, s. 11, sub-s. 2.)

Letters of Marque (or **Mart**). Extraordinary commissions issued, either in time of war or peace, by the Lords of the Admiralty, or the vice-admirals of a distant province, to the commanders of merchant ships, authorising reprisals for reparation of the damages sustained by them through enemies at sea. They were either "special," to make reparation to individuals, or "general," when issued by the Government of one State against all the subjects of another. Letters of Counter-marque were issued as a reprisal.

Letters Patent. Grants by the Crown of lands, franchises, offices, etc., contained in charters or instruments not sealed up but exposed to open view with the Great Seal pendant at the bottom, and usually addressed to all the subjects of the realm. See *Patent.*

Levant and Couchant. When land to which a right of common of pasture is annexed can maintain during the winter by its produce, or requires to plough and manure it, a certain number of cattle, those cattle are said to be levant and couchant on the land.

Levari facias. A writ of execution which commanded the sheriff to levy a judgment debt on the lands and goods of the debtor by seizing and selling the goods, and receiving the rents and profits of the lands until the debt was satisfied. It was superseded by the writ of *elegit* (*q.v.*).

Lex Angliæ sine Parliamento mutari non potest. The law of England cannot be changed except by Parliament.

Lex domicilii. The law of the place of a person's domicil (*q.v.*).

Lex fori. The law of the forum or Court in which a case is tried. More particularly the law relating to procedure or the formalities in force in a given place. See *Leroux* v. *Brown.*

Lex Hortensia (B.C. 287) provided that *plebiscita* should bind the whole people equally with *leges.* (Roman law.)

Lex Hostilia. Permitted an action of theft to be brought on account of persons who were among the enemy or away in the service of the commonwealth or who were in the *tutela* of some person bringing the action (Roman law.)

Lex loci contractus. The law of a place where a contract is made.

Lex loci solutionis. The law of the place of payment.

Lex mercatoria. The law merchant (*q.v.*).

Lex non cogit ad impossibilia. The law does not compel the impossible.

Lex non requirit verificari quod apparet curiæ. The law does not require that which is apparent to the Court to be verified.

Lex non scripta. The unwritten law; the common law.

Lex posterior derogat priori. A later Act overrules an earlier one.

Lex Regia. The statute by which the people vested the supreme power in the emperor. (Roman law.)

Lex scripta. The written law; statute law.

Lex situs. The law of the place where property is situated. The general rule is that lands and other immoveables are governed by the *lex situs.*

Lex spectat naturæ ordinem. The law has regard to the order of nature.

Lex talionis. The primitive law embodied in the phrase "an eye for an eye, a tooth for a tooth."

Liability. Subjection to an obligation; or the obligation itself. A contingent liability is a future or unascertained obligation. As to liability (1) for dangerous premises, see *Todd* v. *Flight*; *Miller* v. *Hancock*; *Indermaur* v. *Dames*; *Lane* v. *Cox.* (2) for dangerous things, see *Rylands* v. *Fletcher*; *Nichols* v. *Marsland*; *Whalley* v. *Lancs and Yorks Ry. Co.*

Libel. Defamation (*q.v.*) by means of writing, print, or some permanent form. It is a tort actionable without proof of special damage. It is also a crime if it tends to promote a breach of the peace. It is a defence to an action for libel (1) that there was no publication and therefore no defamation; (2) that the words used were incapable of a defamatory meaning; (3) that the words used were true in substance and in fact (justification); (4) that the publication was privileged. Privilege may be absolute or qualified, and qualified privilege may be lost by proof of express or actual malice (*q.v.*).

A public libel is one which tends to produce evil consequences to society, because it is blasphemous, obscene, or seditious. The publication of such a libel is a misdemeanour. See *Innuendo*; *Campbell* v. *Spottiswoode*; *Harrison* v. *Bush*; *Hulton* v. *Jones*; *Monson* v. *Tussaud*; *Ratcliffe* v. *Evans*; *Stockdale* v. *Hansard*; *Vizetelly* v. *Mudie's Select Library.*

Libertas. Freedom; the capacity to possess the rights and to fulfil the duties of a free person. (Roman law.)

Libertas directa. The setting free of his own slave by a master, as when he appointed his slave as a tutor. Either the testator accompanied the appointment with express enfranchisement or the law implied his intention to do so. (Roman law.)

Libertas fideicommissaria. Where the testator appointed as a tutor another man's slave, entrusting his heir to purchase and enfranchise the slave. (Roman law.)

Libertinus. A freedman; a man that had been set free from lawful slavery by manumission. They fell originally into three classes: (1) Full Roman citizens; (2) *Latini Juniani*; (3) *Dedititii.* (Roman law.)

Liberty. An authority to do something which would otherwise be wrongful or illegal. Formerly used in the sense of franchise (*q.v.*), denoting both a right or rights, and the place where they are exercisable.

Liberum tenementum. A freehold or frank tenement.

Licence. An authority to do something which would otherwise be inoperative, wrongful or illegal, *e.g.*, a trespass. A licence passes no interest, and a mere licence is always revocable, but when a licence is coupled with an interest, or if granted for valuable consideration, it is generally irrevocable. See *Hurst* v. *Picture Theatres, Ltd.*

Licence, Marriage. See *Marriage.*

Licet dispositio de interesse futuro sit inutilis, tamen fieri potest declaratio præcedens quæ sortiatur effectum, interveniente novo actu. Although the grant of a future interest is inoperative, yet it may become a declaration precedent, which will take effect on the intervention of some new act. See *Lease by Estoppel.*

Lickbarrow v. Mason ((1788), 2 T. R. 63). *Held,* that the vendee of goods may by assignment of the bills of lading to a *bona fide* transferee defeat the vendor's right to stop them *in transitu* in case of the vendee's insolvency.

Lien. The right to hold the property of another as security for the performance of an obligation.

A possessory lien is the right of the creditor to retain possession of his debtor's property until his debt has been satisfied. A particular lien exists only as a security for the particular debt incurred, while a general lien is available as a security for all debts arising out of similar transactions between the parties.

A charging lien is the right to charge property in another's possession with the payment of a debt or the performance of a duty.

A maritime lien is a lien on a ship or freight, either possessory, arising out of contracts of carriage, or charging, arising out of collision or other damage. A vendor's lien is the right of a seller to retain his property till payment of the purchase price. See *Mackreth* v. *Symmons.*

Life, Presumption of. Once the fact of life on a given date has been established, the law will presume its continuance unless there be evidence, or a presumption of fact recognised by the law, to the contrary effect.

Limitation. To limit an estate is to mark out the extreme period during which it is to continue, and the clause by which this is done in a conveyance, will, etc., is called a limitation.

Limitation of Liability. A shipowner is not liable at all for loss of or damage to goods on the ship in certain cases, *e.g.*, when caused by fire (Merchant Shipping Act, 1894, s. 502), and is not liable for loss of life or injury to persons or things caused by or on board the ship in other cases beyond a certain amount for each ton of the ship's tonnage, namely, £15 per ton in respect of loss of life or personal injury, and £8 per ton for loss or damage to goods (*ibid.* s. 503). These limitations of liability only apply to cases where the loss or injury has not been caused by the shipowner's actual fault or privity (ss. 502, 503). See *Company.*

Limitation, Statutes of. The statutes which prescribe the periods within which proceedings to enforce a right must be taken. They are of two kinds, namely, (1) where on the expiration of the time the right itself is barred, as in the case of a person who has been out of possession of land for twelve years (Real Property Limitation Act, 1874, s. 1; Real Property Limitation Act, 1833, s. 34), (2) where on the expiration of the time the remedy is barred, but not the right; thus, in the case of a debt which has remained unpaid and unacknowledged for six years, the creditor's right to bring an action to recover it is gone (Limitation Act, 1623, s. 3; Statute of Frauds Amendment Act, 1828, s. 1). See *Nullum tempus aut locus occurrit regi*; *Thorne* v. *Heard.*

Limited owner's charge. A charge in favour of a tenant for life or

statutory owner who has discharged death duties. (Land Charges Act, 1925, s. 10.)

Limpus v. London General Omnibus Co. ((1862), 1 H. & C. 526). A master is liable for acts done by his servant in the course of his business and for his interest, even though they are tortious and forbidden by the master.

The driver of the defendants' omnibus drove across in front of the plaintiff's omnibus and caused it to overturn. The defendant company had forbidden racing with and obstructing of other omnibuses. *Held*, the defendants were liable.

Lincoln's Inn. One of the Inns of Court (*q.v.*).

Linea recta semper præfertur transversali. The direct line is always preferred to the collateral.

Liquidated. A fixed or ascertained sum.

Liquidator. A person appointed to carry out the winding-up of a company. The duties of a liquidator are to get in and realise the property of the company, to pay its debts, and to distribute the surplus (if any) among the members. The chief difference between a liquidator in a winding-up by the Court and a liquidator appointed in a voluntary winding-up is that the former cannot as a rule take any important step in the winding-up without the sanction of the Court. See the Companies (Consolidation) Act, 1908.

Lis alibi pendens. A suit pending elsewhere.

Lis mota. Existing or anticipated litigation.

Lis pendens. A pending suit, action, petition or matter, particularly one relating to land. By the Land Charges Act, 1925, s. 2, a pending action relating to land and a petition in bankruptcy may be registered in the register of pending actions.

Lister v. Perryman ((1870), L. R. 4 H. L. 531). In actions for false imprisonment and malicious prosecution, the question of reasonable cause is a question for the Judge to determine on facts found by the jury.

The appellant was the owner of a rifle in charge of his coachman H. The respondent saw it, said he would like a similar one, and later the gun was missed. H reported to the appellant that R had seen the rifle in the respondent's barn and had remarked upon it. H had gone to the barn and been shown a gun which was not the appellant's. The appellant prosecuted the respondent for stealing the gun, and he was acquitted. The respondent then sued the appellant for malicious prosecution. The Judge directed the jury that if they found that the appellant had not communicated with R before prosecuting, they were to find for the plaintiff, which the jury did. *Held*, the Judge had misdirected the jury. The question of reasonable cause is for the Judge.

Literarum obligatio (or **expensilatio**). Created by an entry in the account books (*codex*) of the creditor, with the consent of the debtor, charging the debtor as owing a certain sum. (Roman law.)

Littleton, Thomas. Serjeant-at-law 1453, Judge of the Common Pleas 1466, knighted 1475, and died August 23, 1481. He wrote the celebrated "Treatise on Tenures," upon which Coke wrote a commentary.

Livery. Formerly when an infant heir of land held *in capite ut de corona*, he was obliged on attaining twenty-one to sue livery, that is, to

obtain delivery of the possession of the land, for which he paid half-a-year's profit of the land.

Livery of Seisin. An "overt ceremony," which was formerly necessary to convey an immediate estate of freehold in lands or tenements. It was the transfer of the feudal possession of the land.

There are two kinds of livery of seisin, *viz.*, a livery in deed and a livery in law. A livery in deed is where the feoffer is on the land to be conveyed, and verbally requests or invites the feoffer to enter, or formally hands to him any object, such as a branch or twig of a tree, and declares that he delivers it to him by way of seisin of the land. "A livery in law is when the feoffor saith to the feoffee, being in view of the house or land, 'I give you yonder land to you and your heires, and go enter into the same, and take possession thereof accordingly,' and the feoffee doth accordingly in the life of the feoffor enter." (Coke.) See *Grant*.

Lloyd v. Grace, Smith & Co. ([1912] A. C. 716). A principal is liable for the fraud of his agent committed while acting within the scope of his authority.

The plaintiff went to the defendants, a firm of solicitors, for the purpose of selling her property and saw their managing clerk, who induced her to convey the property to himself for the purpose of the sale. The clerk then sold the property in his own name, and absconded with the money. *Held*, the defendants were liable.

Lloyd's. An association of underwriters and brokers in the City of London, incorporated by Lloyd's Act, 1871.

Lloyd's Bonds. Bonds invented by Mr. J. H. Lloyd for the use of railway companies. They are "an account stated under seal with a covenant to pay."

Local Government. The system of government under which the administration of the local affairs of the whole of England is in the hands of parish meetings, parish, district, county, borough and city councils.

The principal Acts relating to local government are the Public Health Act, 1875, the Local Government Acts, 1888 and 1894, the Municipal Corporations Act, 1882, the London Government Act, 1899, and the Education Acts, 1902 to 1921.

Local Government Board. A board established by the Local Government Board Act, 1871, for the purpose of the supervision of the laws relating to the public health, the relief of the poor, and local government. All the powers and duties of the Local Government Board were transferred to the Ministry of Health by the Ministry of Health Act, 1919, s. 11.

Locke King's Act. The Real Estate Charges Act, 1854, which enacted that the heir should take mortgaged land subject to the mortgage debt. It is repealed and re-enacted by the Administration of Estates Acts, 1925, s. 35.

Locus in quo. "The place where," or "the place in which."

Locus regit actum. The place governs the act; the validity of an act depends on the law of the place where it is done.

Locus standi. A place of standing; the right to be heard in Court or other proceeding.

Lodger. A person who occupies rooms in a house of which the

general possession remains in the landlord, as shown by the fact that he retains control over the street or outer door.

Log. A record of happenings in and to a ship. See the Merchant Shipping Act, 1894, ss. 239-243, 262 (*j*).

London, Brighton & South Coast Railway v. Truman ((1885), 11 A. C. 45). *Held*, that if a statute imperatively requires an undertaking (*e.g.*, a railway) to be carried on, persons injured thereby have no remedy if the undertaking is carried on with reasonable care.

London Joint Stock Bank v. Macmillan ([1918] A. C. 777). A customer owes a duty to his bank to draw cheques with reasonable care, and is responsible for loss incurred by want of such care.

The respondents signed and gave to their clerk at his request a cheque for £2 for petty cash, but filled in no amount in words. The clerk added figures to make it read £120, and filled in the amount in words. The bank paid the cheque without negligence and in good faith. *Held*, the bank was entitled to debit the customer.

Lord. (1) A person of whom land is held by another as his tenant. The relation between the lord and the tenant is called tenure, and the right or interest which the lord has in the services of his tenant is called a lordship or seignory. (2) A peer of the realm.

Lord Chamberlain. See *Chamberlain.*

Lord Chancellor. See *Chancellor, Lord High.*

Lord Chief Justice of England. The President of the King's Bench Division; he represents not merely the Chief Justice of the ancient Court of King's Bench, but also the Chief Baron of the Exchequer and the Chief Justice of the Common Pleas.

Lord High Admiral. See *Admiral.*

Lord High Steward. When a person is impeached, or when a peer is tried on indictment for treason or felony before the House of Lords, one of the lords is appointed Lord High Steward, and acts as speaker *pro tempore*. If the House of Lords is not sitting, the indictment is removed into the Court of the Lord High Steward, which is a Court instituted by commission from the Crown, and to which is summoned all the peers of Parliament. The Lord High Steward is sole Judge on points of law, and the peers summoned are triers and judges of fact only.

Lord Keeper, or Keeper of the Great Seal. Since 5 Eliz. c. 18, the same office as that of Lord Chancellor.

Lord Lieutenant. The office of "lieutenants of counties" was created about the reign of Henry VIII, for the purpose of having a representative of the Crown in each county, to keep it in military order. For this purpose he had the power of raising militia.

The Lord Lieutenant nominates persons for the lowest rank of officer in the county territorial units, and recommends persons for the commission of the peace. The appointment to the office is made by the Crown, under the Militia Act, 1882, s. 29.

Lord Mayor's Court. See *Mayor's Court of London.*

Lord President of the Council. The President of the Privy Council. The office is held by such person, being a member of one House of Parliament or the other, as the King in Council, from time to time, verbally declares to be the Lord President of the Council. It is of cabinet rank.

Lord Privy Seal. The officer who affixed the Privy Seal to documents, especially letters patent, which were to pass the Great Seal. The Great Seal Act, 1884, s. 3, abolished the use of the Privy Seal, and the Lord Privy Seal has now no official duties. The office carries cabinet rank.

Lord Steward of the King's Household. He originally presided over the Court of the Lord Steward of the King's Household. His main function is to supervise the servants and the arrangements of the Royal Household.

Lord Treasurer or **Lord High Treasurer and Treasurer of the Exchequer.** The office dates from the earliest Norman period. After 1612 it was sometimes put in commission, and since 1714 it has always been in commission. The Commissioners constitute the Treasury Board, which now never meets. See *Treasury.*

Lords Justices of Appeal. The designation of the five ordinary Judges of the Court of Appeal. See *Supreme Court of Judicature.*

Lords Marchers. Until the conquest of Wales in 1282 the English kings permitted their nobles to conquer and hold such parts of Wales as they could. Each noble, known as a lord marcher, was given *jura regalia,* or sovereign rights, within the area held by him.

Lords of Appeal in Ordinary. Persons appointed by the King for the purpose of aiding the House of Lords in the hearing and determination of appeals; they must have held some high judicial office for two years, or have been practising barristers or advocates for at least fifteen years; they are barons for life, and are entitled to sit and vote in the House of Lords during their tenure of office. (Appellate Jurisdiction Act, 1876, 1913.)

Lost or not Lost. Words inserted in a maritime policy of insurance to prevent the operation of the rule that if a ship is lost at the time of insurance, the policy is void, although the assured did not know of the loss. See the Marine Insurance Act, 1906, s. 6, sub-s. 1.

Lottery. A distribution of prizes by lot or chance. The Lotteries Act, 1699, declares them to be "common and public nuisances," and an indictment at common law will lie. But prosecutions are usually brought under section 2 of the Gaming Act, 1802, which provides for the summary conviction of a defendant.

Low v. Bouverie ([1891] 3 Ch. 82). A plaintiff cannot recover for negligence unless the defendant owes him a duty to take care. The plaintiff, contemplating making an advance to Bouverie on the security of his interest in a certain estate vested in trustees, wrote to the defendant, who was one of the trustees, asking whether Bouverie's interest was subject to any incumbrances. The defendant replied mentioning certain incumbrances, but he did not say there were no others. The plaintiff then made the advance. At the date of the defendant's reply there were in fact other charges, but the defendant had forgotten them. The plaintiff's security, by reason of these other charges, proved valueless, and he brought this action to compel the defendant to indemnify him. *Held,* that the action could not be maintained.

Lowe v. Peers ((1768), 4 Burr. 2225). A contract in total restraint of marriage is void. The plaintiff covenanted that if he married any

person except the plaintiff he would pay her £1,000 within three months of the marriage. *Held*, the contract was void.

Luby v. Lord Wodehouse ((1865), 17 Ir. C. L. R. 618). *Held*, that no action is maintainable against the Lord Lieutenant of Ireland during his continuance in office for any act done by him in his capacity of Lord Lieutenant.

Lumley v. Gye ((1853), 2 E. & B. 216). It is an actionable wrong at common law knowingly to induce a person to commit a breach of contract with another.

The plaintiff engaged Miss Wagner to sing for him at his theatre for three months. The defendant knowingly induced her to break this contract. *Held*, he was liable in damages.

Lunatic. Defined by the Lunacy Act, 1890, s. 341, as "an idiot or person of unsound mind." The word is used to denote (1) a person who has attacks of intermittent insanity separated by lucid intervals, or suffers from delusions; (2) a person who from unsoundness of mind is incapable of managing himself or his affairs, and has been found so by inquisition; and (3) a person detained in an asylum on account of unsoundness of mind. See the Lunacy Acts, 1890, 1891, 1908, and 1922.

Lynch v. Nurdin ((1841), 1 Q. B. 29). The contributory negligence of a child is no defence to an action by him for injury caused by the defendant's negligence, if the plaintiff's conduct was of a kind to be expected from a child.

The defendant's servant having left a cart and horse unattended in a street, the plaintiff, a boy under seven years of age, got upon the cart, and another boy led the horse on, whereon the plaintiff fell from the cart and was run over. *Held*, the plaintiff could recover.

Lyndhurst's Act, (Lord). The Marriage Act, 1835, which provided that any marriage after 1835 between persons within the prohibited degrees of affinity should be null and void.

M.R. Master of the Rolls.

Macbeath v. Haldimand ((1786), 1 T. R. 172). An officer of the Crown is not personally liable on contracts made on behalf of the Crown. The defendant, as Governor of Quebec, had entered into certain contracts with the plaintiff to be supplied with goods for the public service. The Treasury only paid part of the charges on the ground that they were unreasonable. The plaintiff sued the defendant for the balance. *Held*, that the defendant was not personally liable on the contract.

Machado v. Fontes ([1897] 2 Q. B. 231). An action will lie in the English Courts for a tort committed outside the jurisdiction, provided the act complained of is wrongful, both by the law of this country and the law of the country where it was committed.

The defendant published in Brazil a document libelling the plaintiff in respect of which, by the law of Brazil, only a criminal prosecution would lie. *Held*, that an action would lie in England.

Mackreth v. Symmons ((1808), 15 Ves. 329). *Held*, (1) that a vendor's lien for unpaid purchase-money, unless relinquished, exists against all persons except purchasers for valuable consideration without notice having the legal estate. (2) That another security taken and

relied on may, according to its nature and the circumstances under which taken, be evidence of relinquishment, but the proof is on the purchaser.

Maddison v. Alderson (8 A. C. 467). The plaintiff was the housekeeper of a person who subsequently died intestate. Some time before his death she had some idea of leaving his service, but on a verbal promise by him to make a will leaving her a life estate in land she was induced to continue in his service until his death without any wages. *Held,* (1) that there was no evidence of any definite contract between the plaintiff and the intestate; (2) that her service did not amount to part performance, as it was not unequivocably and necessarily referable to the contract, but was explicable on other grounds. See *Performance.*

Madrazo v. Willes ((1820), 3 Barn. & Ald. 353). A servant of the Crown is liable for wrongful acts, other than acts of State, committed against persons not subject to his control or jurisdiction.

The defendant, the captain of a British ship of war, seized the slave trading ship of the plaintiff, a Spaniard, off the coast of Africa. *Held,* the defendant was liable as slave trading was not illegal by the laws of the plaintiff's own country or the general law of nations.

Magistrate. A judicial officer having a summary jurisdiction in matters of a criminal nature; a justice of the peace. Stipendiary magistrates are appointed to act in certain populous places with wider powers than ordinary justices, and receive a salary. See *Justices of the Peace.*

Magna Carta. The charter originally granted by King John, and afterwards re-enacted and confirmed by Parliament more than thirty times. The charter now in force is the statute 9 Hen. 3, with which our statute book commences. It contained provisions to protect the subject from abuse of the Royal Prerogative in the matter of arbitrary arrest and imprisonment, and from amercements, purveyance and other extortions. It also provided for the proper administration of justice, for the uniformity of weights and measures, and the protection of foreign merchants.

Magnum concilium. The Great Council (*q.v.*).

Maiden Assize, etc. One at which there is no prisoner for trial.

Mainprize. Taking into the hand; the process of delivering a person to sureties or pledges (mainpernors) who undertook to produce him again at a future time. Bail applied only to cases where a man was arrested or imprisoned, while a man could be mainperned not only in such cases, but also, *e.g.*, in an appeal of felony. Mainpernors were not bound by recognisances to the Crown, and they could not relieve themselves of responsibility by seizing and remitting to custody the man for whom they had gone security.

Maintenance. (1) The supply of the necessaries of life for a person. A maintenance clause in a deed of settlement is the provision of income for such a purpose. (2) Maintenance "signifieth in law a taking in hand bearing up or upholding of quarrels and sides, to the disturbance or hindrance of common right" (Coke). It is the offence committed by a person who, having no interest in a suit, maintains or assists either party, with money or otherwise, to prosecute or defend it. It includes champerty and embracery (*q.v.*). Contracts cannot be

enforced which infringe the laws against maintenance. See *Neville* v. *London Express Newspapers.*

Mainwaring v. Leslie ((1826), 2 C. & P. 507). *Held*, that if a wife lives apart from her husband without his consent or fault, she cannot pledge his credit for necessaries.

Mala fides. Bad faith. See *Bona fide.*

Mala grammatica non vitiat chartam. Bad grammar does not vitiate a deed.

Mala in se; Mala prohibita. *Mala in se* are acts which are wrong in themselves, such as murder, as opposed to *mala prohibita*, acts which are merely prohibited by law, *e.g.*, smuggling: a distinction not now of importance.

Mala praxis is where a medical practitioner injures his patient by neglect or want of skill, giving rise to a right of action for damages.

Maledicta expositio quæ corrumpit textum. It is a bad exposition which corrupts the text.

Malfeasance. The doing of an unlawful act, *e.g.*, a trespass.

Malice. "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"; *per* Bayley, J. (4 B. & C. 255). Personal spite or ill-will is sometimes called actual malice, express malice, or malice in fact.

Malicious Injuries to Property. Certain wilful injuries to property are crimes as well as torts, *e.g.*, arson. See the Malicious Damage Act, 1861.

Malicious Injuries to the Person. A felony, the punishment for which is penal servitude for life. (Offences Against the Person Act, 1861, s. 18.)

Malicious Prosecution. The institution of criminal or bankruptcy proceedings against another maliciously and without reasonable and probable cause, by which that other suffers damage to his fame, person or property, provided that the proceedings terminate in the other's favour, so far as that may be possible. See *Abrath* v. *North Eastern Ry.*; *Lister* v. *Perryman.*

Manager. A receiver (*q.v.*).

Manby v. Scott ((1659), 1 Sid. 109). The defendant's wife departed from him without his consent and lived twelve years separate from him and then returned, but he would not receive her nor allow her any maintenance, and defendant forbade tradesmen, particularly the plaintiffs, from trusting her with any wares. The plaintiffs, being mercers, sold to the wife wares at a reasonable price, and the things were fit for her quality. *Held*, that the husband was not bound.

Mandamus. A high prerogative writ which issues in the King's name from the High Court of Justice on application to the King's Bench Division to some person or body to compel the performance of a public duty, where no other effective means of redress is available. See Order LIII.

Mandatarius terminos sibi positos transgredi non potest. A mandatary cannot exceed the limits imposed upon him.

Mandatary. The receiver of a mandate (*q.v.*). See *Bailments.*

Mandate. A direction, request, or authoritative command. Thus a

cheque is a mandate by the drawer to his banker to pay the amount to the transferee or holder of the cheque.

Mandatory. See *Injunction.*

Mandatum. See *Bailment.*

Mandavi ballivo. "I have commanded the bailiff." Where a sheriff receives a writ which has to be executed within a place which is a liberty he commands the bailiff of the liberty to execute the writ.

Manor. A district of land of which the freehold is vested in the lord of the manor, of whom two or more persons, called freeholders of the manor, hold land in respect of which they owe him certain free services, rents or other duties. Hence every manor must be at least as old as the Statute of Quia Emptores and consist of demesne lands, jurisdiction in a Court Baron, and services of free tenants in fee, who are liable to escheat and owe attendance at the Court.

Mansfield, Lord (1705—1793). Called to the Bar by Lincoln's Inn 1730; Solicitor-General, 1742; Attorney-General, 1754; Lord Chief Justice of the King's Bench, 1756. He may be said to be the founder of the commercial law of this country.

Manslaughter. The crime of unlawful homicide. The most frequent instances occur (*a*) where death is caused accidentally by an unlawful act, as where A strikes B with a small stick, not intending either to kill him or to do him grievous bodily harm, and the blow kills him; (*b*) where death is caused by culpable negligence, as by furious driving; (*c*) where death is caused by an act done in the heat of passion, caused by provocation (*q.v.*)

Manslaughter is felony, punishable by penal servitude for life, or a fine. (Offences against the Person Act, 1861, s. 5.) Upon an indictment for murder the jury, if they find that malice aforethought has not been proved, can bring in a verdict of manslaughter.

Manumissio. The giving of his freedom to a slave; setting him free from the "hand" or *potestas* of his master.

Formal manumission was effected (1) *Per vindicta*, a fictitious suit in which it was claimed that the slave was free-born. The master admitted the claim, touched him with a rod (*vindicta*) and let him go. (2) By the inscription of the slave's name as a citizen in the quinquennial census; (3) By testament (will); and later (4) in church.

Informal manumission took place (1) By an oral declaration of freedom in the presence of his friends (*inter amicos*); (2) By letter; (3) By any other expression of a man's last will. Witnesses were necessary in each case. (Roman law.)

Manus. "Hand"; marital power. A woman was subjected to the manus of her husband by (1) confarreatio (a religious ceremony); (2) Cœmptio (fictitious sale); (3) Usus (cohabitation). (Roman law.)

Marais, D. F., Ex p., ([1902] A. C. 109). In 1901, during the war between Great Britain and the South African Republic, Marais, a British subject, was arrested on a charge of having violated regulations made in pursuance of a proclamation of martial law. The district in which he was arrested was not the scene of active military operations. The Supreme Court of Cape Colony refused his petition for release on the ground that martial law had been proclaimed. *Held*, on appeal to the Privy Council (1) That when a state of war actually prevails the operation of the ordinary law will be deemed to be suspended by

martial law in all that relates to the war; (2) That acts done by the military authorities in the exercise of martial law will therepon cease to be justiciable by the civil Courts whilst war is actually raging; (3) That the test of the legality of martial law is not whether the civil Courts are still sitting but whether a state of war exists or not; (4) That once a state of war exists, martial law may be exercised even in places outside the range of active hostilities.

Marches. The boundary between England and Wales and that between England and Scotland. See *Lords Marchers.*

Marchet; Marcheta; Merchetum. A fine which some tenants had to pay to their lord for liberty to give away their daughters in marriage.

Marginal Notes of Acts of Parliament are not part of the Act.

Maritagium. The power which the lord had of disposing of his infant ward in marriage. Also land given as a marriage portion; a dowry.

Marital Rights. The right of a husband to property of his wife during marriage, *jus mariti* (*q.v.*). It is now used as synonymous with conjugal rights. See *Strathmore* v. *Bowes.*

Market Overt. "Open market." Market overt in ordinary market towns is only held on the special days provided for by charter or prescription; but in the City of London every week day is market day. The goods must be such things only as the seller professes to trade in.

The doctrine of market overt is that all sales of goods made therein, except horses, are not only binding on the parties, but also on all other persons: so that if stolen goods are sold in market overt, the purchaser, if acting in good faith, acquires a valid title to them against the true owner (Sale of Goods Act, 1893, s. 22, sub-s. 1) unless the latter has prosecuted the thief to conviction, in which case the goods re-vest in the true owner (*ibid.*, s. 24, sub-s. 1), and the buyer is left to obtain compensation out of any money which may have been taken from the thief on his apprehension.

Markets and Fairs. At common law a market or a fair is a franchise or privilege to establish meetings of persons to buy and sell, derived either from Royal grant or from prescription implying such grant.

Marlebridge, Statute of. The statute 52 Hen. 3, whereof cc. 1, 2, 4 and 15, dealing with distress, are still in force. (Marlebridge=Marlborough.)

Marque. See *Letters of Marque.*

Marquis; Marquess. The rank in the peerage next below that of duke, dating from 1386. The wife of a marquis is styled marchioness.

Marriage. Marriage is the voluntary union for life of one man and one woman to the exclusion of all others, subject to the rules as to consanguinity or affinity, and capacity to perform the duties of matrimony prevailing in the place of domicile of the parties, and subject to the formalities required either by the law of England or the place where the marriage takes place.

Marriage is not a contract, but the agreement to marry is. It creates a special personal relationship and confers a certain status.

Under the canon law, adopted by the common law, marriage could be by (1) a public celebration of the marriage service in a church, known

as a celebration *in facie ecclesiæ*; (2) by a clandestine celebration anywhere conducted by one in priest's orders. The statute 26 Geo. 2, c. 33 (Lord Hardwicke's Act), provided that any marriage celebrated after 1754 without publication of banns or licence duly granted or celebrated elsewhere than in the parish church or public chapel should be null and void in the absence of a special licence from the Archbishop of Canterbury.

The Marriage Act, 1823, made further provision for the celebration of marriage, and the Marriage Act, 1836, introduced the certificate of the superintendent registrar of marriages.

Marriage was formerly also the right of a guardian by tenure to bestow his ward in marriage.

Marriage, Registration of. See *Registration of Marriage.*

Marriage-brocage. A contract to procure a marriage between two persons for reward. Such a contract is void. See *Hermann* v. *Charlesworth.*

Married Woman. See *Husband and Wife.*

Marriot v. Hampton ((1797), 7 T. R. 269). Where money has been paid by the plaintiff to the defendant under the compulsion of law, which is afterwards discovered not to have been due, the plaintiff cannot recover it back in an action for money had and received.

The plaintiff having lost a receipt for a debt which he had paid, was sued for the debt by the defendant and judgment, which was satisfied, was given against him. Having found the receipt, he sought to recover the money. *Held*, he was estopped by the judgment.

Marsh v. Lee ((1670), 2 Ventris, 337). *Held*, that if a third mortgagee, having advanced his money without notice of a second mortgage, afterwards buy in a first mortgage, then such third mortgagee, having obtained the first mortgage and having the law on his side and equal equity, shall thereby squeeze out and gain priority over the second mortgagee.

Marshal. In the King's Bench Division of the High Court, a marshal is an officer who attends each Judge on circuit in a personal capacity.

The Marshal of the Probate, Divorce and Admiralty Division in Admiralty matters is entrusted with execution of warrants and orders of the Court.

Marshalling. Where there are two creditors of the same debtor, and one creditor has a right to resort to two funds of the debtor for payment of his debt, and the other creditor has the right to resort only to one fund, the Court will order the first creditor to be paid out of the fund against which the second creditor has no claim, so far as that fund will extend, so as to leave as much as possible of the second fund for payment of the second creditor, and if the first creditor has already paid himself out of the second fund, the Court will allow the second creditor to stand in his shoes and resort to the first fund to the extent to which the second fund has been exhausted by the first creditor. (Snell, p. 279.)

Martial Law. Originally the law administered in the Court of the Constable and Marshall. Later it was confused with military law. Now it means "The suppression of ordinary law and the temporary

government of a country or parts of it by military tribunals" (Dicey). It is proclaimed by the Crown or by notice by the military authorities.

"Martial law is the assumption by officers of the Crown of absolute power, exercised by military force for the suppression of an invasion and the restoration of order and lawful authority" (Sir James Stephen).

In *Ex p. Marais* (*q.v.*), Lord Halsbury, C., said that "Where actual war is raging acts done by the military authorities are not justiciable by the ordinary tribunals," but this decision has not always been followed. Acts of Indemnity are always passed to legalise the acts done during war or while martial law prevails.

Master and Servant. The relation of master and servant exists when the master has the right at the moment to control the manner in which the servant shall act, *e.g.*, a clerk is a servant: an opera singer is not. A master is liable for the act or default of his servant committed in the course of and within the scope of his employment on the ground of implied authority. If the master himself has no authority to do an act, then the servant can have no implied authority. A servant has implied authority to do all things necessary to protect his master's property entrusted to his care, but not to arrest a person upon suspicion of an attempt to steal in order to punish the supposed offender. An independent contractor is not a servant, and the employer is not liable for default, except where (1) the work is unlawful; (2) it must be done in a certain way by statute and the contractor fails to do it in that way; (3) the work is likely to cause injury, when the employer is bound to see that necessary precautions are taken.

A master has an action for damages against one who entices away his servant without just cause, whereby he loses his serviecs. A master is not required to take more care of the servant than he reasonably would of himself. As regards a servant's injuries from the negligence of fellow servants, see *Common Employment.*

A servant is entitled to customary holidays and notice determining his employment, *e.g.*, a month's notice in the case of a clerk or menial servant. A servant wrongfully dismissed, *i.e.*, without such notice or wages in lieu, is entitled to sue the master for breach of contract. Success in getting other employment may operate in mitigation of damages. He may also sue on a *quantum meruit* for work actually performed. See *Limpus* v. *L.G.O.C.*; *Storey* v. *Ashton.*

Master in Lunacy. An officer of the Lord Chancellor, as guardian of lunatics, and the administrator of their property. He makes inquiries into the state of mind of persons alleged to be insane.

Master of the Crown Office. A Master of the Supreme Court who files criminal informations in the Court of King's Bench upon the relation or complaint of private persons. See *King's Coroner; Information.*

Master of the Mint. The Chancellor of the Exchequer. (Coinage Act, 1870.)

Master of the Rolls. He was originally keeper of the records and assistant to the Lord Chancellor. Subsequently, in the reign of Edward I, he acquired judicial authority in the Court of Chancery. In more modern times any suit, petition, etc., could be heard in the first instance by the Master of the Rolls, as a deputy for the Lord

Chancellor. By the Judicature Act, 1873, s. 5, the Master of the Rolls was made a member of the High Court of Justice, and by the Judicature Act, 1881, s. 2, he became a Judge of the Court of Appeal.

Master v. Miller ((1791), 4 T. R. 320). An unauthorised alteration of the date of a bill of exchange after acceptance, whereby the payment would be accelerated, avoids the instrument; and no action can be afterwards brought upon it, even by an innocent holder for a valuable consideration (but see now the Bills of Exchange Act, 1882, s. 64).

Masters in Chancery. They were assistants of the Lord Chancellor, and of the Master of the Rolls. They sat in chambers for the discharge of functions which were partly ministerial and partly judicial. The Court of Chancery Act, 1852, abolished the Masters and provided for the appointment of eight Chief Clerks (*q.v.*).

Masters of the Supreme Court. These consist of (1) the Masters in the Chancery Division; (2) the seven Masters of the King's Bench Division, who superseded the Masters of King's Bench, Common Pleas and Exchequer; (3) the eleven Masters of the Supreme Court who carry out the taxation of the costs of all cases in the Chancery and King's Bench Divisions. See Order LIV, r. 12.

Matrimonial Causes. Suits for divorce, nullity of marriage, judicial separation, damages for adultery, restitution of conjugal rights, and jactitation of marriage.

Matrimonium. Matrimony, the marriage-tie. (Roman law.) See *Nuptiæ*.

Matthews v. Baxter ((1873), L. R. 8 Ex. 132). *Held*, that a party who enters into a contract when in state of intoxication may, when sober, ratify it, and in such case will be bound.

May v. Burdett ((1846), 9 Q. B. 101). *Held*, that if a person is possessed of an animal *feræ naturæ*, he is liable if it escapes and does damage, even though he be guiltless of any negligence.

Mayhem consists in violently depriving another of the use of a member proper for his defence in fight, such as an arm, a leg, an eye, etc. It was both a civil injury and a criminal offence. Obsolete.

Mayor's and City of London Court. A new Court formed in 1921 by the amalgamation of the Mayor's Court of London and the City of London Court. (Mayor's and City of London Court Act, 1920.)

Mayor's Court of London. An inferior Court which had jurisdiction in civil cases where the whole cause of action arose within the City of London.

Measures. By the Church of England Assembly (Powers) Act, 1919, every measure prepared by the Church Assembly with the assistance of the Legislative Committee of the Church Assembly shall be submitted to the Ecclesiastical Committee, consisting of fifteen members of each House of Parliament, who consider the measure and report on it, especially with relation to the constitutional rights of all His Majesty's subjects. The report, after communication to the Legislative Committee, and with its concurrence, is made to Parliament, and the measure is laid before Parliament, which has no power to amend it. On a resolution passed by both Houses it is presented for the Royal Assent and has the effect of a statute.

Melior est conditio possidentis et rei quam actoris. The position of

the possessor is the better; and that of the defendant is better than that of the plaintiff.

Memorandum. A clause inserted in a policy of marine insurance to prevent the underwriters from being liable for injury to goods of a peculiarly perishable nature and for minor damages. It begins as follows:—"N.B.—Corn, fish, salt, fruit, flour and seed are warranted free from average, unless general or the ship be stranded."

Memorial. An abstract of the material parts of a deed, with the parcels at full length, and concluding with a statement that the party desires the deed to be registered, which is left at the Land Registry for registration. See *Land Registration.*

Memory. "Living memory" is time whereof the memory of man runneth not to the contrary.

Legal memory runs from the reign of Richard I, because the Statute of Westminster I (3 Edw. 1, c. 8) fixed that period as the time of limitation for bringing certain real actions.

Mens rea. Guilty mind: an evil intention, or a knowledge of the wrongfulness of an act. There is a presumption that it is an essential ingredient in every offence, liable to be displaced either by the words of the statute, or by the subject-matter with which it deals. (Wright, J., in *Sherras* v. *De Rutzen* (*q.v.*).) See *Intention.*

Merchandise Marks Act, 1887. The object of the Act is to prevent the sale and importation of goods falsely marked. The Merchandise Marks Act, 1926, prohibits the exposure for sale, etc., of imported goods to which there is applied any name or trade-mark purporting to be the name or trade-mark of any manufacturer, dealer or trader, or the name of any place in the United Kingdom, unless accompanied by an indication of origin.

Merchet. Marchet (*q.v.*).

Merger. That operation of law which extinguishes a right by reason of its coinciding with another and greater right in the same person. *E.g.*, a life estate is merged in or swallowed by the reversion when the two interests come into the hands of the same person. Similarly, an equitable estate merges in the legal estate when they are equal and co-extensive and unite in the same person. A right of action on a simple contract debt is merged in the right of suing on a bond for the same debt, and a right of action is merged in a judgment.

Merits. The real matters in question as opposed to technicalities.

Merry v. Green ((1841), 7 M. & W. 623). *Held*, that if a party purchases an article of furniture such as a bureau, and there is a secret drawer in it containing money, etc., the owner of which is unknown, he is not entitled to such things, unless the bureau was sold to him with its contents.

Merryweather v. Nixan ((1799), 8 T. R. 186). There is no contribution between joint tortfeasors.

One, Starkey, brought an action on the case against the present plaintiff and defendant for an injury done by them to his reversionary estate in a mill, in which was included a count in trover for the machinery belonging to the mill, and having recovered £840, he levied the whole on the present plaintiff, who thereupon brought this action against the defendant for a contribution of a moiety as for so much paid to his use. *Held*, the plaintiff could not recover.

Merton, Statute of. The statute 20 Hen. 3, which declared that children born before the marriage of their parents were illegitimate, in connection with which the Barons declared "*Nolumus leges Angliæ mutari*"—"We will not have the laws of England changed."

Mesne. Middle, intervening or intermediate. A mesne lord was one who held of a superior lord. See *Process.*

Messuage. A house, including gardens, courtyard, orchard and outbuildings.

Metes and Bounds. By measurement and boundaries, as applied to tenure in dower.

Middle Temple. One of the Inns of Court (*q.v.*).

Middlesex Registry. A registry of deeds and wills relating to land situate in the county of Middlesex to facilitate proof of title. It was transferred in 1891 to the Land Registry in London.

Land registered under the Land Registration Act, 1925, is exempt from the local county registry. See *Land Registration*; *Le Neve* v. *Le Neve.*

Mighell v. The Sultan of Johore ([1894] 1 Q. B. 149 (C. A.)). A foreign sovereign may claim immunity from jurisdiction at the trial, no matter what he may have done previously.

The defendant, while in England incognito, became engaged to be married to the plaintiff, who subsequently sued him for breach of promise of marriage. *Held*, he could plead his privilege at the trial.

Military Law. The law under which courts martial sit, and to which persons in the military service of the Crown are subject. See *Martial Law.*

Militia. The force which was raised after the Restoration of 1660 as a substitute for those which had been raised under the commissions of array and lieutenancy, superseded by the Territorial Forces prior to the War. The Territorial Army and Militia Act, 1921, enacted that the Army Reserve previously called the "Special Reserve" shall be called the Militia.

Miller v. Hancock ([1893], 2 Q. B. 177). *Held*, that a party who lets a part of his premises, such as flats, is liable to members of the public for the condition of any portion of the building of which he retains control as if he were the occupier thereof.

Miller v. Race ((1791), 1 Burr. 452). Property in a bank note passes like that in cash, by delivery; and a party taking it *bona fide*, and for value, is entitled to retain it as against a former owner from whom it has been stolen.

A bank note was sent by post to one B, but was stolen in transit, and ultimately came into the hands of the plaintiff for full and valuable consideration and in the usual course of his business and without knowledge of the theft. The plaintiff applied to the bank for payment, and delivered the note to the defendant, a clerk in the bank. The defendant refused either to pay the note or to re-deliver it to the plaintiff. *Held*, the plaintiff was entitled to recover.

Mineral Rights Duty. An annual duty on the rental value of mining royalties, payable under the Finance (1909-10) Act, 1910.

Minister. A "Servant of the King"; a member of the Cabinet, or a holder of high office under the Crown who vacates it on a change of Government.

Ministerial Act. An act or duty which involves the exercise of administrative powers or the carrying out of instructions (*e.g.*, the arrest of a person) as opposed to a judicial or discretionary act.

Minor. An infant; a person under the age of twenty-one years.

In Roman law, the age of minority extended from puberty (12 or 14) up to 25 years.

Mint. The Government Department charged with the coining of money, regulated by the Coinage Act, 1870.

Minutes. (1) Notes or records of business transacted at a meeting. (2) Copies of a draft order or decree before embodied in a formal judgment of the Court.

Misadventure. An accident or mischance, unexpected and undesigned, arising out of a lawful act. See *Homicide.*

Misdemeanour. Any crime or indictable offence not amounting to felony: such as perjury, battery, libel, conspiracy, and public nuisances. At common law, misdemeanours are generally punishable by fine and imprisonment; now with or without hard labour. In many cases special punishments have been attached to misdemeanours by statute.

Misdescription. When a contract for the sale of land contains a material misdescription affecting the title, value or character of the land, the contract is voidable at the option of the party misled, independently of fraud, concealment, or misrepresentation. (Flight *v.* Booth (1834), 1 Bing. N. C. 370.)

Misericordia. Mercy. See *Amerciament.*

Misfeasance. Misfeasance is the improper performance of a lawful act, *e.g.*, where there is negligence or trespass. A misfeasor is a person who does a misfeasance.

Misjoinder. Where persons are wrongly joined as plaintiffs or defendants in an action, *i.e.*, where persons are made parties who ought not to be. No action can now be defeated by a misjoinder (Order XVI, r. 11).

Misnomer. A mis-naming. An amendment in consequence can be made in either civil or criminal causes.

Misprision. (1) Of treason, is where a person who knows that some other person has committed high treason does not within a reasonable time give information thereof to a Judge of assize or justice of the peace. At common law the punishment is imprisonment for life and forfeiture of the offender's goods.

(2) Of felony, is where a person who knows that some other person has committed felony conceals or procures the concealment thereof. In ordinary cases the offence is a common law misdemeanour.

Misrepresentation. Where one of the parties to an intended contract conveys to the other a false impression as to some matter relating to the contract, whether by an express statement (active) or by silence (passive).

A false or fraudulent misrepresentation is one made with knowledge of its falsehood. A negligent misrepresentation is one made with no reasonable grounds for believing it to be true. An innocent misrepresentation is one made with reasonable grounds for believing it to be true.

When a person has been induced to enter into a contract by misrepresentation, he may in general either (1) affirm the contract and

insist on the misrepresentation being made good, if that is possible, or (2) rescind the contract, or (3) bring an action for damages, or (4) rely upon the misrepresentation as a defence to an action on the contract. An innocent misrepresentation has no effect on the contract unless it produces mistake excluding true consent, or unless it amounts to a warranty or condition, or unless the contract is one in which good faith is especially required, such as contracts of insurance and family settlements. Specific performance will not be decreed if a definite untrue representation has been relied on. See *Derry* v. *Peek*; *Peek* v. *Gurney*; *Langridge* v. *Levy*; *Chandelor* v. *Lopus*.

Mistake is in general inoperative. In the following cases it avoids the contract:

(1) Mistake as to the nature of the obligation.
(2) Mistake as to the person contracted with.
(3) Mistake as to the subject-matter of the contract, either as to its existence or its identity.
(4) Mistake of one party as to the intention of the other party, such mistake being known to the other party (Carter).

See *Gordon* v. *Street; Raffles* v. *Wichelhaus; Smith* v. *Hughes; Cundy* v. *Lindsay*.

Mitchell v. Reynolds ((1711), 1 P. Wms. 181). A bond or promise to restrain the vendor of a business from trading in a particular place, if made upon a reasonable consideration, is good.

The defendant sold his baker's business in the parish of St. Andrew, Holborn, to the plaintiff for five years, and agreed not to exercise the trade of a baker within the said parish for the period of five years, under a penalty of £50. On breach of the covenant, the plaintiff sued for the £50. *Held*, he was entitled to recover.

Mitigation. Where a defendant or prisoner whose responsibility or guilt is not in dispute proves facts tending to reduce the damages or punishment to be awarded against him, he is said to show facts in mitigation of damages, or of sentence, as the case may be.

Mittimus. "We send"; *e.g.*, a writ.

Mixed Arbitral Tribunal. A temporary tribunal, consisting of three members, which was established under Part VI of the Treaty of Peace Order, 1919, pursuant to the Treaty of Peace Act, 1919, to deal with questions of international indebtedness.

Mixed Fund. A fund consisting of the proceeds of both real and personal property.

Mobilia sequuntur personam. "Moveables follow the person." Thus the law of a man's domicil governs the descent of his personal property.

Modo et forma. A denial that the thing alleged in the pleading of the other side had been done *modo et forma* (in the manner and form) alleged. This put the opposite party upon strict proof of every averment.

Modus. The payment of tithes otherwise than by a tenth of the yearly increase of land, *e.g.*, by a payment of twopence per acre.

Modus et conventio vincunt legem. "Custom and agreement overrule law." Within limits, the parties to a contract can make their own rules.

Modus legem dat donationi. "Agreement gives law to the gift."

I.e., the agreement for the transfer of land settles the conditions upon which the land is to be held.

Mogul Steamship Co. v. McGregor, Gow & Co. ([1892] A. C. 25). A combination of traders to compete with other traders, whereby such others suffer loss of trade, is not unlawful.

The plaintiffs sued the defendants for damages for conspiracy to prevent the vessels of the plaintiffs from being employed by shippers in Chinese ports. The defendants' association offered traders special discounts and underbid the plaintiffs' vessels for freight, and had refused to let the plaintiffs join their association. *Held*, there was no cause of action against the defendants.

Money-bill. A bill which in the opinion of the Speaker of the House of Commons contains provisions dealing with finance and taxation.

A money-bill can only originate in the House of Commons, and any bill certified by the Speaker to be a money-bill must be presented for the Royal Assent at the end of the session in which it passes the Commons, whether it is or is not passed by the Lords. (Parliament Act, 1911.)

Moneylenders. Any person whose business is that of moneylending or who advertises or announces himself or holds himself out in any way as carrying on that business; but does not include pawnbrokers, friendly societies, bodies authorised by law to lend money, bankers, or bodies exempted by the Board of Trade (Moneylenders Act, 1900, s. 6).

The Act of 1900 provides that every moneylender must be registered and carry on business in one name only and only at his registered address or addresses; and that the Courts may re-open transactions between him and his clients. The Moneylenders Act of 1911 protects *bona fide* holders without notice of securities taken by moneylenders.

Monopoly. A licence or privilege allowed by the Sovereign for the sole buying and selling, making, working or using of anything whatsoever. Monopolies were made illegal by the Statute of Monopolies (21 Jac. 1, c. 3), except in the case of patents for new inventions, etc. Ancient franchises (*q.v.*) are not within the statute.

Monson v. Tussaud ([1894] 1 Q. B. 671). Libel consists in publishing defamatory matter in writing, or other permanent form.

The plaintiff had been tried in Scotland for murder, and a verdict of "not proven" had been returned. The defendants placed an effigy in wax in their "Chamber of Horrors." *Held*, there was evidence of libel for the jury.

Monstrans de droit. Manifestation of right. A remedy which a subject had when the Crown was in possession of property belonging to him, and title of the Crown appeared from facts set forth upon record. In such a case the claimant might present a *monstrans de droit*, either showing that upon the facts as recorded he was entitled to the property, or setting forth new facts showing that he was entitled. Now superseded by the Petition of Right.

Montague v. Benedict ((1825), 3 B. & C. 631). The plaintiff, a jeweller, delivered articles of jewellery to the wife of the defendant, who had at her marriage jewellery suitable to her condition. She had never worn in her husband's presence any of the plaintiff's jewellery, and the plaintiff always asked for payment from the wife and not the husband. *Held*, that the goods so furnished were not necessaries, and that as there was no evidence to go to the jury of any assent of the

husband to the contract made by his wife, the action could not be maintained.

Month. A month is either a lunar month of twenty-eight days, or a calendar month. A month at common law meant a lunar month, but in ecclesiastical and mercantile law, a calendar month. In Acts of Parliament passed after 1850 " month " means calendar month, unless a contrary intention appears (Interpretation Act, 1889, s. 3), and by Order LIV, r. 1, a month means a calendar month.

By the Law of Property Act, 1925, s. 61, in all deeds, contracts, wills, orders and other instruments, " month " shall mean calender month, unless the context otherwise requires.

Moratur in lege. " He tarries in the law " ; a demurrer.

Morgan v. Griffith ((1871), L. R. 6 Ex. 70). Parol evidence is admissible to prove any collateral verbal agreement as to any matter on which the document is silent and which is separate from it and not inconsistent with its terms.

Morley v. Bird ((1798), 3 Ves. 629). *Held*, that notwithstanding the leaning of the Court to a tenancy in common, in preference to a joint tenancy, an interest simply given to two or more either by way of legacy or otherwise, is joint, unless there are words of severance as " equally among," or words to the like effect, or unless an inference of that sort arises in equity from the nature of the transaction, as in partnership, etc.

Morris v. Baron & Co. ([1918] A. C. 1). *Held*, that a contract in writing may be expressly rescinded by a new parol agreement, unenforceable itself for want of writing.

Mortgage. (Norman-French, *Mort*, dead, and *gagè*, a pledge, from low Latin, *vadium.*) A mortgage originally denoted a pledge of land under which the creditor took the rents and profits for himself, so that it was dead or profitless to the debtor, as opposed to a pledge under which the rents and profits went in reduction of the debt (*vif gage, vadium vivum*).

A legal mortgage is a transfer of a legal estate or interest in land or other property for the purpose of securing the repayment of a debt. An equitable mortgage is one which passes only an equitable estate or interest, either (1) because the form of transfer or conveyance used is an equitable one, that is, operates only as between the parties to it, and those who have notice of it, *e.g.*, a deposit of title deeds, or (2) because the mortgagor's estate or interest is equitable, that is, consists merely of the right to obtain a conveyance of the legal estate.

Prior to 1926 a mortgage was ordinarily effected by an absolute conveyance, followed by a proviso for redemption, by which the mortgagee agreed to reconvey the property to the mortgagor on payment of the debt and interest by a certain date. Formerly, if the money was not paid on the day, the mortgage became irredeemable at common law, but the mortgagor had an equity of redemption until foreclosure or sale. The right of foreclosure entitled the mortgagee to compel the mortgagor either to pay off the debt within a reasonable time or to lose his equity of redemption.

By section 85 of the Law of Property Act, 1925, a mortgage of an estate in fee-simple shall only be made by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge

by deed expressed to be by way of legal mortgage. A first or only mortgagee shall take a term of 3,000 years from the date of the mortgage, and a second or subsequent mortgagee shall take a term commencing from the date of the mortgage one day longer. By section 86 a mortgage of a term of years absolute shall only be made either by a subdemise for a term of years absolute less by one day at least than the term vested in the mortgagor, or by a charge by deed expressed to be by way of legal mortgage.

The object of the changes in the new law is to secure to the estate owner a legal estate, and not a mere equity of redemption as hitherto. See *Equity of Redemption*; *Clog on Equity*; *Northern Counties Fire Insurance Co.* v. *Whipp*; *Salt* v. *Marquis of Northampton.*

Mortmain. The alienation of land to corporations, whereby the benefit of the incidents of tenure were lost, because "a corporation never dies." Land cannot be conveyed to corporations except by statutory authority or by licence of the Crown. (7 Edw. 1, stat. 2, c. 13 and 15 Rich. 2, c. 5, replaced by the Mortmain and Charitable Uses Act, 1888.)

Charities are in a special position. If they are corporations they cannot hold land without a licence from the Crown. If they are not incorporated, the provisions of the Mortmain Acts must be complied with. The Charitable Uses Act, 1735 (9 Geo. 2, c. 36) prohibited gifts of land or of money to be laid out in the purchase of land for any charitable purposes, except by absolute and immediate conveyance by deed, executed twelve months before the death of the donor, and enrolled with certain formalities, the object being to prevent dispositions of land by dying persons to the disherison of their lawful heirs. Therefore, all such gifts by will were void under that Act. This Act was replaced by the Mortmain and Charitable Uses Act, 1888, which prescribed that land conveyed for charitable purposes must be by deed attested by two persons, made at least twelve months before the grantor's death, enrolled within six months in the Central Office of the Supreme Court, and not containing any power of revocation or reservations to the grantor, with exceptions for certain purposes and colleges. By the Settled Land Act, 1925, s. 29, sub-s. 4, these requirements as to attestation and enrolment are repealed. After 1925 the conveyance must be recorded with the Charity Commissioners within six months of execution. The Mortmain and Charitable Uses Act, 1891, legalised gifts of land to charity by will, but the land must be sold unless required for actual occupation, and money secured on land is not to be considered as land.

Mortuaries. A place for the reception of dead bodies before interment. See the Public Health Act, 1875, ss. 141, 142.

Mortuum vadium. A mortgage.

Moss v. Gallimore ((1780), 1 Douglas, 279). *Held*, that a mortgagee after giving notice of the mortgage to a tenant in possession under a lease prior to the mortgage, is entitled to the rent in arrear at the time of the notice, as well as to what accrues after, and he may distrain for it after such notice.

Mostyn v. Fabrigas ((1775), 1 Cowper, 161). An action will lie in an English Court for a tort committed abroad, provided the act is "transitory" and not "local" (*i.e.*, not necessarily referred to some particular locality).

This was an action of trespass in the Common Pleas by a native of Minorca against the Governor of the island in which the plaintiff alleged that the defendant made an assault upon him "at Minorca, to wit at London, in the parish of St. Mary-le-Bow, in the Ward of Cheap." The defendant pleaded he was Governor of the island, and that the plaintiff was raising a sedition and mutiny, and that consequently he imprisoned him. *Held*, that an action lies against a Governor in the Courts of this country for injuries committed by him in the possession of which he is Governor.

Mote. A meeting or assembly. (Anglo-Saxon.)

Motion. An application to a Court or a Judge for an order directing something to be done in the applicant's favour. Ordinarily a motion is to be made only after notice has been given to the parties affected (Order LII, r. 3), but in certain cases it may be made *ex parte*.

Motion for Judgment. The mode of obtaining the judgment of the High Court in an action in all cases where no other mode of obtaining it is prescribed. (Order XL, r. 1.) At the trial of an action the Judge must now (Order XXXVI, r. 39) direct judgment to be entered as he thinks right, and no motion for judgment is necessary. If the defendant makes default in delivering his defence, the plaintiff must set down the action on motion for judgment, unless it is of such a nature that he may enter judgment for his claim at once (*e.g.*, where it is for a debt, damages, recovery of land, or the like). (See Order XXVII.)

Motion to Set Aside Judgment. A motion made to the Court of Appeal by a party in an action in the High Court on the ground either that the finding of the jury has been wrongly entered, or that the judgment itself is wrong. (Order XL, rr. 3, 4.)

Mulier. (Latin, *mulier*, a wife.) A son, daughter, brother, sister, etc., born in lawful wedlock, or legitimate, as opposed to a bastard.

Multifariousness. A bill in Chancery was open to a demurrer for multifariousness when it attempted to embrace too many objects or causes of suit. Now, a plaintiff may include as many causes of action as he pleases in one writ, provided they can conveniently be tried together. (Order XVII.)

Municipal Corporation. The local government authority of a town or borough, consisting of a mayor, aldermen and councillors, as regulated by the Municipal Corporations Act, 1882.

Municipal Law. The law of a state or country, as opposed to international law.

Muniments. (*Munio*, to defend or fortify.) Title deeds and other documents relating to the title to land.

Munster v. Lamb ((1883), L. R. 11 Q. B. D. 588). Statements made by an advocate in the conduct of a case are absolutely privileged.

On the trial of one Hill for administering drugs to persons in the plaintiff's house, for the purpose of enabling a burglary to be committed there whilst the inmates were in a stupefied condition, Hill's solicitor suggested that the plaintiff kept drugs in the house to be used for immoral purposes. *Held*, the statement was absolutely privileged.

Murder. The crime of unlawful homicide with malice aforethought; as where death is caused by an unlawful act done with the intention to cause death or bodily harm, or which is commonly known to be likely to

cause death or bodily harm. Death must ensue within a year and a day of the injury.

Murray v. Lord Elibank ((1804), 10 Ves. 84). *Held*, that the wife obtained, by the decree in the suit of *Elibank* v. *Montolieu* (*q.v.*), a judgment for the children, liable to be waived if she thought proper; otherwise to be left standing for their benefit at her death.

Mute. A prisoner is said to stand mute when, being arraigned for treason, felony, or misdemeanour, he either makes no answer at all or with such matter as is not allowable. In the first case, a jury must be sworn to try whether the prisoner stands mute of malice (*i.e.*, obstinately) or by visitation of God (*e.g.*, being deaf or dumb). If he is found mute by visitation of God, the trial proceeds as if he had pleaded not guilty; if he is found mute of malice, or if he will not answer directly to the indictment, it formerly exposed him to the *peine forte et dure* (*q.v.*); now the Court, under the Criminal Law Act, 1827, s. 2, orders a plea of not guilty to be entered, and the trial proceeds accordingly.

Mutiny Act. The Bill of Rights (1 W. & M. sess. 2, c. 2), declares that the raising or keeping a standing army within the kingdom in time of peace, unless it be with the consent of Parliament, is illegal. Consequently, an Act of Parliament was passed annually to legalise the Army for the year, called the Mutiny Act, and containing rules for its regulation. These provisions were consolidated in the Army Discipline and Regulation Act, 1879; replaced by the Army Act of 1881, which is re-enacted and amended every year by the Army and Air Force Annual Act.

Mutual Credits. Such dealings between two persons as must in their nature terminate, or have a tendency to terminate, in debts. (Bankruptcy Act, 1914.)

Name and Arms Clause. The clause, sometimes inserted in a will or settlement by which property is given to a person, for the purpose of imposing on him the condition that he shall assume the surname and arms of the testator or settlor, with a direction that if he neglects to assume or discontinues the use of them, the estate shall devolve on the next person in remainder.

Nash v. Inman ([1908] 2 K. B. 1). *Held*, that necessaries are goods suitable to an infant's station in life and actual requirements, but the plaintiff must prove that the infant had not a sufficient quantity at the date when the goods were supplied.

Nationality. The character or quality arising from membership of some particular nation or State, which determines the political status and allegiance of a person. It may be acquired either by birth or naturalization (*q.v.*). The following are natural-born British subjects: Any person (a) born within His Majesty's dominions and allegiance; (b) born out of His Majesty's dominions (1) whose father was at that time a British subject born within His Majesty's allegiance, or naturalized or in the service of the Crown, or (2) whose birth was registered at a British consulate within one year (exceptionally, two years) of its occurrence. (British Nationality and Status of Aliens Acts, 1914-1922, s. 1.)

Natural Persons. Human beings, as distinguished from artificial persons or corporations recognised by the law.

Natural rights. Fundamental rights common to the law of all civilised peoples, *e.g.*, right of personal liberty, of ownership and possession of property, etc.

Naturales liberi. Natural children. (1) Children not born in lawful wedlock, opposed to *legitimi*; (2) children born as opposed to adopted. (Roman Law.)

Naturalization takes place when a person becomes the subject of a State to which he was before an alien. An alien who has resided for not less than five years in the United Kingdom, or who has been for that period in the service of the Crown within the last eight years, and is of good character, and has an adequate knowledge of the English language, and intends to continue such residence or service, may on application to the Home Secretary and after taking the oath of allegiance, be granted a certificate of naturalization at discretion. (British Nationality and Status of Aliens Acts, 1914, 1918, s. 2.)

Navigation Acts. Various statutes (especially 12 Car. 2, c. 18) passed for the encouragement and protection of British shipping by excluding foreign ships from trading with British colonies and even with Great Britain. Now repealed.

Ne exeat regno. A writ which issues from the High Court of Justice (in the Chancery Division) to restrain a person from going out of the kingdom without the King's licence or the leave of the Court. It is a high prerogative writ, which was originally applicable to purposes of State only, but was afterwards extended and confined to private transactions.

Nec tempus nec locus occurrit regi. Neither time nor place affects the King.

Necessaries. Infants and lunatics normally incapable of making a binding contract, can contract to buy necessaries, which are defined as "goods suitable to the condition in life of such infant and to his actual requirements at the time of the sale and delivery." (Sale of Goods Act, 1893, s. 2.) See *Roberts* v. *Gray*; *Ryder* v. *Wombwell*.

As a general rule, every wife has an implied authority to contract with tradesmen for necessaries suitable to the degree and estate of her husband, so as to make him liable. See *Bolton* v. *Prentice*.

For ships, the term "necessaries" means such things as are fit and proper for the service in which the ship is engaged, and such as the owner, being a prudent man, would have ordered if present. The master may hypothecate the ship for necessaries supplied abroad so as to bind the owner.

Necessitas inducit privilegium quoad jura privata. Necessity gives a privilege as to private rights.

Necessitas publica major est quam privata. Public necessity is greater than private.

Neck Verse. The words *Miserere mei Deus*, with which the fifty-first Psalm begins. A prisoner was entitled to benefit of clergy (*q.v.*) if he could read or recite these words.

Negative Pregnant. A mere literal denial in pleading which does not go to the substance of the allegation. *E.g.*, to a claim for fifty

pounds, a denial that the defendant owes fifty pounds is insufficient. He must add "or any other sum" or words to that effect.

Negligence. Failure to use that degree of care which a person is bound by law to use. Ordinarily a person is bound to use reasonable care; but a person who professes to have special skill must use such skill as is usual with persons possessing such special skill, otherwise he must use such skill as he has. In an action for negligence, which is a tort, the plaintiff must prove the duty to show care, the failure to show such care, and resulting damage. In certain cases negligence may be implied by law from the position of the defendant, as where the plaintiff is injured by something under the defendant's control. Defences to an action for negligence are: unavoidable accident, and contributory negligence on the part of the plaintiff which was the real cause of the injury. The division of negligence into gross, ordinary and slight is only of importance in the law of bailments (*q.v.*).

Negligence is a question of fact for the jury, after the Judge has decided there is evidence of negligence fit to go to the jury. See *Blyth* v. *Birmingham Waterworks; Low* v. *Bouverie; Lynch* v. *Nurdin; Tillett* v. *Ward*; *Wakelin* v. *L.S.W. Ry. Co.*; *Wilson* v. *Brett*; *Butterfield* v. *Forrester; Cotton* v. *Wood; Davies* v. *Mann; Byrne* v. *Boadle.*

Negotiable Instrument. An instrument the transfer of which to a transferee who takes in good faith and for value passes a good title, free from any defects or equities affecting the title of the transferor. The most important kinds of negotiable instruments are bills of exchange, cheques and promissory notes. Negotiability may be conferred by custom or statute, and restricted or destroyed by the holder of the instrument. Negotiability is also used popularly as equivalent to transferability. See *Raphael* v. *Bank of England.*

Negotiorum gestio. Interference of one in the affairs of another merely from benevolence and without authority. In English law a man so interfering (1) has no claim on the other in respect of what he may do; (2) is liable for the wages of anyone whom he may employ; (3) must have the skill and knowledge necessary for whatever he takes it on himself to do.

Nem. con. (*Nemine contradicente.*) No one saying otherwise.

Nem. dis. (*Nemine dissentiente.*) No one dissenting.

Nemo admittendus est inhabilitare seipsum. Nobody is to be permitted to incapacitate himself.

Nemo agit in seipsum. No one takes proceedings against himself.

Nemo contra factum suum proprium venire potest. No one can come against his own deed.

Nemo dat qui non habet. No one gives who possesses not.

Nemo debet bis puniri pro uno delicto. No one should be punished twice for one fault.

Nemo debet esse judex in propria causa. No one should be a judge in his own cause.

Nemo est hæres viventis. No one is the heir of anyone who is alive.

Nemo ex proprio dolo consequitur actionem. No one obtains a cause of action by his own fraud.

Nemo ex suo delicto meliorem suam conditionem facere potest. No one can improve his position by his own wrongdoing.

Nemo potest esse simil actor et judex. No one can be at once suitor and Judge.

Nemo potest facere per alium, quod per se non potest. No one can do through another what he cannot do himself.

Nemo potest plus juris ad alium transferre quam ipse habet. No one can transfer a greater right to another than he himself has.

Nemo prohibetur pluribus defensionibus uti. No one is forbidden to use several defences.

Nemo tenetur ad impossibile. No one is required to do what is impossible.

Nemo tenetur seipsum accusare. No one is bound to incriminate himself.

Nepean v. Doe ((1837), 2 M. & W. 894). *Held*, that when a party has been absent for seven years without having been heard of, the presumption of law then arises that he is dead; but there is no presumption as to the time of his death.

Neville v. London Express Newspapers, Ltd. ([1919] A. C. 368). *Held*, that maintenance is the intermeddling with litigation in which the intermeddler has no concern, and helping either the plaintiff or defendant therein. A party may intermeddle to help a near relative servant, or poor person, or if the party has an interest in the subject-matter of the suit.

Next Friend. An infant or a person of unsound mind who has no committee who desire to bring an action must, as a rule, do so through the intervention of a person called a next friend, generally a relation (Order XVI, rr. 16, 17). Every next friend is responsible for the propriety of the proceedings taken in his name.

A married woman cannot be either a next friend or a guardian *ad litem*.

Next-of-Kin. Those who are next in degree of kindred to a deceased person, that is, are most closely related to him in the same degree. The degrees of kindred are reckoned according to the Roman law, both upwards to the ancestor and downwards to the issue, each generation counting for a degree. Thus, from father to son is one degree, and from brother to brother is two degrees, namely, one upwards to the father and one downwards to the other son.

More commonly, the "next-of-kin" of a person who has died intestate signified those persons who were entitled to his personal property, after payment of his debts, under the Statute of Distribution (22 & 23 Car. 2, c. 10), repealed by the Administration of Estates Act, 1925. See *Intestate Succession*.

Next Presentation. The right to present to the first vacancy of a benefice. When an advowson is sold during an existing incumbency, the right of next presentation passes to the grantee, unless the owner has already sold it to someone else, which he might do down to January 1, 1899, as from which date, under the Benefices Act, 1898, s. 1, no dealing with the right of presentation separately from the advowson can take place. See *Advowson*.

Nichols v. Marsland ((1876), 2 Ex. D. 1). If a dangerous thing escapes from a person's land and does injury, the person is not liable if the escape is caused by an act of God or *vis major*.

The defendant's artificial lakes overflowed owing to an unusual fall

of rain, and the water carried away the county bridges lower down the stream. *Held*, the defendant was not liable.

Nihil: Nil. Nothing: no goods.

Nihil facit error nominis cum de corpore constat. A mistake as to the name has no effect when there is no mistake as to who is the person meant.

Nisbet & Potts' Contract, Re ([1910] 1 Ch. 1). K entered into a restrictive covenant as to his land. H took the land and remained in possession for more than twelve years, and then sold to Nisbet. N. agreed to sell to Potts, who discovered the covenant. *Held*, H acquired his " squatter's " title subject to the covenant. As the covenant had never been broken, no right of action had accrued, the Statute of Limitations had not commenced to run, the covenant was still binding and Potts could rescind the contract.

Nisi. A decree, order, rule, declaration, or other adjudication of a Court is said to be made *nisi* when it is not to take effect unless the person affected by it fails to show cause against it within a certain time, that is, unless he appears before the Court, and gives some reason why it should not take effect. See *Absolute*.

Nisi prius. A trial at *nisi prius* is a trial by a jury before a single Judge, either at the sittings held for that purpose in London and Middlesex, or at the assizes. Formerly all common law actions were tried at bar, that is, before the full Court, consisting of several Judges; and, therefore, the writ for summoning the jury commanded the sheriff to bring the jurors from the county where the cause of action arose to the Court at Westminster. But when the statute 13 Edw. 1 directed the Justices of assize to try issues in the county where they arose, the sheriff was thenceforth commanded to bring the jurors to Westminster on a certain day, " unless before that day " (*nisi prius*) the Justices of assize came into the county.

Noakes v. Rice ([1902] A. C. 24). Any term in a mortgage is void which tries to prevent the mortgagor from getting back his property in the same state as when he mortgaged it.

On a mortgage of a leasehold hotel to a brewer, the mortgagor covenanted that after the mortgage should have been paid off, the hotel should remain a " tied house " during the whole term of the lease, *i.e.*, that it should sell only malt liquor purchased from the brewer. *Held*, the covenant was void.

Noble v. Ward ((1867), L. R. 2 Ex. 135). *Held*, that a contract in writing cannot be rescinded by implication by a parol agreement, unenforceable for want of writing.

Nolle prosequi. An acknowledgment or undertaking entered on record by the plaintiff in an action, to forbear to proceed in the action, either wholly or partially: superseded by the modern practice of discontinuance. In criminal prosecutions by indictment or information, a *nolle prosequi* to stay proceedings may be entered by leave of the Attorney-General at any time before judgment: it is not equivalent to an acquittal and is no bar to a new indictment for the same offence.

Non aliter a significatione verborum recedi oportet quam cum manifestum est aliud sensisse testatorem. There should be no departure from the ordinary meaning of words except in so far as it appears that the testator meant something different.

Non assumpsit. The plea by which the defendant averred that "he did not promise" as alleged, and thus raised the general issue in an action of *assumpsit*.

Non cepit modo et forma. He did not take in the manner and form (alleged).

Non compos mentis. "Not sound in mind"; *e.g.*, a lunatic or idiot.

Non constat. It is not clear; it does not follow.

Non culpabilis. Not guilty.

Non debet, cui plus licet, quod minus est non licere. It is lawful for a man to do a less thing if he is entitled to do a greater thing.

Non est factum. It is not his deed.

Non est inventus. "He has not been found"; the return which a sheriff has to make upon a writ commanding him to arrest a person who is not within his bailiwick.

Non liquit. It is not clear.

Non observata forma infertur adnullatio actus. Non-observance of the prescribed formalities involves the invalidity of the proceeding.

Non obstante. "Notwithstanding." About the year 1250, the Crown began to issue licences to do such and such a thing *non obstante* any law to the contrary. The Bill of Rights enacted that any dispensation *non obstante* should be wholly void and without effect.

Non obstante veredicto. "Notwithstanding the verdict." Upon an application for a new trial the Court of Appeal may set aside the judgment of the Court below and enter judgment notwithstanding the verdict, for the unsuccessful party. (Order XL, r. 10; Order LVIII, r. 4).

Non omittas propter libertatem. A clause inserted in writs of execution, directing and authorising the sheriff "not to omit" to execute the writ by reason of any liberty, or district in which the sheriff had no power to execute process unless he had special authority.

Non possessori incumbit necessitas probandi possessiones ad se pertinere. A person in possession is not bound to prove that what he possesses belong to him.

Non potest rex gratium facere cum injuria et damno aliorum. The king cannot confer a favour on one man to the injury and damage of others.

Non pros. or **Non prosequitur.** "He does not follow up." Judgment *non pros.* was available for the defendant in an action when the plaintiff failed to take the proper steps within the prescribed time. See now Order XXVII, r. 12, and Order XXXVI, r. 12.

Non quod voluit testator, sed quod dixit in testamento inspicitur. Not what the testator wished, but what he said, is considered in construing a will.

Non refert an quis assensum suum præfert verbis, an rebus ipsis et factis. It matters not whether a man gives his assent by his words, or by his acts and deeds.

Non refert quid notum sit judici, si notum non sit in forma judicii. It matters not what is known to the Judge, if it be not known judicially.

Non solent quæ abundant vitiare scripturas. Surplusage does not vitiate writings.

Non videntur qui errant consentire. Those who are mistaken are not deemed to consent.

Non videtur consensum retinuisse si quis ex præscripto minantis aliquid immutavit. He is not deemed to have consented who has altered anything at the command of anyone using threats.

Nonagium ; Nonage. The ninth part of the moveables of a deceased which was anciently paid for pious uses to the clergy of his parish.

Nonfeasance. The neglect or failure to do some act which ought to be done.

Non-intromittant Clause. A clause in the charter of a borough which exempts the borough from the jurisdiction of the Justices of the Peace appointed for the county in which the borough is situated.

Non-joinder. The omission of a person who ought to be made party to an action. See Order XVI, r. 11.

Nonsuit. The abandonment of a case at the trial, before the jury had given their verdict, whereupon judgment of nonsuit was given against the plaintiff. Now used where the Judge withdraws the case from the jury and directs a verdict for the defendant.

Nordenfelt v. Maxim Nordenfelt Co. ([1894] A. C. 535). The appellant, who was the patentee and manufacturer of quick-firing guns, sold to the respondent company his goodwill, patents, etc., and covenanted that he would not during the term of twenty-five years engage in his old business. *Held*, the covenant was valid, as the trade was a world-wide one.

Northern Counties of England Fire Insurance Co. v. Whipp (26 Ch. D. 482). A legal mortgagee may be postponed to a subsequent equitable mortgagee by fraud, negligence or when he has entrusted the title deeds to an agent to raise money. He will not be postponed if the mortgagor obtains the deeds without his knowledge and consent.

M, the manager of a joint stock company, made a legal mortgage of freeholds to the company, and handed over to the company the deeds which were kept in a safe to which he had access. Afterwards M took from the safe the deeds except the mortgage, and created a new mortgage to B without notice of the mortgage to the company. *Held*, that the company did not lose priority for their mortgage.

Noscitur a Sociis. The meaning of a word can be gathered from the context.

Not Guilty. The appropriate plea to an indictment where the prisoner wishes to raise the general issue, *i.e.*, when he wishes to deny everything and to let the prosecution prove what they can. It was also a plea used in common law actions of tort under the old practice, when the defendant simply denied that he had committed the wrong complained of. Under the present system of pleading, a defendant must deal specifically with all allegations made by the plaintiff which he does not admit, and therefore a plea of "not guilty" is no longer permissible in civil proceedings other than informations at the suit of the Crown.

Not Guilty by Statute. A plea of not guilty which entitled a public officer to give special matter in evidence by virtue of some statute. Abolished by the Public Authorities Protection Act, 1894, s. 2.

Notary Public. A person who attests the execution of any deeds or writings, or makes certified copies of them in order to render the same

authentic, especially for use abroad. He is appointed to his office by the Archbishop of Canterbury, and can be removed from office by the Court of Faculties.

Notation. Making a memorandum of some special circumstance on a probate or letters of administration.

Note of a Fine. See *Fine*.

Notice. Knowledge or cognisance. To give notice is to bring matters to a person's knowledge or attention. Judicial notice means recognition of the truth or existence of a fact without proof, *e.g.*, the dates of the calendar. Notice is either actual (express) or constructive. Constructive notice is where knowledge of the fact is presumed or imputed by law, *i.e.* (1) where it would have come to the knowledge of a person's agent as such if proper inquiries had been made; (2) where in the same transaction it has come to the knowledge of a person's counsel, solicitor, or other agent, as such, or would have done so if such inquiries and inspections had been made as ought reasonably to have been made; (3) where it would have come to a person's own knowledge if proper inquiries had been made. (Law of Property Act, 1925, s. 199, sub-s. 1 (ii).)

The doctrine of notice is that a person who purchases an estate, although for valuable consideration, after notice of a prior equitable right, takes subject to that right, and will not be enabled, by getting in the legal estate, to defeat that right. But a purchaser shall not be prejudicially affected by notice of any instrument capable of registration under the Land Charges Act, 1925, and void or unenforceable because of non-registration. (*Ibid.*, section 199, sub-section 1 (i).) Where an intending lessee or assign is not entitled to call for the title to the freehold or leasehold reversion, he shall not, after 1925, be affected with notice of anything affecting such title contained in the deeds. (*Ibid.*, section 44, sub-section 5.) See *Ward* v. *Duncombe*; *Wasdale, Re*; *Agra Bank* v. *Barry*; *Bassett* v. *Nosworthy*.

Notice of Action. Notice required to be given to public authorities of actions it was intended to bring against them. Practically abolished by the Public Authorities Protection Act, 1893.

Notice of Trial. In the practice of the High Court, the plaintiff may give the defendant notice of trial of the action along with the reply (if any), or when the issues of fact are ready for trial, or four days after the delivery of the defence. If the plaintiff fails to give such a notice within six weeks of the earliest possible time, the defendant may give notice of trial, or move to dismiss the action for want of prosecution. Ordinary notice of trial is ten days, and short notice, four days. See Order XXXVI, rr. 11—14.

Notice of Writ of Summons, etc. In an action in the High Court, when the plaintiff has obtained leave, under Order XI, r. 1, to serve the defendant out of the jurisdiction, the defendant, if neither a British subject nor within the British dominions, is served with a notice giving the substance of the writ of summons, but not the writ itself, as inappropriate to a foreign subject.

The Court, under Order X, sometimes allows substituted service to be effected by notice of the writ or other legal process being given to the defendant, *e.g.*, by advertisement. See also Order LXVII, r. 5.

Notice to Admit. Any party can call upon the opposite party to

admit any document or fact which is material, on pain of paying the costs occasioned by proof. (See Order XXXII.) See *Admission.*

Notice to Produce. If one of the parties to an action is in possession of any document which would be evidence for the other party if produced, the latter may give him notice in writing to produce it at the trial, and, in default of production, may give secondary evidence of it (Order LXVI, r. 1).

At any time before the trial of an action, any party to an action may give any other party notice to produce for his inspection any document referred to in pleadings or affidavits: and on refusal to produce them without good cause, an order for inspection may be obtained from the Court (Order XXXI, r. 15).

Notice to Quit. Where there is a tenancy of land or tenements from year to year, or other like indefinite period, a notice to quit is required, to enable either the landlord or the tenant to determine the tenancy without the consent of the other. As a general rule, no particular form is required, but the notice is usually in writing and formal.

Notice to Treat. The notice which a railway company or other public body having compulsory powers for the purchase of land is bound to give to the persons interested in any land which it is empowered and desires to purchase. (Land Clauses Consolidation Act, 1845, s. 18.)

Noting. A minute or memorandum made by a notary on a bill of exchange which he has presented, and which has been dishonoured. It consists of his initials and charges, and the date, and, in the case of foreign bills, is preparatory to a formal protest.

Nova constitutio futuris formam imponere debet non præteritis. A new law ought to regulate what is to follow, not the past.

Nova Statuta. The statutes from the year 1327 to 1483.

Novatio. The renewal or re-making of an existing obligation; the transmutation of an obligation so that it ceases to exist and is renewed as a new obligation. The preceding obligation may have been contracted in any form and with any subject; the new obligation must be *verbis* or *literis* and it must bind either civilly or naturally. (Roman Law.)

Novation. The acceptance by a promisee or creditor of another person as the person to be bound in lieu of the original promisor, *e.g.*, where a company or partnership transfers its liabilities to another company or partnership.

Novel disseisin. See *Assize of Novel Disseisin.*

Novellæ. See *Corpus juris civilis.*

Nudum pactum. "A nude contract"; a contract made without consideration and upon which, unless it be under seal, no action will lie.

Nugent v. Smith ((1875), 1 C. P. D. 423). A common carrier is not liable for any accident as to which he can show that it is due to natural causes directly and exclusively, without human intervention, and that it could not have been prevented by any amount of foresight and pains and care reasonably to be expected from him.

A mare was carried by sea and died of injuries in a storm, without negligence on the part of the defendant shipping company. *Held*, that it was an "Act of God" and the defendant was not liable.

Nuisance. "An inconvenience materially interfering with the

ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober, simple notions among the English people" (*per* Knight-Bruce, V.-C., Walter *v.* Selfe, 4 De G. & Sm. 332).

A public or common nuisance is an act which interferes with the enjoyment of a right which all members of the community are entitled to, such as the right to fresh air, to travel on the highways, etc. The remedy for a public nuisance (which is a misdemeanour) is by indictment, information or injunction at the suit of the Attorney-General, and in certain cases by summary process, or abatement (*q.v.*); and if special damage is caused to an individual, he has an action for damages or injunction against the wrongdoer.

A private nuisance is such a continuous infringement of a natural right of property as would in process of time give the wrongdoer an easement or prescriptive right to do an act which was originally tortious; *e.g.*, if a man builds a house so close to another that his roof overhangs, and the water flows off his roof upon the other. The remedy for a private nuisance is either by abatement (*q.v.*), or by action for damages, injunction or mandamus. See *Benjamin* v. *Storr; St. Helens Smelting Co.* v. *Tipping.*

Nul Tiel Record. The plea or defence that "no such record" as that alleged by the plaintiff exists.

Nulla bona. "No goods"; the return made by a sheriff to a writ or warrant authorising him to seize the chattels of a person, when he has been unable to find any to seize.

Nulla pactione effici potest ut dolus præstetur. By no contract can it be arranged that a man shall be indemnified against responsibility for his own fraud.

Nullity of Marriage. When a marriage is void, for any reason, the party not in fault may present a petition to the High Court in the Probate, Divorce and Admiralty Division, and obtain a decree declaring the nullity of the marriage.

Nullius filius. A bastard (*q.v.*).

Nullum simile est idem. A thing which is similar to another thing is not the same as that other thing.

Nullum tempus aut locus occurrit regi. "Time never runs against the Crown," *i.e.*, the ordinary Statutes of Limitations do not bind the Crown. But by the Crown Suits Act, 1769 (the Nullum Tempus Act), and the Crown Suits Act, 1861, the common law rule has been altered, and the Crown is barred by lapse of time in cases within those Acts.

Nunc pro tunc. "Now for then," as when the Court directs a proceeding to be dated as of an earlier date than that on which it was actually taken.

Nuncupative Will. See *Will.*

Nuptiae. Marriage, the ceremonies with which the legal tie was formed; the union of a man and a woman involving unbroken harmony in the habits of life. (Roman Law.)

Nuptiae, Justae. "Legal marriage." That union of the sexes which gave the father *potestas* over the children born to him by his wife. Conditions of *justae nuptiae*: (1) Consent of the parties duly

expressed; (2) Puberty; (3) *Connubium* (the legal power of contracting marriage). (Roman Law.)

Nuptias non concubitus sed consensus facit. It is consent, not cohabitation, which makes a marriage.

Oaths. An oath is a religious asseveration by which the party calls his God to witness that what he says is the truth, or that what he promises to do he will do. The Oaths Act, 1888, allows an affirmation to be made instead of an oath. See *Perjury*.

Obiter Dictum. A saying by the way. An observation by a Judge on a legal question suggested by a case before him, but not arising in such a manner as to require decision. It is therefore not binding as a precedent.

Obligatio civilis. A statutory obligation, or one recognised by the *jus civile*. (Roman Law.)

Obligatio literarum. See *Literarum obligatio*.

Obligatio prætoria, or **honoraria.** An obligation established by the Praetor in the exercise of his jurisdiction. (Roman law.)

Obligatio verborum. See *Verborum obligatio*.

Obligee. One to whom a bond is made.

Obligor. One who binds himself by bond.

Obscene. A publication, the tendency of which is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands it is likely to fall. Obscene publications or libels are punishable with fine or imprisonment, being misdemeanours at common law.

Occupancy. The taking possession of a *res nullius* or ownerless thing.

Occupant. See *Tenant pur autre vie*.

Occupation. The exercise of physical control or possession of land; especially by the forces of the Crown in time of war, in enemy territory, or at home.

Of Course. A step in an action or proceeding which the Court has no discretion to refuse, provided the proper formalities have been observed.

Offer. An agreement consists essentially of an offer made by one party and an acceptance by the other. An offer is the offer of a promise (Anson). An offer may be withdrawn at any time before it has been unconditionally accepted: and if the person to whom an offer is made refuses it, or neglects to accept it within a reasonable time, it is deemed to be at an end. See *Byrne* v. *Van Tienhoven; Ramsgate Hotel Co.* v. *Montefiori; Rossiter* v. *Miller; Taylor* v. *Brewer; Williams* v. *Carwardine; Carlill* v. *Carbolic Smoke Ball Co.; Felthouse* v. *Bindley; Household Fire Insurance Co.* v. *Grant*.

Office. The right and duty to exercise an employment. Offices are either public or private, a public office being one which entitles a man to act in the affairs of others without their appointment or permission.

Office Copy. A copy made by an officer appointed for that purpose, and sealed with the seal of his office.

Office, Inquest of. See *Inquest of Office*.

Official Receivers. Officers appointed by the Board of Trade, who

act in bankruptcy and in the winding up of companies. See Bankruptcy Act, 1914.

Official Referee. See *Referee.*

Official Secrets Acts, 1911 and 1920. Legislation passed to prevent breaches of official confidence and to counter espionage, for which there was no penalty at common law.

Official Trustee of Charity Lands. The secretary of the Charity Commissioners. He is a corporation sole for the purpose of holding real property and leaseholds as bare trustee for an endowed charity in cases where it appears to the Court desirable to vest them in him. See the Charitable Trusts Acts.

Official Trustees of Charitable Funds. Persons, appointed by the Charity Commissioners, and forming a corporation, in whom the money, stocks or investments of any endowed charity may be vested. See the Charitable Trusts Acts.

Old Bailey. Now the Central Criminal Court (*q.v.*).

Oleron, Laws of. A collection of customs of the sea compiled in the twelfth century at Oleron, an island off the west coast of France.

Omne quod solo inædificatur solo cedit. Everything which is built into the soil is merged therein.

Omne testamentum morte consummatum est. Every will is completed by death.

Omnes licentiam habent his, quæ pro se indulta sunt, renunciare. Every one has liberty to renounce those things which are granted for his benefit.

Omnia præsumuntur contra spoliatorem. All things are presumed against a wrongdoer. See *Armory* v. *Delamirie.*

Omnia præsumuntur legitime facta donec probetur in contrarium. All things are presumed to have been legitimately done, until the contrary is proved.

Onerous. A right, in which the obligations attaching to it counterbalance or exceed the advantage to be derived from it.

Onus probandi. The onus of proof (*q.v.*).

Operative Part. The part of an instrument which carries out the main object, as opposed to recitals.

Oppression. The common law misdemeanour committed by a public officer, who, under colour of his office, wrongfully inflicts upon any person any harm or injury.

Optima est lex quæ minimum relinquit arbitrio judicis; optimus judex qui minimum sibi. That system of law is best which confides as little as possible to the discretion of a Judge; that Judge the best who trusts as little as possible to himself.

Optima legum interpres est consuetudo. Custom is the best interpreter of the law.

Optimus interpres rerum usus. The best interpreter of things is usage.

Option. A right of choice; a right conferred by agreement to buy or not at will, property whether land or stocks, etc., within a certain time.

Oratio. An address by the emperor to the senate, stating what he wished them to embody in a *senatus consultum.* (Roman Law.)

Orcinus. Pertaining to *Orcus* (Pluto) the nether world, or death;

a freedman who had received freedom directly from the will of his master, having been the slave of the testator at the date of the will as well as at the time of his death. (Roman Law.)

Ordeal. The most ancient mode of trial: it involved an appeal to the supernatural or the *judicium Dei*. The ordeal by fire consisted of taking up in the hand a piece of red-hot iron, or of walking barefoot and blindfold over red-hot ploughshares. If the party was unhurt he was innocent; if otherwise, he was guilty. Ordeal by hot water was performed by plunging the arm in boiling water, with similar consequences. The cold water ordeal consisted of throwing the offender in a pond or river; if he sank he was innocent, and if he floated he was guilty. (See Goitein, "Ancient Ordeal and Modern Law.") The ordeal was abolished in the reign of Henry III, and was ultimately replaced by the trial by jury.

Order. A command or direction; used in law with particular reference to Courts of Justice. The directions of a Court in a proceeding or matter other than a decree of judgment, are termed "orders." The code of procedure of the Supreme Court consists of Orders subdivided into Rules.

Order and Disposition. See *Reputed Ownership*.

Order in Council. An Order made by the King "by and with the advice of His Majesty's Privy Council," for the purposes of government, either in virtue of the royal prerogative or under statutory authority.

Ordinance. (1) Of Parliament. Formerly an Act of Parliament which lacked the consent of one of the three elements, Crown, Lords and Commons. (2) A declaration of the Crown lacking the authority of Parliament.

Ordinary. The bishop of a diocese when exercising the ecclesiastical jurisdiction annexed to his office, he being *judex ordinarius* within his diocese.

Ouster. The deprivation of a person of his freehold.

Ousteriemain. A writ directing the possession of land to be delivered out of the hands of the Crown into those of a person entitled to it. It was the mode by which an heir in ward of land held of the Crown, *ut de honore* obtained possession of it on attaining majority. It also meant a judgment on a *monstrans de droit*, deciding that the Crown had no title to a thing which it had seized.

Outlaw. A person who is put out of the protection of the law by judgment of outlawry.

Outlawry. Where an indictment has been found against a person and summary process proves ineffectual to compel him to appear, process of outlawry may be issued, though in practice this is never done. See *Process*.

Outstanding. The legal estate in land is said to be outstanding when it has been conveyed to a mortgagee, and has not been reconveyed to the mortgagor when the mortgage debt has been cleared off. Similarly an outstanding term is a term of years which has not come to an end although the purpose for which it was created has been realised.

Over. In conveyancing, gifts or limitations "over" are limitations

intended to take effect on the cessation or failure of prior estates. See *Limitation*.

Overdue. A bill of exchange is said to be overdue when the time for its payment has passed. Anyone taking it takes it subject to the equities of prior holders. See Bills of Exchange Act, 1882.

Overreaching Clause. A clause in a resettlement which saves the powers of sale and leasing annexed to the estate for life created by the original settlement, when it is desired to give the tenant for life the same estate and powers under the resettlement; so called because it provides that the resettlement shall be overreached by the exercise of the old powers.

Overriding Trust. A trust which takes precedence of other trusts previously declared.

Overseers. See *Poor Law*.

Overt Act. An open act; an act capable of being observed, and from which an intention may be deduced. Used in the law of treason and conspiracy.

Ownership. The right to the exclusive enjoyment and possession of a thing; a right *in rem*. It involves the right of user, of taking produce, and of destruction. Ownership is absolute or restricted, *i.e.*, it may be limited to a lesser or greater extent, either voluntarily or under compulsion of law, as, for example, where there are several joint owners, or where payment of a sum of money is charged on the land, or an easement is held to exist over it. Ownership is always subject to the rule that a man must so use his own property as not to injure his neighbour.

Beneficial ownership is the right to the enjoyment or the substance of a thing as contrasted with the legal or nominal ownership.

Oyer and Terminer. To hear and determine. A commission to the Judges to try offences committed in a certain area. See *Assize*.

P.C. Privy Councillor.

P.P.I. Policy proof of interest. A policy of marine insurance which usually is legally unenforceable owing to want of insurable interest on the part of the insurer. By the Marine Insurance Act, 1906, s. 4, any person without insurable interest effecting a marine insurance commits an offence.

Pacta dant legem contractui. Agreements constitute the law of the contract.

Pacta quæ contra leges constitutionesque vel contra bonos mores fiunt, nullam vim habere, indubitati juris est. It is undoubted law that agreements which are contrary to the laws and constitutions, or contrary to good morals, have no force.

Page v. Morgan ((1885), 15 Q. B. D. 228). The plaintiff had sold certain wheat by sample to the defendant, the contract being by word of mouth only and the price over £10. The plaintiff sent the wheat by barge to the defendant's mill, and the defendant had a portion of it taken into the mill, and after examining it, he then rejected the whole of the wheat on the ground that it was not equal to sample. The plaintiff sued for the price, and the defendant set up that the provisions of section 17 of the Statute of Frauds had not been complied

with, and that therefore the contract was unenforceable. *Held*, that there had been an acceptance and receipt within the meaning of the section. The defendant's dealing with the goods clearly amounted to a recognition of the contract.

Pains and Penalties. See *Bill of Pains and Penalties.*

Pais. See *In Pais.*

Palatine. See *County Palatine.*

Pandects. The Digest of Justinian. See *Corpus juris civilis.*

Panel. The printed list, made up by the sheriff, of the persons who have been summoned to serve as jurors for the trial of all actions at a particular sittings.

Paper Office. An office of records. (1) In Whitehall. (2) In the Old Court of King's Bench.

Paper, Special. A list kept in the King's Bench Division of matters set down for argument on points of law.

Paquin, Ltd. v. Beauclerk ([1906] A. C. 148). *Held*, that if a married woman purchases necessaries with her husband's authority, she is not liable for the price thereof, even though the vendor did not know that she was married.

Parage; Paragium. Equality of blood, name, or dignity.

Paramount. Superior.

Paraphernalia. Such apparel and ornaments given to a married woman by her husband as are suitable to her condition in life, to be worn as ornaments of her person only. The husband might dispose of them during his life, and they were liable for his debts, but he had no power to dispose of them by will.

Paravail. Inferior or subordinate.

Parcels. Parts or portions of land. The part of an instrument following the operative words.

Parcener; Parcenary. The equivalents of coparcener and coparcenary.

Pardon. The release by the Crown of a person from punishment incurred for some offence. A pardon may be granted either (1) before or during a prosecution, in which case it may be pleaded in bar, or (2) after conviction, in which case it may be pleaded in arrest of judgment or in bar of execution, so that the offender is discharged from punishment. Some offences, however, cannot be pardoned, *e.g.*, a common nuisance while it remains unredressed: and a pardon cannot be pleaded to a parliamentary impeachment.

Pares. Peers, equals.

Pari passu. "With equal step." Equally, without preference.

Parish. The unit of local government, formerly co-incident with the ecclesiastical parish. "A place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed" (Interpretation Act, 1889, s. 5).

Parish meetings and councils were created by the Local Government Act, 1894.

Park. An enclosed chase (*q.v.*).

Parlement Belge, The ((1880), 5 P. D. 197). The property of a foreign sovereign is immune from the jurisdiction of English Courts, even though such sovereign be engaged in trade.

The *Parlement Belge* was an unarmed packet boat belonging to the

King of the Belgians, and carrying mails and passengers between Ostend and Dover. She was arrested at the suit of the owners of a ship following a collision. *Held*, she was free from arrest, being the property of a foreign sovereign.

Parliament. The sovereign legislative authority for the British Empire; composed of the King, the House of Lords, and the House of Commons. See *Sovereignty*.

Parliamentary Agents. Persons (usually solicitors) who transact the technical business involved in passing private Bills through the Houses of Parliament.

Parliamentary Committees. These consist of (1) committees of the whole House, (2) standing or sessional committees, (3) select committees, (4) joint committees.

A committee of the whole House, whether in the Lords or the Commons, is really the House of Lords or the House of Commons, as the case may be, presided over by a chairman instead of by the Lord Chancellor or the Speaker. The standing or sessional committees and the select committees consist in each House of a certain number of members who perform various functions in connection with Bills. Joint committees consist of equal numbers of members of each House.

Parol. Verbal or oral, as opposed to anything in writing or under seal. See *Morgan* v. *Griffith; Morris* v. *Baron; Pym* v. *Campbell*.

Parricide. The killing of a father.

Parson. The ecclesiastical officer in charge of a parish church. He is a corporation sole.

Particeps criminis. One who has a share in a crime: an accessory (*q.v.*).

Particular Tenant. The owner of a particular estate.

Particulars. The details of the claim or of the defence in an action which are necessary in order to enable the other side to know what case they have to meet. See Order XIX.

Partition. The division of land owned by persons jointly among the owners in severalty. Partition was either voluntary by deed or compulsory by order of the Court. Until the Partition Act, 1868, the Court had no power to order a sale and division of the proceeds instead of a partition of the property itself. By the operation of the Law of Property Act, 1925, land belonging to joint owners is vested in trustees on trust for sale, with power to postpone the sale, and the Partition Acts are repealed.

Partnership. The relation which subsists between persons carrying on business in common with a view to profit (Partnership Act, 1890, s. 1), but excluding a company incorporated under the Companies Acts or by statute or by letters patent or by royal charter and a company working within the Stannaries.

Every partner is entitled and bound to take part in the conduct of the business, unless it is otherwise agreed between them. Every partner is liable for the debts of the partnership to the whole extent of his property. As between the partners, each partner is bound to contribute to the debts in proportion to his share of the profits. As regards third persons, the act of every partner, within the ordinary scope of the business, binds his co-partners, whether they have sanctioned it or not. The relation between the partners being personal, no one of them can

put a stranger in his place without the consent of the others. Where no time for the duration of the partnership is fixed, it is called a partnership at will, and may be dissolved at the pleasure of any partner.

A limited partnership is one in which, although there must be one or more partners responsible for all the liabilities of the partnership, there may be one or more partners who are under no liability if they contribute an agreed sum for partnership purposes, provided that they take no part in the management, and that the partnership is registered as a limited partnership. See the Limited Partnership Act, 1907.

When partners sue out a writ in the name of their firm, they or their solicitors must, on demand in writing by or on behalf of the defendant, furnish the names and addresses of the partners. (Order XLVIIIA, r. 2.) See *Cox* v. *Hickman*.

Part-owners. Persons who are entitled to property, *e.g.*, a ship, in common.

Party. A person who takes part in a transaction or legal proceeding.

Party-wall. A wall adjoining property belonging to different owners. In the absence of evidence to the contrary, tenancy in common of the wall was presumed. By the Law of Property Act, 1925, s. 38, sub-s. 1, a party wall or structure shall be and remain severed vertically as between the respective owners, each of whom shall have the requisite rights of support and user over the rest of the structure.

Pasley v. Freeman ((1789), 3 T. R. 51). The defendant fraudulently stated that Christopher was a person who could safely be trusted with credit for goods to a specified value. *Held*, that a false affirmation made by the defendant with intent to defraud the plaintiff, whereby the plaintiff receives damage, is the ground of an action upon the case in the nature of deceit. In such an action, it is not necessary that the defendant should be benefited by the deceit, or that he should collude with the person who is.

Passage. The right of way over private water: an easement.

Passim. In various places.

Pasture, Common of. The right of feeding beasts on the land of another. Common of pasture appendant is the right which every freehold tenant of a manor possesses to feed his cattle used in agriculture (*i.e.*, horses, cattle and sheep) upon the lord's waste, provided they are levant and couchant on the tenant's freehold land.

Common of pasture appurtenant is a right annexed to certain lands, by virtue of which the owner of those lands feeds cattle on the soil of another person.

Common because of vicinage is where the tenants of two adjoining manors, the inhabitants of two adjoining townships, or the owners of two contiguous pieces of land, have from time immemorial "intercommoned," *i.e.*, allowed each other's cattle to stray and pasture on each other's land, or on a waste or open field lying between their lands.

Common of pasture in gross differs from the foregoing varieties of common in being unconnected in any way with the tenure or occupation of land.

Patent. (1) Letters patent from the Crown, as, *e.g.*, conferring a peerage. (2) The right conferred by letters patent of the exclusive use

and benefit of a new invention. The law as to patents is to be found in the Patents and Designs Act, 1907, as amended by the Patents and Designs Act, 1919, and in the Patents Rules, 1920. A patent is obtained by making to the Patent Office an application accompanied by a specification, and, when granted, is sealed with the seal of the Patent Office. Its normal duration is sixteen years, but the period may be extended.

Pater est quem nuptiæ demonstrant. He is the father whom marriage indicates.

Paterfamilias. One invested with *patria potestas* over another; a man *sui juris* or not under the authority of another. (Roman Law.)

Paterson v. Gandassequi ((1812), 15 East, 62). L & Co., acting on instructions from the defendant, a merchant carrying on business abroad but temporarily present in London, purchased goods from the plaintiffs without stating on whose behalf they were acting, or that they were acting as agents. The plaintiffs, *semble*, knew that L & Co. were acting as agents for the defendant but nevertheless debited the goods to L & Co. L & Co. having become insolvent without having paid for the goods, the plaintiffs claimed payment from the defendant. *Held*, the defendant was not liable if the plaintiffs knew who the principal was at the time when they debited the agent.

If the principal was not known at the time of the purchase made by the agent, it seems that when discovered the principal or the agent may be sued, at the election of the seller, unless where, by the usage of trade, the credit is understood to be confined to the agent so dealing, as particularly in the case of principals residing abroad.

Patman v. Harland (17 Ch. D. 353). A lessee has notice of his lessor's title.

P conveyed to H two freehold plots of land, part of a building estate, subject to restrictive covenants that only private dwelling-houses should be erected. H conveyed the plots, subject to the covenants, to Harland. Harland granted lease of one plot to B. Neither B nor her solicitor knew of the restrictive covenant and proceeded to erect an art studio. *Held*, that B was bound by the covenant, and must be restrained from completing the building. See now section 44, sub-section 5, Law of Property Act, 1925, and *Notice*.

Patria. A jury of neighbours. See *Jury*.

Patria potestas. The rights enjoyed by the head of a Roman family (*paterfamilias*) over his legitimate children. It was acquired by (1) birth, (2) legitimation, (3) adoption. It was lost by (1) death of the *paterfamilias*, (2) by loss of status of parent or child, (3) by promotion of the son to the patriciate, (4) by emancipation. (Roman law.)

Patriciatus. The patriciate; from the time of Constantine, the highest rank at Court. (Roman Law.)

Patrimonium. Things *in nostro patrimonio* are things belonging to individuals. Things *extra nostrum patrimonium* are things belonging not to individuals but to all men (*communes*), to the State (*publicæ*), to corporate bodies (*universitatis*), or to no one (*nullius*). (Roman law.)

Pauper. (1) A person in receipt of relief under the poor laws. (2) A person suing or defending an action *in forma pauperis*. See *Poor Person*.

Pauperies. Mischief occasioned by an animal; damage done with-

out *injuria*, or wrong intent, on the part of the doer. (Roman law.) See *Actio noxalis*.

Pawn. To pledge a chattel as security for a debt. A special property is conferred on the pawnee, who has the power of sale in default of redemption. The surplus, after satisfying the debts belongs to the pawnor. It is a tort for the pawnee to retain the goods after payment or tender of the debt. See *Bailments*.

Pawnbroker. A person who carries on the business of taking goods and chattels in pawn. (Pawnbrokers Act, 1872, s. 5.)

Payee. The person to whom a bill of exchange is payable.

Paymaster-General. The officer who makes the payments out of public money required for the Government Departments, by issuing drafts on the Bank of England.

Payment into Court. The deposit of money with an official or banker of a Court of justice for the purposes of proceedings pending in the Court.

(1) Where the defendant in an action admits the plaintiff's claim to a certain amount, he may pay that amount into Court by way of satisfaction or amends, and plead the payment in as a defence. Except in libel or slander, a defendant may also pay money into Court with a defence denying liability. The plaintiff (unless otherwise ordered) is entitled in either case to receive the amount paid in, and if he accepts it in satisfaction of his entire claim the defendant must pay him his costs of the action. In no case where money is paid into Court is that fact to be communicated to a jury before they have found their verdict. See Order XXII.

(2) Money may be paid into Court to remain there pending litigation. Thus, where a *prima facie* liability is established against a defendant, the Court may, under Order XXXII, r. 6, order him to pay the amount in question into Court, " to abide the event " of the litigation. Payment into Court is also a mode, under Order LXV, r. 6, of giving security, *e.g.*, for the costs of an appeal.

(3) In the Chancery Division payment into Court is also a mode by which a person may relieve himself from the responsibility of distributing or administering a fund in his hands, *e.g.*, as a trustee.

Peace. In early times criminal matters and offences against public order were within the jurisdiction of local lords and local Courts, and the King's Court exercised jurisdiction over offences committed within the vicinity of the King himself: committed "*contra pacem Domini*," or " against the peace of our Lord the King."

By a fiction that the King's peace extended to the highways and ultimately over the whole realm, the King's Court acquired its comprehensive jurisdiction. It remained necessary to allege in an indictment that an offence was committed *contra pacem Domini* until the Criminal Procedure Act, 1851. See *Articles of the Peace; Bill of Peace; Clerk of the Peace; Commission of the Peace; Justice of the Peace*.

Peachy v. Duke of Somerset ((1824), 1 Stra. 447). The plaintiff was tenant of copyhold lands in a manor of which the defendant was lord. He committed acts of forfeiture by making leases contrary to the custom of the manor without licence, and by felling timber, etc., and he now brought this suit, offering to make compensation and praying

relief from the forfeiture. *Held,* that the plaintiff was not entitled to relief; and that the true ground of relief against penalties is from the original intent of the case, where the penalty is designed only to secure money, and the Court can give by way of recompense all that was expected or desired.

Pearce v. Brooks ((1866), L. R. 1 Ex. 213). Immorality vitiates a contract.

The plaintiff sued the defendant, a common prostitute, for the price of a carriage with which he had supplied her, well knowing she was going to use it for the purposes of her calling. *Held,* he could not recover the price.

Peek v. Gurney (L. R. 6 H. L. 377). A party who has suffered damage through relying on a false statement must show that the defendant intended him to act on such statement. Non-disclosure of material facts is not actionable unless there is a duty to disclose.

The appellant purchased partly paid-up shares from an original allottee in a company of which the defendant was a director, having been induced to do so by a prospectus issued by the directors containing false statements. He claimed indemnity from liability as a contributory. *Held,* his claim failed as the prospectus was only meant for the original subscribers.

Peer. (1) A lord. (2) An equal.

Peerage. The peerage consists, in order of precedence, of dukes, marquises, earls, viscounts and barons.

Peine forte et dure. The torture inflicted upon a prisoner indicted for felony who refused to plead and submit to the jurisdiction of the Court. Heavy weights were applied to his body until he consented to be tried by pleading "guilty" or "not guilty," or until he died.

Originally the Courts had no jurisdiction in felonies except by consent of the parties, and a prisoner who refused to plead thereby escaped the attainder and forfeiture of property which resulted from conviction of felony.

In 1772 the statute 12 Geo. 3, c. 20, made refusal to plead to a charge of felony equivalent to a plea of guilty, and abolished the *peine forte et dure.*

Penal Action. An action for a penalty imposed by statute as a punishment, recoverable by any person who will sue for it. See *Qui tam,* etc.

Penal Servitude. The punishment substituted for transportation by the Penal Servitude Act, 1853. It may be for life or any period not less than three years.

Penalty. (1) A punishment, particularly a fine or money payment. (2) The nominal sum payable (*a*) by an obligor on breach of the condition in a bond; (*b*) on breach of a term in a contract. In each case, only the sum representing the actual loss can be recovered. See *Peachy* v. *Duke of Somerset; Sloman* v. *Walter; Kemble* v. *Farren.*

Pendente lite. While a suit is pending, *i.e.,* after it has been commenced.

Penn v. Lord Baltimore ((1750), 1 Ves. 444). "Equity acts *in personam.*" The plaintiff and defendant, being in England, had entered into articles for settling the boundaries of two provinces in America—Pennsylvania and Maryland—and the plaintiff sought a specific per-

formance of the articles. The principal objection was that the property was out of the jurisdiction of the Court. *Held*, that the plaintiff was entitled to specific performance of the articles, for the Court acts *in personam*.

Pensions, Ministry of. Established pursuant to the Ministry of Pensions Act, 1916, which authorised the appointment of a Minister of Pensions. It transferred to him the powers and duties of the military and naval authorities with regard to pensions and grants payable by them. He and one of the secretaries of the Ministry may sit in the House of Commons.

Per, Actions in the. See *Entry, Writs of.*

Per auter vie. See *Tenant pur autre vie.*

Per capita. "By the head." Individually. Distribution of the property of an intestate is *per capita* if it is divided amongst all entitled to it in equal shares. See *Per stirpes.*

Per incuriam. Through want of care.

Per infortunium. By mischance. See *Homicide.*

Per my et per tout. By the half and by the whole. See *Joint Tenancy.*

Per quod. Whereby.

Per se. By itself; taken alone.

Per stirpes. By stock or branches. Distribution of the property of an intestate is *per stirpes* if it is divided amongst those entitled to it according to the number of stocks of descent; that is, if it is divided equally amongst the surviving children of an intestate individually, and the descendants of deceased children collectively, so that the descendants of a deceased child take that child's share between them. See section 47, sub-section 1, Administration of Estates Act, 1925.

Per totam curiam. By the whole Court.

Perambulation. The act of walking over the boundaries of a district or piece of land, either for the purpose of determining them or of preserving evidence of them.

Perdurable. Lasting long or for ever.

Peremptory. An order or writ which admits of no excuse for non-compliance.

Performance. The doing of that which is required by a contract or condition. The equitable doctrine of part performance is that where a contract is not enforceable for want of some formality (*e.g.*, writing under the Statute of Frauds), if it has been partly carried into effect by one of the parties, the other cannot set up the informality, *i.e.*, "part performance takes the case out of the Statute." The doctrine applies to all cases where specific performance would be decreed. The acts of the plaintiff in part performance of a contract must be unequivocally referable to a completed agreement, and must be such that it would amount to fraud in the defendant to take advantage of the want of writing. See *Lester* v. *Foxcroft; Russel* v. *Russel; Maddison* v. *Alderson.*

Periculum rei venditæ, nondum traditæ, est emptoris. A thing, sold but not yet delivered, is at the risk of the purchaser. (Roman Law.)

Perjury. False swearing. The making on oath by a witness or interpreter in a judicial proceeding of a statement material in that

proceeding, which he knows to be false or which he does not believe to be true.

Perjury is a misdemeanour, but no conviction can be made on the evidence of one witness only. See the Perjury Act, 1911.

Perpetua lex est, nullam legem humanam ac positivam perpetuam esse, et clausula quæ abrogationem excludit, ab initio non valet. It is an everlasting law, that no positive and human law shall be perpetual, and a clause which excludes abrogation is invalid from its commencement.

Perpetuation of Testimony. A proceeding originally by Bill in Chancery to place on record evidence material for establishing a future claim to property or title. See now Order XXXVII, rr. 35—38.

Perpetuity. A disposition of property by which its absolute vesting is postponed for ever. Perpetuities are contrary to the policy of the law, because they "tie up" property and prevent its free alienation. The rule against perpetuities forbids any disposition by which the absolute vesting of property is or may be postponed beyond the period of the life or lives of any number of persons living at the time of the disposition, and the further period of twenty-one years after the death of the survivor, with the possible addition of the period of gestation. Accordingly a gift to A for life, and after his death to such of his children as shall attain *twenty-five* would be void for remoteness.

By the Law of Property Act, 1925, s. 163, a limitation or gift, which would be void as depending upon the beneficiary attaining an age exceeding twenty-one years, is to be construed as if the age specified had been twenty-one years. See *Cadell* v. *Palmer*.

Person. The object of rights and duties, that is, capable of having rights and of being liable to duties. Persons are of two kinds, natural and artificial. A natural person is a human being, an artificial person is a collection or succession of natural persons forming a corporation.

Persona. (1) A human being. (2) A being or entity capable of enjoying legal rights, or subject to legal duties; *e.g.*, a person or corporation. (3) A man's political and social rights collectively; his legal capacity. (Roman law.)

Persona designata. A person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character.

Persona extranea. A person outside one's family. (Roman law.)

Persona incerta. See *Incerta persona*.

Persona publica. A public officer; a notary. (Roman law.)

Personal Action. An action *in personam*, as opposed to an action *in rem*.

Personal property. Moveable property; goods and chattels. Moveable property, if lost or taken, could not as of right be recovered from the wrongful possessor; the latter had the option of paying its value as damages in lieu. The action against the wrongdoer was called a personal action, and the property in question personal property. Leasehold interests in land are personal property.

Personal Representative. An executor or administrator whether acting with regard to personal property or, under the Land Transfer Act, 1897, with regard to real property. By section 55, sub-section 1 (xi) Administration of Estates Act, 1925, "personal representative"

means the executor original or by representation for the time being of a deceased person.

By the Administration of Estates Act, 1925, s. 1: (1) Real estate to which a deceased person was entitled for an interest not ceasing on his death, shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased in like manner as, before 1926, chattels real devolved. (2) The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts and powers. (3) The personal representatives shall be the representative of the deceased in regard to both real and personal estate.

Personalty. Personal property passing on death of the owner. Pure personalty is personal property unconnected with land. Mixed personalty is personal property consisting of interests in land, such as leaseholds.

Personation. The act of representing oneself to be someone else, whether living or dead, real or fictitious. It is a felony by various statutes.

Peter v. Compton ((1694), Skinner, 353). This was an action upon an agreement of the defendant, in consideration of one guinea paid to him, to give the plaintiff fifty on the day of his marriage. The marriage did not happen within a year, and the question was whether or no the agreement must be in writing. *Held*, that " an agreement which is not to be performed within one year from the making thereof " means, in the Statute of Frauds, an agreement which from its terms is incapable of being performed within the year. Therefore the agreement in this case need not be in writing.

Petition. A written statement addressed to the Crown, a Court or public officer, setting forth facts on which the petitioner bases a prayer for remedy or relief. Proceedings in the Probate, Divorce and Admiralty Division, in Bankruptcy, in the House of Lords and Privy Council are commenced by petition. A petition is also one of the methods of initiating proceedings in the Chancery Division.

The right of the subject to petition the Crown or Parliament was affirmed by the Court in the case of the Seven Bishops (*q.v.*), and in the Bill of Rights. But violent and tumultuous petitioning is forbidden by the statute 13 Car. 2, st. 1, c. 5.

Petition of Right. (1) The mode by which a subject can claim relief from the Crown for certain kinds of injury arising from the acts of the Crown or its servants, *e.g.*, an illegal seizure of goods, or a claim for breach of contract. The petition may be presented in any of the divisions of the High Court on the Home Secretary granting his fiat for that purpose. (Petition of Right Act, 1860, s. 1.) (2) The statute 3 Car. 1, c. 1.

Petty Bag Office. The principal office on the common law side of the Court of Chancery, under the management of the Clerk of the Petty Bag (*q.v.*). Out of it issued all original writs.

Petty Sergeanty. A form of tenure, which consisted in the rendering of some minor personal service to the lord, such as yielding him yearly a sword or pair of gilt spurs. The Act 12 Car. 2, c. 24, did not affect its incidents, which are expressly preserved by the Law of Property Act, 1922, s. 136.

Petty Sessional Court or **Petty Sessions.** A Court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and including the Lord Mayor or any alderman of the City of London, or any salaried magistrate when sitting in any place where he is authorised by law to do alone any act for which two justices are required. (Interpretation Act, 1889, s. 13, sub-s. 12.)

Phillips v. Eyre ((1870), L. R. 6 Q. B. 1). An action will not lie in an English Court for a wrong committed abroad, for which there is no liability by the law of the place where the act was committed.

The plaintiff sued the defendant for false imprisonment, the wrong being committed when the defendant was Governor of Jamaica. The Jamaican Legislature had passed an Act of Indemnity in respect of the imprisonment. *Held*, the action would not lie.

Picketing. The posting of persons in the vicinity of a place of work during a trade dispute in order to interfere with those wishing to work. The Conspiracy and Protection of Property Act, 1875, made picketing an offence; but the Trades Dispute Act, 1906, s. 2, provided that it should be lawful for one or more persons to attend at a place of work or residence merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

Pin Money. An allowance made by a husband to a wife for her dress and personal expenses. It may be secured by settlement, or it may be given voluntarily.

Pipe. A "roll" in the Exchequer, also known as the Great Roll. It consisted of the accounts relating to the hereditary revenues of the Crown.

Piracy. (1) The act of robbery on the seas within the jurisdiction of the admiral, and not being an act of war. Certain acts also constitute piracy by statute. Piracy is punishable with penal servitude for life, unless it is accompanied by attempted murder, or violence dangerous to life, in which case the punishment is death. (Piracy Act, 1837, s. 2.) (2) The infringement of copyright.

Piscary. Fishery (*q.v.*).

Placita. Pleas

Plaint. The cause for which the plaintiff complained against the defendant and for which he obtained a writ or summons.

Plaintiff. One who brings an action at law.

Plea. The reply to a "plaint," a mode of defence in an action at law.

In a criminal prosecution, the prisoner has to plead to the indictment, which he may do (1) by pleading to the jurisdiction, that is, alleging that the Court has no jurisdiction to try him; (2) by a demurrer (*q.v.*); or (3) by some plea in bar, either a general plea, "guilty," or "not guilty," or a special plea, such as "autrefois acquit."

Pleas in abatement were pleas which showed that in criminal proceedings the prosecutor, or in civil proceedings the plaintiff, had committed some informality which prevented him from succeeding. Now obsolete.

Formerly in a civil action pleas were of two kinds, dilatory and peremptory. The former included pleas to the jurisdiction, pleas in

suspension, *e.g.*, an allegation of infancy, and pleas in abatement; the latter consisted of pleas in bar which showed a substantial defence to the action, either by traverse or by confession and avoidance (*q.v.*).

Pleas have been superseded by the Statement of Defence.

Plead. To make a plea (*q.v.*).

Pleader. (1) An advocate. (2) One who draws pleadings. At common law called a special pleader, and in Chancery an equity draftsman.

Pleadings. Written or printed statements delivered alternately by the parties to one another, until the questions of facts and law to be decided in an action have been ascertained, *i.e.*, until issue is joined. The pleadings delivered (*a*) by the plaintiff, (*b*) by the defendant, are as follows: (1) (*a*) Statement of claim; (*b*) defence. (2) (*a*) Reply; (*b*) rejoinder. (3) (*a*) Surrejoinder; (*b*) rebutter. (4) (*a*) Surrebutter. A counterclaim may be included with the defence. No reply or subsequent pleading shall be delivered except by leave of a Master. See Orders XIX—XXIII; *Amendment*.

Pleas of the Crown. Offences averred to have been committed *contra pacem Domini Regis, coronam et dignitatem suam* (against the peace of our Lord the King, his crown and dignity), which were triable only in the King's Courts, as distinguished from offences which could be tried in the local Courts, *e.g.*, the County Court. A general term for criminal prosecutions. See *Peace*.

Pledge. The transfer of the possession of a chattel as security for the payment of a debt or performance of an obligation. On failure of payment or performance the chattel may be sold.

Pledge v. White ([1896] A. C. 187). Consolidation is applicable (1) where at the date when redemption is sought all the mortgages are united in one hand and redeemable by the same person, or (2) where after that state of things has once existed the equities of redemption have become separated (*per* Lord Davey).

The plaintiff had become entitled to the equity of redemption in all of seven remaining properties which had been mortgaged by several separate mortgages, which mortgages were vested in the defendants. The plaintiff claimed to redeem one of the properties (No. 2) without redeeming the others. *Held*, he could not do so, and the executor of the transferee was entitled to consolidate.

Plene administravit. The defence set up by an excutor or administrator when sued upon a debt of his testator which he has no assets to satisfy.

Plenipotentiary. Having full powers.

Plus-petere, plus-petitio, pluris petitio. Where the plaintiff claims more than he is entitled to. This might be done in four ways: *re, tempore, loco, causa.* (Roman law.)

Poaching. The offence of unlawfully taking or destroying game on another man's land. See the Poaching Prevention Act, 1862.

Poena. A penalty, the punishment of an offence: generally inflicted for delicts. It is not confined to a money payment, as is *multa*, a fine, but may extend to the *caput* of the offender, and is not left to the discretion of the Judge, but is attached to or appointed for each particular delict. (Roman law.)

Polemis v. Furness, Withy, Re ([1921] 3 K. B. 560). If by reason

of negligence a cause of action arises, the defendants are liable for all the direct consequences of such negligence, even though such consequences could not reasonably have been anticipated. A ship was being repaired when a plank was negligently allowed to fall into the hold, starting a fire which damaged the ship. *Held*, that action for damages for negligence would lie, and that the damages were not too remote.

Police Court. A petty sessional Court (*q.v.*), held in London and in other cities by a magistrate.

Police Supervision. Where a criminal offender is obliged to notify the place of his residence and every change of his residence to the chief officer of police of the district, and, if a male, of reporting himself once a month. (Prevention of Crimes Act, 1871, s. 8.)

Policy of Assurance. An instrument containing a contract of insurance, and called a marine, fire, life or accident policy, according to the nature of the insurance. An unvalued policy is where the value of the thing insured is not stated; a valued policy is where the value is stated. (Marine Insurance Act, 1906, ss. 27, 28.)

Political Offence. An offence committed in connection with or as part of political disturbances. The Extradition Act, 1870, s. 3, provides that a fugitive offender shall not be surrendered by this country for a political offence.

Poll. See *Deed Poll; Challenge of Jurors.*

Poll-tax. A tax upon every poll or head, that is to say, upon every person.

Pone. A writ whereby a cause pending in the old County Court of the sheriff was removed into the Common Pleas or King's Bench.

Poor Law. The law which relates to the public or compulsory relief of the indigent poor. By the Poor Relief Act, 1601, overseers of the poor were appointed in every parish to provide for the relief of paupers settled there, and to levy a rate on property therein. The system of overseers being unsatisfactory, the statute 22 Geo. 3, c. 83, authorised any parish to appoint guardians in lieu of overseers, and also to enter into a voluntary union with one or more other parishes.

By the Poor Law Amendment Act, 1834, the general management of the poor was placed under the Poor Law Commissioners, whose functions were transferred by the Poor Law Board Act, 1847, to the Poor Law Board, and in 1871 to the Local Government Board (since 1919 the Ministry of Health), which has the power of making general poor law rules, and of compulsorily dividing parishes, or consolidating parishes into unions. (Divided Parishes and Poor Law Amendment Act, 1876.) By the Rating and Valuation Act, 1925, ss. 48, 62, overseers are abolished and their functions transferred to rating authorities. See *Rate.*

Poor Law Union. Any parish or union of parishes for which there is a separate board of guardians (*q.v.*). (Interpretation Act, 1889, s. 16.)

Poor Person. A person who is not worth £50, or £100 in special circumstances, and whose income does not exceed £2, or exceptionally £4 a week, who is allowed to take proceedings in the High Court under special rules. See Order XVI, rr. 22—31, 34a, and 45 (4).

A committee of the Law Society administers the Poor Persons Rules, and counsel and solicitor give their services gratuitously.

Poor Rate. The rate formerly levied by the overseers for the relief of the poor. See *Rate.*

Port. (1) A harbour or other stretch of water, the limits of which are prescribed by the Treasury, and in which legal quays are appointed by the Treasury for the lading and unlading of goods. (Customs Consolidation Act, 1876, s. 11.) (2) A city or town. (Anglo-Saxon.)

Porter v. Freudenberg ([1915] 1 K. B. 857). *Held,* that an alien enemy is a person, of whatever nationality, who voluntarily resides or carries on business in enemy territory, or in territory in enemy occupation. An alien enemy is not entitled to sue, but may be sued, and can then appear and be heard in his defence, and if judgment be given against him he may appeal.

Portion. The provision made for a child by a parent or one *in loco parentis*; the gross sums of money provided in a strict settlement for the children, other than the eldest son, on their attaining twenty-one, or, if females, marrying before that age. See *Pye, Ex p.*

Portreeve. The chief magistrate of a town.

Positive Law. That part of law which consists of rules imposed by a sovereign on his subjects: law proper as opposed to moral law, and so on (Austin). See *Law.*

Posse comitatus. The power of the county. An assemblage of the able-bodied male inhabitants of a county, except peers and clergymen. The sheriff of the county could summon it either to defend the county against the King's enemies or to enforce the King's writ.

Possessio. Legal possession. The detention or physical apprehension of a thing with the intention of holding it as one's own. (*Detentio,* together with *animus possidendi.*) It was protected by interdicts. (Roman law.)

Possessio civilis. Civil possession; possession capable of ripening into ownership by *usucapio*; *i.e.,* if it was (1) free from *vitium*; (2) held *ex justa causa*; (3) *bona fide.* (Roman law.)

Possessio fratris de feodo simplici facit sororem esse hæredem. The possession of the brother makes the sister heir.

Possessio naturalis. Natural possession; where a person possessed a thing not *ex justa causa* and *bona fide.* It was not protected by interdicts. (Roman law.)

Possession. "Physical detention coupled with the intention to hold the thing detained as one's own" (Maine). "The continuing exercise of a claim to the exclusive use of a material object" (Salmond). Possession has two elements (1) the *corpus,* or the thing possessed; (2) the *animus possidendi,* the intention to appropriate to oneself the exclusive use of the thing possessed.

"Immediate" possession is possession retained personally; "mediate" possession or "custody" is possession retained for or on account of another. Incorporeal possession is the possession not of a material thing, but of a legal right. "Constructive" possession is possession in contemplation of law as opposed to *de facto* possession or actual possession in fact.

Possession is *prima facie* evidence of ownership. "Possession is nine-tenths of the law," means that possession is good against all the world except the true owner. Possession ripens into ownership by effluxion of time. Adverse possession of land (*i.e.,* not by agreement

with the owner) for twelve years destroys the title of the owner and vests it in the possessor. The holder of a negotiable instrument, a factor, and a seller in market overt, can give a better title than he himself has, provided the buyer takes in good faith and for value.

Possession Money. The fee to which a sheriff's officer is entitled for keeping possession of property under a writ of execution.

Possession, Writ of. The writ which commands the sheriff to enter the land and give possession of it to the person entitled under a judgment. (Order XLVII, r. 1.)

Possessory Action. A real action to recover the possession of land.

Possibility. A future event, the happening of which is uncertain; an interest in land which depends on the happening of such an event. A possibility is said to be either bare or coupled with an interest. Thus, the expectation of an eldest son of succeeding to his father's land is a bare possibility, which is not capable of transfer. If land is conveyed to A for life, and if C should be living at his death, then to B in fee, B's contingent remainder is a possibility coupled with an interest, which may be transferred.

The rule against " double possibilities " is the rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person. It is abolished by the Law of Property Act, 1925, s. 161.

Possidere pro herede. To possess in the belief that one is heir. (Roman law.)

Possidere pro possessore. To possess the part or the whole of an inheritance without any right, and with the knowledge that one is not the owner. (Roman Law.)

Post litem motam. After litigation has been in contemplation. See *Lis Mota.*

Postea. A formal statement, indorsed on the *nisi prius* record, which gave an account of the proceedings at the trial of the action.

Postliminium. " Beyond the threshold " ; the doctrine of the Roman Law that persons captured by the enemy were, on their return, deemed to revert to their original status, on the fiction that no capture had occurred. The doctrine has been adopted by international law as the rule by which persons, property and territory tend to revert to their former condition on the withdrawal of enemy control.

Postmaster-General. The Minister at the head of the Post Office. He can sit in the House of Commons. See the Representation of the People Act, 1867, s. 52.

Post-mortem Examination. A medical examination of a corpse in order to discover the cause of death. It may be ordered by a coroner under section 21 of the Coroners Act, 1887. It may be made without an inquest. (Coroners (Amendment) Act, 1926, s. 21.)

Post-obit. A money bond conditioned for payment at or after the death of some person other than the giver of the bond.

Postumus. (1) A child of a testator, born after his death, who, if born in his lifetime, would have been under his *potestas*, and entitled to succeed him if he died intestate; (2) a child of a testator conceived before the date of the will, but born his *suus heres* after the date of the will, and before the testator's death. This was called a *postumus*

Vellaeanus, from *lex Junia Vellaea*, which provided that the testator might institute or exclude such a child. (Roman law.)

Postumus alienus. A posthumous stranger; a posthumous child that would not have been under the testator's power if born in his lifetime. (Roman Law.)

Potior est conditio defendentis. The condition of a defendant is the better.

Potior est conditio possidentis. The condition of a possessor is the better.

Pound. A place where goods which have been seized as distress are placed by the distrainor, and in which the goods are in the custody of the law. A pound is either overt (open overhead) or covert (closed in).

Poundage. A fee of so much in the pound. Formerly a customs duty on the value of imports other than wine. See *Tonnage*.

Pound-breach. The taking of goods out of a pound before the distrainor's claim has been satisfied.

Power. "The ability conferred on a person by law to determine, by his own will directed to that end, the legal relations of himself or others" (Salmond). A power is the converse of disability. It differs from a right in that there are no accompanying duties. Powers are public, *i.e.*, when vested by the State in its agent or servant, or private, when conferred by one person on another. General powers are those which are by law incident to an office, *e.g.*, of solicitor or trustee, special powers those conferred specially, *e.g.*, by a power of attorney, or a power of sale.

Powers of appointment or revocation are powers which enable the donees to create or modify estates or interests in property. They confer the right of alienation as opposed to that of enjoyment; that is, the power enables the donee to declare in whom and in what manner the property is to vest, but gives him no right of ownership over it. The donee of a general power can exercise it in favour of anyone including himself. A limited power can only be exercised in accordance with its limitations. A power was said to be legal when it passed the legal estate in the property, and equitable when it passed an equitable estate or interest.

Legal powers are (*a*) appendant or appurtenant when the donee has an estate in the land and the power is to take effect wholly or in part out of that estate; (*b*) in gross or collateral, where the donee may exercise the power for his own benefit; (*c*) collateral or naked, where he cannot.

Legal powers (which are confined to land) operated either under the Statute of Uses, under the Wills Act, 1837, or by custom.

By the Law of Property Act, 1925, s. 1, sub-s. 7, every power of appointment is to operate only in equity, except that vested in a legal mortgagee or estate owner in right of his estate. See *Alexander* v. *Alexander; Tollet* v. *Tollet*.

Power of Attorney. A formal instrument by which one person empowers another to represent him, or act in his stead for certain purposes; usually in the form of a deed poll, and attested by two witnesses. The donor of the power is called the principal or constituent; the donee is called the attorney. The Conveyancing Acts,

1881 and 1882, contained provisions as to powers of attorney, now replaced by sections 123 to 129 of the Law of Property Act, 1925.

Practice. Procedure (*q.v.*). The actual conduct of legal proceedings.

Practice Court. The Bail Court (*q.v.*).

Præcipe. (1) A species of original writ, which required the sheriff to command the defendant either to do a certain thing or to show cause why he had not done it. (2) A slip of paper on which a party to a proceeding writes the particulars of a document which he wishes to have prepared or issued; he then hands it to the officer of the Court whose duty it is to prepare or issue the document.

Prædia stipendiaria. Provincial lands belonging peculiarly to the Roman people, and paying taxes (*stipendia*). (Roman Law.)

Prædia tributaria. Provincial lands belonging peculiarly to the emperor, and paying tribute. (Roman Law.)

Præfectus urbi. The city prefect or governor. His civil jurisdiction extended to one hundred miles round Rome and his criminal jurisdiction throughout Italy. An appeal lay to him from the Praetor. (Roman Law.)

Præmunire. The offence of directly or indirectly asserting the supremacy of the Pope over the Crown of England, as by procuring excommunications or bulls from Rome, contrary to the Statute of Præmunire (16 Rich. 2, c. 5). The writ employed commenced with the words, *præmunire facias*, "that you cause to be forewarned."

Præpositus. "One put in front." A person in authority.

Præses. The president or governor of a province; a *legatus Cæsaris* being the governor of a province reserved by the emperor. (Roman Law.)

Preamble. That part of a statute which contains the recitals showing the reason for the Act. The necessity for a private Bill must be shown by "proving the preamble."

Precatory Words. Words of wish, hope, desire or entreaty accompanying a gift, that the donee will dispose of the property in some particular way which may show that a trust was intended. The modern tendency is against construing precatory words as a trust. See *Adams and Kensington Vestry, Re*; *Harding* v. *Glynn*.

Precedence, Patent of. Letters patent whereby the Crown assigns to some person a rank higher than that to which he would otherwise be entitled.

Precedent. A judgment or decision of a Court of law cited as an authority for deciding a similar set of facts. A case which serves as an authority for the legal principle embodied in its decision. The common law has developed by "broadening down from precedent to precedent." In conveyancing, a precedent is a copy of an instrument, used as a guide in preparing another similar instrument.

Precept. An order or direction given by one official person or body to another, requiring some act to be done, *e.g.*, the payment of a sum of money.

Pre-emption. The right of purchasing property before or in preference to other persons. In international law, pre-emption is the right of a government to purchase, for its own use, the property of the subjects of another Power *in transitu*, instead of allowing it to reach its destination.

Preference shares. Shares in a joint stock company which are entitled to a fixed rate of dividend payable in preference to the dividend on the ordinary shares. Unless preference shares are made preferential as to capital they rank *pari passu* with the ordinary shares on a winding-up. They are presumed to be cumulative.

Prejudice. Injury. An offer which is made "without prejudice" for the purpose of settling a dispute cannot be construed as an admission of liability or given in evidence.

Preliminary Act. A sealed document giving particulars of a collision between vessels, which must be filed by the solicitors for each party in an Admiralty action for damages for collision. See Order XIX, r. 28.

Premises. That which has been stated before. (1) In a conveyance, when the property has been fully described, it is generally referred to in the subsequent parts of the deed, as "the premises hereinbefore described." From this, "premises" has acquired the sense of land or buildings. (2) That part of a deed which precedes the *habendum*. See *Liability*.

Premium. A sum payable in advance of or over and above the consideration for an agreement.

Prender. The power of taking a thing without its being offered.

Prerogative. Those exceptional powers and privileges of the King in virtue of the Crown. *E.g.*, the command of the Army, or the treaty-making power. It consists of the residue of the sovereign powers unappropriated by Parliament, together with those powers expressly granted to the Crown by statute. See *De Keyser's, Ltd., Re*.

Prescribe. (1) To claim a right by prescription. (2) To lay down authoritatively.

Prescription. The vesting of a right by reason of lapse of time. Negative prescription is the divesting of a right by the same process. In Roman law the *præscriptio* was a clause placed at the head of the formula or pleadings (*præ*, before, and *scribere*, to write). *Præscriptio* was also a variety of *usucapio*, *i.e.*, a mode of acquiring property by undisturbed possession for a certain length of time.

At common law, a title by prescription was acquired by the enjoyment of a right from time immemorial, or time out of mind. The Prescription Act, 1832, enacts that in the case of rights of common and other profits *à prendre*, the period of enjoyment as of right required to establish the claim is thirty years, subject to an extension in case the person against whom it is claimed was under disability during part of that period; but enjoyment for sixty years establishes an absolute right. In the case of rights of way and watercourses, the terms are respectively twenty and forty years. In the case of lights, enjoyment for twenty years gives an absolute right. Where a person claiming a right by prescription proves that it has been enjoyed by him and his predecessors in title in virtue of certain lands, he is said to prescribe in a *que* estate.

Present. To tender or offer, *e.g.*, to present a bill of exchange for acceptance or payment to the acceptor.

Presentment. A report by a jury or members of a Court. Thus, formerly, at the Customary Court of a manor, events relating to the copyhold lands were presented by the tenants for the information of

the lord. Presentments are usually made by juries acting in a judicial capacity, *e.g.*, an indictment by a grand jury. Formerly, presentments were made by a jury of facts and matters peculiarly within their own knowledge or observation.

Presumption. A conclusion or inference as to the truth of some fact in question, drawn from other facts proved or admitted to be true.

Presumptions are of three kinds. Irrebuttable or conclusive presumptions (*præsumptiones juris et de jure*) are absolute inferences established by law: evidence is not admissible to contradict them. Thus an infant under the age of seven years is presumed to be incapable of committing a felony. Irrebuttable presumptions are more properly called rules of law.

Rebuttable presumptions of law (*præsumptiones juris*) are inferences which the law requires to be drawn from given facts, and which are conclusive until disproved by evidence to the contrary; thus an infant between seven and fourteen is presumed to be incapable of committing a felony, but evidence may be given to prove a felonious intention.

Presumptions of fact (*præsumptiones hominis vel facti*) are inferences which may be drawn from the facts, but not compulsorily.

Price v. The Earl of Torrington ((1703), 1 Salkeld, 285). In an action for beer sold and delivered, in order to prove the delivery, a book was put in containing an account of the beer delivered by the plaintiff's draymen and which it was the duty of the draymen to sign daily. The drayman, who had signed the account of beer delivered to the defendant, being dead, the book was admitted in evidence on proof of his handwriting.

Pricking for Sheriffs. The practice of appointing sheriffs by the King by pricking their names with a bodkin, as a survival from the days when the selection was by chance.

Priestley v. Fowler ((1837), 3 M. & W. 1). At common law the master is not responsible to a servant for the ordinary risks of service.

The plaintiff was driving a van in the course of his duties as the defendant's, a butcher's, service and was injured by the van breaking down owing to being overloaded. *Held*, the defendant was not liable.

Primage. A small payment made by the owner or consignee of goods to the master of the vessel in which they are shipped, for his care.

Prime Minister. The head of the political party in a majority in the House of Commons, charged by the King with the formation of the Cabinet. He is the executive head of the Government. He takes precedence next after the Archbishop of York. Strictly, the office of Prime Minister is unknown to the law, and no salary is attached, but the Prime Minister usually holds the office of First Lord of the Treasury with a salary of £5,000 a year.

Primer seisin. A payment of a year's profits due by a tenant of land held of the Crown *in capite ut de corona* if he succeeded to it by descent when of full age.

Primogeniture. (*Primo-genitus*, first-born). The rule of inheritance according to which the eldest male in the same degree succeeds to the ancestor's land to the exclusion of the others.

Prince of Wales. The eldest son of the reigning Sovereign is always

created Prince of Wales and Earl of Chester by patent. Since the accession of James I, the heir apparent has been by inheritance Duke of Rothesay, Earl of Carrick, and Baron of Renfrew, Lord of the Isles and Great Steward of Scotland.

Principal. One who authorises, or who is deemed responsible for, the acts or defaults of another, termed the agent or accessory. A debtor for whom another becomes surety is a principal. See *Lloyd* v. *Grace, Smith; Thomson* v. *Davenport; Addison* v. *Gandassequi.*

Principum placita. The enactments or constitutions of the emperors. "What the emperor determines has the force of a statute." (Roman Law.)

Priority. Precedence, the right to enforce a claim in preference to others. Every mortgage affecting a legal estate in land made after January 1, 1926, whether legal or equitable (not being a mortgage by deposit of documents), other than a mortgage of registered land, or of land within the jurisdiction of a local deeds registry, ranks according to its date of registration as a land charge (Law of Property Act, 1925, s. 97). Equitable claims rank in order of the time of creation. "Where the equities are equal the law prevails," so that the *bona fide* purchaser of a legal estate without notice of an earlier equity takes priority over the earlier equity.

Where there are successive assignments of an equitable chose in action priorities are determined by the order in which notice is given to the person by whom the fund is distributable. This rule, known as the rule in *Dearle* v. *Hall* (*q.v.*), is extended by the Law of Property Act, 1925, to equitable interests in land.

Prisage. An ancient hereditary revenue of the Crown, consisting in the right to take a certain quantity from cargoes of wine imported into England, later converted into a pecuniary duty called butlerage. Abolished.

Prison-breach. The offence of breaking out of prison by force.

Privateers. Vessels belonging to private owners which in time of war were furnished with a commission from the State, known as letters of marque, empowering them to carry on war against the enemy, and to capture enemy vessels and property. "Privateering is and remains abolished." (Declaration of Paris, 1856.)

Privatorum conventio juri publico non derogat. An agreement between private persons does not derogate from the public right.

Privatum commodum publico cedit. Private good yields to public good.

Privatum incommodum publico bono pensatur. Private loss is compensated by public good.

Privilege. An exceptional or extraordinary right, immunity or exemption belonging to a person in virtue of his office or status, *e.g.*, the immunity from arrest of ambassadors, Members of Parliament or barristers on circuit.

A statement is privileged if the person making it is protected from the full legal consequences of his act, as where a person makes a libellous statement in the proper course of his duty or in giving evidence in Court. See *Munster* v. *Lamb; Seaman* v. *Netherclift; Stuart* v. *Bell; Wason* v. *Walter; Wheeler* v. *Le Marchant; Clark* v. *Molyneux; Harrison* v. *Bush.*

Privileges, Committee of. A standing committee of the whole House of Lords, presided over by the chairman of committees and re-appointed at the beginning of each session. It is concerned with claims to peerages and the privileges of peers.

Privilegium clericale. Benefit of clergy (*q.v.*).

Privilegium non valet contra rempublicam. A privilege avails not against the State.

Privity. The relationship in which a person stands to a transaction in which he is a party, or to some other party with whom he is connected.

Privity of contract is the relation which exists between the immediate parties to a contract, as where A agrees with B to pay him £100. Privity of contract is necessary to enable one person to sue another on a contract.

Privity of estate is that which exists between lessor and lessee, tenant for life and remainderman or reversioner, etc. Privity of estate is required for a release by enlargement. Thus, if A grants land to B for life, and B grants a lease to C, and then A executes a release to C, this is void as a release, because there is no privity between A and C.

Privy. One who is a party to, or has a share or interest in, something.

Privy Council. Nominally, the principal council of the Crown, consisting of persons of distinction, nominated by the Crown to the office, and bearing the title "Right Honourable."

Members of the Cabinet are always Privy Councillors, as the Cabinet itself evolved from the Privy Council. See *Judicial Committee of the Privy Council.*

Privy Purse. A sum voted by Parliament as part of the Civil List for the personal use of the King.

Privy Seal. A seal employed by the Crown, chiefly as an authority to the Lord Chancellor to affix the Great Seal to documents. It was abolished in 1884.

Prize. Property captured from an enemy at sea. See *Hughes* v. *Cornelius.*

Prize Courts. Courts specially constituted for the purpose of deciding questions of maritime capture in time of war according to international law. The procedure of the British Prize Court is regulated by the Naval Prize Act, 1864, the Prize Courts Act, 1894, and the Prize Court Procedure Act, 1914. See *Zamora.*

Prize Fight. A fight between two men with ungloved fists until one of them can fight no more: it constitutes an indictable misdemeanour.

Pro forma. As a matter of form.

Pro hac vice. For this occasion. An appointment which is for a particular occasion only.

Pro indiviso. As undivided.

Pro interesse suo. As to his interest.

Pro rata. In proportion.

Probate. A certificate granted by the Probate Division of the High Court of Justice to the effect that the will of a certain person has been proved and registered in the Court and that administration of his effects has been granted to the executor proving the will, he having first

sworn faithfully to administer them and to exhibit a true inventory and render a just account when called on. The copy of the will is termed the "Probate copy."

Probate may be granted either in solemn form or in common form. Probate in solemn form is only employed when there is or is likely to be a dispute as to the validity of the will, and in such a case the person who wishes its validity to be established commences an action against the person who disputes it. Probate in common form is granted in ordinary cases as a matter of course on the executor swearing and filing affidavits.

By the Administration of Estates Act, 1925, s. 2, the rules of law as to probate in case of chattels real shall apply to real estate.

Probate, Divorce and Admiralty Division. The Division of the High Court of Justice which exercises jurisdiction in matters formerly within the exclusive cognisance of the Court of Probate (*q.v.*), the Court for Divorce and Matrimonial Causes (*q.v.*), and the Court of Admiralty. See *Admiral*. It consists of two Judges, one of whom is called the President, and a number of registrars.

Probate Duty. A stamp duty payable (except where it is merged in estate duty) on the personal property over the value of £100 in this country of anyone in respect of whom a grant of probate or letters of administration should be obtained. It is payable under the Customs and Inland Revenue Act, 1881.

Probation of Offenders. Under the Probation of Offenders Act, 1907, s. 1, where a person is charged before a magistrate with a summary offence which is proved, or where a person is convicted on indictment, the magistrate or Court may, instead of convicting, dismiss the charge or discharge the offender on recognisances (with or without sureties) for good behaviour and to come up for judgment within three years.

Procedendo. A prerogative writ which issues (1) when the Judge of an inferior Court delays the parties to a proceeding before him, by not giving judgment for one side or the other, when he ought to do so; or (2) when a cause has been removed from an inferior Court to a superior Court improperly or on insufficient grounds, and the superior Court thinks fit to remit or remove it back to the inferior Court.

Procedure. The formal steps to be taken in an action or other judicial proceeding, civil or criminal. The code of civil procedure is contained in the Rules and Orders of the Supreme Court. (See the "Annual Practice.")

Process. A form of proceeding taken in a Court of justice for the purpose of giving compulsory effect to its jurisdiction. The process of the Supreme Court of Judicature consists of writs and originating summonses. Formerly, process in common law actions was much more complicated and important than now. Original process was the original writ issued out of Chancery; mesne process was the name for the writs issued out of the common law Courts in the course of proceedings; and final process the writs to enforce execution.

Proclamations, Case of ((1610), 12 Rep. 74). *Held*, that the King cannot by his Proclamation create any offence which was not an offence before. The King hath no prerogative but that which the law of the

land allows him. But the King, for prevention of offences, may by proclamation admonish his subjects that they keep the laws.

Proctors. In the Ecclesiastical and Admiralty Courts proctors discharged duties similar to those of solicitors and attorneys in other Courts. By the Judicature Act, 1873, s. 87, proctors were entitled solicitors of the Supreme Court.

Procuration. Agency. The abbreviations "*per proc.*" or "*p.p.*" following a signature upon a bill of exchange indicate that the signatory signs only as an agent. Such signature binds the principal only in so far as the agent signs within the limits of his authority, and does not make the agent personally liable. (Bills of Exchange Act, 1882, ss. 25, 26.)

Procurator. An agent appointed by a mandate to act for another in a single, or in all, actions. He might be appointed under any conditions or arrangements; no special words were needed. The procurator superseded the *cognitor* (*q.v.*). (Roman law.)

Procurator-General. The Treasury Solicitor (*q.v.*).

Profits a prendre. Rights of taking the produce or part of the soil from the land of another person, *e.g.*, rights of common, of pasture, of vesture and herbage.

Prohibition, Writ of. A writ issuing out of the High Court to restrain an inferior Court from exceeding its powers. Prohibitions are of three kinds. (1) An absolute prohibition is peremptory, and wholly ties up the inferior jurisdiction. (2) A temporary prohibition (a prohibition *quousque*) is operative only until a particular act is done, and is *ipso facto* discharged on the act being done. (3) A limited or partial prohibition (a prohibition *quoad*) extends only to that part of the proceeding which exceeds the jurisdiction of the inferior Court, allowing it to proceed as to the residue.

Prolixity. The allegation of facts at unnecessary length, either in a pleading or affidavit. The party offending may be ordered to pay the costs thereby occasioned. (Order XIX, r. 2; Order XXXVIII, r. 2).

Prolocutor. A speaker.

Promise. The expression of an intention to do or forbear from some act. To have legal effect, a promise must either be under seal, when it forms a covenant, or must form part of a contract, that is, be made in consideration of something done or to be done. See *Breach of Promise.*

Promissory Note. "A promissory note is an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer" (Bills of Exchange Act, 1882, s. 83, sub-s. 1).

Promoter. Anciently, the persons who laid themselves out to bring, as common informers, penal and popular actions. Now it generally means either a person who procures the passing of a private Act of Parliament, or a person who "floats" a company.

Proof. A fact is said to be proved when the Court is satisfied as to its truth, and the evidence by which that result is produced is called the proof. The general rule is that the burden of proof (*onus probandi*) lies on the party who asserts the affirmative of the issue or

question in dispute. When that party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof: that is, his allegation is taken to be true, unless his opponent adduces evidence to rebut the presumption.

"Proving a debt" is establishing the existence of a debt owing from a bankrupt's estate.

To prove a will is to obtain probate of it.

Property. That which is capable of ownership. "Property" is sometimes used as meaning a right of ownership, as "the property in the goods." "The ownership of a chattel personal is termed a property" (Finch).

General property is that which every absolute owner has. Special property may mean: (1) that the subject-matter is incapable of being in the absolute ownership of any person, *e.g.*, wild animals; (2) that the thing can only be put to a particular use, *e.g.*, in the case of a bailment.

Propound a Will. To institute an action for obtaining probate in solemn form. See *Probate.*

Proprietary Rights. Rights of property; rights of ownership.

Proprietas nuda; proprietas deducto usufructu. Bare ownership; ownership without *usufruct.* (Roman law.)

Prorogation. The bringing of a session of Parliament to an end. by an exercise of the royal prerogative. Bills lapse on a prorogation and must be re-introduced in the new session.

Prosecutor. A person who takes proceedings against another in the name of the Crown; usually either the person injured, or in grave crimes the Public Prosecutor (*q.v.*).

Prospectus. A document setting forth the nature and objects of an issue of shares, debentures or other securities created by a company or corporation, and inviting the public to subscribe to the issue. See Companies (Consolidation) Act, 1908, s. 285.

Protection Order. Under section 21 of the Matrimonial Causes Act, 1858, a deserted wife may obtain from either the High Court or a petty sessional Court an order protecting her property and earnings from her husband and those claiming through him.

Protector of a Settlement. A person without whose consent a tenant in tail cannot bar the entail except as against his own issue, nor a tenant in base fee enlarge his estate into a fee-simple. In the absence of a protector specially appointed by the settlor, the original owner of the first life estate is the protector. (Fines and Recoveries Act, 1833, s. 22.) By the Law of Property Act, 1925, estates tail take effect as equitable interests, and all statutory provisions relating to estates tail in real property shall apply to entailed interests in personal property. (Section 130.)

Protest. (1) An express declaration by a person doing an act that the act is not to give rise to an implication which it might otherwise cause, *e.g.*, that payment of money is not to imply a debt. (2) A solemn declaration by a notary stating that he has demanded acceptance or payment of a bill, and that it has been refused, with the reasons, if any, given by the drawee or acceptor for the dishonour. The object of a protest is to give satisfactory evidence of the dishonour to the drawer or other antecedent party; but it is not necessary except in the case of a foreign bill.

Prothonotary. A principal notary; a chief clerk. The title was borne by three officers of the Common Pleas and by one officer of the King's Bench, who were analogous to the modern Master.

Protocols. The minutes of the proceedings of an international conference, signed by the delegates, to serve as the basis for the final instrument.

Province. A district subject to an archbishop's jurisdiction. England is divided into the two provinces of Canterbury and York.

Provisional Orders. Regulations made by a Government Department in pursuance of statutory powers, in place of private bills. They are laid on the table of the House of Commons and are inoperative until confirmed by an Act of Parliament.

Proviso. A clause in a deed or other instrument beginning "provided always that" (in Latin, *proviso semper*).

Provocation. Acts which are sufficient to lead to loss of control, and which will reduce the offence of homicide from murder to manslaughter. Mere words are not, as a rule, sufficient.

Provost-Marshal. An officer appointed by general officers commanding to secure the prompt repression of all offences committed abroad, arrest and detain for trial persons subject to military law committing offences, and to execute punishments ordered by courts-martial. In the Navy, a senior member of the ship's police is appointed provost-marshal when a court-martial is to be held. He arrests the accused and produces him to the Court.

Proxy. A lawfully constituted agent. A person deputed to vote for another. Under the Companies Acts, it denotes (1) a person appointed to represent another at a meeting or number of meetings; (2) the instrument containing the appointment.

Prudentium responsa. "The answers of the wise." The opinions of the jurisconsults; restricted by the Law of Citation (A.D. 426) to Papinian, Paul, Gaius, Ulpian and Modestinus. (Roman Law.)

Pubertas. The legal age of puberty, fourteen for males and twelve for females. *Plena pubertas* was fixed at eighteen, when the body was regarded as fully developed. (Roman law.)

Pubertati proximi. Children in the stage prior to puberty. (Roman law.)

Public Authorities Protection Act, 1893. This Act provides that any action brought against any person for any act done in execution of an Act of Parliament or public duty must be commenced within six months of the ceasing of the cause of action, and if judgment be for the defendant he shall have costs as between solicitor and client. The defendant must be given an opportunity of tendering amends.

Public Meeting. A public meeting may be held on private property by licence, but there is no right to cause obstruction to a highway. Under the Public Meeting Act, 1908, to create disorder in order to prevent the transaction of business at a lawful meeting is an offence punishable summarily.

No public meeting can be held within one mile of Westminster Hall during a session of Parliament (Seditious Meetings Act, 1817). The report in a newspaper of a public meeting is privileged by the Law of Libel Amendment Act, 1898. See *Beatty* v. *Gillbanks*.

Public Officer. (1) The holder of a public office under the Crown or public agent. (2) An officer of a joint stock company or corporation.

Public Policy. Certain classes of acts are said to be against public policy or against the policy of the law when the law refuses to enforce or recognise them on the ground that they have a mischievous tendency so as to be injurious to the interests of the State. Thus, trading with an enemy, marriage-brokage contracts, and agreements in general restraint of marriage or trade, are instances of acts against public policy. See *Egerton* v. *Brownlow.*

Public Prosecutor. The Director of Public Prosecutions (*q.v.*).

Public Records. The General Records of the Realm which are kept at the Record Office, in the custody of the Master of the Rolls. Copies purporting to be sealed with the seal of the Record Office are admissible as evidence (Public Record Office Act, 1838, ss. 12, 13).

Public Trustee. The official appointed by the Lord Chancellor under the Public Trustee Act, 1906. He is a corporation sole, and the State is responsible for his breaches of trust. He may act as a custodian, ordinary or judicial trustee, either solely, or jointly.

Publication. Prior to the Wills Act, 1837, a will had to be published, *i.e.*, declared by the testator, in the presence of witnesses, to be his will: abolished by the Wills Act, 1837.

For the purposes of the Copyright Act, 1911, publication in relation to any work means the issue of copies of the work to the public.

In any action of libel or slander the plaintiff must show that the defamatory words were actually published, that is to say, brought to the knowledge of some person other than the plaintiff. In criminal proceedings for libel, however, publication to the prosecutor himself is sufficient. See *R.* v. *Adams; Wenhak* v. *Morgan; Wenman* v. *Ash.*

Publici juris. Of public right, *e.g.*, the right to light and air.

Puis darrein continuance. A plea in which the defendant pleaded some matter of defence which had arisen "since the last continuance" or adjournment.

Now, where a ground of defence arises after the delivery of the statement of defence, the defendant may by leave of the Court or a Judge deliver a further sentence setting forth the same. (Order XXIV, r. 2.)

Puisne. Later born, or younger. A puisne Judge means a Judge of the High Court of Justice other than the Lord Chancellor, the Lord Chief Justice of England, and the President of the Probate Division They are styled "Justices of the High Court." (Judicature Act, 1925, s. 2.)

Puisne Mortgage. Any legal mortgage not protected by a deposit of documents of title and not being registered in the local deeds register (if any). (Land Charges Act, 1925, s. 10.)

Pupillus. A person *sui juris*, under the age of puberty, whose affairs are managed, and whose want of legal capacity is supplied by a tutor. (Roman law.)

Pur autre vie. See *Tenant pur autre vie.*

Purchase. In the special legal sense "purchase" means to acquire land by lawful act; *e.g.*, by conveyance, gift or devise, as opposed to title by act of the law, such as descent, dower, curtesy, inclosure, partition,

etc., and to title by wrong, as in the case of disseisin. One who so acquires land is a purchaser.

Purgation. To make clean: the modes by which a man accused of crime acquitted himself. They were compurgation, the ordeal, and trial by battle.

Purparty. Share or portion.

Purpresture. Inclosure.

Pursue. To execute or carry out.

Purveyance. The Crown's prerogative right to buy up provisions and other necessaries for the Royal Household at an appraised price, and of impressing horses and vehicles, at an appraised price, for the royal use.

Purview. That part of a statute which provides or enacts, as opposed to the preamble; the scope or policy of a statute.

Pusey v. Pusey ((1684), 1 Vern. 273). The plaintiff brought this bill for specific delivery up of a certain horn which in ancient times was delivered to his ancestors to hold their lands by. The defendant demurred to this bill. *Held*, that the demurrer must be overruled, and that the heir was entitled to the horn.

Pye, Ex p. ((1811), 18 Ves. 140). *Held*, (1) That as a general rule, where a parent gives a legacy to a child, not stating the purpose with reference to which he gives it, he is understood to give a portion; and in consequence of the leaning against double portions, if the parent afterwards advances a portion on the marriage of the child, the presumption arises that it was intended to be a satisfaction of the legacy either wholly or in part; and this rule applies where a person puts himself *in loco parentis*.

(2) But no such presumption arises in the case of a stranger or of a natural child, where the donor has not put himself *in loco parentis*, unless the subsequent advance is proved to be for the very purpose of satisfying the legacy; and therefore the legatee will be entitled to both.

Pym v. Campbell ((1856), 25 L. J. Q. B. 277). Parol evidence is admissible to prove any collateral verbal agreement showing that a document, apparently complete and operative on its face, should be conditional upon and not operate until the happening of a certain event, which has not occurred.

Q.V. (Quod vide.) Which see.

Qua. In the capacity of; as.

Quæ non valeant singula, juncta juvant. Words which are of no effect by themselves are effective when combined.

Quælibet concessio fortissime contra donatorem interpretanda est. Every grant is to be construed as strongly as possible against the grantor.

Qualification. A quality which makes a person eligible for an office: as a general rule, the possession of property of a certain value.

Qualified Property. The property of a bailee in a bailment.

Quality. (1) The nature of an estate (*q.v.*) as regards the certainty of its duration. (2) Status.

Quamdiu se bene gesserit. During good behaviour.

Quando aliquid mandatur, mandatur et omne per quod pervenitur

ad illud. When anything is commanded, everything by which it can be accomplished is also commanded.

Quando aliquid prohibetur fieri, prohibetur ex directo et per obliquum. When the doing of anything is forbidden, then the doing of it either directly or indirectly is forbidden.

Quando duo jura in una persona concurrunt, æquum est ac si essent diversis. When two titles concur in one person, it is the same as if they were in different persons.

Quando jus domini regis et subditi concurrunt jus regis præferri debet. When the titles of the King and of the subject concur, that of the King is to be preferred.

Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest. When the law gives anything to anyone, it gives also all those things without which the thing itself could not exist.

Quando plus fit quam fieri debet, videtur etiam illud fieri quod faciendum est. When more is done than ought to be done, then that is considered to have been done which ought to have been done.

Quantity. The nature of an estate (*q.v.*) with regard to the time of its duration.

Quantum meruit. "As much as he has earned." If a person enters into a contract of service and does not complete it, usually he is not entitled to any reward. But in some circumstances, *e.g.*, if completion has been prevented by the act of the other party to the contract, he is entitled to sue on a *quantum meruit*; that is, to claim the actual value of the work he has done. See *Cutter* v. *Powell.*

Quantum ramificatus. The amount of damage suffered.

Quantum valebant. As much as they were worth.

Quarantine. Forty days. (1) The period which persons coming from a country or ship in which an infectious disease was prevalent were obliged to wait before they were permitted to land. See the Public Health Acts, 1896, 1904. (2) The period during which a widow is entitled to remain in her husband's dwelling-house after his death.

Quare impedit. "An ancient writ which lies by him who being in possession of an advowson of a church is disturbed in his presentation of it" (Coke).

Quarta Antonina or **Quarta D. Pii.** An arrogated son under puberty if disinherited, or emancipated without lawful cause, received back all the property he had brought to the arrogator or acquired for him; and also one-fourth of the arrogator's property, as enacted by Antoninus Pius. (Roman law.)

Quarter Sessions. A Court of record held before two or more justices of the peace once in every quarter of the year for execution of the authority given them by the commission of the peace and certain statutes. Formerly their jurisdiction was more extensive, but was limited in cases of serious crime in favour of the assizes by the Quarter Sessions Act, 1842. Quarter sessions of a borough are held before a Recorder.

Quarter-days. Christmas Day (December 25), Lady Day (March 25), Midsummer Day, (June 24), and Michaelmas (September 29). The old quarter days (*i.e.*, before the reform of the calendar) were January 7, April 7, July 7, November 11.

Quash. To discharge or set aside, *e.g.*, a wrongful conviction.

Quasi-contract. The term is an abbreviation of the *obligatio quasi ex contractu* of Roman law. It is an obligation similar to that created by contract, but not really arising by the consent of the person bound. Thus, in Roman law, if a person left his property without anyone to look after it, a stranger might undertake the care of it, and had a right of action against the owner for his expenses (*actio negotiorum gestorum*). The best example of quasi-contract in English law is salvage (*q.v.*).

Quasi-entail. This exists when an estate *pur autre vie* is limited to a person and the heirs of his body.

Quasi-trustee. A person who, without authority, has taken it on himself to act as a trustee.

Que Estate. See *Prescription.*

Queen. A Queen Regnant is a reigning Sovereign in her own right. A Queen Consort is the wife of the Sovereign; and Queen Dowager is the widow of a deceased Sovereign.

Queen Anne's Bounty. By the statute 2 & 3 Anne, c. 20, the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy were appointed to receive the first fruits and tenths, hitherto payable to the Crown, and apply them for the benefit of the poor clergy. By the First Fruits and Tenths Measure, 1926, the Acts relating to Queen Anne's Bounty are repealed. See *Annates.*

Quem redditum reddit. A real action by which the grantee of a rent could compel the tenants of the land out of which the rent issued to attorn to him.

Querela. Any civil proceeding in any Court. See *Audita querela.*

Qui facit per alium facit per se. He who acts through another is deemed to act in person.

Qui hæret in litera hæret in cortice. He who sticks in the letter sticks in the bark, *i.e.*, does not get at the substance or the meaning.

Qui jure suo utitur neminem lædit. He who exercises his legal right inflicts upon no one any injury.

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse quia parere necesse est. He who does anything by command of a Judge will not be supposed to have acted from an improper motive; because there is an obligation to obey.

Qui omne dicit nihil excludit. He who says everything, excludes nothing.

Qui per alium facit, per seipsum facere videtur. He who does anything by another is deemed to have done it himself.

Qui prior est tempore potior est jure. He who is first in time has the strongest claim in law.

Qui sentit commodum sentire debet et onus; et e contra. He who enjoys the benefit ought also to bear the burden; and *vice versa.*

Qui tacet consentire videtur. He who is silent is deemed to consent.

Qui tam pro dimino rege quam pro si ipso in hac parte sequitur. "Who sues on behalf of our Lord the King as well as for himself." The description of an action brought by an informer. See *Penal Action.*

Qui vult decipi decipiatur. If a man wants to be deceived, then let him be deceived.

Quia. Because.

Quia Emptores. "Because purchasers." The statute 18 Edw. 1, c. 1 —the Statute of Westminster III—which commences with these words. It enacted that every freeman shall be at liberty to sell his lands, but that the purchaser shall hold them of the chief lord and not of his feoffor. The statute, therefore abolished subinfeudation (*q.v.*), and made the future creation of manors, etc., impossible.

Quia timet. Because he fears. See *Bill quia timet.*

Quicquid plantatur solo, solo cedit. Whatever is affixed to the soil belongs to the soil.

Quicquid solvitur, solvitur secundum modum solventis; quicquid recipitur, recipitur secundum modum recipientis. Whatever is paid, is paid according to the intention or manner of the party paying; whatever is received, is received according to the intention or manner of the party receiving.

Quid pro quo. "Something for something." Consideration (*q.v.*).

Quietare. To quit, discharge or save harmless.

Quietus. A discharge granted by the Crown or its officer to a person indebted to the Crown, *e.g.*, an accountant or sheriff.

Quietus redditus. Quit-rent. See *Rent.*

Quilibet potest renunciare juri pro se introducto. Every man is entitled to renounce a right introduced in his favour.

Quinn v. Leathem ([1901] A. C. 495). If a party by unlawful means induces another not to enter into a contract with the plaintiff, whereby he is injured, the plaintiff has a cause of action against him.

The respondent was a wholesale butcher; the appellant was a trade union official who induced retail butchers to refuse to deal with the respondent as he would not dismiss his non-union employees, by threatening to call out on strike the employees of the retail butchers, whereby the respondent was damaged. *Held*, the respondent had a cause of action.

Quit Rent. See *Rent.*

Quittance. An acquittance (*q.v.*).

Quo ligatur, eo dissolvitur. Whatsoever binds can also release.

Quo minus. "By which the less." The initial words of the writ by means of which the Court of Exchequer obtained its extended jurisdiction. It permitted the plaintiff to plead that he was a debtor of the King, and by reason of the cause of action pleaded he had become less able to pay his fictitious debt to the King.

Quo warranto. "By what authority." A high prerogative writ by the Crown against one who claims or usurps any office, franchise or liberty, to inquire by what authority he supports his claim. It lies also in cases of non-user, or mis-user, of a franchise, or where any public trust is executed without authority. The writ, however, has long been supplanted by the "information in the nature of a writ of *quo warranto*," which can be brought with the leave of the Court, at the relation of a private person.

Quoad hoc. Regarding this.

Quod ab initio non valet, in tractu temporis non convalescit. That which is bad from the beginning does not improve by length of time.

Quod ædificatur in area legata cedit legato. That which is built on ground that is devised passes to the devisee.

Quod contra legem fit, pro infecto habetur. What is done contrary to law is deemed not to have been done at all.

Quod non apparet non est. That which does not appear does not exist.

Quod nullius est, est domini regis. That which is the property of nobody, belongs to our Lord the King.

Quod per me non possum, nec per alium. What I cannot do in person, I cannot do by proxy.

Quod prius est verius; et quod prius est tempore potius est jure. What is first is truer; and what is first in time is better in law.

Quod semel meum est amplius meum esse non potest. What is once mine cannot be more fully mine.

Quod semel placuit in electione, amplius displicere non potest. Where election is once made it cannot be revoked.

Quorum. "Of whom." The minimum number of persons which constitutes a valid formal meeting.

Quoties in verbis nulla est ambiguitas ibi nulla expositio contra verba expressa fienda est. When in the words there is no ambiguity, then no interpretation contrary to the actual words is to be adopted.

R. v. Adams ((1888), 22 Q. B. D. 66). In criminal libel publication to the party libelled is sufficient, as it tends to cause a breach of the peace.

The accused wrote a letter to a virtuous girl soliciting immoral intercourse with her. He enclosed it in an envelope and addressed it to her. It was opened by her mother. *Held*, the accused was rightly convicted.

R. v. Beard ([1920] 14 Cr. App. R. 159). Where a specific intent is an essential element in an offence, evidence of a state of drunkenness rendering the accused incapable of forming such an intent should be taken into consideration in order to determine whether he had in fact formed the intent necessary to constitute the particular crime.

Beard caused the death of a girl by an act of violence done in furtherance of the felony of rape. There was no evidence that he was too drunk to form the intent of committing rape. *Held*, that the killing was murder.

R. v. Bedingfield ((1879), 14 Cox, C. C. 341). To be part of the *res gestae*, a statement must strictly accompany or be made at the same time as the acts in question. On a trial for murder it appeared that the deceased, with her throat cut, came suddenly out of a room in which she had left the prisoner and said: "See what Bedingfield has done to me!" *Held*, that the statement was inadmissible.

R. v. Casement ([1917] 1 K. B. 98). By the Treason Act, 1351, it is a treason "if a man be adherent to the King's enemies in his realm, giving to them aid or comfort in his realm or elsewhere."

Casement, a British subject, assisted the enemy in Germany during the Great War. *Held*, he was guilty of treason.

R. v. Chandra Dharma ([1905] 2 K. B. 335). *Held*, that although a statute does not as a rule operate retrospectively, yet one which merely alters rules of procedure does apply to crimes committed, and causes of action existent, before the statute was passed.

R. v. Christie ([1914] L. R. (A. C.) 545). *Held*, that a statement or accusation made to or in the presence of a prisoner may be evidence against him, although he actually denied it at the time, if, by his conduct or demeanour, he may be held to have admitted it.

R. v. Earl Russell ([1901] A. C. 446). Earl Russell, a British subject, was married in England in 1890. In 1900 he obtained an order of divorce in the United States of America, and married again. The divorce was invalid by English law as the earl had not acquired an American domicil. On his return to England he was arrested and tried by the Lord High Steward before the House of Lords. *Held*, that section 57 of the Offences against the Person Act, 1861, extended to marriages contracted by British subjects in any part of the world, and the prisoner was guilty of bigamy.

R. v. Geering ((1849), 18 L. J. M. C. 215). Unconnected conduct on other occasions is not admissible to prove the commission of an offence, but it is admissible to prove *mens rea*, *i.e.*, to show a system or course of conduct, to rebut a defence of accident, or to prove knowledge of some fact.

The accused was charged with murdering her husband by poison. *Held*, that after proof of the administration of the poison, evidence could be given of other deaths in the family from poison.

R. v. Hampden ((1637), 3 St. Tr. 825). Charles I issued writs for collection of ship money, both from maritime towns and inland counties. Hampden refused to pay the amount for which he was assessed, and proceedings were taken in the Exchequer. Judgment for the Crown by a majority of Judges.

R. v. Jackson ([1891] 1 Q. B. 671). *Held*, that a husband is not entitled to use physical compulsion to induce his wife to live with him.

R. v. Jenkins ((1869), 1 C. C. R. 187). The prisoner was charged with the murder of a woman, who on her death-bed accused him of the crime. Her statement was written down, together with a declaration that it was made "with no hope of recovery." She signed it with the addition of the words "at present." *Held*, that some hope of recovery was indicated, and the statement therefore was inadmissible.

R. v. Keyn ((1876), 2 Ex. D. 63). The question in the case was whether a foreign subject in command of a foreign ship could be convicted at the Central Criminal Court of the manslaughter of a person whose death resulted from the negligent navigation of the foreign ship within three miles of English territory. *Held*, that he could not. See *Territorial*.

R. v. Lynch ([1903] 1 K. B. 444). Lynch, a British subject, obtained letters of naturalisation in the South African Republic after the commencement of the South African War. *Held*, that this was in itself an act of treason and no defence to an indictment of treason in subsequently joining the military forces of the enemy.

R. v. McNaghten ((1843), 10 Cl. & Fin. 200). The opinion of the Judges as to the effect of insanity on criminal responsibility was given to the House of Lords as follows:

(1) A person under the influence of insane delusion who does an act with a view of redressing or revenging some supposed grievance or injury, or producing some supposed public benefit, is nevertheless

punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law.

(2) To establish a defence on the ground of insanity, it must be clearly proved that at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong.

(3) If a person under an insane delusion as to existing facts commits an offence in consequence thereof, he must be considered in the same situation as to responsibility as if the facts, with respect to which the delusion exists, were real.

R. v. Osborne ([1905] 1 K. B. 551). *Held*, that evidence of complaints made in the absence of the accused, after the matter complained of, is only admissible in cases of rape and similar offences against females to show the consistency of the conduct of the prosecutrix with her evidence. But the complaint must have been made at the first reasonable opportunity.

R. v. Prince ((1875), L. R. 2 C. C. R. 154). The prisoner unlawfully took an unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, contrary to the Offences against the Person Act, 1861, s. 55. *Held*, that it was no defence that the prisoner *bona fide* and reasonably believed the girl was over sixteen.

R. v. Thomas ((1815), 4 M. & S. 442). The prisoner, while a sentry on board a warship in the Medway, fired at a man and killed him, under the impression that it was his duty. *Held*, that the killing was murder, which would only have been justified in preservation of the ship, if, *e.g.*, the deceased had been stirring up mutiny.

R. v. Tolson ((1889), 23 Q. B. D. 169). A married T in 1880, and in 1881 T deserted her, and was believed by A to have been drowned. In 1887, A married Y. In fact T was still alive. *Held*, that A could not be convicted of bigamy in the absence of *mens rea*.

R. v. Wheat ([1921] 2 K. B. 119). *Held*, that a belief reasonably and in good faith that the accused person has been divorced, when in fact he has not been divorced, affords no defence to a charge of bigamy.

Rack rent. See *Rent*.

Raffles v. Wichelhaus ((1864), 2 H. & C. 906). A mistake as to the subject-matter of a contract avoids it.

The defendant agreed to buy of the plaintiff a cargo of cotton, to arrive "ex *Peerless* from Bombay." There were two such ships, and each party contracted with reference to a different ship. *Held*, the contract was void.

Railway and Canal Commission. A Court established by the Railway and Canal Traffic Act, 1888. It consists of two non-judicial commissioners, and three *ex officio* commissioners, consisting of an English, Scotch and Irish Judge acting in their respective countries. The Commission has jurisdiction in matters directly relating to railways and canals, and also as regards the construction of telegraphs and the water supply of London. Questions arising under the Mines (Working Facilities and Support) Act, 1923, are referred to the Commission.

Railway Rates Tribunal. The Court established by the Railways Act, 1921, which provides that it shall, as from "the appointed day," exercise various functions and powers of the Railway and Canal Commission.

Ramsgate Hotel Co. v. Montefiori ((1866), L. R. 1 Ex. 109). *Held*, that an offer must be accepted within a reasonable time if no time for acceptance is named. If not so accepted it lapses, and cannot afterwards be accepted.

Rank. (1) A claim to a prescriptive payment, such as a *modus* (*q.v.*), which is excessive, and therefore void. (2) Order in precedence, or priority.

Rann v. Hughes ((1778), 7 T.R. 350 n.). A promise or agreement not under seal is not actionable unless there be consideration for the same, even if it be in writing.

Rape. (1) A division of the county of Sussex, *viz.*, Chichester, Arundel, Bramber, Lewes, Pevensey and Hastings. They appear to have been military governments in early Norman times. (2) The act of having carnal knowledge of a woman against her will, or by permission extorted by force, fear of immediate bodily harm, or fraud. Rape is a felony, punishable with penal servitude for life. (Offences against the Person Act, 1861, s. 48; Criminal Law Amendment Act, 1885, s. 4.)

Raphael v. Bank of England ((1855), 17 C. B. 161). One who takes a negotiable instrument *bona fide* for value without knowledge that it has been stolen, even though negligent in not availing himself of the means of knowledge within his reach, has a good title, as negligence is not *mala fides*.

A money-changer innocently changed a stolen banknote, although the number was on a list of stolen notes which he had been given. *Held*, he had a good title.

Rapine. Robbery (*q.v.*).

Rasure. An erasure. See *Alteration*.

Ratcliffe v. Evans ([1892] 2 Q. B. 524). An action will lie for a false statement published maliciously, whereby a party is damaged, even though the words are not defamatory.

The defendant falsely and maliciously published a statement that the plaintiff had ceased to carry on his business, in consequence of which the plaintiff suffered damage. *Held*, the plaintiff could recover.

Rate. A sum assessed or made payable by a local authority in respect of the enjoyment or occupation of property in proportion to its value (*pro rata*, hence "rate"). Provision is made by the Rating and Valuation Act, 1925, for the consolidation of the various pre-existing rates, *e.g.*, poor rate, district rate, into one "general rate" for a district, and "special rate" for a parish. From April 1, 1927, the powers and duties of the overseers of the poor are transferred to the various councils, who become the rating authorities for their respective areas. Assessment and valuation committees are instituted to promote uniformity of valuation. "Rateable value" means the value on which rates are to be assessed.

Ratification. The act of adopting a contract or other transaction by a person who was not bound by it originally, *e.g.*, because it was entered into by an unauthorised agent. Ratification cannot take place

where the party who professes to ratify a transaction was not in existence when it took place. See *Kelner* v. *Baxter*.

Ratio decidendi. The reason or ground of a judicial decision.

Ratione tenuræ. By reason or in respect of his tenure.

Ravishment. The tortious act of taking away a wife from her husband, or a ward from his guardian.

Ravishment de gard. A writ which anciently lay for the guardian by knight service or in socage against one who deprived him of the custody of his ward. Abolished in 1660.

Readhead v. Midland Railway Co. ((1869), L. R. 4 Q. B. 379). A carrier of passengers is not an insurer.

The plaintiff was injured owing to the railway carriage in which he was travelling leaving the line through a concealed defect in the wheel. *Held*, the defendant company were not liable.

Real Property. Lands, tenements and hereditaments. Immoveable property which could be recovered by a real action (*res*, a thing).

Real Representative. The person on whom the real property of a deceased person devolves immediately upon death. The Land Transfer Act, 1897, s. 1, enacted that realty should vest in the personal representative, *i.e.*, an executor or administrator of a deceased person.

The Administration of Estates Act, 1925, s. 13, provides that representation may be granted in respect of real estate, either separately, or together with personal estate, or in respect of realty only, where there is no personalty, or in respect of a trust estate only.

Real Securities. Securities charged on land. The Trustee Act, 1925, s. 5, provides: (1) A trustee having power to invest in real securities may invest: (*a*) on mortgage of property held for an unexpired term of not less than two hundred years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption, or to any condition for re-entry, except for non-payment of rent; and (*b*) on any charge under the Improvement of Land Act, 1864. (2) The trustee may accept the security in the form of a charge by way of legal mortgage.

Realty. Real property (*q.v.*).

Rebut. To repel, defeat or take away the effect of something, *e.g.*, to disprove a presumption.

Rebutter. See *Pleadings*.

Recaption. A remedy by act of the party which may be resorted to when a man has deprived another of his goods, or wrongfully detains his wife, child or servant: then the person injured may lawfully claim and retake them, but not so as to cause a breach of the peace.

Receditur a placitis juris potius quam injuriæ et delicta maneant impunita. We dispense with the forms of law rather than that crimes and wrongs should be unpunished.

Receipt. An acknowledgment of the receipt of money paid in discharge of a debt. A receipt under hand alone is in general only *prima facie* evidence, but a receipt under seal amounts to an estoppel, and is conclusive. The forgery of a receipt is felony (Forgery Act, 1913). A receipt for the payment of £2 or over must be stamped (Stamp Act, 1891).

Receiver. (1) A person appointed by the Court on an interlocutory application, to receive the rents and profits of real estate, or to get in

personal property affected by proceedings in lieu of the person then having the control of the property, to protect the property until the rights of the parties have been ascertained. In an action for the dissolution of a partnership a receiver is frequently appointed to realise the partnership assets. A receiver is an officer of the Court, and generally has to give security for the due performance of his duties. (See Order L, rr. 16-22.) (2) In bankruptcy the official receiver may be appointed interim receiver, at any time after the presentation of the petition, if that course be necessary for the preservation of the estate, and it is his duty to act as interim receiver after adjudication until a trustee is appointed (Bankruptcy Act, 1914, ss. 8, 74). (3) A mortgagee has the power, when the mortgage money has become due, to appoint a receiver. (Sections 101, 109, Law of Property Act, 1925.) (4) A receiver of stolen property is one who receives stolen property knowing it to be stolen. The offence of receiving is punishable on indictment with penal servitude up to fourteen years. (Larceny Act, 1916.)

Receivers of Wreck. Persons appointed by the Board of Trade under the Merchant Shipping Act, 1894, to take steps for the preservation of any vessel stranded or in distress within his district, and if necessary receive and take possession of it.

Receiving Order. The order made by the Court on presentation of a bankruptcy petition for the protection of the debtor's estate, constituting the official receiver the interim receiver of the property of the debtor, and restraining all legal proceedings against the person or property of the bankrupt in respect of any debt provable in the bankruptcy. (Bankruptcy Act, 1914, ss. 3, 7, *et seq.*)

Reception Order. The order signed by a judicial authority (a County Court Judge or a justice) authorising the reception and detention of a person as a lunatic. (Lunacy Act, 1890.)

Recitals. Statements introduced to explain or lead up to the operative part of an instrument. They are generally divided into narrative recitals, which set forth the facts on which the instrument is based; and introductory recitals, which explain the motive for the operative part. A recital commences with "Whereas."

Recognisance. An obligation or bond acknowledged before some Court of record or authorised officer, and afterwards enrolled in some Court of record (*q.v.*). The person bound by it is called the conusor (or cognisor), and the person in whose favour it is made, the conusee (or cognisee). The object of a recognisance is to secure the performance of some act by the conusor, such as to appear at the assizes, to keep the peace, or be of good behaviour. See the Summary Jurisdiction Act, 1879.

Recognitors. The jurors in an assize of novel disseisin or the like. See *Assize*.

Reconversion. Notional conversion may be put an end to by an absolute owner who being *sui juris* is competent to do so, by electing to take the property in its actual state. The Court will not then direct a conversion, because the owner might immediately reconvert, and "Equity, like nature, will do nothing in vain" (*per* Lord Cowper, Seeley *v.* Jago, 1 P. W. 389). So where the obligation to lay out money in land and the right to call for the money vest in the same person,

the obligation is at an end, and the property is "at home" or reconverted (Chichester *v.* Bickerstaff, 2 Vern. 295). Similarly, where trustees have a power to sell land comprised in a will or settlement, the *cestuis que trustent*, where the property has become vested in them absolutely and they are *sui juris*, may, by electing to take the property as it stands, put an entire end to the power and the trusts (Cotton's Trustees, Re, 19 Ch. D. 624).

Reconveyance. The deed of conveyance by which the legal estate in mortgaged land is revested in the mortgagor on payment of the mortgage debt.

Record. (1) An authentic memorial preserved in a Court or the Legislature. (2) Formerly the official statement of the writ and pleadings for the use of the Judge in a common law action.

Record, Conveyances by. Conveyances of land effected by a judicial or legislative act, as evidenced by the record, *e.g.*, fines, or an Act of Parliament.

Record, Trial by. Where in an action one party alleged and the other party denied the existence of a record, there was the issue known as *Nul Tiel Record* (*q.v.*), and the Court would thereupon order a trial by inspection and examination of the record. Failing proof of the record, judgment was given for the party who had denied its existence.

Recordari facias loquelam. A writ used to remove a suit from an inferior Court not of record into one of the superior Courts of common law.

Recorder. A barrister, of five years' standing at the least, appointed by the Crown under the Municipal Corporations Act, 1882, to act as a justice of the peace and sole Judge in a borough Court of quarter sessions.

The Recorder of the City of London is a commissioner of the Central Criminal Court. He is appointed by the corporation, but he cannot perform any judicial functions unless the Crown also appoints. (Local Government Act, 1888.)

Recovery. (1) Proceedings for the recovery of land from a person wrongfully in possession of it, are taken either in the High Court of Justice, or in the County Courts, or before justices. In the High Court the proceedings are a substitute for the old action of ejectment (*q.v.*). (2) A common recovery was a mode of barring estates tail. It was a judgment in a collusive suit brought by a friendly plaintiff or "demandant" against the tenant in tail. As a first step the tenant in tail conveyed his life estate to the "tenant to the *praecipe*" to allow of the writ of *praecipe* being served upon him. The tenant to the *praecipe* then vouched (*i.e.*, called on) the tenant in tail to warranty, who in turn vouched the "common vouchee" (the crier of the Court) on the fiction that the land had been conveyed by the "common vouchee" to him with warranty of title. The "common vouchee" admitted the fiction and craved leave to "imparl" with the tenant in tail. (*i.e.*, confer with him out of Court). He remained out of Court and judgment was given against him by default, to the effect that the land belonged to the plaintiff and that the "common vouchee" must give land of equal value to the tenant to the *praecipe*. The "common vouchee" being a man of straw, no land was forthcoming, but the land

of the tenant in tail went to the plaintiff under the judgment, freed from the estate tail and the remainders and reversions expectant on it, and then the plaintiff conveyed it back to him in fee simple. Common recoveries were abolished by the Fines and Recoveries Act, 1833, which substituted a simple disentailing assurance.

Rectification. The correction of an error in a register or instrument, *e.g.*, a conveyance or settlement. An action may be brought in the Chancery Division for rectification (Judicature Act, 1925, s. 56); but every Division can give effect to a claim for rectification in any action before it.

Recto de dote. A writ of right of dower which lay for a widow who alleged that she had received only part of her dower and claimed the residue against the heir of her husband.

Recto de dote unde nihil habet. A writ which lay for a widow who had received no part of her dower.

Rector. An officer of the Church having a benefice with cure of souls and an exclusive title to the emoluments of the living *e.g.*, tithes (*q.v.*). Since the Reformation lay rectors with vicars to perform the cure of souls have been possible; they are termed Impropriators.

Rectum. Right; trial.

Reddendo singula singulis. "Giving each to each." A clause in an instrument is so read when one of two provisions in one sentence is appropriated to one of two objects in another sentence, and the other provision is similarly appropriated to the other object. Thus, "I devise and bequeath all my real and personal property to A," will be construed *reddendo singula singulis* by applying "devise" to "real property" and "bequeath" to "personal property."

Reddendum. That which is to be paid or rendered. That clause in a lease which specifies the amount of the rent and the time at which it is payable.

Redditus. Rents. See *Alba firma; Assize rents; Chief-rent; Rent.*

Redemption. The paying off of a mortgage debt or charge upon property; the "buying back" of the property. An action or suit for redemption is one brought to compel the mortgagee to reconvey the property on payment of the debt and interest.

Reduction into Possession. The act of exercising the right conferred by a chose in action, so as to convert it into a chose in possession; thus a debt is reduced into possession by payment. See *Husband and Wife.*

Reduction of Capital. Any company limited by shares may pass a resolution to reduce its capital which must be confirmed by an order of the Court on petition in the Chancery Division. The company must then usually add the words "and reduced" to its name. (Companies (Consolidation) Act, 1908.)

Reeve. An officer or steward, *e.g.*, the shire-reeve or sheriff.

Re-exchange. The damages which the holder of a bill of exchange sustains by its being dishonoured in a foreign country where it was made payable, calculated by finding the amount of English money it would take, on the day of dishonour in the place abroad, to purchase the sum payable there in foreign money, plus expenses.

Re-extent. A second execution by extent in respect of the same debt. See *Extent.*

Referee. (1) A person to whom a question is referred for his decision or opinion; an arbitrator. The Arbitration Act, 1889, empowers the Court to refer any question arising in a cause or matter to an official or special referee for inquiry and report. An official referee is an officer of the Court (Judicature Act, 1925, s. 125). A special referee is one who is agreed on between the parties and remunerated by them, the amount being determined by the Court. (2) Referees on private bills are members appointed by the House of Commons to report on questions of *locus standi* (*q.v.*) arising on private bills.

Reference. The decision of a question by a person nominated for the purpose, called a referee, in lieu of the ordinary judicial procedure. The proceedings are usually private, and the conclusion of the referee is termed an award. Questions of detail and calculation are often referred by the Court to Chambers or a Master.

Reference in Case of Need. The name of a person indorsed on a bill of exchange to whom the bill may be presented if it is dishonoured (Bills of Exchange Act, 1882, s. 15).

Refresher. A fee paid to a counsel on the trial of an action in addition to the fee originally paid to him with his brief. It is paid for every clear day which is occupied by the trial after the first five hours.

Refreshing Memory. A witness may refresh his memory while under examination, by referring to a document or memorandum made by himself, although it is not itself admissible as evidence.

Regalia. (1) The royal prerogative, or rights. (2) The Crown jewels. See *Jura regalia.*

Register of Writs. The collection of the various original writs, first printed in 1531.

Registers. See *Land Charges.*

Registrar and Merchants. In Admiralty actions matters of account or assessment of damages are referred for decision to the registrar, assisted by two merchants.

Registrar-General of Births, Deaths and Marriages. The officer established by the Births and Deaths Registration Act, 1836, s. 2.

Registration of Births. The registration of the birth of children born alive in England or Wales is compulsory under the Births and Deaths Registration Act, 1874.

Registration of Business Names Act, 1916. Every firm or individual carrying on business in the United Kingdom under a name other than that of their surnames must register under the Act.

Registration of Deaths. Every death in England, and the cause thereof, must be registered in accordance with the Births and Deaths Registration Acts, 1836 to 1874. The body may not be disposed of until a certificate by the registrar or coroner is given. (Births and Deaths Registration Act, 1926, s. 1.)

Registration of Marriage. Every marriage solemnised in England must be registered, if celebrated according to the rights of the Church of England, by the clergyman who solemnised it, and in other cases generally by the registrar. (The Marriage Act, 1836.)

Registration of Title. See *Land Registration.*

Regrating. The offence of buying corn, etc., in any market and selling it again in the same place, so as to raise the price.

Regulæ Generales. "General Rules"; the Rules of the Supreme Court.

Re-hearing. The re-arguing of a cause or matter which has been already adjudicated upon. Every appeal to the Court of Appeal is by way of re-hearing, and hence the Court may receive fresh evidence and review the whole case. (Order LVIII, r. 1.) See *Appeal.*

The Criminal Appeal Act, 1907, s. 9, empowers the Court of Criminal Appeal to treat an appeal as a re-hearing to such extent as they think fit; but evidence that was not given at the trial is not commonly received.

Re-insurance. The act of an insurer in relieving himself of part or the whole of the liability he has undertaken by insuring the subject-matter himself with other insurers.

Re-insurance was formerly illegal, but the Marine Insurance Act, 1906, s. 9, sub-s. 1, provides that an insurance may be effected in respect of the interest of an insurer under a contract of marine insurance.

Re-issuable Notes. A bank note may be re-issued any number of times without any liability for stamp duty on such re-issue (Stamp Act, 1891, s. 30).

Rejoinder. See *Pleadings.*

Relation. (1) The doctrine by which an act is made to produce the same effect as if it had occurred at an earlier time. Thus, an adjudication in bankruptcy relates back to the act of bankruptcy on which the receiving order was made.

If a person has an authority to enter on land, and after entering he abuses the authority, he becomes a trespasser *ab initio*, because his wrongful act relates back to the time of his entry. (2) The information of a relator (*q.v.*).

Relator. The private person whose name is inserted in the proceedings taken in an action by way of information in the High Court, instituted by the Attorney-General on the information or narration of the relator, *e.g.*, in a case of public nuisance.

Release. (1) "The giving or discharging of the right or action which a man hath or may have or claim against another man or that which is his." When trustees or executors have wound up an estate they usually require a release from the persons beneficially entitled before handing over or dividing it, in order to clear themselves of responsibility. A release may take the form of a covenant not to sue. (2) The discharge by a person of his interest in land in favour of the person in possession, thus vesting the entire legal estate in the possessor. See *Lease and Release.*

Relegatio. Banishment. A prohibition from entering Rome or elsewhere. (Roman law.)

Relegation. Exile or banishment short of outlawry.

Relevant. A fact so connected, directly or indirectly, with a fact in issue in an action or other proceeding that it tends to prove or disprove the fact in issue. "Any two facts so related to each other that according to the common course of events one either taken by itself or in connection with other facts proves or renders probable the past, present or future existence or non-existence of the other" (Stephen). Evidence must be relevant to be admissible.

Relicta verificatione. "Verification abandoned." Down to 1856, a

defendant who had pleaded a plea which was demurred to, could withdraw it by entering a *relicta verificatione*. See *Cognovit Actionem*.

Relief. (1) A payment which a tenant of full age was bound to pay to the feudal lord on succeeding to the land by descent. By the common law it was an incident to the service of every free tenure, and is sometimes called relief service. It usually consists of one year's rent. Reliefs incident to knight service were abolished by the statute 12 Car. 2, c. 24. A customary relief is one due by the special custom of some manors on every descent, and in some cases on every purchase, of freehold tenements held of the manor. (2) The remedy sought by the plaintiff in an action, particularly in Chancery; *e.g.*, a decree or damages. (3) The assistance granted to paupers. See *Poor Law*.

Remainder. "A remnant of an estate in lands or tenements, expectant upon a particular estate created together with the same at one time" (Co. Litt. 93A). Thus if A, a tenant in fee-simple, grants land to B for life, and after B's decease to C and his heirs, C's interest is termed a remainder in fee expectant on the decease of B. No tenure exists between the particular tenant (B) and the remainderman (C).

A vested remainder as opposed to a contingent remainder (*q.v.*) is one ready to come into possession the moment the prior estate determines (as in the above example).

After 1925, remainders can only be created and subsist as equitable interests. (Law of Property Act, 1925, s. 4.)

Remand. To adjourn a hearing to a future date, and to order that the defendant, unless admitted to bail, be kept in custody in the meantime.

Remanent pro defectu emptorem. "They are left on my hands for want of buyers": a return made by a sheriff with regard to goods taken under a *fieri facias*.

Remanet. An action in the King's Bench Division which has been set down for trial at one sittings, but has not come on, so that it stands over to the next sittings.

Remedy. The means by which the violation of a right is prevented, redressed, or compensated. Remedies are of four kinds: (1) by act of the party injured, the principal of which are defence, recaption, distress, entry, abatement and seizure; (2) by operation of law, as in the case of retainer and remitter; (3) by agreement between the parties, *e.g.*, by accord and satisfaction, and arbitration; and (4) by judicial process, *e.g.*, action or suit.

Remembrancers. Three officials of the Exchequer known as the King's Remembrancer, the Lord Treasurer's Remembrancer, and the Remembrancer of the First Fruits.

The Remembrancer of the City of London represents the corporation before parliamentary committees; he accompanies the sheriffs when they wait on the Sovereign in connection with any address from the corporation; and he is bound to attend all Courts of aldermen and common council when required.

Remise. To release or surrender.

Remission. (1) The reference of a case by a higher Court to a lower. See the County Courts Act, 1919. (2) The pardon of an offence.

Remitter, "Is where a man hath two titles to lands or tenements, *viz.*, one a more ancient title, and another a more latter title; and if

he comes to the land by a latter title, yet the law will adjudge him in by force of the elder title, because the elder title is the more sure and more worthy title." (Litt. § 659.)

Remoteness. (1) A disposition of property which is not to take effect within the period allowed by the rule against perpetuities (*q.v.*) is said to be void for remoteness. (2) Unless an act is the immediate or direct cause of damage, the damage is too remote to be recovered. A man is presumed to intend the natural consequences of his acts, and will be liable for damage so caused. The natural consequences are such as flow necessarily and in sequence "without the intervention of some new factor unconnected with the original culpable act or default" (Pollock). See *Clerk* v. *Chambers; Polemis* v. *Furness, Withy; Scott* v. *Shepherd; Sharp* v. *Powell; Vicars* v. *Wilcocks; Glover* v *L. & S. W. Ry.*

Render. To yield or pay. Some kinds of heriots are said to lie in render, that is, the tenant is bound to give the heriot to the lord. See *Prender.*

Rent. A periodical payment due from a tenant of land or other corporeal hereditament to the owner or lord. It is usually payable in money but it may be reserved in kind.

A peppercorn rent is a nominal rent, *i.e.*, of no value, which serves as an acknowledgment of the tenancy.

Rent service is always incident to tenure; it is that which is due when one man holds land of another by fealty (or any other service) and rent. "It is called a rent service because it hath some corporeal service annexed unto it, which at least is fealty" (Co. Litt. 142A); but at the present day fealty is never exacted.

Quit rents are rents due usually from the tenants of manors, in lieu and in discharge of services. If a rent is severed from the reversion (as where either is assigned without the other) it becomes a rent in gross. A rack rent is a rent of the full annual value of the land, or near it. When land is leased to a person on condition that he erects certain buildings on it, the rent reserved (which is small in comparison with the rent of the land when built on) is called the ground-rent. A rent-charge is a rent payable in respect of land to a person who has no reversion in it, and a right to distress is given him by express agreement between the parties. Formerly where a rent (not being a rent service) was reserved or created without a clause of distress, the grantee had no remedy by distress, and hence the rent was called a rent seck (*redditus siccus*, a dry rent). It was abolished by the Landlord and Tenant Act, 1730, s. 5, which gave the owner of every rent seck a right of distress for it. Under the Tithe Act, 1836, a rentcharge varying with the price of corn was substituted for the right to take tithes in kind.

The remedies for recovering payment of rent are enacted in section 121, Law of Property Act, 1925.

Renunciation. A disclaimer. A document by which a person appointed by a testator as his executor, or a person who is entitled to take out letters of administration to the effects of an intestate in priority to other persons, renounces or gives up his right to take out probate or letters of administration; the document is filed in the registry.

Repatriation. The resumption of a nationality which has been lost; or the sending of an alien back to his own country. See *Expatriation.*

Repeal. The abrogation of a statute or part of a statute by a subsequent statute. It may be either express, *i.e.*, specially enacted, or it may be implied, *i.e.*, the necessary result of the subsequent enactment. See the Interpretation Act, 1889, ss. 11, 38. See *Statute Law Revision Acts.*

Repleader. A judgment in an action when the pleadings had failed to raise a definite issue, that the pleadings be begun again.

Replegiari facias. The writ of replevin (*q.v.*).

Replevin. The remedy of a person whose chattels are unlawfully taken from him. The replevisor or distrainee (*i.e.*, the person whose goods have been distrained) obtains a replevy of the goods by procuring from the registrar of the County Court of the district a warrant directing the high bailiff to cause the goods to be delivered to him; and gives security to prosecute an action for the wrongful taking against the distrainor, either in the County Court or in the High Court, and to return the goods to the distrainor if a return shall be adjudged. If the plaintiff obtains judgment, he retains the goods and is awarded damages for the original unlawful taking; if the defendant is successful, he obtains judgment for a return of the goods taken, formerly enforceable by a writ called *de retorno habendo,* now by a writ of delivery (*q.v.*). See *Capias in withernam.*

Replication; Reply. See *Pleadings.*

The right of reply is the right of counsel in a case to have the last word, or make the last speech to the jury, before the Judge's summing up.

Report. The decision of a referee, or the result of a master's inquiry, as notified to the Court. See *Law Report.*

Representation. (1) One person is said to represent another when he takes his place. Thus, an agent represents his principal, and an executor his testator.

In intestacy, the rule of representation is that by which the children or other descendants of a deceased person who, if he had lived, would have taken property by virtue of an intestacy, stand in his place, so as to take that property. Under the Administration of Estates Act, 1925, s. 47, the issue of any child of an intestate who predeceased the intestate take the share which their parent would have taken if living at the death of the intestate; and the same rule is extended to the issue of relatives of the intestate.

(2) A representation is a statement or assertion made by one party to a contract to the other, before or at the time of the contract, of some matter or circumstance relating to it. A representation made during the making of a contract of sale may be (1) A mere expression of opinion, or simply "puffing" by a seller of his goods: it is then inoperative. (2) A warranty (*q.v.*). (3) A condition (*q.v.*) as constituting part of the description of the thing sold, and an essential term of the contract. (4) If false or fraudulent it may avoid the contract. See *Misrepresentation.* (5) It may create an estoppel (*q.v.*).

Representative. A person who takes the place of another. The executor or administrator of a deceased person is called his personal representative, because he represents him in respect of his personal

estate. Since the Land Transfer Act, 1897, the personal representative is also the real representative where there is realty. See *Real Representative.*

Representative Action. One brought in the Chancery Division by a member of a class of persons on behalf of himself and the other members of the class.

Reprieve. The suspension of the execution of a sentence. It may be granted either by the Court or by the Crown. The Court is bound to grant a reprieve where a female prisoner under sentence of death is pregnant, and where a prisoner becomes insane after judgment. The Home Secretary exercises the prerogative of mercy on behalf of the Crown.

Reprisal. (1) a recaption (*q.v.*). (2) Every species of means, short of war, employed by one State to procure redress for an injury committed by another State. It includes embargo and retorsion (*q.v.*)

Republication. The re-execution by the testator of a will or codicil previously revoked.

Repugnant. Contrary to, or inconsistent with.

Reputation. In the law of evidence, matters of public and general interest, such as the boundaries of counties or parishes, rights of common, etc., are allowed to be proved by general reputation, *e.g.*, by the declarations of deceased persons made *ante litem motam*, by old documents, etc., notwithstanding the general rule against secondary evidence.

Reputed Ownership. The doctrine that if the circumstances in which property is in a trader's possession, order or disposition, are such as to lead to a fair and reasonable inference amongst persons likely to have dealings with him, that he is the owner, and if the real owner is a consenting party, that property is said to be in his reputed ownership, and on the trader becoming bankrupt, that property is divisible among his creditors. The doctrine does not apply to property comprised in a registered bill of sale, nor does it apply in cases where (as *e.g.*, furniture held by a hotel keeper on the hire-purchase system) there is a custom or usage of trade rebutting the presumption of ownership (Bankruptcy Act, 1914, s. 38).

Requisitions on Title. When a contract for the sale of real property has been entered into, and the vendor's solicitor has delivered the abstract of title to the purchaser, the latter's solicitor goes through the abstract, and if there are any defects in or questions as to the vendor's title, he puts his objections into writing and delivers them to the vendor. These are called requisitions, because they require the vendor to remove the defects or doubts pointed out.

Res. Things.

Res accessoria sequitur rem principalem. The accessory follows the principal.

Res gestæ. The facts surrounding or accompanying a transaction which is the subject of legal proceedings; or, all facts so connected with a fact in issue as to introduce it, explain its nature, or form in connection with it one continuous transaction. Evidence of words used by a person may be admissible on the ground that they form part of the *res gestæ*, which might otherwise be inadmissible as hearsay. See *R.* v. *Bedingfield.*

Res integra. A point, governed neither by any decision nor by any rule of law, which must be decided upon principle.

Res inter alios acta alteri nocere non debet. A transaction between others does not prejudice one who was not a party to it.

Res ipsa loquitur. "The thing speaks for itself." See *Byrne* v. *Boadle*.

Res judicata pro veritate accipitur. "A thing adjudicated is received as the truth." A judicial decision is conclusive until reversed, and its verity cannot be contradicted.

Res Nullius. A thing which has no owner. See *Merry* v. *Green*.

Rescission. Abrogation or revocation, particularly of a contract.

In a sale of land there is usually an express condition of sale under which, in case the purchaser makes and persists in any objection or requisition which the vendor is unable or unwilling to comply with, the vendor may by notice in writing rescind the sale, and return the deposit to the purchaser and so escape liability to pay damages for breach of contract. (Snell, p. 553.)

If a party is entitled to rescind a contract owing to a misrepresentation having been made he must notify the other party of his intention by pleading invalidity as a defence to proceedings to enforce the contract, or by bringing a suit for having the contract judicially set aside.

Rescue. (1) The act of forcibly and knowingly freeing a person from an arrest or imprisonment. (2) The act of forcibly taking back goods which have been distrained and are being taken to the pound. If the distress was unlawful, the owner may lawfully rescue the goods; if the distress was lawful, the rescuer is liable to an action by the distrainor. See *Pound-Breach*.

Reservation. (1) "A clause of a deed whereby the feoffor, donor, lessor, grantor, etc., doth reserve some new thing to himself out of that which he granted before. And this doth most commonly and properly succeed the *tenendum*" (Sheppard's Touchstone). The commonest instance of a reservation is the rent in an ordinary lease. See *Deed*. (2) Formerly difficult points of law arising in a criminal trial were reserved for the Court for Crown Cases Reserved (*q.v.*).

Resiant. A resident in a manor.

Residence. The place of a persons home or habitation; the place from which the affairs of a company are directed. It is of importance as determining domicil and liability to taxation.

Residue. That which remains of a deceased person's estate after payment of debts, funeral and testamentary expenses, legacies and annuities. Where a testator does not effectually dispose of the residue of his property he dies intestate as to it. See *Lapse*.

Resolution. A resolution is an expression of opinion or intention by a meeting. Resolutions of the members of a company are either ordinary, special, or extraordinary. An ordinary resolution is one passed by a simple majority in number at an ordinary meeting. A special resolution requires first to be passed by a majority of three-fourths of the members present at a meeting summoned for the purpose, and then to be confirmed by a simple majority at a meeting held for the purpose pursuant to notice between a fortnight and a month from the first meeting. An extraordinary resolution is a resolution passed by a

majority of three-fourths of the members present at a meeting summoned for the purpose. (Companies (Consolidation) Act, 1908, s. 69.)

In bankruptcy proceedings, an ordinary resolution is one decided by a majority in value of the creditors present (personally or by proxy) at the meeting, and voting on the resolution. A special resolution is one passed by a majority in number and three-fourths in value of the creditors present (personally or by proxy) at the meeting, and voting on the resolution. (Bankruptcy Act, 1914, s. 167).

Resoluto jure concedentis resolvitur jus concessum. The grant of a right comes to an end on the termination of the right of the grantor.

Respite. To discharge or dispense with.

Respondeat Ouster. "Let him answer over." A judgment formerly given when a defendant or prisoner failed to substantiate a plea, and which ordered him to plead again. See *Plea.*

Respondeat superior. "Let the principal answer," *i.e.*, where the relation of master and servant or principal and agent exists.

Respondent. A person against whom a petition is presented, a summons issued, or an appeal brought.

Respondentia. The making of the cargo on board a ship security for the repayment of a loan. See *Hypothecation; Bottomry.*

Restitutio in integrum. "Restoration to the original position." The remedy administered by Courts of equity in rescinding a contract or otherwise placing parties in their original position.

Restitution of Conjugal Rights. Where one of two married persons has without lawful cause withdrawn from living with the other, the latter may present a petition to the High Court in the Probate, Divorce and Admiralty Division praying restitution of conjugal rights, on which the Court will, in a proper case, order the other to return to cohabitation within the time limited by the order.

Restitution, Writ of. The writ by which a defendant, successful in an appeal, is restored to all he has lost by the execution of the judgment which is reversed; the writ by which stolen goods were formerly restored to their true owner.

Restraining Order. An order under the Court of Chancery Act, 1841, s. 4, by which a public company may be restrained from permitting the transfer of stock or shares in their books or from paying dividends thereon.

Restraint of Marriage. Every contract, the object of which is to restrain a person from marrying at all, or not to marry anyone except a specific person, is void as against public policy. See *Lowe* v. *Peers; Scott* v. *Tyler.*

Restraint of Trade. A contract in general restraint of trade is one which provides that one of the parties shall not carry on a particular trade at all, and is void as contrary to public policy. A contract in restraint of trade may, however, be valid if it is limited to a certain district or area, or is not unreasonable in its terms. See *Mitchell* v. *Reynolds; Nordenfelt* v. *Maxim Nordenfelt.*

Restraint on Alienation. Where property is given to a married woman to her separate use without power of alienation.

Restraint on Anticipation. See *Anticipation.*

Rests. The period for which accounts are balanced and interest

is ascertained and charged, and added to the principal sum, *e.g.*, half yearly.

Result. A thing is said to result when, after having been ineffectually or only partially disposed of, it comes back to its former owner or his representatives, *e.g.*, property subject to a trust which fails returns to the author of the trust under a resulting trust. See *Trust.*

Resumption. The taking again of lands by the owner.

Retainer. (1) The right of the executor or administrator of a deceased person to retain out of the assets sufficient to pay any debt due to him from the deceased in priority to the other creditors whose debts are of equal degree. (2) A retainer is the engagement of a barrister or solicitor to take or defend proceedings, or to advise or otherwise act for the client. See the Annual Practice, under "Professional Etiquette."

Retire. To take up a bill of exchange and extinguish it by paying what is due.

Retorsion. A form of retaliation, unfriendly, but not affording a cause of war, consisting of the adoption of measures directed against an offending nation analagous to those to which exception is taken, *e.g.*, the imposition of a differential tariff.

Retour sans protet. "Return without protest." A direction in case a bill of exchange is dishonoured.

Retractation. A withdrawal of a renunciation (*q.v.*).

Return. A report. Thus, the sheriff executing a writ of execution has to report to the Court what he has done in pursuance of it. A writ is said to be returnable at a certain time when the return must be made by that time.

Every company formed under the Companies Acts, and having a share capital, is bound (Companies (Consolidation) Act, 1908, s. 26) to send in a yearly return to the Registrar of Companies, giving a list of its shareholders.

Returning Officer. A person responsible for the conduct of an election. For parliamentary elections he is the sheriff or mayor. See the Representation of the People Act, 1918, s. 28.

Returnus Brevium. "The Return of Writs." The manorial right of making returns to writs addressed to residents within the manor.

Reus. Any party to a case, including a stipulator. (Roman law.)

Reversal. The setting aside of a judgment on appeal.

Reversion. Where land is granted by the owner for a less estate or interest than he himself has, his undisposed-of interest is termed the reversion, because the land will revert to the owner on the determination of the particular estate, *e.g.*, where a tenant in fee-simple grants the land to another person for a term of years, for life, or in tail.

The estate created by the grant is called the particular estate, and tenure exists between the reversioner (the owner of the reversion) and the tenant.

Reversionary Interest. Any right in property the enjoyment of which is deferred, *e.g.*, a reversion or remainder, or analagous interests in personal property.

Reverter. A reversion (*q.v.*).

Revesting. The vesting of property in its original owner, *e.g.*, stolen property. See Sale of Goods Act, 1893, s. 4.

Review of Taxation. The re-consideration of taxed costs by the Taxing Master. (Order LXV, r. 39.)

Revising Barristers. Junior barristers appointed to revise the lists of voters for parliamentary elections. The office was abolished by the Representation of the People Act, 1918.

Revival. The renewal of rights which were at an end or in abeyance by subsequent acts or events. *E.g.*, a will once revoked may be revived by republication, and formerly a suit in Chancery, defective by death of a party might be renewed by bill of revivor.

Revocation. "Recalling." Revocation is of three kinds—by act of the party; by operation of law; and by order of a Court. Revocation by act of the party is an intentional or voluntary revocation, *e.g.*, of authorities and powers of attorney and wills. See the Wills Act, 1837, s. 20.

A revocation in law is produced by a rule of law, irrespectively of the intention of the parties. Thus, a power of attorney is in general revoked by the death of the principal.

When a grant of probate or letters of administration has been improperly obtained, it may be revoked by the Court at the instance of a person interested.

Rex non potest peccare. The King can do no wrong.

Rex nunquam moritur. The King never dies.

Rex quod injustum est facere non potest. The King cannot do what is unjust.

Rhodes, Laws of. A code of sea laws compiled at a very early date in the island of Rhodes, and declared by the Roman emperors to be binding on the world at large.

Richards v. Delbridge (L. R. 18 Eq. 11). An imperfect gift will not be construed as a declaration of trust.

D before his death indorsed on a lease and signed a memorandum as follows: "This deed and all thereto belonging I give to R from this time forth, with all stock-in-trade." R was an infant at the time, and D delivered the lease to the mother on his behalf. *Held*, there was no valid declaration of trust of the property in favour of Richards.

Richerson, Re ([1892] 1 Ch. 379). *Held*, that where an absolute conversion of land is directed for the general purposes of the will, and some of these purposes fail, yet, the conversion being effectual, the surplus proceeds of the land sold and the unsold land both result to the heir as personalty; and if the heir is dead, go to his personal representatives.

Rider; Rider-roll. Anciently a rider-roll meant an additional clause on a separate piece of parchment which was added to the parchment roll containing an Act of Parliament. Later, a rider meant merely a new clause in an Act. Now a rider means merely some addition, such as a recommendation to mercy, occasionally made by a jury to their verdict in a criminal case.

Right. "An interest recognised and protected by the law, respect for which is a duty, and disregard of which is a wrong" (Salmond). "A capacity residing in one man of controlling, with the assent and assistance of the State, the actions of others" (Holland).

A right involves (1) a person invested with the right, or entitled; (2) a person or persons on whom that right imposes a correlative duty

or obligation; (3) an act or forbearance which is the subject-matter of the right; (4) an object, that is, a person or thing to which the right has reference; and (5) a title or reason for the right becoming vested in the owner.

Rights are classified by Salmond as follows: perfect and imperfect; positive and negative; real and personal; proprietary and personal; *in re propria* and *in re aliena*; principal and accessory; and legal and equitable.

Right of Action. The right to bring an action. Thus, a person who is wrongfully dispossessed of land has a right of action to recover it. It is used also as equivalent to *chose in action* (*q.v.*).

Right of Entry. The right of taking or resuming possession of land by entering on it in a peaceable manner. A right of entry is usually reserved in a lease in respect of breaches of covenant. After 1925 all rights of entry affecting a legal estate may be made exercisable by any person and the person deriving title under him. (Law of Property Act, 1925, s. 4, sub-s. 3.) See *Entry*.

Right to Begin. The right of counsel of first addressing the Court or jury. It belongs to the party on whom the onus of proof rests.

Riot. "There are five necessary elements of a riot: (1) Number of persons, three at least; (2) common purpose; (3) execution or inception of the common purpose; (4) an intent to help one another by force if necessary against any person who may oppose them in the execution of their common purpose; (5) force or violence not merely used in demolishing, but displayed in such a manner as to alarm at least one person of reasonable firmness and courage" (*per* Phillimore, J., Field *v* Receiver of Metropolitan Police, [1907] 2 K. B. 853).

Where twelve or more persons are committing a riot, it is the duty, under the Riot Act, (1 Geo. 1, st. 2, c. 5), of the mayor, sheriff, and certain other officers to make a proclamation in the King's name, commanding them to disperse; and every person who obstructs the making of the proclamation, or continues to riot for one hour afterwards, is guilty of felony.

Riotous damage or demolition of property is an offence under the Malicious Damage Act, 1861.

Risk Note. Under the Railway and Canal Traffic Act, 1854, s. 7, a railway company may make with anyone for whom they carry goods a contract which makes them, instead of being liable as carriers (*q.v.*), liable only for such loss or injury as results from the wilful misconduct of themselves or their servants. Such a contract, which must be signed by the consignor, is known as a risk note.

Robbery. The taking and carrying away with violence or with threats of injury of a thing which is on the body or in the immediate presence of a person. See section 23, Larceny Act, 1916.

Roberts v. Gray ([1913] 1 K. B. 520). *Held*, that a contract for the education of an infant so that he may able to earn his living (*e.g.*, as a professional billiard player) is a contract for necessaries.

Robinson v. Pett ((1734), 3 P. Wms. 132). *Held*, that the Court never allows an executor or trustee for his time and trouble; neither will it alter the case that the executor renounces, and yet is assisting in the executorship; and this, even though it appears that the executor or trustee has benefited the trust to the prejudice of his own affairs.

Roe v. Tranmarr ((1757), Willes, 682). "*Ut res magis valeat quam pereat.*" A in consideration of natural love and of £100, by deeds of lease and release, granted after his own death certain premises to his brother, and covenanted and granted that the premises should, after his death, be held by his brother and his heirs. *Held*, that the deed could not operate as a release because it attempted to convey a freehold *in futuro*; but that it was good as a covenant to stand seised.

Rolls. In ancient times records were written on pieces of parchment stitched together so as to form a long continuous piece, which was rolled up when not in use.

The Parliament Rolls are the records of the proceedings of Parliament, especially Acts of Parliament.

Rosecorla v. Thomas ((1842), 3 Q. B. 234). The plaintiff alleged that in consideration of his having purchased a horse from the defendant, the latter promised the horse was free from vice. *Held*, the promise was not actionable for want of consideration, the purchase of the horse being an executed consideration.

Rossiter v. Miller ((1878), L. R. 3 A. C. 1124). *Held*, that although an acceptance of an offer "subject to a formal contract being drawn up and signed" is conditional and does not create a binding contract, a mere statement that a formal contract will be drawn up for signature does not make the acceptance conditional.

Rout. An unlawful assembly which has made some motion towards the execution of the common purpose of the persons assembled. It is, therefore, intermediate between an unlawful assembly and a riot (*q.v.*).

Routledge v. Grant ((1828), 3 C. & P. 267). *Held*, that an acceptance must be identical with the offer and not vary its terms in any way.

Royal Fish. See *Fish Royal.*

Rule. (1) A regulation made by a Court of justice or a public office with reference to the conduct of business therein. Rules made under the authority of an Act of Parliament have statutory effect. Rules of Court are made by the Judges under the Judicature Acts for the regulation of practice and procedure. (2) An order or direction made by a Court of justice in an action or other proceeding. A rule is either —(i) absolute in the first instance, or (ii) *nisi*, *i.e.*, calling upon the opposite party to show cause why the rule applied for should not be granted. If no sufficient cause is shown, the rule is made absolute; otherwise it is discharged. (3) A principle of the law, *e.g.*, the rule in *Shelley's Case* (*q.v.*).

Running Days. A charterparty includes all days, whether working or non-working, as well as Sundays and holidays. But custom may, as in the City of London, make either "running days" or "days" equivalent to working days.

Running Down Case. An action for damages against the driver or owner of a vehicle for colliding with another vehicle or person.

Running with the Land. See *Covenant.*

Ruptum. "Broken." In the *lex aquilia*, *ruptum* means *corruptum* or spoliation in any way. "Not only breaking and burning, but also cutting and crushing and spilling, and in any way destroying or making worse are included under this term." (Roman law.)

Russel v. Russel ((1783), 1 Bro. C. C. 269). A lease had been

pledged with the plaintiff by a person since bankrupt, and the plaintiff now brought his bill against the assignees for the sale of the leasehold estate. *Held*, that the deposit created a good equitable mortgage.

Russell v. Russell ([1924] L. R. A. C. 687). The rule that when a child has been born in wedlock, it is not competent for either husband or wife to give evidence of their non-access during marriage so as to bastardise the child, applies both to divorce and legitimacy proceedings.

Mr. Russell petitioned for divorce, alleging in proof of his wife's adultery that she had had a child of which he was not the father. *Held*, he could not give such evidence and the petition must be dismissed.

Ryder v. Wombwell ((1868), L. R. 4 Ex. 32). *Held*, that if goods supplied to an infant are such that they cannot be necessaries, the Judge should not let the case go to the jury.

Rylands v. Fletcher ((1868), L. R. 3 H. L. 330). "*Sic utere tuo ut alienum non laedas.*" A person who for his own purposes brings on to his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so is *prima facie* answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or that the escape was the consequence of *vis major* or the act of God.

Fletcher was possessed of certain coal mines which communicated with certain old coal workings under appellants' land. Rylands were not aware of these old workings under their land, and they had constructed on their land a reservoir. The reservoir was properly constructed, but as soon as it was filled with wafer it gave way by reason of the cavities beneath, and the water found its way into and flooded F's mines. *Held*, that, although not guilty of negligence, the appellants were liable.

Sac. Jurisdiction.

Sackville West v. Viscount Holmesdale (L. R. 4 H. L. 543). In construing executory trusts the Court exercises a large authority subordinating the language to the intent.

The Countess Amherst by a codicil gave certain freeholds, leaseholds, copyholds and chattels to trustees in trust to settle them as nearly as might be practicable with the limitations of the barony of Buckhurst, *i.e.*, after the decease of the Countess de la Warr to R. W. Sackville West and the heirs male of his body, and in default of such issue to the third, fourth and fifth sons of the Countess W. and the heirs male of their bodies. *Held*, by the House of Lords that the estates ought to be limited in a course of strict settlement to the second and other younger sons of the Countess de la Warr for their respective lives without impeachment of waste, with remainder to their sons successively in tail male in the order of the barony; and that the copyholds, leaseholds and chattels were to go in a similar manner so far as the rules of law and equity would allow.

Sacrilege. The offence committed by a person who breaks into a place of divine worship and commits any felony therein, or who, being in a place of divine worship, commits any felony therein and breaks

out of it. (Section 24, Larceny Act, 1916.) The maximum punishment is penal servitude for life.

Safe Conduct. A pass issued to an enemy subject by a belligerent State.

St. Helens Smelting Co. v. Tipping ((1865), 11 H. L. C. 642). In an action for nuisance it is no defence that the plaintiff came to the nuisance.

The appellants carried on smelting works. The respondent purchased an estate in the neighbourhood and the fumes from the appellants' works injured his trees, plants and cattle. *Held*, he was entitled to damages.

Sale. A transfer of a right of property in consideration of a sum of money. "A contract for the sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price." (Sale of Goods Act, 1893, s. 1, sub-s. 1.) Every sale includes an agreement, the payment of the price and the delivery of the property. The property in the goods sold is transferred at the time when the parties intend it to pass, which is usually when the agreement is concluded. In the case of an agreement for the sale of unascertained goods, *e.g.*, ten sheep to be selected from a flock, the property does not pass until the goods are ascertained and appropriated to the contract. "Where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell" (*ibid.*, s. 1, sub-s. 3). "A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf" (*ibid.*, s. 4, sub-s. 1). See *Page* v. *Morgan; Abbott* v. *Wolsey; Elmore* v. *Stone*.

Sale or Return. A contract whereby the buyer has the right of returning the goods to the seller within a reasonable time.

Salomon v. Salomon & Co., Ltd., [1897] A. C. 22. Salomon sold his business to a company which he formed, the whole of the capital of which he held himself except one share each held by six members of his family. Part of the purchase price was paid by the company to S. in the form of a debenture. The company was unsuccessful and was wound up, the assets being less than the amount of the debenture. The unsecured creditors claimed that S. and the company were virtually one and the same, and that the debenture should be set aside, and the assets paid out to them. *Held*, that the company was a separate legal entity and S. was entitled to enforce his debenture.

Salt v. Marquis of Northampton ([1892] A. C. 1.) "Once a mortgage always a mortgage." *Held*, that if the substance of a transaction is a mortgage the Court disallows any conditions appropriate to a sale but inappropriate to a mortgage.

Salus populi est suprema lex. The welfare of the people is the paramount law.

Salvage. Compensation allowed to persons (salvors) by whose assistance a ship or cargo or the lives of persons belonging to her are

saved from danger or loss at sea. The assistance must be voluntary and salvors have a retaining lien for their remuneration on the property rescued. The Admiralty Court will assess the amount payable as salvage.

Sanction. The penalty or punishment provided as a means of enforcing obedience to law.

Sanctuary. A place in which neither the civil nor criminal process of the law could be executed. It originated in the claim for immunity for all persons taking refuge in consecrated places. It was abolished by 21 Jac. 1, c. 28, s. 7.

Sans frais. Without expense.

Sans nombre. A right of common of pasture where the number of beasts is not fixed.

Sans recours. Without recourse (*q.v.*).

Santos v. Illidge ((1860), 8 C. B. (N.S.) 861). The legality of a contract made abroad is governed *prima facie* by the law of the place where the contract is made.

The defendants agreed to sell to the plaintiff, a British subject, some slaves in Brazil. Slavery was unlawful by English law, but lawful by Brazilian law. *Held*, the contract was valid.

Satisfaction. The extinguishment of an obligation by performance, *e.g.*, the payment of a debt. A judgment may be satisfied by payment or execution. The equitable doctrine of satisfaction relates to the doing of an act in substitution for the performance of an obligation.

(1) *Satisfaction of debts.* If A, after contracting a debt, makes a will giving B a pecuniary legacy equal to or greater than the debt, the legacy is considered a satisfaction of the debt unless a contrary intention appears.

(2) *Satisfaction of Portions.* When a father or a person *in loco parentis* has covenanted to provide a portion (*q.v.*) and subsequently by will provides a portion, or subsequently makes a gift in the nature of a portion, the second provision is presumed to be wholly or *pro tanto* in substitution for the first.

Equity leans against satisfaction of debts but favours satisfaction of portions. See *Ademption; Accord and Satisfaction; Talbot* v. *Duke of Shrewsbury; Blandy* v. *Widmore.*

Satisfied Term. See *Term of Years.*

Scaccarium. The exchequer.

Scandal. The allegation in pleading of anything unbecoming the dignity of the Court to hear, or contrary to good manners or which unnecessarily charges some person with crime or immorality. It is liable to be struck out. (Order XIX, r. 27; Order XXXVIII, r. 11; Order XXXI, r. 6.)

Scandalum magnatum. The former offence of making defamatory statements regarding persons of high rank, such as peers, Judges or great officers of State.

Schedule. An appendix to an Act of Parliament or an instrument.

Scienter. Knowledge; an allegation in a pleading that a thing has been done knowingly; *e.g.*, the knowledge of the owner of an animal of its mischievous disposition. (See *Animals.*) A plaintiff who sues in tort for misrepresentation must aver a *scienter.*

Scilicet. That is to say; to wit.

Scintilla juris. A spark or fragment of a right. The doctrine that a fragment of a right or possibility of seisin remained in a feoffee to uses where there was a shifting use. It was formally abolished by the Law of Property Amendment Act, 1867, s. 7.

Scire facias. A writ founded upon some record, such as a judgment or letters patent, etc., directing the sheriff to make known to the person against whom it is brought to show cause why the person bringing it should not have advantage of the record, etc., or where it is used to repeal letters patent, etc., why the record should not be annulled.

If the sheriff executes the writ by warning the defendant, he returns *scire feci* (" I have caused to be warned "); if he does not warn him, he returns *nihil.*

Scot and Lot. The rates payable by the inhabitants of a borough.

Scott v. Morley ((1887), 20 Q. B. D. 120). *Held,* that a married woman is only liable on a contract in respect of her separate estate, and, being under no personal liability, she cannot be imprisoned for debt.

Scott v. Shepherd ((1773), 2 W. Bl. 892). A wrongdoer is responsible for the natural consequences of his act, notwithstanding the intervention of a third party. The defendant threw a lighted squib made of gunpowder from the street into the market house, where a large concourse of people were assembled. It fell on the stand of Y. W, to save himself, threw it away and it fell on R's stand, who threw it away, when it struck the plaintiff and put out one of his eyes. *Held,* that the plaintiff could recover damages from the defendant, although the defendant was not the immediate cause of the injury.

Scott v. Tyler ((1788), 2 Bro. Ch. 431). A legacy had been given to a daughter, one moiety of which was to be paid to her at twenty-one if then unmarried, and the other moiety at twenty-five if then unmarried; but in case she married before twenty-one with the consent of her mother, to be settled upon her as mentioned in the will. The daughter married under twenty-one without the consent of her mother. *Held,* that the legacy did not vest in the daughter upon the marriage, and that she never came under the description to which the gift of the legacy was attached.

Scribere est agere. To write is to act.

Scrip. A certificate issued by a newly-formed company or the issuers of a loan, acknowledging that the person named or the holder is entitled to certain shares, bonds, etc. Scrip certificates are negotiable instruments.

Script. A draft of a will or codicil, or written instructions for the same. If the will is destroyed a copy of its contents becomes a script. See *Affidavit of Script.*

Scrutiny. An inquiry into the validity of votes recorded at an election.

Scutage. Escuage (*q.v.*).

Seal. A solemn mode of expressing consent to a written instrument by attaching to it wax impressed with a device; but any act done with the intention of sealing is sufficient. By the Law of Property Act, 1927, s. 73, where a deed is executed it must be signed or marked, and sealing alone is not sufficient.

Seaman v. Netherclift ((1876), 2 C. P. D. 53). Statements made by a witness while giving evidence are absolutely privileged if they have reference to the litigation.

The defendant, while giving evidence in a dispute as to the genuineness of a signature to a will witnessed by the plaintiff, said he believed the signature to the will to be a rank forgery. The plaintiff sued him for defamation. *Held*, the words were absolutely privileged.

Search. By international law warships of a belligerent have the right to visit and search merchant vessels in order to ascertain whether the ship or cargo is liable to seizure.

Search Warrant. An order under the hand of a justice of the peace authorising a named person to enter a specified building and to seize certain specified goods. It may be issued under section 103 of the Larceny Act, 1861, to search for stolen goods, etc.

Searches. Examination by a purchaser of records and registers for the purpose of finding incumbrances affecting the title to the property. Under the Land Charges Act, 1925, s. 16, an official search may be made and a certificate of the result issued.

Seaton v. Benedict ((1828), 5 Bing. 28). A husband who supplies his wife with necessaries is not liable for debts contracted by her without his previous authority or subsequent sanction.

The defendant, a lawyer, had supplied his wife's wardrobe with all necessary articles. The plaintiff, a tradesman, supplied the wife with gloves and (*inter alia*) thirteen pairs of silk stockings in one day. *Held*, the plaintiff was not entitled to succeed.

Seaworthiness. The fitness of a vessel in all respects to undertake a particular voyage. By the Carriage of Goods by Sea Act, 1924, Art. IV, neither the carrier nor the ship shall be liable for loss or damage resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds in which goods are carried fit and safe. The burden of proof of due diligence is on the carrier, etc.

Seck. Dry. Where there is no tenure created and consequently no incidents such as the right of distress and escheat. See *Rent*.

Secret Trusts. A bequest or devise of property by a testator to a person on a verbal promise that it will be held in trust for another or others. A secret trust is valid if it would have been valid as an express trust.

Secretary of State. The expression means "one of His Majesty's Principal Secretaries of State for the time being" (Interpretation Act, 1889, s. 12, sub-s. 3). The Principal Secretaries of State are those for the Home Department, for Foreign Affairs, for the Colonies, for the War Department, for Air and for India. Not more than six of them, and not more than six of their under-secretaries may sit in the House of Commons at the same time. Each Secretary of State can do anything which any one of the others is empowered to do. By the Secretaries of State Act, 1926, the Secretary for Scotland and the Parliamentary Under-Secretary for Health for Scotland were made Secretary of State for Scotland and Under-Secretary respectively, and the number allowed to sit in the Commons was raised from five to six at the same time.

Secta. A following. (1) A service, due by custom or prescription, which obliged the inhabitants of a particular place to make use of a mill, kiln, etc. (2) The followers or witnesses whom the plaintiff brought into Court with him to prove his case.

Secta curiæ. Suit and service done by tenants at the Court of the lord.

Secta regalis. The obligation to attend twice a year at the Sheriff's Tourn.

Security. "A security is a possession such that the grantee or holder of the security holds as against the grantor a right to resort to some property or some fund for the satisfaction of some demand, after whose satisfaction the balance of the property or fund belongs to the grantor. There are two owners, and the right of the one has precedence of the right of the other. A share in a corporation does not answer the above description." (Singer *v.* Williams, [1921] 1 A. C. 41, *per* Lord Wrenbury.)

Security for Good Behaviour. See *Sureties of the Peace and Good Behaviour.*

Secus. Otherwise.

Sedition. The misdemeanour of publishing verbally or otherwise any words or document with the intention of exciting disaffection, hatred, or contempt against the Sovereign, or the Government and constitution of the kingdom, or either House of Parliament, or the administration of justice, or of exciting His Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State, or of exciting feelings of ill-will and hostility between different classes of His Majesty's subjects.

Seduction. An action for damages may be brought by a parent or master for loss of services of his daughter or servant owing to her seduction and consequent illness. Where the daughter or servant is a consenting party, no action lies by her against the seducer. See *Speight* v. *Oliviera; Terry* v. *Hutchinson.*

Seignory. A lordship. The interest of one who has tenants holding of him in fee-simple.

Seised in Demesne as of Fee. One in whom an immediate freehold in severalty was vested for an estate in fee simple: an allegation in pleading, shortened in time to "In fee simple."

Seisin. Feudal possession; the relation in which a person stands to land or other hereditaments, when he has in them an estate of freehold in possession. Formal legal ownership as opposed to mere possession or beneficial interest. Seisin in deed is actual possession of land. Seisin in law is that which an heir has when his ancestor dies intestate seised of land, and neither the heir nor any other person has taken actual possession of the land. See *Livery of Seisin.*

Seisina facit stipitem. "Seisin makes the stock of descent." The old rule was that when a person died intestate as to his land, it descended to the heir of the person who was last seised of it. See *Descent.*

Semayne's Case ((1604), 5 Coke, 91). "An Englishman's home is his castle."

The defendant was the owner and in possession of a house in which were goods of one X, against whom the plaintiff had recovered judg-

ment. The sheriff came to levy execution, but the defendant refused to let him enter the house by which the plaintiff lost the benefit and profit of his writ of execution. The plaintiff brought this action against the defendant for thus hindering him and causing him such damage. *Held*, that a sheriff or other officer of the law may use force to enter on premises and deliver possession thereof to a party who has recovered judgment in a real action, but he may not break in to levy execution unless the goods of another have been put into the house to avoid execution, or the execution is at the suit of the King.

Semble. "It appears." Used in judgments and text-books to introduce a proposition of law which is not intended to be stated definitely.

Semestria. Half-yearly ordinances, the records of the half-yearly imperial council of senators. (Roman Law.)

Semper in dubiis benigniora præferenda. In doubtful matters the more liberal construction should always be preferred.

Semper præsumitur pro legitimatione puerorum. It is always to be presumed that children are legitimate.

Semper præsumitur pro negante. The presumption is always in favour of the negative.

Seneschal. A steward.

Sentence. The judgment of a Court, particularly in an ecclesiastical or criminal cause.

Separate Estate. Separate estate, or property belonging to a woman to her separate use, is property which belongs to a married woman as if she were a *feme sole*. She is entitled to the income of it, and may charge it, or dispose of it by deed or will, unless she is restrained from anticipation or alienation, without the consent of her husband. The doctrine was invented in equity to overcome the Common Law rule that a married woman was incapable of owning property apart from her husband, which was abolished by the Married Women's Property Act, 1882, s. 2. See *Anticipation; Restraint on Alienation; Hulme* v. *Tenant*.

Separation Deed. A deed made between the husband and a trustee for the wife, and generally containing provisions for the allowance by the husband of an annuity for the wife, for his indemnification by the trustee against the wife's debts, for the custody and education of the children, etc. It is avoided by subsequent reconciliation and cohabitation, but while it remains in force it is a bar to a suit for restitution of conjugal rights.

Separation Order. The order which a wife may obtain whose husband has been convicted of an aggravated assault upon her, or who has been deserted. (Summary Jurisdiction (Married Women) Act, 1895, s. 4). See *Desertion*.

Sequela villanorum. The possessions of a villein, which were at the disposal of the lord.

Sequestration. Legal process consisting of the temporary deprivation of a person of his property. It is a writ or commission directed to certain persons (usually four in number and one of them being usually a sheriff's officer) nominated by the person prosecuting the judgment, and empowering them to enter upon the real estate of the disobedient person, and receive the rents and profits thereof, and take

his chattels, and keep them in their hands, until he performs the act required. (Order XLII, Order XLIII, r. 6.) See *Assistance, Writ of.*

Serjeants-at-Arms. Officers of the Crown, whose duty is nominally to attend the person of the Sovereign, to arrest traitors, and so on. Two of them attend the Houses of Parliament to execute the commands of each House.

Serjeants-at-Law. Barristers of superior degree of the Order of the Coif, to which they were called by writ under the Great Seal. They formed an Inn called Serjeants' Inn, with buildings in Fleet Street and Chancery Lane. Formerly they were supposed to serve the Crown (hence their name, serjeants or *servientes ad legem*); they had a right of exclusive audience in the Court of Common Pleas; and every Judge of the superior Courts of Common Law had to be a Serjeant. See *Coif.*

Serjeanty (Norman-French, *serjantie*; Latin, *serviens*, a servant). Service: a form of tenure. See *Grand Serjeanty; Petty Serjeanty.*

Seroka v. Kattenburg ((1886), 17 Q. B. D. 177). *Held*, that a husband is still liable for his wife's post-nuptial torts, although section 1, sub-section 2 of the Married Women's Property Act, 1882, made a married woman liable for her own torts. (Followed in Edwards *v.* Porter, 41 T. L. R. 57 (H. L.).)

Service. (1) The duty due from a tenant to his lord. Services were (i) spiritual, *e.g.*, as in tenure by frankalmoign; (ii) temporal, (*a*) free, (*b*) base or villein. (2) In the law of contract, service is the relation between master and servant. (3) In procedure, service is the operation of bringing the contents or effect of a document to the knowledge of the persons concerned. It is either direct or substituted service. Direct service is effected by actually bringing the document to the person or thing to be served. Substituted service is effected by serving the document on some person likely to bring it to the knowledge of the party, or by advertising it or by sending a copy by post. See Order X.

Servient Tenement. A tenement subject to a servitude or easement (*q.v.*).

Servitude. An easement (*q.v.*).

Servitus. Slavery. "An institution of the *jus gentium* by which, contrary to nature, a man becomes the property of a master." (Roman law.)

Servus ordinarius. A slave holding some special post in the establishment as cook, baker, etc (Roman law.)

Servus pœnæ. A slave of punishment, a convict, *e.g.*, slaves sent to the mines, or condemned to fight with wild beasts. Abolished by Justinian. (Roman law.)

Servus vicarius. An attendant or assistant of a *servus ordinarius*: often purchased by the latter out of his *peculium.* (Roman law.)

Session. The period between the opening of Parliament and its prorogation (*q.v.*).

Session of the Peace. A sitting of justices of the peace for the exercise of their powers. There are petty, special, quarter and general sessions (*q.v.*).

Set-off. In an action to recover money, a set-off is a cross claim for money by the defendant, for which he might maintain an action against the plaintiff, and which has the effect of extingishing the

plaintiff's claim *pro tanto*, so that the plaintiff can only recover against the defendant the balance of his claim, after deducting what is due by him to the defendant. (Order XIX, r. 3.) A set-off is a liquidated amount while a counterclaim is unliquidated, as, *e.g.*, a cross claim for damages. See *Counterclaim.*

Seton v. Slade ((1602), 7 Ves. 265). The plaintiff had agreed to sell certain land to the defendant, and it was understood that he should make a good title in two months, and defendant gave him a notice that if he did not do so he should insist on the return of his deposit, with interest. The plaintiff, however, only delivered his abstract a few days before the expiration of the two months, which the defendant then received and kept without objection. *Held*, that the purchaser under the circumstances was not entitled to insist on time as of the essence of the contract, and so specific performance decreed.

Settle. To settle a document is to draw it up and decide upon its terms, *e.g.*, a partnership deed may be settled by counsel. See *Settlement.*

Settled Land. Land limited to several persons in succession, so that the person for the time being in the possession or enjoyment of it has no power to deprive the others of their right of future enjoyment. Under the Settled Land Act, 1925 (which replaces the Settled Land Acts, 1882-90), s. 1, settled land is land:

(1) Limited in trust for any person by way of succession.
(2) Limited in trust for any person in possession,
    (*a*) for an entailed interest;
    (*b*) for an estate subject to an executory limitation over;
    (*c*) for a base or determinable fee;
    (*d*) being an infant.
(3) Limited in trust for a contingent estate.
(4) Limited to or in trust for a married woman with a restraint on anticipation.
(5) Charged with any rentcharge for the life of any person.

Settlement. The instrument by which land is settled. A compound settlement is the description of a number of documents, *e.g.*, deeds and wills, extending over a period, by means of which land is settled.

A marriage or ante-nuptial settlement is an instrument executed before a marriage, and wholly or partly in consideration of it, for the purpose of regulating the enjoyment and devolution of real or personal property.

A strict settlement is one which is designed to retain estates in the family. It proceeds to make provision for the wife by securing the payment to her of two annuities; the one, pin-money, payable during her husband's lifetime; the other, a jointure, payable after his death. Secondly, to provide for the payment of gross sums of money—portions—to such of the younger children of the marriage as attain majority. Thirdly, to provide that the property so charged should go as a whole to the eldest son.

A voluntary settlement is one not made for valuable consideration.

The settlement of a pauper is the place where he has acquired a right to permanent relief.

Several. Separate: as opposed to "joint." See *Severalty; Fishery.*

Severalty. Property is said to belong to persons in severalty when the share of each is ascertained (so that he can exclude the others from it) as opposed to joint ownership, ownership in common, and coparcenary, where the owners hold in undivided shares.

Severance. Division. When a claim is composed of several parts, and some of them may be put forward or enforced without the others, the latter are said to be severable.

Sewell v. Burdick ((1884), 10 A. C. 74). *Held*, that the mere indorsement and delivery of a bill of lading by way of pledge for a loan does not pass the property in the goods to the indorsee so as to transfer to him all liabilities in respect of the goods.

Sewer. Originally an open trench or channel for carrying off surplus water from land near the sea, or from marshy ground.

Shack. Common of shack is the right of owners of adjacent fields to pasture their cattle after the crop has been gathered over the whole extent.

Share. A definite portion of the capital of a company; it is personal property. The ownership of a share entitles the holder to receive a proportionate part of the profits of the company, and to take part in the management in accordance with the articles of association, which also regulate the mode in which shares may be transferred. Shares may be converted by a limited company into stock (*q.v.*). A share certificate is an instrument under the seal of the company, certifying that the person therein named is entitled to a certain number of shares; it is not a negotiable instrument. A share warrant to bearer is a certificate under the seal of the company, stating that the bearer of the warrant is entitled to a certain number or amount of fully paid-up shares or stock; it is a negotiable instrument. See *Scrip*.

Sharp v. Powell ((1872), L. R. 7 C. P. 253). The defendant caused one of his vans to be washed in the street, which was an infringement of the Metropolitan Police Act. Unknown to the defendant a drain was stopped up and the water froze in the road. The plaintiff's horse slipped on the ice and was injured. *Held*, the defendant was not liable.

Shelley's Case, Rule in ((1581), 1 Co. 93 b). Where the ancestor takes an estate of freehold, and in the same gift or conveyance an estate is limited, either mediately or immediately, to his heirs or the heirs of his body, the word "heirs" is a word of limitation and not of purchase; so that the ancestor takes the whole estate comprised in the term; that is to say, in the first case, an estate in fee-simple; in the second, an estate in fee tail. The rule is abolished by section 131, Law of Property Act, 1925.

Sheriff. The chief officer of the Crown in the county. He is appointed by the Crown every year, and must hold some land within the county. The duties of sheriffs include the charge of parliamentary elections, the execution of process issuing from the High Court and the Criminal Courts, the summoning of jurors and the levying of forfeited recognisances. The sheriffs of the City of London are two in number and are elected by the city corporation.

Formerly the sheriff had judicial duties to perform as Judge of the Sheriff's County Court. He also held a Court of record, called the Sheriff's Tourn, twice every year, which had the same functions and

jurisdiction as the Court Leet (*q.v.*): both are obsolete. (See the Sheriff's Act, 1887.) See *Pricking for Sheriffs.*

Sheriff of Middlesex's Case ((1840), 11 Ad. & E.). The sheriff in pursuance of a writ from the Queen's Bench levied execution upon Hansard (see *Stockdale* v. *Hansard*). The House of Commons thereupon committed him for contempt. A writ of *habeas corpus* was obtained. Held, that a Court of law cannot inquire into the grounds of a commitment for contempt by the House of Commons, because the warrant of commitment does not specify the grounds upon which the person committed had been adjudged guilty of contempt.

Sherras v. De Rutzen ([1895] 1 Q. B. 918). The appellant served a police constable with liquor contrary to the Licensing Act, 1873, under the mistaken impression that he was off duty. *Held,* that the appellant was not guilty in the absence of any *mens rea.*

Shew Cause. When an order, rule, decree or the like, has been made *nisi,* the person who appears before the Court and contends that it should not be allowed to take effect is said to shew cause against it. See *Rule.*

Shifting Use. See *Use.*

Ship. A vessel cannot be registered as a British ship unless she belongs wholly to British subjects, or to a corporation formed under and subject to the laws of, and having its principal place of business in, the British Empire. The ownership of every registered ship is divided into sixty-four shares, all of which may belong to one person, but not more than sixty-four persons can be registered as part-owners of any one ship. Not more than five persons may be registered as joint-owners of any ship or share. (Merchant Shipping Act, 1894.)

Ship Money, Case of. See *R.* v. *Hampden.*

Ship's Husband. The agent of the owners in regard to the management of all affairs of the ship in the home port.

Ship's Papers. A ship's registry certificate, bill of lading, bill of health charterparty and log, which show the character of the ship and cargo.

Shire. The county.

Shire-Reeve or **Shire Clerk.** The sheriff.

Short Cause. In the Chancery Division, on the certificate of plaintiff's counsel, an action which involves no question of difficulty and is not likely to take up much time in Court may be marked as "short" in the registrar's book and disposed of expeditiously.

In the King's Bench Division short causes are cases in which, under Order XIV, r. 8, a defendant has been given leave to defend.

Short Notice of Trial. See *Notice of Trial.*

Sic utere tuo ut alienum non lædas. So use your own property as not to injure your neighbour's. See *Rylands* v. *Fletcher.*

Sign Manual. The signature or "royal hand" of the King, as distinguished from the operation of signing documents by the Signet (*q.v.*).

Signature. A person signs a document when he writes or marks something on it in token of his intention to be bound by its contents, commonly by subscribing his name. Illiterate people commonly sign by making a cross. Corporations sign by means of the corporate seal.

Signet. A seal with which certain documents are sealed by the prin-

cipal Secretary of State on behalf of the King. Formerly, every Bill for letters patent, after being signed with the Sign Manual (*q.v.*), was sealed with the Signet, as a warrant or authority to the proper officer to affix the Privy Seal or Great Seal to the grant. The Signet is the principal of the three seals by the delivery of which a Secretary of State is appointed to his office.

Signing Judgment. After judgment in an action in the King's Bench Division, the successful party draws up two forms of judgment in accordance with the certificate of the associate and takes them to the proper officer, who signs one form of judgment and files it; after stamping the other with the seal of the Court, he returns it to the party. (Order XLI, r. 1.)

Similiter. In like manner: that set form of words used by the plaintiff or defendant in an action by which he signified his acceptance of the issue tendered by his opponent.

Simony. "The selling of such things as are spiritual, by giving something of a temporal nature for the purchase thereof" (Stephen). *E.g.*, the purchase of a next presentation to a living, as distinguished from the whole advowson. Simoniacal contracts are void and subject to penalties. See *Fox* v. *Bishop of Chester*.

Simpson v. Hartop ((1744), Willes, 512). *Held*, that the implements of trade are privileged from distress for rent if they be in actual use at the time, or if there be any other sufficient distress on the premises.

Sine die. "Without day": indefinitely. See *Eat inde sine die*.

Sittings. The sittings of the Supreme Court are four in number: the Hilary Sittings, commencing on January 11, and ending on the Thursday before Easter; the Easter Sittings, commencing on the Tuesday after Easter Week and ending on the Friday before Whit Sunday; the Trinity Sittings, commencing on the Tuesday after Whitsun Week and ending on July 31, and the Michaelmas Sittings, commencing on October 24 and ending on December 31. (Order LXIII, r. 1.)

Six Carpenters' Case ((1610), 8 Coke, 146 a). Six carpenters entered a tavern and were served with wine for which they paid. They were afterwards, at their request, served with bread and more wine which they refused to pay for. Trespass was brought against the six carpenters and the only point in the case was whether the non-payment made the entry into the tavern tortious. *Held*, that (1) if a man abuse an authority given by the law, he becomes a trespasser *ab initio*; but (2) where the authority is given by the party and abused, there he is not a trespasser *ab initio*; but he must be punished for his abuse; (3) that mere non-feasance (or not doing) cannot make the party who has the licence by law a trespasser *ab initio*. Therefore the six carpenters were not trespassers *ab initio*.

Six Clerks. Officials of the Court of Chancery who acted as intermediaries between solicitors and the Court. They were abolished in 1842 and their duties were transferred to the Clerk of Enrolments and to the Clerks of Records and Writs (*q.v.*).

Slander. Defamation (*q.v.*) by means of spoken words or gesture. It is a tort and not a crime and is not actionable without proof of special damage, except in four cases when the words are said to be

actionable *per se, i.e.* : (1) Imputing a crime punishable with imprisonment. (2) Imputing contagious venereal disease. (3) Imputing incompetency in business or profession. (4) Imputing unchastity to a woman. See *Libel; Derry* v. *Handley.*

Slave Grace, Case of ((1827), 2 Hagg. Adm. R. 94). *Held,* that a slave who accompanied her mistress into England and there took no steps to establish her freedom, upon returning voluntarily to a country where slavery was legal, reverted to the condition of a slave; her stay in England had only put her liberty into a sort of parenthesis.

Slip. A memorandum containing the agreed terms of a proposed policy of marine insurance, and initialled by the underwriters. See the Marine Insurance Act, 1906, ss. 21, 22.

Sloman v. Walter ((1784), 1 Bro. C. C. 417). The plaintiff and defendant were partners in the Chapter Coffee House, and it had been agreed that defendant should have the use of a particular room when he wanted it, and the plaintiff gave a bond to secure this. Upon breach of the agreement, defendant brought an action for the penalty of the bond, and the plaintiff brought this suit for an injunction, and for the actual damage sustained by defendant to be assessed. *Held,* that plaintiff was entitled to an injunction, and that the rule is, that where a penalty is inserted merely to secure the enjoyment of a collateral object, the enjoyment of the object is considered as the principal intent of the deed, and the penalty only as accessional, and to secure the damages really incurred.

Small Holding. An agricultural holding which exceeds one acre and either does not exceed fifty acres, or has an annual value not exceeding £50. (Small Holdings and Allotments Act, 1908, s. 61.) See *Allotment.*

Smith v. Chadwick ((1884), L. R. 9 A. C. 187). *Held,* that in an action for deceit the plaintiff must prove that he was misled by the statement of which he complains.

Smith v. Hughes ((1871), L. R. 6 Q. B. 597). A mistake by one party as to the quality of the subject-matter of a contract for sale of goods, even though known to the other party, does not avoid the contract, unless the mistake was induced by the latter.

The defendant thought he was buying old oats, and the plaintiff who showed a sample of newly-cropped oats, was aware of the mistake. *Held,* the contract was not avoided on that ground.

Smith v. London & South Western Railway Co. ((1870), L. R. 6 C. P. 14). If a party is required by Act of Parliament to carry on an undertaking he is liable for damage resulting therefrom if he has contributed to such damage by negligence.

Sparks from a railway engine set light to some grass which had been cut at the side of the line by the defendants' servants and allowed to remain fourteen days in hot weather. The fire crossed a field of stubble and burnt the plaintiff's cottage. *Held,* defendants were liable.

Smith v. Marrable ((1843), 11 M. & W. 5). A furnished house must be reasonably fit for habitation.

The defendant leased a furnished house from the plaintiff, but finding it infested with bugs, left before her term had expired. *Held,* she was not liable for rent after giving up possession.

Smuggling. The offence of importing or exporting prohibited goods,

or of importing or exporting goods without paying the duties imposed on them. Goods so imported are liable to confiscation, and the offenders are liable to forfeit treble the value of the goods, or the penalty of £100. See the Customs Consolidation Act, 1876.

Socage. A variety of tenure with fixed and certain services, as distinguished from frankalmoign and knight's service.

Socage was originally of two kinds, free socage and villein socage, according as the services were free or base. Free socage was of two kinds, socage *in capite* and common socage, but the former has been abolished. Common free socage is the modern ordinary freehold tenure. Villein socage is now represented by tenure in ancient demesne (*q.v.*).

Solicitor. A person employed to conduct legal proceedings or to advise on legal matters. To enable a person to practise as a solicitor, he must serve a term as an articled clerk (*q.v.*), pass certain examinations, be admitted and enrolled as a solicitor of the Supreme Court of Judicature, and take out a yearly certificate authorising him to practise (Solicitors Act, 1843).

Solicitors are not only bound to use reasonable diligence and skill in transacting the business of their clients, but they also occupy a fiduciary position towards their clients. They are officers of the Court: formerly they were officers of the Court of Chancery only. See *Attorney; Proctors.*

Solicitor-General. The second of the law officers. He is a member of the House of Commons. The office is conferred by patent at the pleasure of the Crown. The salary is £6,000.

Solvit ad diem. The plea by the defendant, in an action on a bond, bill, etc., that he had "paid on the day" the money was due.

Solvitur in modum solventis. Money paid is to be applied according to the wish of the person paying it.

Sommersett's Case ((1771), Lofft. 1—19). *Held*, that slaves coming into England cannot be sent out of the country against their will, and if forcibly detained here are entitled to be discharged by writ of *habeas corpus.*

Sottomayor v. De Barros ((1877), L. R. 3 P. D. 1). The capacity of a party to enter into a contract is governed, as a rule, by the law of the party's domicil.

Two persons, who were first cousins and domiciled in Portugal, contracted a marriage in England. Such marriage was void by Portuguese law as being incestuous, though valid by English law. *Held*, the marriage was void.

Sounding in Damages. An action which is brought to recover damages, as opposed to an action for debt.

South Staffordshire Water Co. v. Sharman ([1896] 2 Q. B. 44). The possessor of land is generally entitled as against the finder to lost things found on the land.

The defendant, while cleaning out a pond on the plaintiffs' land by the latter's instructions, found two rings, the owner being unknown. *Held*, that the plaintiffs were entitled to the rings.

Sovereignty. The supreme authority in an independent political society. It is essential, indivisible and illimitable (Austin.) It is now considered both divisible and limitable. (See Bryce, Studies in

History and Jurisprudence.) External sovereignty is independent of control from without; internal sovereignty is paramount power over all action within. (Holland.) In the British Constitution the Sovereign *de jure* is the King or Crown. The legislative sovereign is the King in Parliament, which can make or unmake any law whatever. The legal sovereign is the King and the Judiciary. The executive sovereign is the King and his Ministers. The *de facto* or political sovereign is the electorate: the Ministry resign on a defeat at a general election.

Sovereignty is limited externally by the possibility of a general resistance; internally by the nature of the power itself.

Speaker. The Speaker of the House of Commons is the member of the House through whom it communicates with the Sovereign, and who presides over the proceedings of the House and enforces obedience to its orders. He is elected, subject to the approval of the Crown, on the first day that a new Parliament assembles. The Lord Chancellor presides over the debates in the House of Lords, but is not addressed as Speaker.

Special Case. The parties to an action may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court without pleading. (Order XXXIV, r. 1.) The Court may direct questions of law in an action to be raised by special case (*ibid.* r. 2).

Special Pleader. See *Pleader.*

Special Sessions. Meetings of two or more justices of the peace held for the purpose of executing some jurisdiction (such as the licensing of ale-houses) which can be exercised by justices out of quarter sessions.

Specialia generalibus derogant. Special words derogate from general ones.

Specialty. A contract under seal.

Specific Performance. Where damages would be an inadequate compensation for the breach of an agreement, the contractor may be compelled to perform what he has agreed to do by a decree of specific performance, *e.g.*, in contracts for the sale, purchase or lease of land, or for the recovery of unique chattels. Specific performance will not be decreed of contracts of personal service.

Actions for the specific performance of contracts relating to real estate are assigned to the Chancery Division by the Judicature Act, 1925, s. 56. See *Lester* v. *Foxcroft; Seton* v. *Slade; Woollam* v. *Hearn; Cuddee* v. *Rutter.*

Specification. The statement in writing describing the nature of an invention, required under the Patents and Designs Act, 1907.

Speight, Re; Speight v. Gaunt ((1883), L. R. 9 App. Cas. 1). A trustee employed a broker of good standing to purchase corporation bonds as an investment of the trust funds, the same being a proper investment. The broker sent in a contract note according to the rules of the Stock Exchange. The trustee paid the purchase-money to the broker to complete the matter, but the broker never obtained the bonds from the parties and shortly afterwards he became insolvent. *Held,* that the trustee was not bound to make good the loss of the trust fund.

Speight v. Oliviera ((1819), 2 Starkie, 493). *Held,* that if a

master seduces his own servant, no action for seduction will lie unless the jury hold that the service was not a *bona fide* one, but merely a pretence for the purpose of gaining possession of the girl for the purpose of ultimately seducing her.

Spencer v. Harding ((1870), L. R. 5 C. P. 561). *Held*, that an announcement of sale by tender is not an offer to sell, and therefore cannot be accepted by sending in the highest tender.

Spencer's Case ((1583), 5 Coke, 16). An assignee of a lease is not bound by a covenant as to a thing not *in esse* at the time it was made unless the assigns are expressly included in the covenant.

Spencer, by indenture, demised a house and land to S for twenty-one years, by which indenture S covenanted for him, his executors and administrators that he would build a brick wall upon the land demised. S assigned his term to J, and J to the defendant; and for not building the brick wall the plaintiff brought the action of covenant against the defendant as assignee. *Held*, that the defendant was not liable.

Sponsus (betrothed). The man that intended to marry a woman stipulated with the person that was to give her in marriage that he would do so, and on his part promised to marry her. *Sponsa* was the woman thus promised; *sponsus* the man that promised to marry her. *Sponsalia* denoted the proposal and promise of marriage. (Roman Law.)

Springing Use. See *Use*.

Spurii. Bastards; persons born out of lawful marriage. (Roman Law.)

Squatter's Title. The title acquired by one who, having wrongfully entered upon land, has occupied it without paying rent or otherwise acknowledging any superior title for such time that he acquires an indefeasible title. See *Limitation, Statutes of; Nisbet and Pott's Contract, Re.*

Stabit præsumptio donec probetur in contrarium. A presumption will stand good until the contrary is proved.

Stakeholder. A person with whom money is deposited pending the decision of a bet or wager; or one who holds money or property which is claimed by rival claimants, but in which he himself claims no interest. See *Interpleader*.

Stallage. A payment for the exclusive occupation of a portion of the soil within a market.

Stamp Duties. Revenue raised by means of stamps affixed to written instruments such as receipts, conveyances, leases, etc. Stamps are either fixed in amount, or *ad valorem*, that is, proportionate to the value of the property dealt with by the instrument. Such instruments cannot in general be received in evidence in civil proceedings unless duly stamped. See the Stamp Duties Management Act, 1891, and the Stamp Act, 1891.

Standing Orders. Rules and forms regulating the procedure of each House of Parliament.

Stannaries. Parts of Devon and Cornwall where any tin works are in operation. Civil actions in respect of mining matters might formerly be brought in the Stannary Court, which was abolished in 1896. See the Stannaries Acts, 1869 and 1887.

Stapilton v. Stapilton ((1739), 1 Atk. 2). *Held*, that an agreement entered into upon a supposition of a right, or of a doubtful right, though it afterwards appears that the right was on the other side, shall be binding, and the right shall not prevail against the agreement of the parties; for the right must always be on one side or the other, and therefore the compromise of a doubtful right is a sufficient foundation of an agreement. That where agreements are entered into to save the honour of a family, and are reasonable ones, a Court of equity will, if possible, decree a performance of them.

Staple Towns. The seaports from which wool, leather, tin and lead (collectively termed the staple) were exported, and which were regulated by the Statute of the Staple. The merchants of those towns, the Staples, had, from the reign of Edward I, a monopoly in the staple. In each staple town the mayor of the staple held Staple Courts.

Star Chamber. The *Aula Regis* sitting in the Star Chamber at Westminster, with a residuary jurisdiction after the severance of the Courts of Common Law and Chancery. By 3 Hen. 7, c. 1, the Court was reconstituted to consist of the chief officers of State and the two Chief Justices, with jurisdiction over unlawful combinations, riots and assemblies, and offences of sheriffs and jurors; later extended to offences against Royal Proclamations. It acted as a "Court of equity" in criminal matters. It was abolished by 16 Car. 1, c. 10.

State. The organised community: the central political authority.

In international law a State is a people permanently occupying a fixed territory, bound together into one body politic by common subjection to some definite authority exercising, through the medium of an organised government, a control over all persons and things within its territory, capable of maintaining relations of peace and war, and free from political external control.

Statement of Claim. A written or printed statement by the plaintiff in an action in the High Court, showing the facts on which he relies to support his claim against the defendant, and the relief which he claims. If the writ is specially indorsed under Order III, r. 6, the indorsement is deemed to be the statement of claim. In a commercial cause the "points of claim" corresponds to the statement of claim. See Order XXX.

Statement of Defence. See *Defence*.

Status. The legal position or condition of a person, *e.g.*, an infant, married woman, bankrupt, or British national. The status of a person is an index to his legal rights and duties, powers and disabilities.

Status de manerio. The state of a manor: the assembly of the tenants in the Court of the lord to do suit.

Status quo. The state in which things are, or were.

Statute. An Act of Parliament, particularly public Acts. Statutes are of the following kinds: "Declaratory," when they do not profess to make any alteration in the existing law, but merely to declare or explain what it is; "remedial," when they alter the common law; "amending," when they alter the statute law; "consolidating," when they consolidate several previous statutes relating to the same subject-matter, with or without alterations of substance; "disabling" or "restraining," when they restrain the alienation of property, and

" enabling," when they remove a restriction or disability; and " penal," when they impose a penalty or forfeiture.

Statute Law Revision Acts. Since 1861 have been passed every few years to remove from the statute book Acts or parts of Acts which have become wholly obsolete. The legal effect of anything repealed by the Acts remains notwithstanding the repeal.

Statute Merchant. A bond acknowledged before the chief magistrate of some trading town pursuant to the statute *De mercatoribus*, 13 Edw. 1.

Statute of Frauds (29 Car. 2, c. 3). Passed " for the prevention of frauds and perjuries." It enacted (sections 1 and 2) that leases of lands, tenements or hereditaments (except leases not exceeding three years, reserving a rent of at least two-thirds the value of the land) shall have the force of leases at will only, unless they are put in writing and signed by the parties or their agents. Section 3 required assignments and surrenders of leases and interests in land (not being copyholds, etc.) to be in writing. Section 4 enacted that no action shall be brought upon any special promise by an executor or administrator to answer damages out of his own estate, or upon a guarantee, or upon an agreement made in consideration of marriage, or upon any contract or sale of lands, etc., or any interest in or concerning them, or upon any agreement that is not to be performed within a year, unless the agreement is in writing and signed by the party to be charged, or his agent. Sections 7 and 9 required declarations or creations of trusts of lands, etc., and all assignments of trusts, to be in writing, signed by the party, but section 8 exempted trusts arising by implication of law. Sections 10 and 11 made the lands of a *cestui que trust*, when in the hands of his real representative, liable to his judgments and obligations. Section 17 has been replaced by section 4, subsection 1, Sale of Goods Act, 1893. Sections 1, 2, 3, 4 (in part), 7, 8 and 9 have been repealed and replaced by sections 52-54, Law of Property Act, 1925. See *Sale; Tenterden's Act, (Lord); Wain* v. *Warlters; Peter* v. *Compton; Birkmyr* v. *Darnell; Boydell* v. *Drummond; Clayton* v. *Blakey.*

Statute of Uses (27 Henry 8, c. 10). See *Use.*

Statute Staple. A bond acknowledged before the mayor of the staple (*q.v.*) to provide a speedy remedy for recovering debts.

Statutes of Distribution. See *Distribution.*

Statutes of Limitation. See *Limitation, Statutes of.*

Statutory Declaration. A written statement of facts which the person making it (the declarant) signs and solemnly declares to be true before a commissioner or magisterial officer. Making a false statutory declaration is a misdemeanour (Perjury Act, 1911).

Statutory Rules and Orders. Regulations made by the King in Council, Government Departments, or other authorities pursuant to Acts of Parliament, which regulations have the force of law, usually after having laid on the table of the House of Commons for a prescribed period.

Statutum de Mercatoribus. The Statute of Acton Burnell, which established the Statute Merchant (*q.v.*).

Stay of Proceedings. The suspension of proceedings in an action, or their total discontinuance, *e.g.*, if the plaintiff is ordered to do

something and fails to do it, the proceedings may, under the inherent jurisdiction of the Court, be ordered to be stayed until he complies with the order. A frivolous or vexatious action may be stayed under Order XXV, r. 4.

Stealing. See *Larceny; Embezzlement; Robbery.*

Stet processus. An entry on the record in an action in the old Common Law Courts, whereby it was ordered, with the consent of the parties, that all further proceedings in the action be stayed.

Steward. Formerly an officer of the Crown, or of a feudal lord, who acted as keeper of a Court of justice; as, for example, the Lord High Steward (*q.v.*), or the steward of a Lord of a Manor.

Stint. A limit. A limited right of pasture.

Stipendiary Magistrate. A salaried magistrate with the powers of a justice of the peace, except that a stipendiary can do all things for which two ordinary justices are required, but cannot act at any Court of gaol delivery or general or quarter sessions.

Stipulatio. A verbal contract formed by question and answer. One party proposed a question (*stipulatio*) and the other responded to it (*promissio*). In the time of Gaius it was necessary to use a certain solemn form of words; but before Justinian, the question and answer could be embodied in any words which would express the meaning of the parties. The contract was unilateral, the promissor only being bound, and the parties had to be present when the contract was entered into. (Roman Law.)

Stirpes. Stocks or families. See *Per Stirpes.*

Stock. (1) A family. (2) The capital of a company was formerly called its "joint-stock," meaning the common or joint fund contributed by the members. (See *Company.*) (3) A fund or capital which is capable of being divided into and held in any irregular amount.

Stock Exchange. An association of stock brokers and jobbers. It has many rules which, unless they are recognised by the law, are binding upon its members only to such extent as they can be enforced by disciplinary action on the part of the committee, and upon persons who are not members so far as they are reasonable.

Stock brokers are the intermediaries between their clients and the jobbers. See *Leeman's Act.*

Stockdale v. Hansard ((1839), 9 Ad. & E. 1). A report containing a libel on the plaintiff had been printed by the defendants by order of the House of Commons. *Held,* the House of Commons alone could not legalise the publication of the libel. Judgment for the plaintiff.

Stop Order. In Chancery practice, when a fund (in cash, stock or other securities) is in Court in a cause or proceeding, any person claiming an interest in it may apply to the Court for an order to prevent it from being paid out or otherwise dealt with without notice to the applicant. See Order XLVI, rr. 12, 13.

Stoppage in transitu. The right which an unpaid vendor has to resume the possession of goods sold upon credit and to retain them until tender of the price where the vendee has become insolvent before they come into his possession, or that of his agent.

The right of stoppage lasts only so long as the goods are in transit, and is not affected by any sale or disposition of the goods by the buyer, unless the seller has assented thereto, or unless the seller has parted

with documents of title to the goods which have been transferred to a person who takes them in good faith and for value. See Sale of Goods Act, 1893, ss. 44—48; *Lickbarrow* v. *Mason*.

Storey v. Ashton ((1869), L. R. 4 Q. B. 476). If a servant at a time when he ought to be engaged on his master's work undertakes something on his own behalf, the master is not liable for his conduct during such period.

The defendant's servants, while delivering wine from a cart, went off on an errand of their own and negligently ran over the plaintiff. *Held*, the defendant was not liable.

Stranding. Does not occur when a vessel takes the ground in the ordinary and usual course of navigation, so that she will float again on the flow of the tide; but it occurs if the vessel takes the ground by reason of some unusual or accidental occurrence, *e.g.*, in consequence of an unknown and unusual obstruction in the harbour or on being driven on to rocks.

Stranger. One not party or privy to an act or transaction; one not a relation.

Strathmore (Countess of) v. Bowes ((1789), 1 Ves. Jun. 22). Lady Strathmore, during her engagement of marriage with one Grey, conveyed and assigned her property to trustees for her separate use, with his approbation. Afterwards hearing that the defendant Bowes had fought a duel on her account, she married him instead of Grey. Bowes had no notice of the settlement. *Held*, that a conveyance by a wife, whatsoever may be the circumstances, and even the moment before the marriage, is *prima facie* good, and becomes bad only upon the imputation of fraud; and that if a woman, in the course of a treaty of marriage with her, makes, without notice to the intended husband, a conveyance of any part of her property, it will be set aside because affected with that fraud; but that this case was different, the settlement indeed being with the sanction of the then intended husband, and so the settlement here was established.

Strike. See *Combination, Unlawful; Trade Disputes Act*, 1906.

Striking out Pleadings. This takes place when the Court makes an order to that effect, either for the purpose of amendment (*q.v.*) or to compel one of the parties to do some act. Thus, if a defendant fails to comply with an order for discovery, he is liable (under Order XXI, r. 21) to have his defence struck out, and to be placed in the same position as if he had not defended the action.

Stuart v. Bell ([1891] 2 Q. B. 341). Qualified privilege attaches to statements made under a legal or moral duty, or by one party to another where they have a common interest.

The defendant, with whom one Stanley was staying as a guest, told Stanley that the plaintiff, who was in Stanley's employ, was suspected by the police of having stolen a watch and chain. *Held*, the statement was privileged.

Stuprum. Any connection between a man and an unmarried free woman otherwise than in concubinage. (Roman law.)

Sub voce. Under the title.

Subduct. To withdraw.

Subinfeudation. The grant of the whole or part of his land by a tenant in fee-simple to another to hold of him as his tenant so that the

relation of tenure with its incidents of fealty, etc., was created between them. Subinfeudation was abolished by the statute Quia Emptores (*q.v.*) (18 Edw. 1, c. 1).

Submission. A submission to arbitration is an instrument by which a dispute or question is referred to arbitration pursuant to an agreement between the parties. See *Arbitration; Reference.*

Subornation of Perjury. The offence of procuring a person to commit perjury, punishable as perjury (*q.v.*).

Subpœna. A writ issued in an action or suit requiring the person to whom it is directed to be present at a specified place and time, and for a specified purpose, under a penalty (*sub pœna*) of £100. The varieties in use are: (1) the *subpœna ad testificandum*, used for the purpose of compelling a witness to attend and give evidence, either in Court or before an examiner or referee; and (2) the *subpœna duces tecum*, used to compel a witness to attend in Court or before an examiner or referee, to give evidence and also bring with him certain documents in his possession specified in the subpœna. (See Order XXXVII.) There are also (3) the subpœna to show cause, which must be served upon an infant when he comes of age if a judgment against him during infancy has given him a day to show cause against it (see Order XVI, r. 16); and (4) the subpœna to name a solicitor which the one party to an action can serve upon the failure of the other party to appoint a solicitor in the place of a solicitor who has died or become incapable of acting. (See Order VII, r. 3.).

Under the old Chancery practice, every suit was commenced by a writ of subpœna requiring the defendant to appear.

Subrogation. The substitution of one person or thing for another, so that the same rights and duties which attached to the original person or thing attach to the substituted one. If one person is subrogated to another, he is said to "stand in that other's shoes."

Subscribe. To "write under"; to sign or attest; to apply for shares, etc.

Subsidy. Originally, import and export duties granted to the King; later, any tax imposed by Parliament; now, popularly, as synonymous with subvention.

Substituted Service. See *Service.*

Subtraction. The neglect or refusal to perform a duty or service, *e.g.*, pay a tithe.

Succession. Where property passes on the death of a corporation sole to his successor; "for as the heir doth inherit to the ancestor, so the successor doth succeed to the predecessor" (Co. Litt. 8B).

Succession Duty. A duty which was first imposed by the Succession Duty Act, 1853, on gratuitous acquisition, on death, of property in respect of which no legacy (*q.v.*) duty is payable, unless specially exempted. See the Finance Act, 1894 and 1909—1910.

Sue. To bring an action, suit or other civil proceeding against a person.

Sufferance Wharf. A place appointed by order under the hands of the Commissioners of Customs and Excise for the lading and unlading of goods liable to Customs duties. See section 14, Customs Consolidation Act, 1876.

Sugden v. St. Leonards (Lord) ((1876), L. R. 1 P. D. 154). The will

of Lord St. Leonards was missing at his death and was never found. His daughter wrote out the contents of the will from memory. *Held*, that the declarations of the testator, as recorded by the daughter, were admissible as evidence of the contents of the will.

Suggestio falsi. An active misrepresentation, as opposed to a *suppressio veri*, or passive misrepresentation (*q.v.*).

Sui juris. An independent person not subject to any of the three forms of authority, *potestas*, *manus*, *mancipium*. (Roman law.) In English law, a person who can validly contract and bind himself by legal obligation uncontrolled by any other person.

Suicide. The felony of self-murder.

Suit. Any legal proceeding of a civil kind brought by one person against another; an action, particularly in equity or for divorce.

A bond or recognisance given to a public officer as security is said to be put in suit when proceedings are taken to enforce it.

Suit of Court. A service theoretically due from every tenant of land forming part of, or held of, a manor, and consists in the duty of attending the Courts held by the lord. Manorial incidents are abolished by the Law of Property Act, 1922.

Suit of the Peace. A prosecution.

Summary Proceedings. Short proceedings. Petitions, special cases, motions, and summonses, not being interlocutory proceedings in an action or suit, are instances of summary proceedings in civil cases.

In criminal cases, summary proceedings are those which may be had and concluded before a magistrate or justices of the peace, as opposed to regular proceedings by indictment or information and trial by a jury. See the Summary Jurisdiction Act, 1879.

Summing-up. A recapitulation by the Judge of the evidence adduced in an action in order to draw the attention of the jury to the salient points.

Summons. A document issued from the office of a Court of justice, calling upon the person to whom it is directed to attend before a Judge or officer of the Court. In the High Court of Justice a summons is a mode of making an application to a Judge or master in chambers for the decision of matters of procedure prior to, or in lieu of, the hearing of an action in Court, *e.g.*, a summons for directions (*q.v.*) or a summons for leave to sign judgment under Order XIV. See *Judgment*.

The term "originating summons" includes "Every summons other than a summons in a pending cause or matter" (Order LXXI, r. 1A). It is used in the Chancery Division instead of a writ of summons to obtain a declaration or decision of the Court in the following cases:—(1) The construction of an instrument (Order LIVA); the determination of the rights of persons interested in an estate or trust; the ascertainment of any class of creditors, etc., or the furnishing of accounts; the administration of a trust of the property of a deceased person; or the foreclosure or redemption, etc., of a mortgage (Order LV). (2) *Ex parte* applications for the appointment of new trustees. See *Writ of Summons; Warrant*.

Super-tax. An addition to the Income Tax charged at the rate prescribed for any year in respect of the income of any individual,

the total of which from all sources exceeds two thousand pounds (Income Tax Act, 1918, s. 4).

Super-tax is charged on a sliding scale from ninepence to six shillings in the pound on the excess over two thousand pounds (Finance Act, 1925, s. 14). It is administered by the Special Commissioners of Income Tax. See *Income Tax.*

Super visum corporis. Upon view of the body. See *Coroner.*

Supercargo. A person employed by charterers of ships to go on the ship for the purpose of looking after cargo shipped by them and of selling it abroad. He also looks after such cargoes as may be shipped for the return voyage.

Supersedeas. A writ which stays or puts an end to a proceeding. Thus, if a *certiorari* (*q.v.*) has been wrongly issued, and has been returned, the Court will grant a *supersedeas.*

Superstitious Uses. A trust which has for its object the propagation of the rites of a religion not tolerated by the law, and which is therefore void.

Supplicavit. When a justice of the peace refused to compel a person to give security to keep the peace, the person exhibiting the articles of the peace might apply to the High Court for a *supplicavit,* which is a mandatory writ compelling the justice to require security. Practically obsolete.

Supply, Committee of. See *Committee of the whole House.*

Support, Right of. Every proprietor of land is entitled to so much lateral support from his neighbour's land as is necessary to keep his soil at its natural level, that is, his neighbour must not excavate so close to the boundary as to cause his land to fall or subside. Similarly the owner of the surface is entitled to vertical support as against the owner of the subsoil, that is, the owner of the subjacent land must not cause subsidence of the surface unless he has an easement entitling him to do so. The right does not extend to the case of land, the weight of which has been increased by buildings, unless it can be shown that the land would have sunk if there had been no buildings on it, or unless an easement has been acquired by twenty years uninterrupted enjoyment. See *Dalton* v. *Angus; Humphries* v. *Brogden; Lemaitre* v. *Davis; Darley Main Co.* v. *Mitchell.*

Suppressio veri. The suppression of the truth; misrepresentation (*q.v.*).

Supreme Court of Judicature. The Court formed by the Judicature Act, 1873 (as modified by later Acts). It consists of two permanent divisions, viz., a Court of original jurisdiction, called the High Court of Justice, and a Court of appellate jurisdiction, called the Court of Appeal.

The High Court of Justice exercises the former jurisdiction of the Court of Chancery, the Courts of Queen's Bench, Common Pleas and Exchequer, the Courts of Probate, Divorce and Admiralty, the London Court of Bankruptcy, the Court of Common Pleas at Lancaster, the Court of Pleas at Durham, and the Courts of the Judges or commissioners of assize. It is a Superior Court of Record, with the Lord Chancellor as President.

The High Court was originally divided into five divisions, *viz.*, the Chancery Division, the Queen's Bench Division, the Common Pleas

Division, the Exchequer Division, and the Probate, Divorce and Admiralty Division. An order in Council of 1881 abolished the offices of the Lord Chief Justice of the Common Pleas and the Lord Chief Baron, and consolidated the Queen's Bench, Common Pleas and Exchequer Divisions into one division called the Queen's (or King's) Bench Division, under the presidency of a Lord Chief Justice. An appeal lies to the Court of Appeal from all judgments and orders of the High Court in its ordinary jurisdiction.

The Court of Appeal exercises the former jurisdiction of the Lord Chancellor and Court of Appeal in Chancery, the Court of Exchequer Chamber, and the Privy Council in Admiralty and Lunacy appeals. It consists of the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, five ordinary Judges entitled "Lords Justices of Appeal," the President of the Probate, Divorce and Admiralty Division, and every person who has held the office of Lord Chancellor. The Lord Chancellor is *ex officio* the President of the Court.

The Judicature Act, 1873, and the later Acts are now merged in the Supreme Court of Judicature (Consolidation) Act, 1925.

Sur. "Upon." Used to point out on what the old real actions were founded, *e.g.*, "sur disseisin," to recover the land from a disseisor.

Surcharge. (1) To surcharge a common is to put more cattle thereon than the pasture and herbage will sustain, or than the commoner has a right to do. (2) Where an account is being investigated in the Chancery Division, and the party at whose instance it is taken shows that an item has been omitted for which the accounting party ought to give credit, he is said to surcharge the accounting party. Under the Public Health Acts, where an auditor disallows an item of expenditure by an urban authority as being illegal, he surcharges it on the person who made or authorised it, *i.e.*, he makes him personally liable for the amount (Public Health Act, 1875, s. 247, sub-s. 7). See *Falsify*.

Sureties of the Peace and Good Behaviour. A person may be ordered to find sureties for his keeping the peace upon conviction on indictment of any felony under the Criminal Law Consolidation Act, 1861. He may be ordered to find sureties both for the peace and for good behaviour upon conviction on indictment of any misdemeanour. An offender released upon probation may be required to find sureties for good behaviour, and a person may be required to find sureties of the peace if articles of the peace (*q.v.*) are exhibited against him.

Surety. A person who binds himself usually by deed to satisfy the obligation of another person, if the latter fails to do so: a guarantor.

If a surety satisfies the obligation for which he has made himself liable, he is entitled to recover the amount from the principal debtor. If one of several sureties is compelled to pay the whole amount or more than his share, he is entitled to contribution (*q.v.*) from his co-sureties. A surety is entitled to the benefit of all the securities which the creditor has against the principal. If the creditor releases the principal debtor, this will discharge the surety from liability, unless the creditor reserves his rights against the surety. See *Dering* v. *Earl of Winchelsea*.

Surplusage. A superfluity or excess; in pleading, the allegation of unnecessary matter. See Order XIX, r. 27.

Surprise may be a ground for setting aside a contract, judgment or order if substantial injustice has been done.

Surrebutter; Surrejoinder. See *Pleadings*.

Surrender. The yielding up of an estate for life or for years in land, so that it merges in the reversion or remainder. Surrender must be by deed, or may be by operation of law, *e.g.*, if a lessee accepts a new lease incompatible with his existing lease, this operates as a surrender in law of the latter. A mortgagee or mortgagor in possession has power to accept surrenders of leases, subject to the conditions in section 100, sub-section 5, Law of Property Act, 1925.

Surrender was the principal mode of alienating copyholds (*q.v.*). They were surrendered to the lord of the manor to the use of the intended transferee, whom the lord was bound to admit as his tenant.

Survivorship. The right of a person to property by reason of his having survived another person who had an interest in it, *e.g.*, on the death of one of two joint tenants the whole property passes to the survivor. See *Commorientes*.

Sus. per coll. An abbreviation for *suspendatur per collum*: let him be hanged by the neck.

Sutton v. Johnstone (1 T. R. 493). An action will not lie against a party's superior officer for acts done in the course of his duty.

The plaintiff, a naval captain, sued his superior officer for having put him under arrest and imprisonment and so kept him nearly three years, until he was tried by court-martial and acquitted. *Held*, the action would not lie.

Syndic. A person appointed by a corporation to act for it as regards a particular matter.

Synod. An ecclesiastical council.

Tabulae. Tablets. (Roman law.)

Tabularius. A public notary. (Roman law.)

Tacking. The priority of mortgagees over the same property is determined by the order in which the mortgages were made, the first mortgagee getting the legal estate. Prior to 1926, this order might be disturbed by the process of adding a subsequent mortgage to an earlier or a further advance by the earlier mortgagee to his mortgage, when both would take the priority of the earlier, provided there was no notice of intervening mortgages at the time the mortgage was made. This was known as tacking. Thus a third mortgagee, who had no notice of a second mortgage at the time his mortgage was made, might subsequently acquire the first mortgage and squeeze out the second mortgagee, a right which was known as a *tabula in naufragio*, or plank in the shipwreck.

By section 94 of the Law of Property Act, 1925, tacking is abolished, except that a prior mortgagee has the right to make further advances to rank in priority to subsequent mortgages, where such is made (*a*) by arrangement; or (*b*) without notice of the subsequent mortgages; or (*c*) under an obligation in the mortgage deed. See *Marsh* v. *Lee*.

Tail. See *Estate*.

Talbot v. Duke of Shrewsbury ((1714), Prec. Ch. 394). *Held*, that if a debtor, without taking notice of the debt, bequeaths a sum as great

as, or greater than, the debt, to his creditor, this is a satisfaction; but it is not a satisfaction if it is bequeathed on a contingency or if it be less than the debt.

Tales (pr. Tal'es). "Such." Where a jury is summoned and found to be insufficient in number, the Judge is empowered to award a tales *de circumstantibus*, that is, to command the sheriff to return so many other men duly qualified as shall be present or can be found, to be taken first from those summoned on the common jury panel, if the deficiency is of special jurors, and if there are not enough common jurors, then from any persons who are present in Court or can be found. The jurors so added are called talesmen.

Tallage. Taxes.

Tally. A stick of rectangular section across one side of which were cut notches denoting payments. The stick being split lengthwise so that on each half there was one half of each notch, the debtor retained one half of the stick as evidence of the payment and the creditor kept the other half as a record. They were used in the Exchequer (*q.v.*) from the earliest times.

Tatam v. Reeve ([1892] 1 Q. B. 44). *Held*, that if A pays B's betting debts at B's request, even though he did not know they were betting debts, he cannot recover the amount from B, as the money is paid in respect of a transaction void under the Gaming Act, 1892, s. 1.

Taxation. (1) The imposition of duties for the raising of revenue. Direct taxes are imposed upon the individual, usually according to his ability to pay, *e.g.*, income tax; indirect taxes are levied upon certain articles of popular consumption, *e.g.*, customs and excise duties on the importation and manufacture of spirits. (2) Taxation is the process of examining and, if necessary, reducing, the bill of costs of a solicitor by the Masters of the Supreme Court Taxing Office. (Order LXI, r. 1B.)

Taxation is of two kinds, taxation in an action, matter or other judicial proceedings, and taxation under the Solicitors Act, 1843. (Order LXV.) See *Costs*.

Taylor v. Brewer ((1813), 1 M. & S. 290). *Held*, that an offer to contract must be sufficiently certain in its term to form the basis of a contract.

Taylor v. Caldwell ((1863), 3 B. & S. 286). The destruction of the subject-matter of a contract without fault of either party may avoid the contract.

The defendants agreed to let a music hall to the plaintiffs for concerts. Before the date of the proposed concerts the music hall was accidentally burned down. *Held*, the contract was at an end.

Tellers. (1) Four officers of the Exchequer who received all moneys due to the King. Abolished. (2) Counters of votes.

Temporalities. The properties and possessions of a bishop in his see.

Tenancy in Common. Where two or more persons are entitled to land in such a manner that they have an undivided possession but several freeholds: that is, no one of them is entitled to the exclusive possession of any part of the land, each being entitled to occupy the whole in common with the others; and on the death of any one of them his share passes, not to the survivors, but to his heir or devisee, who

then becomes tenant in common with the survivors. By the Law of Property Act, 1925, s. 34, no undivided share in land is capable of being created, except as equitable interests under a settlement, or as that of a joint tenant upon the statutory trusts for sale.

Tenant. One who holds land. In theory of law "all the lands and tenements in England in the hands of subjects are holden mediately or immediately of the King" (Coke). Popularly a lessee of land or buildings for occupation, agriculture, etc. See *Estate.*

Tenant at Sufferance. One who has originally come into possession of land by a lawful title, and holds such possession after his title has determined. See *Holding Over.*

Tenant at Will, "Is where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In this case the lessee is called tenant at will, because he hath no certain nor sure estate, for the lessor may put him out at what time it pleaseth him" (Litt. § 68). Copyholds were originally tenancies at will. See *Tenant from Year to Year.*

Tenant by Copy of Court Roll. A copyholder. See *Copyhold.*

Tenant by the Curtesy. See *Tenure by Curtesy of England.*

Tenant for Life. One who is entitled to land or tenements either for the term of his own life or for that of another person. In the latter case he is called tenant *pur autre vie* (*q.v.*).

Tenant for Years. One who holds for a term of years certain; a lessee.

Tenant from Year to Year. A tenant of land whose tenancy can only be determined by a notice to quit expiring at that period of the year at which it commenced. In the case of ordinary tenancies from year to year a six months' notice to quit is required. Whenever one person holds land of another, and there is no express limitation or agreement as to the term for which it is to be held, then, if the rent is payable with reference to divisions of the year (*e.g.*, quarterly), the tenancy is deemed to be a tenancy from year to year. See *Notice to Quit.*

Tenant in Tail after Possibility of Issue Extinct, says Littleton, "is where tenements are given to a man and his wife in special tail. If one of them die without issue, the survivor is tenant in tail after possibility of issue extinct," because there is no possibility of issue being born capable of inheriting the estate. Such a tenant cannot bar the entail and is not impeachable for waste. (Fines and Recoveries Act, 1833, s. 18.) See *Estate.*

Tenant pur autre vie. A tenant for the life of another. If A granted land to B during the life of C and B died before C, then there was no one entitled to the land because A had parted with his right during C's life. Anyone might enter and occupy during C's life, and was called a "general occupant." But B.'s heir might enter and occupy, and was called the "special occupant." By the Statute of Frauds, s. 12, however, a tenant *pur autre vie* might dispose of his interest by will; otherwise it formed part of his personal estate. See now Wills Act, 1837, ss. 3, 6.

The person for whose life land is granted is called the *cestui que vie.*

Tenant to the Præcipe. One against whom a præcipe or writ was issued in a real action. See *Recovery.*

Tenant-right. (1) The right of a tenant in agricultural districts to claim a beneficial interest in the land, notwithstanding the expiration of his lease, *e.g.*, a right to the return of a portion of the amount spent on manuring. (2) Tenant-right estates are a kind of customary freeholds found in the north of England.

Tender. An offer; *e.g.*, by a debtor to his creditor of the amount of the debt. The offer must be in money, which must be actually produced to the creditor, unless by words or acts he waives production. If a debtor has made a tender and continues ready to pay, he is exonerated from liability for the non-payment, but the debt is not discharged. Therefore if he is sued he should plead the tender and pay the money into Court under Order XXII, r. 3, when he will normally be entitled to judgment for his costs.

Money is said to be legal tender when a creditor cannot refuse to accept it in payment of a debt. Coins issued by the Royal Mint for circulation in the United Kingdom are legal tender; gold coins up to any amount, silver up to £2, and bronze coins up to 1s. (Coinage Act, 1870, s. 4.) Gold coins coined at certain colonial mints, notes of the Bank of England (*q.v.*) and Treasury notes are also legal tender. See *Spencer* v. *Harding; G. N. Ry. Co.* v. *Witham.*

Tenement. (1) A thing which is the subject of tenure (*q.v.*), *i.e.*, land. (2) A house, particularly a house let in different apartments.

Tenendum. "To be held." The clause in a deed of conveyance of land which formerly indicated the tenure by which the grantee was to hold the land of the grantor, but which now simply says that the land is to be held by the grantee, without mentioning of whom.

Tenor. (1) The general import of a document, or its exact wording. (2) The period of time, as expressed in a bill of exchange, after which it is payable.

Tenterden's Act, (Lord). The Statute of Frauds Amendment Act, 1828 (9 Geo. 4, c. 14), which enacts that a promise to pay, or an acknowledgment of a debt must be in writing and signed by the party to be charged to take the case out of the Statute of Limitations, and that an acknowledgment of one joint contractor shall not prejudice the others (section 1). Section 6 provides that no action shall be brought to charge any person upon any representation as to the character or means of another with the intent that such person may obtain credit, money or goods unless such representation be in writing and signed by the party to be charged.

Tenths. (1) The tenth part of the annual profit of an ecclesiastical benefice. See *Annates; Queen Anne's Bounty.* (2) The tax consisting of one-tenth of every man's whole personal property, formerly levied by the Crown.

Tenure. The mode of holding or occupying land, or an office, etc. The rule is that no person except the King can be the absolute owner of land in England; all lands in the hands of subjects are held of some superior, and mediately or immediately of the Crown. The possessor is merely a tenant. The manner of his possession is called tenure, and the extent of his interest is called an estate (*q.v.*). The rule is a relic of the feudal system. Varieties of tenure: (1) Temporal

or lay tenures are those by which land is held by secular persons. They are of two kinds according as their services were originally free or base. The frank or freehold tenures were—(*a*) knight's service with its varieties of grand serjeanty, escuage, castle ward and cornage, all of which have been converted into common socage; and (*b*) free socage with its varieties of petty serjeanty, burgage tenure, borough-English and gavelkind. The base, villein or customary tenures are (*a*) pure villenage, which existed in the form of copyhold and customary freehold tenures; and (*b*) the obsolete privileged villenage or villein socage, from which is derived tenure in ancient demesne. (2) Ecclesiastical or spiritual tenures: tenure in frankalmoign and tenure by divine service (*q.v.*).

Tenure by Curtesy of England. The life estate of a husband in the land of his deceased wife, provided he had issue by her, born alive, and capable of inheriting. Abolished by the Administration of Estates Act, 1925.

Term. (1) A portion of the year during which alone judicial business could be transacted. By the Judicature Acts, 1873, 1875, the division of the year into terms was abolished, the year being divided into sittings and vacations (*q.v.*). The modern terms are: (i) Hilary, for the twenty-one days commencing January 11; (ii) Easter, for the twenty-eight days commencing the second Tuesday after Easter Sunday; (iii) Trinity, for the twenty-one days commencing the second Tuesday after Whit Sunday; and (iv) Michaelmas, for the twenty-four days commencing November 2. "Keeping Term" is the dining in hall of an Inn of Court the requisite number of times, in the course of qualifying for call to the Bar. (2) The fixed period for which a right is to be enjoyed.

Term of Years. An estate or interest in land limited to a fixed number of years, as in the case of an ordinary lease for seven years. A long term of years is often granted as security for the performance of an obligation; *e.g.*, to secure portions to younger children under a marriage settlement. After 1925, portions terms will normally take effect in equity. Under the Law of Property Act, 1925, a mortgage may be made by the lease of the land for a term of 3,000 years. When the purpose for which a term has been created is accomplished the term is said to be satisfied. Formerly when a term had become satisfied it was usual to keep it on foot "in trust to attend the inheritance," for when the property subject to a long term was sold, the purchaser often preferred to keep the term in existence to protect him from unknown encumbrances on the freehold, created since the commencement of the term, which would be postponed until the expiration of the term. By the Satisfied Terms Act, 1845, every term becoming attendant upon the inheritance of land immediately ceased and determined. This Act is repealed by the Law of Property Act, 1925, and replaced by section 5 of that Act. See *Leaseholds*.

Terminus a quo. The starting point.

Terminus ad quem. The finishing point.

Terre-tenant. Land holder; one who has the seisin of land.

Territorial. Pertaining to a particular country or territory. "Territorial waters" are such parts of the sea adjacent to the coast of a country as are deemed by international law to be within the

territorial sovereignty of that country. By the Territorial Waters Jurisdiction Act, 1878, it is enacted that an offence committed by any person within territorial waters (*i.e.*, within one marine league of the coast from low water mark), shall be an offence within the Admiral's jurisdiction, although committed on a foreign ship. See *R.* v. *Keyn.*

Terry v. Hutchinson ((1868), L. R. 3 Q. B. 599). If a daughter lives with her father he has a right to her services, and can sue for her seduction if illness results, as it interferes with his power to enforce such right. *Held*, that if after terminating service with another she is returning home she is deemed in her father's service, and if she is seduced on the journey the father can recover.

Testament. A will of personal property. A formal will usually begins: "This is the last will and testament of me, A B, etc."

Testamenti factio. Capacity to take any part in making a will or any benefit under a will. (Roman law.)

Testamenti, Secundum tabulas. According to the tablets or terms of the will. *Contra tabulas testamenti*, in opposition to the provisions of the will. (Roman law.)

Testamentum. A will. There were the following varieties: (*a*) *Calatis comitiis*, made in time of peace in the *comitia curiata* twice a year. (*b*) *Procinctum*, made in time of war in the field by the army in fighting order. (*c*) *Per aes et libram*: By the copper and the scales. The testator alienated by *mancipatio* his estate in early times to the heir, and *temp.* Gaius, to another person (*familiæ emptor*) who represented the heir. The testator then announced his wishes orally or by written tablets, called the *nuncupatio*. (*d*) *Prætorianum.* The Prætors protected by *bonorum possessio* the persons intended to be benefited, if the will was sealed by seven witnesses, although there had been no *nuncupatio*. (*e*) *Tripertitum*: Of triple origin. From the civil law was derived the necessity for the witnesses' presence together at the same time; from the Imperial Constitutions the signatures (*subscriptiones*) of the testator and witnesses; from the Prætorian edict, the seals and the number of seven witnesses. (*f*) *Militare.* A will made by a soldier on actual service, in writing or orally, without any formality. (Roman law.)

Testamentum destitutum. An abandoned will, *i.e.*, when no one entered on the inheritance. One of the forms of *testamentum irritum* (Roman law.)

Testate. Having made a will.

Testator. One who makes a will.

Testatum. The part of an indenture beginning with the words "Now this indenture witnesseth."

Testatum Writ. A writ which is issued into a county other than that in which the venue was laid.

Teste. The concluding part of a writ, giving the date and place of its issue: so called because it begins with the words "Witness ourself" (in Latin, *Teste meipso*). Every writ issued in the High Court of Justice is tested in the name of the Lord Chancellor.

Testimony. The evidence of a witness given *viva voce* in Court.

Theft. Larceny (*q.v.*).

Theftbote. Hush-money (*q.v.*) for larceny.

Thellusson Act. The Accumulation Act, 1800. See *Accumulation.*

Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum. Treasure does not belong to the King, unless no one knows who hid it.

Third Party. One who is a stranger to a transaction or proceeding. Where a defendant claims to be entitled to contribution or indemnity over against any person not a party to an action, he may by leave issue a third party notice, duly sealed, and serve it on such person within the time limited for delivering his defence. (Order XVI, r. 48.)

A "third party risk policy" is a policy of insurance against liability in respect of injury caused by the insurer or his servants to the property or persons of others.

Thomas v. Sorrell ((1674), Vaughan, 330). The plaintiff claimed a large sum of money from the defendant for selling wine without a licence contrary to statute 12 Car. 2. The jury found that a patent of 9 Jac. 1 had incorporated the Vintners' Company with leave to sell wine, *non obstante* the statute 7 Edw. 6, which forbade the sale of wine without certain licences. *Held*, that the patent was good, as the King may dispense with an individual breach of a penal statute, which would only affect the King himself and would not be to the particular damage of a third party.

Thomson v. Davenport ((1829), 9 B. & C. 78). Davenport sold goods to M who told him he was buying on account of another person, but did not mention the principal's name, and Davenport did not inquire for it, but debited M. M failed and Davenport sued Thomson, the principal, for the price. The verdict was given for the plaintiff, and was now affirmed on writ of error. *Held*, that the seller might sue the principal for the price, he not having known who the principal was at the time.

Thorne v. Heard ([1895] A. C. 495). Where fraud is relied upon as taking the case out of the Statutes of Limitation it must be fraud of, or in some way imputable to, the person invoking the aid of the statute.

H was first mortgagee of property and T second mortgagee. H sold under his power of sale, employing S, a solicitor, who had prepared both mortgages for all parties, and who was entitled to a third mortgage. S received the purchase-money, out of which he paid off H, and put among H's papers a receipt signed by himself for payment of T and himself. He converted T's money to his own use, but paid interest on it to T until 1892, when he became bankrupt. H had no knowledge of T's mortgage. *Held*, that H was entitled to plead the Statute of Limitations, which ran from the time of the misappropriation, and was not liable to T for his mortgage money.

Ticket of Leave. The "licence to be at large," which the Home Secretary may at any time grant, upon such condition as he may think fit and with power of revocation, to anyone undergoing penal servitude. (Penal Servitude Act, 1853, s. 9.)

Tillett v. Ward ((1882), 10 Q. B. D. 17). An ox belonging to the defendant, while being lawfully driven to market through a street in the town of Stamford, escaped, without there being any negligence on the part of the defendant or the drover, into a shop of the plaintiff, an ironmonger, the doorway of which was open to the street, and there did damage. *Held*, that the defendant was not liable in the absence of any evidence of negligence.

Timber is properly only oak, ash and elm; but it includes now all trees used for building. Timber is part of the realty until severed. Cutting timber is waste (*q.v.*). See *Estovers*.

Time Bargain. An option (*q.v.*).

Tipstaff. An officer, in the nature of a constable, attached to the Supreme Court. Since the abolition of imprisonment on mesne process, the functions of the tipstaves have been confined to arresting persons guilty of contempt of Court.

Tithe. The payment due by the inhabitants of a parish for the support of the parish church, generally payable to the parson of the parish. Originally tithe was payable in kind and consisted of the tenth part of all yearly profits; from the soil (*prædial* tithes), from farm stock (mixed tithes), and from personal industry (personal tithes). Rectorial or great tithe is payable to the rector, vicarial or little tithe to the vicar, and lay tithe to a layman. Ecclesiastical tithe is attached to a benefice or ecclesiastical corporation.

When land came into the hands of the monasteries the tithe was appropriated and the cure of souls was deputed to a vicar. The lay holder of a rectory is called an impropriator.

Tithes generally have been commuted for a rentcharge, formerly varying with the price of corn. The Tithe Act, 1925, stabilises the value of tithe, and vests ecclesiastical tithe in Queen Anne's Bounty on trust for the owners. Provision is made for the ultimate redemption of all tithe by means of a sinking fund.

Tithing. A local division or district forming part of a hundred (*q.v.*), and so called because every tithing formerly consisted of ten freeholders with their families. See *Frankpledge*.

Tithing Man. The chief member of a tithing. See *Headborough*.

Title. (1) The right to ownership of property; "a vestitive fact" (Salmond). A title may be: (*a*) original, where the person entitled does not take from any predecessor, *e.g.*, a patent, copyright, etc.; and (*b*) derivative, where the person entitled takes the place of a predecessor, by act of the parties or by operation of law. A title by wrong or tort occurs in the case of wrongful possession, disseisin, etc., and is liable to be defeated by the person rightfully entitled, until the wrongful title has become absolute by lapse of time. See *Limitation, Statutes of*.

A marketable title to land is one which goes back forty years, which period is prescribed by the Vendor and Purchaser Act, 1874, s. 1, repealed by the Law of Property Act, 1925, section 44 of which substitutes thirty years. The contract of sale may stipulate that the title shall commence at a more recent date. The conveyance or other document with which the title commences is called the root of title, and if the vendor shows that he has the title which he is bound to prove, he is said to show a good title. See *Abstract of Title; Covenants for Title*.

(2) An appellation or address of honour or dignity.

(3) A description or heading, *e.g.*, of an action at law.

Title-deeds. The documents and instruments conferring or evidencing the title to land. They "savour of the realty" and pass with the land under a conveyance, except deeds relating to the part of the estate retained by the vendor. In such case the vendor must acknowledge the buyer's right to production, and undertake their safe custody. (Law of Property Act, 1925, s. 64.)

To Have and to Hold. See *Habendum.*

Tobin v. The Queen ((1864), 16 C. B. (N.S.) 310). An action of tort will not lie against the Crown. The servants of the Crown committing unlawful acts on the orders of the Crown are liable.

The captain of one of Her Majesty's ships seized a vessel belonging to the suppliant, believing her to be engaged in the slave trade, and destroyed her, whereas she was not engaged in such trade. *Held*, on a petition against the Crown, that an action would not lie.

Todd v. Flight ((1860), 9 C. B. (N.S.) 377). *Held*, the lessor of premises is liable for damage caused to persons when outside the premises by their defective condition, if he knew they were defective when he let them.

Toft. Land on which a building which has decayed once stood.

Tolhurst v. Associated Portland Cement Manufacturers, Ltd. ([1903] A. C. 414). A contract for the supply of goods may be assigned unless the burden of the contract is thereby increased, or there is personal confidence or skill involved.

T agreed to supply the Imperial Company with chalk for cement-making. The defendant company took over the Imperial Company. *Held*, the benefit of the contract passed to the defendant company.

Toll. A payment for passing over a highway, bridge, ferry, etc. The right to demand tolls frequently forms part of a franchise (*q.v.*).

Toll traverse was a sum payable for passing over the private soil of another; toll thorough for passing over the public highway.

Tollet v. Tollet ((1728), 2 P. Wms. 489). A husband had a power to make a jointure to his wife by deed, and he did it by will, and she had no other provision. *Held*, that equity will make this defective execution good; but that it will not assist in the case of non-execution of a power.

Tolt. An obsolete writ by which a cause was removed from the Court Baron to the Sheriff's County Court. See *Pone.*

Tolzey Court of Bristol. This, originally, was the Court of the bailiffs of the Hundred of Bristol. Its jurisdiction includes mixed and personal actions to any amount, provided the cause of action arises within the city.

Tonnage. A duty on imported wines, imposed by Parliament, in addition to prisage (*q.v.*). The duty was at the rate of so much for every tun or cask of wine. See *Poundage.*

Tonnage-rent. The rent reserved by a mining lease or the like consisting of a royalty on every ton of minerals gotten in the mine.

Tontine. A loan the subscribers to which receive annuities with the benefit of survivorship.

Tort. A wrong. "An infringement of a right *in rem* of a private individual, giving a right to compensation at the suit of the injured party" (Fraser). Sir F. Pollock analyses a tort as an act which causes harm to a determinate person, whether intentionally or not, not being the breach of a duty arising out of a personal relation or contract, and which is either contrary to law, or an omission of a specific legal duty, or a violation of an absolute right.

Tortfeasor. One who commits a tort. A wrongdoer.

Tortious. Wrongful. As to tortious feoffments, see *Feoffment.*

Total Loss. In marine insurance the total loss of the subject-matter

insured may be either actual or constructive. Actual total loss arises where the ship or cargo is totally destroyed or so damaged that it can never arrive in specie at its destination. There is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its total value. (Marine Insurance Act, 1906, s. 60.) See *Abandonment.*

Toties quoties. As often as something happens; as often as occasion arises.

Towage. Remuneration for towing a vessel which may be decreed in an Admiralty action.

Town. A collection of houses, which "hath, or in time past hath had, a church and celebration of divine service, sacraments and burials" (Coke).

Townley v. Sherborne ((1634), Bridg. Rep. 35). One of several trustees had received certain rents. The question was, whether the others were liable for his receipts. *Held,* (1) That where lands are conveyed to two or more upon trust, and one receives the rents, his co-trustees shall not be liable unless some purchase, fraud, or evil dealing seems to have been in them to prejudice the trust, for they being by law joint-tenants, every one of them may receive either all or as much of the rents as he can come by. (2) That it is no breach of trust to permit one of the trustees to receive the rents, it happening many times that some of the trustees live far from the lands, and it is inconvenient for them all to receive them. (3) That if, however, a trustee, having allowed his co-trustee to receive rents, subsequently leaves in the co-trustee's hands the money that has been received, he is liable therefor.

Trade Boards. Bodies established under the Trade Boards Act, 1909, for the purpose of fixing minimum wages under that Act.

Trade Disputes Act, 1906. (1) An act done in pursuance of an agreement or combination by two or more persons shall not, if done in contemplation or furtherance of a trade dispute, be actionable unless the act, if done without any such agreement or combination, would be actionable. (2) The Act legalises peaceful picketing, *i.e.*, persons acting in contemplation or furtherance of a trade dispute may attend at or near a house or work for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working. (3) The Act removes liability for interfering with another person's business, etc., in contemplation or furtherance of a trade dispute. (4) It prohibits actions of tort against trade unions (*q.v.*).

Trade Mark. A distinctive mark or device affixed to or accompanying an article intended for sale for the purpose of indicating that it is manufactured, selected, or sold by a particular person or firm. See the Trade Marks Acts, 1905 to 1919.

Trade Unions. Originally friendly societies consisting of artisans, engaged in a particular trade, such as carpenters, bricklayers, etc.; they in course of time acquired the character of associations for the protection of the interests of workmen. Being in restraint of trade they were illegal associations at common law, but, by the Trade Union Act, 1871, this doctrine was abolished, and provisions were made for the

registration of trade unions, for the regulations to be contained in their rules, and for the appointment of trustees in whom the property of the union is to vest, etc. But (*ibid.* section 4) no agreements between the members as to the conditions on which they are to work, or as to the payment of subscriptions or application of the funds are enforceable in any Court of law. The Trade Union Act, 1913, permits a union to resolve, by a majority of the members voting at a ballot, to raise a fund for political purposes; and it also provides that any member can secure exemption from contributing to such fund if he objects to contributing. See *Picketing; Combination, Unlawful; Allen* v. *Flood; Quinn* v. *Leathem.*

Traders. Only traders could be made bankrupt, until section 69 of the Bankruptcy Act, 1861, made all debtors subject to the provisions of that Act. Married women still can be adjudicated bankrupt only when carrying on trade or business, whether separately from their husbands or not. (Bankruptcy Act, 1914, s. 125, sub-s. 1).

Trail-baston. A commission to make inquiry as to persons who ill-treated jurors, sheltered malefactors or otherwise disturbed the peace. The commissioners were known as Justices of Trail-baston.

Transcript. An official copy of certain proceedings in a Court.

Transfer. The passage of a right from one person to another (1) by virtue of an act done by the transferor with that intention, as in the case of a conveyance or assignment by way of sale or gift, etc.; or (2) by operation of law, as in the case of forfeiture, bankruptcy, descent, or intestacy. A transfer may be absolute or conditional, by way of security, etc. (2) Any action in the High Court may be transferred from one division to another, or (in the case of an action in the Chancery Division) from one Judge to another. See Order XLIX.

Transire. The pass issued by the Collector of Customs for the goods loaded in a vessel in port, and without which the ship cannot sail. (Customs Consolidation Act, 1876, ss. 145, 146.)

Transit in rem judicatem. "It passes into or becomes a *res judicata.*" When a person has obtained a judgment in respect of a given right of action, he cannot bring another action for the same right, but must take proceedings to enforce his judgment. See *Merger; Marriot* v. *Hampton.*

Traverse. To deny an allegation of fact. If a plaintiff replies by simply joining issue on the statement of defence he traverses, that is, denies, all the material allegations in the defence. See Order XIX, r. 18.

Traverse of office or inquisition is a mode by which a subject can, in certain cases, dispute an office or inquisition finding the Crown entitled to property claimed by him.

Treason. Breach of allegiance. There existed formerly both high treason and petty treason. (1) Under the Treason Act, 1351, a person commits high treason who does an overt act showing an intention to kill or depose the King, or to do him any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint; or to kill the wife of a King regnant; or to kill the heir-apparent to the throne; or who levies war against the King; or who attempts by insurrection to intimidate the King or the Houses of Parliament; or who actively assists the King's enemies; or who violates the wife of a

King regnant, or the eldest daughter of the Sovereign, or the wife of the heir-apparent; or who kills the Lord Chancellor, or one of certain other high officials of the Crown. High treason is punishable by hanging, or by beheading, if so directed by the Crown. (Treason Act, 1814, ss. 1, 2.) By the Treason Act, 1695, no person shall be prosecuted for treason committed in Great Britain but within three years after the offence, except in the case of a designed assassination of the Sovereign; two witnesses are required for a conviction, unless the prisoner freely confesses his crime, and the prisoner is entitled to have a copy of the indictment and lists of the witnesses and jurors delivered to him ten days before the trial. (2) Petty treason was where a servant killed his master, a wife her husband, or an ecclesiastical person his superior. It was converted into the crime of murder by the statute 9 Geo. 4, c. 31, s 2.

Treason Felony. The Treason Felony Act, 1848, provides that treason felony consists in an intention to depose or levy war upon the Sovereign or compel him to change his measures or counsels, or to terrorise either House of Parliament, or to incite any foreigner to invade the King's dominions, coupled with an expression of such intention by any printing or writing or by open and advised speech or by any overt act. The maximum penalty is penal servitude for life.

Treasure Trove. Any money, coin, gold, silver, plate or bullion found hidden in the earth or other private place. It belongs to the Crown, unless the owner appears to claim it. The Crown may grant the right to treasure trove found within a certain district to a private person, *e.g.*, the lord of a manor. (See *Franchise.*) In the absence of such a grant anyone concealing treasure trove which he may find is guilty of a common law misdemeanour. The coroner has jurisdiction to hold an inquest, under section 36 of the Coroners Act, 1887, as to treasure trove.

Treasury, or the Lords Commissioners of the Treasury. The Department of the Government which administers the revenue of the State in accordance with the votes of the House of Commons. The financial head of the Treasury is the Chancellor of the Exchequer. The Prime Minister usually holds the office of First Lord of the Treasury. The junior Lords of the Treasury are the whips of the political party in power. The Secretary of the Treasury is the head of the permanent Civil Service. See *Exchequer.*

Treasury Bills. Under the Treasury Bills Act, 1877, the Treasury, when authorised by any other Act to raise money, may do so by means of bills (known as Treasury Bills) payable not more than twelve months after date. See *Exchequer Bills.*

Treasury Solicitor. The legal adviser to the Treasury and other Government Departments. The post is held normally by a barrister. See the Treasury Solicitor Act, 1876.

The Treasury Solicitor is also His Majesty's Procurator-General, who acts for the Crown in the Prize Court. ("Procurator": Latin for "proctor.") The King's Proctor (*q.v.*) belongs to his department.

Treating. The giving or the receiving of food, drink, etc., at an election for the purpose of influencing votes. See the Corrupt and Illegal Practices Prevention Act, 1883, s. 1; *Corrupt Practice.*

Treaty. (1) The negotiations prior to and leading up to a contract

or agreement. (2) An agreement between the governments of two or more States. The treaty-making power is part of the Royal Prerogative, but the private rights of a subject of this country are not affected by a treaty unless its terms are embodied in an Act of Parliament.

Trego v. Hunt ([1896] A. C. 7). In a sale of goodwill the vendor will be restrained from soliciting his former customers, and a retiring partner who agrees that his former partner shall retain the goodwill lies under the same obligation.

In 1899 T and S entered into partnership for seven years with H: the goodwill was to remain T's property. In 1894 H employed a clerk of the firm out of office hours to copy the names and addresses of the firm's customers so that after the partnership expired he might canvas them for himself. *Held*, H might be restrained from so doing.

Trespass. "To pass beyond." A trespass is a wrong. The action of trespass became common at the time of Edward I, and was in the nature of a criminal proceeding: the Court punished the defendant as well as compensated the plaintiff. Maitland called it "that fertile mother of actions." It developed into the misdemeanour (*q.v.*), and by way of its extension, the action of trespass on the case, it gave rise to many of the doctrines of the common law. Where an injury was immediate, trespass would lie; where it was consequential, an action on the case.

The chief varieties of trespass originally were: (1) Trespass *vi et armis* ("with force and arms"): injuries to the person accompanied with actual force or violence, as in the case of battery and imprisonment, and the forcible entry on another man's land. (2) Trespass *quare clausum fregit*, "because he [the defendant] broke or entered into the close" or land of the plaintiff, without lawful authority. (3) Trespass *de bonis asportatis*: the wrongful taking of chattels. See *Action on the Case; Harrison* v. *Duke of Rutland; Bird* v. *Holbrook*.

Trial. The examination and decision of a matter of law or fact by a Court of law. Trial by Judge and jury is the characteristic feature of the English legal system, but the absolute right to trial by jury in a civil action no longer exists. The right of trial by jury is now governed by the Administration of Justice Act, 1920, s. 2, and the rules made thereunder. That section provides that where in any action or matter whatsoever in the High Court, "the Court or a Judge is satisfied" on application made by either party, that the action, etc., "cannot be as conveniently tried with a jury as without a jury" an order may be made for trial without a jury, provided, however, (1) that no such order shall be made without the consent of both parties in any case in which fraud, libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage is involved; and (2) that the right of parties to divorce proceedings to trial by jury of contested issues of fact, and the right of an heir-at-law to such trial when he is a party to a probate action are both to be preserved.

A trial by jury consists of the operation of calling and swearing the jury, of a speech by the counsel for the plaintiff, the examination, cross-examination and re-examination of his witnesses: a speech by the counsel for the defendant, followed by the examination, cross-examination and re-examination of his witnesses, and a summing up of their

evidence by him: the reply or speech by the plaintiff's counsel: the summing up of the whole case by the Judge for the jury: and, lastly, the jury's verdict.

Trial by Battle. See *Appeal of Felony.*

Triers or **Triors.** Persons appointed by the Court to decide challenges to jurors. See *Challenge of Jurors.*

Trinity House. "The Corporation of the Trinity House of Deptford Strond." It received its charter from Henry VIII in 1514. It has been entrusted with many duties relating to pilotage and lighthouses, beacons and sea marks. The Masters of Trinity House are known as Elder Brethren, and they may sit as assessors in the Admiralty Court.

Triplicatio. Triplicate. An equitable allegation by a plaintiff in answer to a *duplicatio.* (Roman Law.)

Trover. A species of action on the case (*q.v.*), which originally lay for the recovery of damages against a person who had found another's goods and wrongfully converted them to his own use; subsequently the allegation of the loss of the goods by the plaintiff and the finding of them by the defendant was merely fictitious, and the action became the remedy for any wrongful interference with or detention of the goods of another. In an action of trover the plaintiff could recover only the value of the goods, not the goods themselves. See *Trespass.*

Truck Acts. The Truck Acts, 1831, 1887, and 1896, were passed to abolish the "truck" system, or the practice of employers in paying their employees in tokens exchangeable for goods, which had led to abuses.

True Bill. See *Indictment.*

Trust. A relation or association between one person (or persons) on the one hand and another person (or persons) on the other, based on confidence, by which property is vested in or held by the one person, on behalf of and for the benefit of another. The holder of the property is the trustee, and the beneficial owner is the *cestui que trust.* The trustee has a right *in rem* in the property, the *cestui que trust* has only a right *in personam* against the trustee or those who take from the trustee with notice of the trust.

The practice of one person holding property on behalf of another, or to the "use" of another, grew up owing to the fact that land was originally not devisable by will, and that certain religious orders could not hold property themselves. The Statute of Uses, 1535, abolished uses, and the trust was gradually instituted in its stead. The Court of Common Law took no cognisance of trusts, which were developed under the equitable jurisdiction of the Chancellor and the Court of Chancery.

No special form of words is necessary to create a trust, if that intention is shown or can be inferred. Trusts may be express, *i.e.*, created by clear words, or implied by law. They may be public, *e.g.*, charitable, or private, for the benefit of particular individuals; active or passive, simple or special. An executed trust is one in which the limitations are complete; one "where the testator has been his own conveyancer." An executory trust is one in which the limitations are incomplete and intended to serve as a guide or draft of the intentions of the testator. See *Sackville West* v. *Holmesdale; Glenorchy* v. *Bosville; Boyes* v. *Carritt.*

Charitable trusts comprise: (1) Trusts for the relief of poverty.

(2) Trusts for the advancement of education. (3) Trusts for the advancement of religion. (4) Trusts for other purposes beneficial to the community. (Special Commissioners of Income Tax *v.* Pemsel, [1891] A. C. 531 (*per* Lord Macnaghten). See *Use*.

Trustee. A person who holds property on trust for another.

The Trustee Act, 1893, was, prior to 1925, the chief statute relating to the duties and liabilities of trustees, and the power of the Court to appoint and replace them, and make orders vesting trust property in trustees. The Trustee Act, 1925, repeals and replaces the former Act. Part I deals with trust investments, Part II with the general powers of trustees and personal representatives, Part III with the appointment and discharge of trustees, and Part IV with the power of the Court to appoint new trustees and make vesting and other orders. By section 34 the number of trustees capable of being appointed as of a settlement of land is limited to four. See *Robinson* v. *Pett; Speight, Re; Townley* v. *Sherborne; Barnes* v. *Addy; Hallett's Estate, Re; Keech* v. *Sandford*.

Trustee in Bankruptcy. A person in whom the property of a bankrupt is vested in trust for the creditors; his duty is to discover, realise and distribute it among the creditors, and for that purpose to examine the bankrupt's property, accounts, etc., to investigate proofs (*q.v.*) made by creditors, and to admit, reject or reduce them according to circumstances. See section 19, Bankruptcy Act, 1914.

Tucker v. Linger ((1883), 8 A. C. 508). *Held*, that a custom of the country need not be immemorial.

Tulk v. Moxhay, Rule in (2 Ph. 774). A restrictive covenant entered into by an owner or lessee of land is enforceable in equity against any subsequent owner, tenant, or occupier, except a purchaser for value, who obtains the legal estate in the land without notice of the covenant. The covenant must be negative, *i.e.*, not involving expenditure, and must simply restrict the user of the land, and it must bind land of the covenantor for the benefit of the land of the covenantee.

Turbary, Common of. The right of digging peat for fuel upon another man's ground.

Turpis causa. See *Ex turpi causa non oritur actio*.

Tutela. Tutelage; guardianship. The public and unpaid duty imposed by the civil law on one or more persons of managing the affairs and removing the legal incapacities of a person *sui juris* under the age of puberty. (Roman Law.)

Tutor. A person on whom the civil law has imposed the duty of *tutela*. There were the following varieties: (*a*) *Atilianus* or *Julioti-tianus*. A tutor given to a pupil without one. (*b*) *Dativus*. A tutor appointed by an authorised magistrate. (*c*) *Fiduciarius*. A tutor holding office as if on a trust committed to him by the father. If a *paterfamilias* emancipated a descendant, and then died, leaving male descendants alive, such male descendants became the fiduciary tutors of those emancipated. (*d*) *Honorarius*. Tutors excluded from the actual administration of a tutor's property. (*e*) *Legitimus*. A statutory tutor that succeeded to the office under the provisions of some statute or the Twelve Tables. (*f*) *Onerarius*. A tutor who actually administered a pupil's property. (*g*) *Testamentarius*. A tutor appointed by will. (Roman Law.)

Twyne's Case ((1601), 3 Coke, 80). *Held*, that a deed of gift made with intent to defeat creditors may be set aside under 13 Eliz. c. 5 at the instance of the creditors. The fraudulent intent may be shown by the secrecy of the gift and by the fact that the donor retains possession of the property.

Tyrrel's Case ((1557), Dyer, 155 a). *Held*, that there cannot be a use upon a use.

Uberrimæ fidei (Latin, " of the fullest confidence "). A contract is said to be *uberrimæ fidei* when the promisee is bound to communicate to the promisor every fact and circumstance which may influence him in deciding to enter into the contract or not. Thus a policy of marine insurance is a contract *uberrimæ fidei*.

Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest. Where anything is granted, that is also granted without which the thing itself is not able to exist.

Ubi eadem ratio ibi idem jus. Like reasons make like law.

Ubi jus ibi remedium. Where there is a right, there is a remedy.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam. Effect is to be given to the last will of a testator according to his true intention.

Ultra Vires. " Beyond the power." An act in excess of the authority conferred by law, and therefore invalid.

Umpire. When there is a reference by consent out of Court to two arbitrators, they have, under the Arbitration Act, 1889, power (unless the submission otherwise provides) to appoint an umpire, that is to say, a person who is to make the award if the arbitrators cannot agree.

Uncertainty. A gift by will or a trust will be void for uncertainty, and a pleading will be struck out for the same reason.

Unconscionable Bargain. A catching bargain (*q.v.*).

Unde nihil habet. Whence she has nothing. See *Dower, Writ of.*

Underlease. A lease granted by a lessee or tenant for years; the latter is called the underlessor, and the person to whom the underlease is granted is called the underlessee. The underlessee is not liable to the original lessor on the covenants, etc., of the original lease. By the Law of Property Act, 1925, s. 146, sub-s. 5 (*d*), " Underlease " includes an agreement for an underlease where the underlessee has become entitled to have his underlease granted.

Undertaking. A promise, especially a promise in the course of legal proceedings by a party or his counsel, which may be enforced by attachment or otherwise in the same manner as an injunction. An undertaking to appear in an action is a promise by a solicitor that he will enter an appearance for his client; given when a solicitor accepts service of a writ of summons in order to save his client the annoyance of personal service. See *Service.*

Underwriter. A person who joins with others in entering into a policy of insurance as insurer. Except where an insurance is effected with a company, a policy of marine insurance is generally entered into by a number of persons, each of whom makes himself liable for a certain sum, so as to divide the risk; they subscribe or underwrite the policy in lines one under the other.

Undue Influence. The equitable doctrine of undue influence is that where a person enters into an agreement or makes a disposition of property under such circumstances as to show or give rise to the presumption that he has not been allowed to exercise a free and deliberate judgment on the matter, the Court will set it aside. Such a presumption chiefly arises in cases where the parties stand in a relation implying mutual confidence, *e.g.*, parent and child, guardian and ward, trustee and *cestui que trust*, legal adviser and client; but it may be rebutted by showing that the transaction was in fact reasonable and entered into in good faith. See *Allcard* v. *Skinner; Huguenin* v. *Basely.*

Uniformity, Act of. See *Act of Uniformity.*

Union. See *Poor Law Union.*

Unity of Interest. No one joint tenant can have a greater interest in the joint property than each of the others. See *Joint Tenancy.*

Unity of Possession (or **Seisin**). (1) Is where a piece of land which is subject to an easement, profit *à prendre*, rent, or similar right, comes into the possession of the person entitled to the easement or other right. (2) The possession of joint tenants. See *Joint Tenancy.*

Universitas. A corporate body. *Universitas juris* was the totality of the rights and duties inhering in any individual man, and passing to another as a whole at once; an estate or inheritance. (Roman law.)

University Courts. Courts held by the Universities of Oxford and Cambridge pursuant to Royal Charters confirmed by 13 Eliz. c. 29.

Unlawful Assembly. The common law misdemeanour consisting of the assembly of three or more persons with intent to commit by open force a crime, or in such a manner as to give just ground to apprehend a breach of the peace.

Unliquidated. Unascertained; *e.g.*, damages left to a jury to determine.

Unsound Mind. A person *non compos mentis*; an idiot, lunatic, or mental deficient.

Upper Bench. The *Bancus Superior*; the Court of King's Bench during the Protectorate.

Urgency Order. A summary means of detaining a lunatic under the Lunacy Act, 1890, s. 11.

Usage. A uniformity of conduct of persons with regard to the same act or matter. A usage may harden into custom (*q.v.*).

Usance. The period for which bills on a foreign country are by the practice of merchants almost invariably drawn.

Use. The technical noun "use" is derived from the Latin *opus* (benefit). It is a word which, as Maitland says, has mistaken its own origin.

Before 1536, if A conveyed land by feoffment to B, with the intention, express or implied, that B should not hold it for his own benefit, but for the benefit of a third person C, or of A himself, then B was said to hold the land "to the use," that is, for the benefit, of C or A. At common law the feoffee to uses (B) was the owner of the land, the seisin or legal estate being in him. In the Court of Chancery, on the other hand, he was merely the nominal owner; he was bound to allow the *cestui que use* (C) to have the profits and benefit of the land. The "use" or

beneficial ownership was treated like an estate. It was devisable by will, although the land was not.

A conveyance to uses enabled interests in land to be created and transferred with a flexibility and secrecy unknown to the common law; and it enabled the owners of land to evade inconvenient incidents of tenure.

The Statute of Uses was passed (27 Hen. 8, c. 10) in 1536 to abolish uses by providing that where a person was seised of an estate of freehold to the use of another the use should be converted into the legal estate, and that the *cestui que use* should become the legal owner.

The Statute failed to destroy uses and equitable interests owing to the decision in *Jane Tyrrel's Case* (*q.v.*) where it was held that if there was a use following on a use, the Statute executed the first use, and was then exhausted, so that the legal estate vested in the first *cestui que use*, who held on behalf of the second who still had an equitable estate. The second use came to be known as a trust. The Statute has been made ingenious use of by conveyancers. A use had only to be expressed to shift the legal estate without formality.

An executed use is one which takes effect immediately as where land is conveyed to A and his heirs to the use of B and his heirs. An executory use is one which is to take effect at some future time. A springing use is an executory use which is to come into existence at some future time, *e.g.*, to A and his heirs to the use of B and his heirs on the death of C. A shifting use is an executory use which shifts from one person to another on the happening of some event, *e.g.*, to A and his heirs to the use of B and his heirs, and on the death of C, to X and his heirs. The Statute of Uses is repealed as from January 1, 1926, by the Law of Property Act, 1925. See *Trust*.

Use and Occupation. A claim for use and occupation arises where a person has used and occupied the land of another with his permission but without any actual lease or agreement for a lease at a fixed rent.

Uses to Bar Dower. A form of conveyance of land prior to the Dower Act, 1833 for preventing the wife's right to dower attaching to the land. The purchaser reserved only a life estate to himself.

Usher. An official appointed to keep silence and order in a Court. See *Black Rod*.

Usill v. Hales ((1878), 3 C. P. D. 319). *Held*, that a fair and impartial report of a proceeding in a police Court, even though it was *ex parte* and a preliminary proceeding, is privileged.

Usurpation. The use by a subject of a royal franchise without lawful warrant.

Usury. Originally meant interest. By Acts of Parliament known as the Usury Laws (repealed in 1854) interest above certain rates was prohibited. Usury hence came to mean only illegal or excessive interest.

Ut res magis valeat quam pereat. It is better for a thing to have effect than to be made void. See *Roe* v. *Tranmarr*.

Uti possedetis. " As you possess." A decree of the Praetor that the ownership of property in question should remain in the person in possession. (Roman law.)

Utilis actio. An action granted by the Praetor, in the exercise of his judicial authority by means of an extension of an existing action

(*actio directa*) to persons or cases that did not come within its original scope. (Roman law.)

Utilis annus. A year of *dies utiles*, made up by reckoning in succession only the days on which the plaintiff could bring his action, *i.e.*, when the Praetor sat, and on which neither party was unable to appear in person or by procurator. (Roman law.)

Utrum. See *Assize utrum.*

Utter. To attempt to pass off a forged document, die or seal, etc., or counterfeit coin, as genuine when it is known to be forged. See the Forgery Act, 1913, s. 6, and the Coinage Offences Act, 1861.

Utter Barristers. (Outer barrister.) A barrister who has not been called within the bar, *i.e.*, is not a King's Counsel.

Vacation. The periods of the year during which the Courts are not sitting, and chambers of the Supreme Court of Judicature are closed for ordinary business. There are however, certain kinds of business which may be transacted during vacation (*e.g.*, applications for injunctions, for extension of time, etc.), and for this purpose two vacation Judges attend. (Order LXIII, r. 11.) Provision is made by Order LXIII, r. 4, (2) (3), for the trial or hearing during the Long Vacation of urgent causes, actions or matters in the King's Bench Division. See *Sittings.*

Vadium. A pledge or security. (Roman law.) See *Mortgage.*

Vagabond or **Vagrant.** A wanderer or idle fellow. The term includes: (1) "idle and disorderly persons," *e.g.*, persons who refuse to work, unlicensed pedlars, beggars, etc.; (2) "rogues and vagabonds," *e.g.*, fortune-tellers, persons without visible means of subsistence, sellers of obscene prints, etc.; (3) "incorrigible rogues," *e.g.*, persons twice convicted of being rogues and vagabonds, persons who escape from imprisonment as rogues and vagabonds, etc.; (4) persons gaming or betting in a public street; (5) persons persistently soliciting in public places for immoral purposes or living on the earnings of prostitution. See the Vagrancy Acts, 1824 to 1898.

Value. Valuable consideration, as in "purchaser for value," etc. See *Consideration.*

Valued Policy. See *Policy of Assurance.*

Vardon's Trusts, Re (31 Ch. D. 275). The doctrine of election is founded on a presumed intention that effect shall be given to every part of an instrument, but this presumption is rebutted where the instrument expresses an intention to the contrary. The doctrine of election extends to voidable gifts of a person's own property.

In 1860, an antenuptial settlement was made on the marriage of W and Miss Vardon, then an infant, by which £5,000 was settled upon trust that the income should be paid to her for her life for her separate use with restraint upon anticipation, and they both covenanted to settle all after-acquired property upon trusts, the effect of which was to give Mrs. W the ultimate reversion. In 1883 a legacy of £8,000 was bequeathed to her for her separate use. *Held*, she was not put to election and she would take the £8,000 without compensating out of the £5,000 those persons disappointed by her refusal to settle the £8,000.

Variance. A discrepancy between a material statement in the writ and in a pleading; or between a statement in a pleading and the evidence

adduced in support of it at the trial. Amendment (*q.v.*) of the pleadings may be allowed under Order XXVIII.

Vastum. Waste (*q.v.*).

Venditioni exponas. "That you expose for sale." When a writ of *fieri facias* has been issued and the sheriff returns that he has taken goods, but that they remain in his hands for want of buyers, this writ may be sued out (Order XLIII, r. 2) to compel a sale of the goods for any price they will fetch.

Vendor. A seller.

Vendor and Purchaser Act, 1874. The statute 37 & 38 Vict. c. 78, which substituted forty for sixty years as the period for which a good title had to be shown under an open contract for the sale of land.

Thirty years is substituted by the Law of Property Act, 1925, s. 44, and the Vendor and Purchaser Act is repealed.

Venire de novo. A writ issued by the King's Bench on a writ of error (*q.v.*) from a verdict given in an inferior Court vacating the verdict and directing the sheriff to summon jurors anew.

Venire facias. An ancient writ in the nature of a summons to appear.

Venire facias ad respondendum. A writ to summon a person, against whom an indictment for a misdemeanour has been found, to appear and be arraigned for the offence. It may be issued by the King's Bench, by a Judge of assize, or a Court of quarter sessions. A warrant is now used instead.

Venue. The place where a case is to be tried; the neighbourhood from which jurors are to be summoned. The common law rule is that the venue must be laid (that is, the indictment must be preferred in a Court having jurisdiction) in the county where the offence was committed, but by the Criminal Justice Act, 1925, s. 11, a person charged with an indictable offence may be tried where he was apprehended or is in custody, or where he has appeared to a summons, provided hardship is not caused him.

In civil actions, venue was *transitory* when the cause of action was such that it might have happened anywhere, in which case the plaintiff might adopt any county he pleased as a venue. It was *local* when the cause of action could have happened in one county only, and then the venue must have been laid in that county. Venue is now abolished. See Order XXXVI, r. 10; *Mostyn* v. *Fabrigas; Phillips* v. *Eyre.*

Verba accipienda sunt secundum subjectum materiem. Words are to be interpreted in accordance with the subject-matter.

Verba chartarum fortius accipiuntur contra proferentem. The words of deeds are to be interpreted most strongly against him who uses them.

Verba cum effectu accipienda sunt. Words are to be interpreted in such a way as to give them some effect.

Verba generalia restringuntur ad habilitatem rei vel aptitudinem personæ. General words are restricted to the nature of the subject-matter or the aptitude of the person.

Verba intentioni, non e contra, debent inservire. Words ought to be made subservient to the intent, and not the other way about.

Verba ita sunt intelligenda ut res magis valeat quam pereat. Words are to be so understood that the object may be carried out and not fail.

Verba posteriora, propter certitudinem addita, ad priora, quæ certitudine indigent, sunt referenda. Subsequent words, added for the purpose of certainty, are to be referred to preceding words which need certainty.

Verba relata hoc maxime operantur per referentiam ut in eis inesse videntur. Words to which reference is made in an instrument have the same operation as if they were inserted in the instrument referring to them.

Verborum obligatio. A verbal obligation, contracted by means of a question and answer; *stipulatio* (*q.v.*). (Roman law.)

Verdict. The answer of a jury on a question of fact in a civil or criminal proceeding. The verdict of a jury must be unanimous. A general verdict is where in a civil case they find for the plaintiff or defendant, or where, in a criminal case, they return a verdict of guilty or not guilty. A special verdict is where they find that certain facts have been proved, leaving to the Court the application of the law to the facts thus found.

Verge. The compass of the King's Court within which the coroner of the county had no jurisdiction.

Verification. That part of the pleadings which contained an averment that the party was prepared to verify his pleadings containing new affirmative matter. Abolished.

Vest. To clothe with legal rights.

Vested. An estate is said to be vested in possession when it gives a present right to the immediate possession of property; while an estate which gives a present right to the future possession of property is said to be vested in interest.

Vesting Assent. The instrument whereby a personal representative, after the death of a tenant for life or statutory owner, vests settled land in a person entitled as tenant for life or statutory owner. (Settled Land Act, 1925, s. 117, sub-s. 1 (xxxi).)

Vesting Deed. An instrument whereby settled land is conveyed to, or vested in, a tenant for life or statutory owner. (Settled Land Act, 1925, s. 117, sub-s. 1 (xxxi).)

Vesting Order. An order of a Court under which property passes as effectually as it would under a conveyance, *e.g.*, vesting property in trustees. See *Trustee Act*, 1925, s. 44, *et seq.*

Vestry. The assembly of the whole of a parish for the dispatch of the affairs and business of the parish, the repair of the church, etc., formerly commonly held in the vestry adjoining to or belonging to the church. The local governmental functions of the vestries have been transferred to parish meetings and councils, and borough councils.

Vesture. Possession or profit of land.

Vetera statuta. The *Antiqua Statuta* (*q.v.*).

Vexatious. A proceeding in which the party bringing it is not acting *bona fide*, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result. Such a proceeding is often described as "frivolous and vexatious," and the Court may stay it on that ground, both under its inherent jurisdiction and under Order XXV, r. 4. See *Abuse of Process.*

Vi et armis. With force and arms. See *Trespass.*

Vicar. A delegate; the incumbent of a parish church not being a rector (*q.v.*).

Vicars v. Wilcocks ((1806), 8 East, 1). The defendant told third persons that the plaintiff had done damage in the defendant's rope yard, and in consequence the plaintiff was dismissed by his employer. *Held*, that the plaintiff could not recover as the damages alleged were too remote. "The special damage must be the legal and natural consequence of the words spoken" (*per* Lord Ellenborough, C.J.).

Note. In Lynch *v.* Knight (9 H. L. C. 577), Lord Wensleydale said "To make the words actionable by reason of special damage the consequence must be such as . . . might fairly and reasonably have been anticipated."

Vice-Admiralty Courts. Courts having admiralty jurisdiction in British possessions overseas. They acted under commissions from the Crown authorising governors of colonies to exercise such powers as in England appertained to the Lord High Admiral. The Colonial Courts of Admiralty Act, 1890, provided for the establishment of Colonial Courts of Admiralty with a right of appeal to the King in Council in all British possessions to which it was applied by Order in Council.

Vice-Chancellor. The first Vice-Chancellor was appointed in 1813 to relieve the Lord Chancellor of some of his duties as a Judge of first instance of the Court of Chancery; in 1841, two more Vice-Chancellors were appointed. They were transferred to the Chancery Division of the High Court of Justice by the Judicature Act, 1873.

Vice-comes. The sheriff.

Videlicet (Viz.). Namely; that is to say.

View. If an action or other proceeding concerns an immoveable thing, such as land or houses, the Judge and jury may view such property under Order L. In any criminal case the Judge may order that the jury or some of them (called "viewers") may view a place in question.

View of Frankpledge. See *Frankpledge.*

Vigilantibus, non dormientibus, jura subveniunt. The laws give help to those who are watchful and not to those who sleep.

Vill. A township or parish.

Villein. Serf. (Latin, *villanus*, appertaining to a *villa*, or farm.) They belonged principally to lords of manors, and were either *villeins regardant*, that is, annexed to the manor or land, or else they were *in gross*, or at large, that is, annexed to the person of the lord; thus, where a lord granted a villein regardant by deed to another person, he became a villein in gross. Villeins could not leave their lord without his permission, nor acquire any property; but they could sue anyone except their lord, and were protected against atrocious injuries by him.

Villein Socage. See *Socage.*

Villein Tenure. See *Tenure; Service.*

Villenage. The status of a villein; villein tenure.

Vindicatio. A real action, especially the real action by which a title to real property could be made out, brought by the owner (*dominus*) against the person in possession. (Roman law.)

Viner v. Francis ((1789), 2 Cox, 190). Here a testator bequeathed unto the children of his late sister the sum of £2,000 to be equally

divided among them. *Held*, that those children should take who were living at the death of the testator.

Vint v. Padget ((1858), 2 De G. & J. 611). Two estates were mortgaged to distinct mortgagees. The mortgagor then made a second mortgage of the two estates to another person. Afterwards the two first mortgages were transferred to one person, with notice of the second mortgage. The transferee then brought a foreclosure suit against the second mortgagee, requiring him to pay off both mortgages. *Held*, that the transferee was entitled to unite the two mortgages, and that the second mortgagee was not entitled to redeem one without the other.

Violenta præsumptio aliquando est plena probatio. Violent presumption is often proof.

Vir et uxor censentur in lege una persona. Husband and wife are considered one person in law.

Vis major. Irresistible force; *e.g.*, a storm, earthquake, or armed forces. One of the "excepted perils" in a policy of marine insurance.

Viscount. The fourth in rank of the peers; he ranks above a baron and below an earl. The title dates from 1440.

Visitor. A person appointed by law to visit and inquire into irregularities in charitable corporations, etc. "Chancery visitors" visit and report as to lunatics in respect of whom proceedings in lunacy have been taken. (Lunacy Act, 1890.)

Vivary. Fish-ponds or waters wherein fish are kept.

Vizetelly v. Mudie's Select Library, Ltd. ([1900] 2 Q. B. 170). *Held*, that a party who distributes documents or books containing libels is not liable unless he knew or ought to have known that they were likely to contain libellous statements.

Vocatio in jus. A summons before a magistrate. (Roman law.)

Void. Of no legal effect. Unenforceable at law, *e.g.*, an agreement for an immoral consideration. But when an unlawful contract has been executed, money paid either in consideration or performance of the contract cannot be recovered back. If a contract or deed is properly entered into, and is afterwards altered in a material point by the fraud or laches of either party, it becomes void *ex post facto* as against him.

Voidable. An agreement or other act which either of the parties to it is entitled to rescind, and which until that happens, has full legal effect; *e.g.*, a case of fraud or mistake in a contract.

Voire dire. A preliminary examination of a witness by the Judge, in which he is required to "speak the truth" with respect to the questions put to him; if his incompetency appears from this examination or from extrinsic evidence, *e.g.*, on the ground that he is not of sound mind, he is rejected.

Volenti non fit injuria. That to which a man consents cannot be considered an injury.

Voluntary. Without valuable consideration. A voluntary gift, conveyance or contract is valid if under seal. A voluntary conveyance is avoided if the owner becomes bankrupt within two years, or within ten years unless he was fully solvent at the time of the conveyance, irrespective of the land conveyed (Bankruptcy Act, 1914, s. 42). A voluntary conveyance of land was void until 1893, if the grantor afterwards conveyed the land to a purchaser for value. The Law of Property

Act, 1925, s. 173, provides that a voluntary disposition of land with intent to defraud is voidable as against a subsequent purchaser for value.

Voluntas in delictis non exitus spectatur. In crimes, the intention, and not the result, is looked to.

Voluntas reputabatur pro facto. The will is to be taken for the deed.

Voluntas testatoris est ambulatoria usque ad extremum vitæ exitum. The will of a testator is ambulatory [or revocable] down to the very end of his life.

Volunteer. (1) A person who gives his services without any express or implied promise of remuneration. He is not entitled to any compensation for injuries sustained by him. (2) A person who is an object of bounty under a will or settlement as opposed to one who gives valuable consideration. See *Ellison* v. *Ellison*.

Vouch. To call upon or summon. A voucher is a document which evidences a transaction, *e.g.*, a receipt for money. As to "voucher to warranty," see *Recovery*.

Wager. Mutual promises between two persons that one will pay the other a certain sum of money if a certain event happens or is ascertained to have happened. At common law a wager constituted a good contract, unless it was contrary to public policy, morality or the like; but by the Gaming Act, 1845, s. 18, all contracts by way of gaming or wagering are null and void, except so far as concerns subscriptions or contributions for prizes or money to be awarded to the winner of any lawful game, sport, pastime, or exercise.

Wager of Law. Compurgation (*q.v.*).

Wagering Policy. A policy effected on a ship, etc., in which the insurer has no insurable interest. See *Interest*.

Wages. Money payable by a master to his servant in respect of services. Some wages are preferential debts in bankruptcy (see *Debt*). No wages of any servant, labourer or workman can be attached by order of any Court of record or inferior Court.

Waifs (*bona waviata*). Stolen goods which are waived or thrown away by the thief in his flight, for fear of being apprehended. They belong to the owner, if he follows and apprehends the thief or prosecutes him to conviction; otherwise they belong to the Crown.

Wain v. Warlters (1804), 5 East, 10). The agreement, memorandum or note, required by section 4 of the Statute of Frauds to be in writing, must contain the consideration for the promise and not merely the promise itself.

The plaintiffs who were the holders of a bill of exchange accepted by one Hall, agreed with the defendant not to sue Hall, if the defendant would agree to pay the amount. The defendant signed a document agreeing to pay the amount, but not stating the consideration for the promise. *Held*, it was not a sufficient memorandum, as it did not contain all the terms.

Waive; Waiver. A person is said to waive a benefit when he renounces or disclaims it, and he is said to waive a tort or injury when

he abandons the remedy which the law gives him for it. A waiver may be either express or implied.

Wakelin v. London and South Western Railway Co. ((1886), 12 A. C. 41). In an action for negligence the onus is on the plaintiff to prove the negligence and that the injury complained of resulted from it.

The plaintiff's husband was found lying dead at a level crossing on the railway. The plaintiff failed to prove any negligence. *Held*, there must be judgment for the defendants.

Walsh v. Lonsdale (21 Ch. D. 9). An agreement for a lease is equivalent to a lease in equity, and since the Judicature Acts, at law.

L agreed to lease to W a mill, with the right to demand rent in advance. W took possession. L claimed rent in advance and put in distress for it. *Held*, that W, while holding under an agreement for a lease was subject to the same right of distress as though a lease containing the same stipulations had been granted.

Wapentake. A hundred (*q.v.*).

Ward. A ward is an infant who is under the care of a guardian (*q.v.*). If an action, suit or other proceeding relative to an infant's estate or person, and for his benefit, be instituted in the Chancery Division, the infant immediately becomes a ward of Court, although its father or testamentary guardian may be living. A ward of Court cannot be taken out of the jurisdiction of the Court, nor can any change be made in his or her position in life, without leave of the Court.

Ward v. Duncombe ([1893] A. C. 369). *Held*, if one of the trustees of a fund has knowledge of an incumbrance affecting it, such knowledge amounts to express notice and will enure for the benefit of such incumbrancer, and a subsequent incumbrance, made whilst one of the trustees has such knowledge, cannot gain priority over it by the fact that the subsequent incumbrancer has given notice to any or all of the trustees.

Warden. A keeper. Generally an officer of the Crown.

Wardmote. Formerly a Court of the wards of the City of London.

Wards. Local government divisions of a city or borough.

Wardship. The status or condition of being a ward. Anciently, wardship was the right to the custody of the land or of the person of an infant heir of land.

Warehouse, Bonded. See *Bonded Warehouse.*

Waring, Ex p. ((1815), 19 Ves. 345). *Held*, that where both the acceptor and drawer of bills are insolvent, the securities held by the acceptor against the bills are available to the bill holders.

Warrant. An authority under hand and seal. It is used in executing process in civil and criminal cases, for the arrest of persons, or for their production in Court as witnesses.

Warrant of Attorney. A written authority from a person enabling the person to whom it is given (the attorney) to enter an appearance for him in an action, and to allow judgment to be entered for the plaintiff, or to suffer judgment to go by default. Such a warrant is usually given to secure the payment of a sum of money, and qualified by a condition that it shall only be put in force if the debt is not paid by a certain day, called the defeasance.

Warranty. A guaranty or assurance. "An agreement with refer-

ence to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated " (Sale of Goods Act, 1893, s. 62, sub-s. 1) ; but " whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, depends in each case on the construction of the contract " ; and " a stipulation may be a condition though called a warranty in the contract " (*ibid.*, s. 11, sub-s. 1 (*b*)).

In marine insurance a warranty is in fact a condition, *e.g.*, that the ship is seaworthy. See Marine Insurance Act, 1906, ss. 33—41.

An action for breach of warranty of authority may be brought against an agent who acts in excess of the authority he purports to have.

Formerly warranty was a covenant by the feoffor or donor of land to defend the feoffee or donee in the possession of the land, and to give him land of equal value if he was evicted from it. See *Roscorla* v. *Thomas; Bettini* v. *Gye.*

Warren. The privilege of keeping and killing hares and rabbits on a piece of ground.

Wasdale, Re ([1899] 1 Ch. 163). An assignee of a *chose in action* who gives notice to all the trustees in whom the subject-matter of the *chose in action* is vested will not lose his priority by the fact that a new assignee, having advanced money without notice of the prior assignment, after the death of the trustees, has given notice to the new trustees who had no notice of the prior assignment.

Wason v. Walter ((1868), L. R. 4 Q. B. 73). *Held,* that a fair report in a public newspaper of a debate in either House of Parliament containing matter disparaging to the character of an individual is privileged.

Waste. (1) Uncultivated land. (2) Whatever does lasting damage to the freehold or inheritance of land, or anything which alters the nature of the property. It is either voluntary or permissive: the former being an offence of commission, such as pulling down a house, converting arable land into pasture, opening new mines or quarries, etc. ; the latter is one of omission, such as allowing a house to fall for want of necessary repairs.

If a limited owner is given power to commit waste, he is said to be unimpeachable for waste. Wanton destruction, *e.g.*, cutting down ornamental timber by an owner unimpeachable for waste may be restrained as equitable waste. Ameliorating waste consists in alterations in the nature of improvements. See *Garth* v. *Cotton.*

Watch and Ward. " Ward " is the duty of constables of apprehending rioters and robbers during the day-time, while " watch " is properly applicable to the night.

Watch Committee. The committee of a borough council which controls the police.

Water Gavel. A rent paid for water or for fishing rights. See *Gavel.*

Water-bailiff. Formerly an officer in a seaport town who searched ships ; now an official who enforces the Salmon Fishery Acts, etc.

Watercourse. The right of watercourse is the right of receiving or discharging water through another person's land, and is an easement.

Waveson. Floating wreckage: flotsam (*q.v.*).

Way. A right of way is the right of passing through or over land belonging to another.

Ways are either public or private. Public ways are called highways (*q.v.*). A private way is either an easement or a customary right.

Way-going Crop. See *Away-going Crop.*

Wayleave. A right of way over or through land for the carriage of minerals from a mine or quarry, generally created by express grant or by reservation. See *Way.*

Webb v. Bird ((1862), 31 L. J. C. P. 335). The right to air is limited to air through a defined channel.

The plaintiff claimed a right by long user to a current of air to turn the sails of his windmill. *Held,* no grant could be implied from such user, as the person against whom the right is claimed could not have interrupted or prevented the exercise of the subject of the supposed grant.

Welsh Mortgage. The conveyance of an estate as security for a loan, redeemable at any time on payment of the debt without payment of interest by the borrower, or account of the rents and profits by the lender, who is let into possession from the beginning, and who takes the rents in lieu of interest.

Wenhak v. Morgan ((1888), 20 Q. B. D. 635). *Held,* that a communication of defamatory matter by a person to his or her spouse is not publication.

Wenman v. Ash ((1853), 13 C. B. 836). *Held,* that communicating a defamatory statement concerning a person to that person's spouse is publication.

Wer, Wergild. Compensation for personal injury. (Anglo-Saxon.) See *Blodwyte.*

West Rand Central Gold Mining Co., Ltd. v. R. ([1905] 2 K. B. 391). Prior to the outbreak of the war between Great Britain and the South African Republic, gold belonging to the Company was wrongfully seized by the Republic. Soon afterwards war broke out and the Republic was conquered and its territory annexed by the Crown. The Company claimed by petition of right that in consequence the obligations of the Republic with respect to the gold had devolved on the Crown.

Held (1) that the Sovereign of a conquering State was not liable for the obligations of the conquered, in the absence of stipulation or convention; (2) International law formed part of the law of England to the extent that it had received the common consent of civilised nations. Such rules of international law must be shown to have been actually accepted as binding between nations by satisfactory evidence of international agreement or usage; (3) That acts of State are not cognisable by the English Courts.

Westminster the First, Statute of. The fifty-one chapters passed in 1275.

Westminster the Second, Statute of. The fifty chapters passed in 1285. The first of which is the statute *De donis, etc.*; see *Estate.*

Westminster the Third, Statute of. Passed in 1290, commencing *Quia emptores* (*q.v.*).

Whalley v. Lancashire and Yorkshire Railway Co., ((1884), L. R. 13 Q. B. D. 131). If a person is in any way responsible for the

presence on his premises of a dangerous thing, he is liable if, in getting rid of it, damage is caused to another.

Flood water having collected against the defendants' railway embankment, whereby the line was endangered, holes were cut to let off the water, in consequence of which the plaintiff's land was flooded and damaged. *Held*, defendants were liable.

Wharf. See *Sufferance Wharf.*

Wheeler v. Le Marchant ((1881), L. R. 17 Ch. D. 675). *Held*, that communications made in professional confidence to counsel, solicitors, and their clerks, may not be disclosed without consent of their client.

Wigglesworth v. Dallison ((1779), 1 Doug. 201). Parol evidence is admissible to prove any local custom of general application, in order that it may be applied to the subject-matter and bind the parties to a written document, unless it is inconsistent with the writing. *Held*, that a custom that the tenant, whether by parol or deed, shall have the way-going crop, after the expiration of his term, is good, if not repugnant to the lease by which he holds.

Wild's Case ((1599), 6 Co. 16 b). *Held*, that where there is a devise to a person and his children or issue, and he has no issue at the time of the devise—*i.e.*, at the date when the will or codicil was made—then such person will take an estate tail; but if he has issue at the time, he and his children take joint estates.

Wilkes v. Wood ((1763), 19 St. Tr. 1153). *Held*, that a general warrant to seize the papers of a person not named is illegal.

Wilkinson v. Downton ([1897] 2 Q. B. 57). The defendant, by way of a practical joke, informed the plaintiff that her husband had met with a serious accident, which was untrue. In consequence of the shock, the plaintiff suffered a severe illness. *Held*, the defendant was liable.

Will. A disposition or declaration by which the person making it (the testator) provides for the distribution or administration of property after his death. It is always revocable by him.

Formerly "will" signified a testamentary disposition of land, as opposed to a testament (*q.v.*). Infants and lunatics are incapable of making wills. A woman married after December 31, 1882, has complete testamentary power with regard to all her property. No particular form of words is required to make a valid will so long as the testator's intention can be ascertained; otherwise its provisions will fail from uncertainty.

A will must in ordinary cases be in writing, and signed at the foot or end by the testator, or by someone in his presence and by his direction, and the signature must be made or acknowledged by the testator in the presence of two or more witnesses, who must be present together at the same time, and must attest and subscribe the will in the presence of the testator (Wills Act, 1837, s. 9; Wills Act Amendment Act, 1882). See *Attestation Clause.*

A devise or bequest to an attesting witness, or to his or her wife or husband, does not affect the validity of the will, but the gift is void (Wills Act, 1837, s. 15).

A nuncupative will is a declaration by the testator without any writing before a sufficient number of witnesses. By the Wills Act, 1837, nuncupative wills are rendered invalid except those made by soldiers or

seamen. (See the Wills (Soldiers and Sailors) Act, 1918.) See *Probate; Letters of Administration.*

Williams v. Carwardine ((1833), 4 B. & Ald. 621). An offer of a reward to anyone who will perform certain services is deemed accepted by anyone who with notice of the offer performs the services, although from an ulterior motive.

Wilson v. Brett ((1843), 11 M. & W. 113). A party who performs services for another gratuitously is not liable for damage, provided he uses such skill as he actually has. If he represents that he has any special skill, he is liable if he fails to use such skill.

The defendant, a person conversant with and skilled in horses, at the plaintiff's request rode a horse belonging to the plaintiff for the purpose of showing it for sale. In consequence of the slippery nature of the show ground the horse slipped and injured itself. The Judge left it to the jury to say whether it was a matter of culpable negligence in the defendant to ride the horse there, and told them that the defendant, being skilled in the management of horses, was bound to take as much care as if he had borrowed it. *Held*, that the jury had been properly directed.

Windhill Local Board v. Vint ((1890), 45 Ch. D. 351). A promise in consideration of an agreement not to proceed with a prosecution for a public misdemeanour (*e.g.*, an obstruction of a highway) is founded on an illegal consideration and is void.

Winding-up. The operation of stopping the business of a company or partnership, realising the assets and discharging the liabilities of the concern, settling any questions of account or contribution between the members, and dividing the surplus assets (if any) among the members.

The winding-up of a partnership is either voluntary (*i.e.*, by agreement between the partners), or by order of a Court made in an action for the dissolution of the partnership.

Companies are wound up under the Companies (Consolidation) Act, 1908, as follows:—Compulsory winding-up by the Court; voluntary winding-up without the intervention of the Court; and voluntary winding-up under the supervision of the Court.

Wisby, Laws of. The code of maritime law drawn up at the Hanse town of Wisby, in the island of Gotland, about the fourteenth century.

Witchcraft. A capital offence: abolished by the Witchcraft Act, 1735.

Wite. A penalty for murder, etc. (Anglo-Saxon.) See *Blodwyte.*

Witenagemot. The mote or meeting of the wise men. In Anglo-Saxon times it was the great council, consisting of bishops, abbots, ealdermen and other notables, which was associated with the King in the government of the country. See *Great Council.*

Withdrawal. Where the plaintiff in an action does not wish to proceed with a portion of his claim, he may withdraw that part of his statement of claim either (1) by giving notice to the defendant, if no step subsequent to the delivery of the statement of defence has been taken (Order XXVI, r. 1); or (2) at any other time by leave of the Court or a Judge (*ibid.*). A defendant may also, by similar leave, withdraw the whole or any part of his defence or counterclaim (*ibid.*). When

a cause has been entered for trial, it may be withdrawn by consent (Order XXVI, r. 2). See *Discontinuance.*

Withdrawal of a Juror. At the trial of an action, when neither party wishes to proceed further, they may, by consent, withdraw a juror; and as that leaves the jury incomplete, there can be no verdict, and the trial comes to an end.

Withernam. A taking again. See *Capias in Withernam.*

Without day. See *Eat Inde Sine Die.*

Without Prejudice. See *Prejudice.*

Without Recourse to Me. An agent who so indorses a bill of exchange protects himself from liability.

Witness. A person who makes a *viva voce* statement to a judicial tribunal on a question of fact. Witnesses require to be sworn before their evidence is given, unless they have conscientious objections to taking an oath, or have no religious belief, in which case they make a solemn affirmation. The general rule is that all persons are competent to give evidence, provided they have sufficient mental understanding. Every witness has a right to refuse to answer questions, the answers to which would have a tendency to expose him to criminal proceedings, or to a forfeiture or penalty.

An adverse or hostile witness is one whose mind discloses a bias hostile to the party examining him, and who may, with the leave of the Court, be cross-examined by the counsel calling him. Prior to the Evidence Act, 1843, no person was a competent witness in any legal proceedings in the result of which he was financially interested. That statute removed this disqualification: but parties to the proceedings remained disqualified until the enactment of the Evidence Act, 1851. See *Evidence; Affirm; Oaths.*

Witnessing Part. The testatum (*q.v.*).

Woollam v. Hearn ((1802), 7 Ves. 211). *Held*, that though a defendant resisting specific performance may adduce parol evidence to show that by a fraud the written agreement does not express the real terms, a plaintiff cannot do so for the purpose of obtaining specific performance with a variation.

Woolsack. The seat on which the Lord Chancellor sits in his capacity of Speaker of the House of Lords. It is not technically part of the House. When the Lord Chancellor votes as a peer, he votes from the Woolsack; but if he desires to speak as a peer, he leaves the Woolsack and goes to his place in the House.

Words of Limitation. Words in a conveyance or will which have the effect of marking out the duration of an estate. Thus, in a grant to A and his heirs, the words "and his heirs" are words of limitation. Formerly these words were essential to pass the fee simple, both in legal and equitable interests. (Bostock, Re, [1921] 2 Ch. 469). The Conveyancing Act, 1881, s. 51, authorised the use of the words "In fee simple," but any other words, including "In fee" passed only a life estate (Ethel and Mitchell, Re, [1901] 1 Ch. 945). No words of limitation are necessary after 1925. A conveyance passes the whole interest of the grantor, unless a contrary intention is expressed. (Law of Property Act, 1925, s. 60.)

To create an estate tail by deed, it was necessary that "words of procreation," should be used as "to A and the heirs of his body."

After 1925 an entailed interest may be created by way of trust in any property, by the use of like words. (Law of Property Act, 1925, s. 130.)

Words of purchase are words which denote the person who is to take the estate.

Workmen's Compensation. The Workmen's Compensation Act, 1906, s. 1, provided " If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall be liable to pay compensation." A workman is defined (section 13) as " Anyone under a contract of service who is not a person employed otherwise than by way of manual labour at a remuneration exceeding £250 a year."

The Acts have been repealed and re-enacted by the Workmen's Compensation Act, 1925. The workman who comes within the Act is in a far more favourable position than a stranger, for where he sues his employer for injuries sustained by an accident arising out of and in the course of his employment, the latter cannot set up as a defence:—

(1) *Volenti non fit injuria*;

(2) Inevitable accident; or

(3) Contributory negligence of the workman.

The defence of serious and wilful misconduct has been considerably curtailed. See *Master and Servant.*

Wounding and Maiming. Aggravated forms of battery (*q.v.*). See *Mayhem; Malicious Injury to the Person.*

Wreck. If a ship was lost at sea, and the cargo or a portion of it came to land, the goods saved belonged to the Crown. This privilege was frequently granted to lords of manors. The owners of shipwrecked goods were allowed to reclaim them within a year and a day, if they could identify them. At the present day, " wreck " includes jetsam, flotsam (*q.v.*), ligan and derelict. It is the duty of receivers of wreck to preserve wreck until it is claimed by the owner, or, if he does not claim it within a year, then to sell it and pay the proceeds into the Exchequer.

Wreck Commissioners. Persons appointed by the Lord Chancellor under the Merchant Shipping Act, 1894, to hold investigations at the request of the Board of Trade into shipping casualties.

Writ. A document in the King's name and under the seal of the Crown, a Court or an officer of the Crown, commanding the person to whom it is addressed to do or forbear from doing some act. Writs are of two principal kinds—prerogative and of right.

(1) Prerogative writs are so called because they are issued by virtue of the Crown's prerogative, and only granted at the discretion of the Court on a *prima facie* case being shown. They are the writs of *mandamus, procedendo, prohibition, quo warranto, habeas corpus* and *certiorari* (*q.v.*).

(2) Writs of right are of two kinds—original and judicial. An original writ was anciently the mode of commencing every action at common law. It issued out of the common law side of the Chancery under the Great Seal. The modern writ of summons was introduced by the statute 2 & 3 Will. 4, c. 39.

A judicial writ is any writ which is issued by a Court under its own seal, as follows:—(1) writs originating actions and other proceedings; (2) interlocutory writs, issued during the course of an action before final

judgment; (3) writs of execution. As to particular writs, see the various titles, and under *De.*

Writ of Right. (1) One which is grantable as a matter of right, as opposed to a prerogative writ. See *Writ.*

(2) A real action which lay to recover lands in fee-simple, unjustly withheld from the rightful owner. It might be brought in any case of disseisin. There were also writs in the nature of writs of right, such as the writ of right of dower. See *Right; Dower, Writ of.*

Writ of Summons. A process issued in the High Court at the instance of the plaintiff for the purpose of giving the defendant notice of the claim made against him and of compelling him to appear and answer it if he does not admit it. It is the first step in the action. It is issued from the Central Office or from a district registry. The writ consists of the body, the memoranda and the indorsements. The body contains the "title," that is, the reference to the record, the name of the Court, division, Judge, if necessary, and the names of the parties, the mandatory part, by which the defendant is ordered to enter an appearance, and the teste (*q.v.*). The memoranda specify the time within which the writ must be served and the place where the defendant may enter an appearance. The indorsements consist of a brief statement of the nature of the claim, *i.e.*, the indorsement of address, giving the name and address of the plaintiff and his solicitor, with an address for service if necessary; and the indorsement of service made by the person who serves the writ. In addition a writ may be specially indorsed, *e.g.*, for a debt or liquidated demand under Order III, r. 6. See *Judgment.*

In Admiralty actions the writ is addressed to the owners of the ship or other property, and commands them to enter an appearance; and at any time after its issue a warrant may be issued authorising the arrest of the ship, etc.

A writ remains in force for twelve months from its issue, but if service has not been effected within that time it may (if a Judge so orders) be renewed for six months. See Orders I, II, III, V, and VIII.

Writing. The following contracts are required to be in writing:—

(1) Bills of exchange, promissory notes, and acceptances.

(2) Assignments of copyright. (Copyright Act, 1911.)

(3) Contracts of marine insurance. (Marine Insurance Act, 1906.)

(4) Acceptances or transfers of shares in a company.

(5) Acknowledgment of a debt barred by the Statute of Limitations.

(6) Under statutes such as the Railway and Canal Traffic Act, 1854, s. 7.

(7) Under the Statute of Frauds (*q.v.*).

(8) Under the Sale of Goods Act (*q.v.*). See *Noble* v. *Ward; Morris* v. *Baron.*

Wrong. A violation or infringement of a right. A private wrong or tort (*q.v.*) is an offence against an individual; a public wrong, an offence against the community. See *Crime.*

Year. A year consists of twelve calendar months; that is, 365 days in ordinary years, and 366 days in leap-year. (1) The historical year has for a very long period begun on January 1. (2) The civil,

ecclesiastical and legal year, used by the Church and in all public instruments, began at Christmas, until the end of the thirteenth century. In and after the fourteenth century, it commenced on March 25, and so continued until January 1, 1753. (Calendar (New Style) Act, 1750.) (3) The regnal year commences on the Sovereign's accession. (See *Appendix, Table of Regnal Years.*)

Year Books. A series of reports of cases written in the Anglo-Norman language, commencing in the thirteenth century and extant either in manuscript copies or in print from 1290 to 1535—with very few gaps. It is generally agreed that they were notes of cases taken by apprentices to the law.

Year, Day and Waste. The right which the Crown had to hold the lands of felons for a year and a day, and commit waste (*q.v.*) thereon. See *Forfeiture.*

Yeoman. "He that hath free land of forty shillings by the year: who was anciently thereby qualified to serve on juries, vote for knights of the shire, and do any other act where the law requires" (Blackstone).

Yield. To perform a service due by a tenant to his lord. See *Render.*

Yonge v. Toynbee ([1910] 1 K. B. 215). If an agent continues to act after the death or lunacy of his principal, even in ignorance of it, he is liable on a warrant of authority.

A solicitor employed to conduct litigation on behalf of X accepted service of the writ, entered appearance and delivered a defence after X had been certified insane, but without notice thereof. *Held,* he was liable for costs to the successful party.

Yorkshire Deed Registry. A registry of deeds and wills relating to land in Yorkshire. If a deed or will is not registered it is void as against a subsequent purchaser for value, who has registered his deed. By the Law of Property Act, 1925, s. 11, instruments which do not deal with the legal estate do not require registration; and land registered under the Land Registration Act, 1925, is exempt from the local county registry. See *Land Registration.*

Young Person. "A person between fourteen and sixteen years of age." (The Children Act, 1908, s. 131.)

Zamora, The ([1916] A. C. 77). *Held,* that it is the primary duty and function of the Prize Court to administer international law. The Prize Court is bound by an Act of Parliament, but it is not bound by an Order of the King in Council which is contrary to international law. But the Court will not ignore executive orders which mitigate the rights of the Crown in favour of the enemy or neutral, but will give effect to them.

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EVIDENCE.

All You Want for the Bar Final. See page 19.

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(See also Conflict of Laws.)

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(See Conflict of Laws.)

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