A

CONCISE

LAW DICTIONARY

BY

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Multa renascentur, quæ jam cecidere; cadentque
Quæ nunc sunt in honore vocabula, si volet usus,
Quem penès arbitrium est, et jus, et norma loquendi.
Hor. De Arte Poetica.

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PREFACE.

THE primary object of this Work is to give an exposition of legal terms and phrases of past and present use. But, as the mere exposition of a word or phrase would often be barren and unsatisfactory, we have in many cases, especially when dealing with the legal terms of the present day, added an exposition of the law bearing upon the subject-matter of the Title.

To many of the Titles which have reference to the historical portions of the law, we have appended the law-Latin or Norman-French words which were used as their equivalents by the mediæval lawyers when writing (as they often did) in one or other of those languages respectively.

To the Titles relating to the procedure of the English Courts, we have, in general, appended references to the Acts and Rules relating to the Supreme Court of Judicature, except in the earlier pages, which passed through the press before the 11th of August, 1875, the date of the passing of the Judicature Act of 1875. The omissions thus necessitated have, we trust, been supplied in the later part of the Book in those numerous cases where the same subject-matter may suggest different Titles, and especially in the Title "Supreme Court of Judicature" (pp. 432—3), and in the Appendix.

Our desire has been to make the Dictionary useful, not merely to the legal profession, but to the general public. With this object we have appended parenthetical explanations to technical words, so far as the same could be done consistently with the general conciseness of the Work; and in citing Acts of Parliament we have, in general, appended the date *Anno Domini*. Moreover, we have inserted among our Titles the

names of some of the most celebrated legal writers, and some of the principal leading cases. We have also included in our list several Scotch, Indian and Commercial words.

There is a difference in the practice of lexicographers as to the order of Titles consisting of more than one word. Some place the order according to the letters of the Title considered as a whole; others regulate the order by the letters of the first word. This being so, it may be as well to state that we have adopted the latter principle. Thus, "Writ of Right" has precedence over "Writer to the Signet," because "Writ" would precede "Writer" if the words stood alone, notwithstanding that "e" (the fifth letter in "writer") precedes in the alphabet "o" (the first letter of "of").

We append to this Preface a list of the abbreviations used in the course of the Book. We do not in this list include authorities which are referred to in full, nor any series of Legal Reports. A catalogue of all the Reports, with the abbreviations generally used to denote them, will be found under the Title "Reports," pp. 364—376. Moreover, the names of the principal current series are included in the Titles of the Dictionary.

The pages appended to the references to Blackstone's Commentaries are those which are adopted in Archbold's edition and in the edition of the late Mr. Justice Coleridge. In general, where the page of a work is referred to, the latest edition is intended, except where the contrary is mentioned.

Our thanks are due, and are here given, to Mr. Commissioner Kerr, Judge of the City of London Court (by whom the original idea of this Work was suggested), for the materials with which he supplied us in reference to the antiquarian Titles.

H. N. M.
G. C. W.

March, 1876.

LIST OF ABBREVIATIONS.

[*As to* REPORTS, *see pp.* 364—376.]

Anc. Inst. Eng. ..... Ancient Institutes of England.
Anc. Inst. Wales ..... Ancient Institutes of Wales.
Arnould, Mar. Ins. ..... Arnould's Marine Insurance.
Aust. Jur. ..... Austin on Jurisprudence.
Bell ..... Scotch Dictionary, by Professor Robert Bell.
Bell, Wm. ..... Scotch Dictionary, by William Bell.
Bl. ..... Sir Wm. Blackstone's Commentaries.
Bouvier ..... Bouvier's Law Dictionary.
Chute, Eq. ..... Chute on Equity.
Coote, Eccl. Pract. ..... Coote's Ecclesiastical Practice.
Coote, Prob. Pract. ..... Coote's Probate Practice.
Cowel ..... Cowel's Interpreter.
Cox & Saunders' Cr. Law. .. Cox and Saunders on the Criminal Law Consolidation Acts.
Crump, Mar. Ins. ..... Crump on Marine Insurance.
Darling ..... Darling's Practice of the Court of Session.
Duncan ..... Duncan's Parochial Ecclesiastical Law of Scotland.
Encycl. Brit. ..... Encyclopædia Britannica.
Eng. Encycl. ..... English Encyclopædia.
Fawcett, L. & T. ..... Fawcett's Law of Landlord and Tenant.
Goldsmith, Eq. ..... Goldsmith's Doctrine and Practice of Equity.
Hallam, Const. Hist. ..... Hallam's Constitutional History.
Haydn, Dict. Dates ..... Haydn's Dictionary of Dates.
Haynes' Eq. ..... Haynes' Outlines of Equity.
Hunt. Eq. ..... Hunter's Suit in Equity.
Kerr's Act. Law ..... Kerr's Action at Law.
Keyser ..... Keyser's Law of the Stock Exchange.
Latham ..... Latham's Dictionary.
Littré ..... Littré's Dictionary.
Lush's Pr. ..... Lush's Practice.
Macdonald ..... Macdonald's Criminal Law of Scotland.
May's Parl. Pract. ..... May's Parliamentary Practice.
Oke's Mag. Syn. ..... Oke's Magisterial Synopsis.
Paterson ..... Paterson's Compendium.
Powell, Ev. ..... Powell on Evidence.
Reeves' Hist. Eng. Law .... Reeves' History of English Law.

Reg. Jud. .....Register of Judicial Writs.
Reg. Orig. .....Register of Original Writs.
Robson, Bkcy. .....Robson on Bankruptcy.
Shand .....Shand's Practice of the Court of Session.
Smith's Act. Law .....Smith's Action at Law.
Sm. Man. Eq.....Smith's Manual of Equity.
Steph. Com. .....Stephen's Commentaries.
Steph. Plead. .....Stephen on Pleading.
T. L. .....Termes de la Ley, or Terms of the Law.
Toml. .....Tomlins' Law Dictionary.
Wedgwood .....Wedgwood's Dictionary of English Etymology.
Wms. Exors. .....Sir E. V. Williams on Executors.
Wms. P. P. .....Joshua Williams on Personal Property.
Wms. R. P. .....Joshua Williams on Real Property.
Wilson's Gloss. Ind. .....Wilson's Glossary of Indian Terms.
Woodfall, L. & T. .....Woodfall's Landlord and Tenant.

A

CONCISE LAW DICTIONARY.

A FORTIORI (from a stronger [reason]). A phrase used in argument to denote the method by which one proposition is proved, on account of its being a stronger instance of another proposition which is allowed. Thus, the law presumes that a child of fourteen years of age is capable of distinguishing between right and wrong; therefore, *à fortiori*, a youth of sixteen, or a man of twenty-one, is accountable for any offence he may have committed.

A MENSA ET THORO (from table and bed). [DIVORCE.]

A POSTERIORI. [A PRIORI.]

A PRENDRE. [PROFITS À PRENDRE.]

A PRIORI. An argument derived from considerations of an abstract character, or which have but a remote and possibly indirect (though none the less real) bearing upon the point under discussion, is called an argument *à priori;* whereas an argument derived from actual observation or other direct consideration is called an argument *à posteriori.*

A. S. [ACTS OF SEDERUNT.]

A VINCULO MATRIMONII (from the bond of matrimony). [DIVORCE.]

AB INITIO (from the beginning). For instance, if a man abuse an authority given him by the law, he becomes, by the common law, a trespasser *ab initio,* from the beginning, so that the legality of his first proceedings is vitiated by his subsequent illegal acts. [SIX CARPENTERS' CASE.]

AB INTESTATO (from an intestate). Succession *ab intestato* means the succession to the property of a person dying intestate, *i.e.* without a will. 2 *Bl.* 490.

ABACTORS (Lat. *Abactores;* from *ab* and *agere*, to lead away). Drivers away, or stealers of cattle not by one and one, but in great numbers at once. *Cowel.*

ABANDONMENT. In marine insurance, abandonment is the act of cession, by which, in cases where the loss or destruction of property is imminent, the assured, on condition of receiving at once the whole amount of insurance, relinquishes to the insurers all his property and interest in the thing insured. *Crump, Mar. Ins.* Abandonment usually takes place in cases of the constructive total loss of a vessel or goods in the progress of a voyage. 2 *Steph. Com.* 133. [TOTAL LOSS.]

ABANDONMENT, ACCEPTANCE OF, takes place where the insurer by his acts, express or implied, adopts the abandonment, as by taking possession of the ship, and thereby becomes bound to pay the amount insured. [ABANDONMENT.]

ABARNARE (Sax. *Abarian*, to uncover, disclose or make bare). To detect or disclose any secret crime. *Cowel.*

ABATE (Fr. *Abattre*, to strike down) has several significations. To *abate* a castle or fortlet has been interpreted to beat down; analogous to which we have the abatement or suppression of a nuisance. [NUISANCE.] Writs formerly were said to *abate* by some error therein or exception thereto. Also, he that steps in between the former possessor and his heir is said to *abate* in the lands. [ABATEMENT.]

ABATEMENT sometimes signifies the act of the abator, and sometimes the result of the act to the thing abated.

1. In commerce it means a deduction made from payments due, and it is also used to denote the allowance sometimes made at the custom-house for damages received by goods in warehousing or during importation. 16 & 17 *Vict. c.* 107, *s.* 76; *Hamel on the Customs.*

ABATEMENT—*continued.*

2. *Abatement amongst Creditors* takes place where the assets of a debtor are not sufficient to pay his creditors in full, so that they are compelled to share the assets in proportion to their debts.

3. *Abatement amongst Legatees* in like manner is enforced where there are not sufficient assets to pay the legacies in full. But preferences are allowed and made in certain cases. 2 *Bl.* 513.

4. *Abatement of an Action or Suit* takes place when, from some supervenient cause, one of the parties thereto is no longer before the court; so that, unless his place be supplied, there is no one to proceed therein. It usually occurs where, by reason of the death of the plaintiff or defendant, or the bankruptcy of either party, or the marriage of a female suitor, a change takes place in the parties entitled to continue the proceedings, or who will be ultimately responsible to the successful suitor. For these and divers other like causes, the defendant might formerly pray that the writ or plaint by which the action was commenced should abate; that is to say, that the plaintiff's suit against him should cease for that time, and that he should begin again his suit, and bring a new writ or plaint, if he was so disposed.

But by s. 135 of the Common Law Procedure Act, 1852, it was enacted that the death of a plaintiff or defendant should not cause the action to abate, but that the proceedings (supposing the right of action to survive) should be continued by or against the proper party or parties.

In equity a suit abated may be revived by what is called an order of revivor. *Hunt. Eq.* [REVIVOR.]

5. *Abatement of Freehold* is where a person dies seised of an inheritance, and before the heir or devisee enters, a stranger, who has no right, makes entry and gets possession of the freehold: this entry is called an abatement, and he an abator. Note that if the heir enter first after the death of his ancestor, and the stranger enter upon the possession of the heir, this last entry is a *disseisin* to the heir. Note, also, the difference between this word and *intrusion* after the death of the tenant for life. 3 *Bl.* 166; 3 *Steph. Com.* 386. [DISSEISIN; INTRUSION; OUSTER.]

6. *Abatement, Pleas in*, are those which show ground for *abating* the proceedings. They do not dispute the cause of action, but only point out an error, which unless remedied is fatal to the suit. Misnaming the defendant, or misdescribing him, as an esquire, for instance, instead of a knight, formerly afforded ground for such abatement; but the powers of amendment now possessed by the courts have rendered them very unusual. Formerly in criminal cases a prisoner could, if misnamed or wrongly described, plead in abatement. But these pleas are now for the most part obsolete. 7 *Geo.* 4, *c.* 64; 14 & 15 *Vict. c.* 100; 3 *Bl.* 301; *Lush's Pr.* 465.

ABATOR. [ABATEMENT, 5.]

ABBACY (Lat. *Abbatia* or *Abbathia*). The government of a religious house, with the revenues and persons subject to an abbot, as a bishopric is to a bishop. *Cowel.*

ABBOT (Lat. *Abbas*). A spiritual lord having the rule of a religious house. Of these, some in England were mitred, and some not. The former were exempted from the jurisdiction of the diocesan, having themselves episcopal authority within their limits, and were also lords of the parliament. The latter were subject to the diocesan in all spiritual government. The abbot with the monks of the house, called the convent, made a corporation. *Cowel; 2 Steph. Com.* 329, *n.* (*y*).

ABBREVIATIO PLACITORUM. An abstract of ancient pleadings.

ABBROACHMENT (Lat. *Abbrocamentum*). Forestalling a market or fair, by buying up the wares before they are exposed to sale there, and then selling them again by retail. *Cowel.*

ABDUCTION. The leading away of any person. More strictly the taking away of a wife from her husband, a child from its parent, a ward from her guardian and a female servant from her master. In some cases the act is criminal, and in others a civil action will lie against the aggressor. 3 *Bl.* 139; 4 *Steph. Com.* 84, 85. [HEIRESS.]

ABEARANCE. Behaviour. 4 *Bl.* 256; 4 *Steph. Com.* 295. [GOOD ABEARING.]

ABEREMURDER (Sax. *Æbere*, apparent, notorious, and *Mord*, murder). Plain or downright murder; as distinguished from the less heinous crimes of manslaughter and chance-medley. *Cowel.*

ABET (Fr. *Bouter;* Lat. *Impellere, Excitare*). To encourage or set on. Thus an abettor of a crime is one who, being present, aids in the commission of the offence. This presence is either actual or constructive, and distinguishes an abettor from an accessory, who is not present at the performance of the crime, but is concerned therein either before or after the fact committed. *Cowel;* 4 *Bl.* 34; 4 *Steph. Com.* 39, 331; *Cox & Saunders, Cr. Law.* [ACCESSORY.]

ABETMENT. The aiding in the commission of an offence. [ABET.]

ABETTOR. One who aids in the commission of an offence. [ABET.]

ABEYANCE (probably from the Fr. *Bayer*, to expect). An estate is said to be in *abeyance*, that is, in expectation, remembrance and contemplation of law, when there is no person *in esse* in whom it can vest and abide; though the law considers it as always potentially existing, and ready to vest whenever a proper owner appears; holding it as a maxim, "That of every land there is a fee-simple in some man, or else it lies in abeyance." This estate has also been called *in nubibus* (in the clouds), and *in gremio legis* (in the bosom of the law). 2 *Bl.* 107; 1 *Steph. Com.* 236.

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

ABIGEAT. A kind of larceny, committed by leading or driving a living thing away with the intention of feloniously appropriating the same, as distinguished from the taking and carrying away property from one place to another. *Bouvier.*

ABIGEI. Stealers of cattle. 4 *Bl.* 239; 4 *Steph. Com.* 121.

ABISHERING or **ABISHERSING**, called sometimes *Mishering* and *Miskering*, is to be quit of amercements. According to Spelman it signifies originally a forfeiture.

ABJURATION, OATH OF. The oath first required by 13 & 14 Will. 3, c. 6 (in consequence of the proclamation of the son of James II. as James III., by the King of France), to be taken by every person holding any office in the state; and so called because the person taking it thereby *abjured* any allegiance to the Pretender. Abolished by 21 & 22 Vict. c. 48. 2 *Steph. Com.* 401.

ABJURATION OF THE REALM. A renouncing by oath, signifying a sworn banishment; the method by which, anciently, a person, accused of any crime except treason or sacrilege, who took refuge in a church or churchyard before he was apprehended, might save his life by confessing his offence, within forty days, to the justices, or to the coroner, and swearing to abjure or forsake the realm. 4 *Bl.* 332; 4 *Steph. Com.* 397, 398, *n.* (*o*). [SANCTUARY.]

ABOLITION is used in stat. 25 Hen. 8, c. 21, to signify the licence given to a criminal accuser to desist from further prosecution. *Cowel.*

ABRIDGMENT. A short comprehensive treatise or digest of the law. Such are the works of Fitzherbert, Brooke and Rolle, published in the reigns of Henry VIII., Elizabeth and Charles II. respectively, whom Viner, Comyns and Bacon have since succeeded. 1 *Steph. Com.* 51, 52.

ABROACHMENT. [ABBROACHMENT.]

ABSCONDING DEBTORS ACT, 1870. Stat. 33 & 34 Vict. c. 76, by which the Court of Bankruptcy is authorized to cause a debtor, against whom a debtor's summons has been granted, to be arrested and safely kept until such time as the court may order, if there is reasonable ground to believe that he is about to go abroad with a view of avoiding payment of his debts, or of delaying or embarrassing proceedings in bankruptcy. *Robson, Bkcy.*

ABSCONDING DEBTORS ARREST ACT, 1851. The stat. 14 & 15 Vict. c. 52, passed for the purpose of facilitating the arrest of absconding debtors. *Lush's Pr.* 755—761. Repealed by the Bankruptcy Repeal Act, 1869 (32 & 33 Vict. c. 83). *Robson, Bkcy.*

ABSENTEES (or Des Absentees). A parliament so called, held at Dublin, 10th May, 28 Hen. VIII., and mentioned in letters patent, dated 29 Hen. VIII.

ABSOLUTE WARRANDICE. [WARRANDICE.]

ABSONIARE. To shun or avoid; used in the oath of fealty of the Saxons. *Cowel.*

ABSQUE HOC (without this). [SPECIAL TRAVERSE.]

ABSQUE IMPETITIONE VASTI. [WASTE; WITHOUT IMPEACHMENT OF WASTE.]

ABSQUE TALI CAUSA (without such cause). A phrase formerly used in actions of trespass, when the plaintiff replied to a plea of the defendant, whereby the latter attempted to excuse the act complained of. Thus, if the defendant alleged that he committed the trespass by authority derived from another, the plaintiff might reply that he (the defendant) committed it *de injuriâ, i. e. de injuriâ suâ propriâ* (of his own wrong), and *absque tali causâ*, without the cause in his plea alleged. [CROGATE'S CASE.]

ABSTENTION, in old French law, is the tacit renunciation of a succession by an heir. *Ferrière.*

ABSTRACT OF PLEAS. A short statement delivered by a defendant of the substance of several pleas which he intends to plead. *Lush's Pr.* 454.

ABSTRACT OF TITLE. A summary or abridgment of the deeds constituting the title to an estate, prepared for the perusal of an intending purchaser or lessee.

ABSTRACTED MULTURES, ACTION OF. An action to compel persons to grind at a certain mill according to their tenure. A *multure* is a toll paid to a miller for grinding corn. When persons who were bound to grind their corn at a certain mill neglected to do so, they evaded the toll, and the above action was the miller's remedy in cases where the multures had been abstracted, that is, taken away. *Bell.*

ABUTTALS (Fr. *Abutter*). The buttings or boundings of lands, showing to what other lands, highways or places they belong, or are abutting. *T. L. See also Lush's Pr.* 404; *Fawcett, L. T.* 77.

ABWABS. Petty taxes imposed by a *zamindar* on the cultivators of land, in addition to the revenue demandable of them individually. *Wilson's Gloss. Ind.* [ZAMINDAR.]

AC ETIAM (And also). A clause by which a fictitious allegation was introduced for the purpose of giving to the Court of Queen's Bench a civil jurisdiction which did not properly belong to it. The court might take cognizance of a civil action only if the defendant was in custody of its marshal, for a breach of the peace or any other offence. Hence it came by a fiction to hold plea of all personal actions whatever, it being surmised that the defendant was arrested for an imaginary trespass which he had in reality never committed. Being thus in custody of the marshal, the plaintiff could proceed against him by suing for the imaginary trespass, and also (*ac etiam*) for the real claim. *Kerr's Act. Law*, 32. *See also* 3 *Bl.* 288. [BILL OF MIDDLESEX.]

ACCAPITUM. A relief, payable to a chief lord. *Cowel.* [RELIEF, 1.]

ACCEDAS AD CURIAM (that you go to Court). A writ that lay for one who had received a false judgment in a court-baron or hundred-court, and issued out of Chancery to the sheriff, who was thereby directed to make a record of the judgment and return it to the King's Bench or Common Pleas, that its validity in point of law might be there inquired into. 3 *Steph. Com.* 280; *Lush's Pr.* 685, 1021.

ACCEDAS AD VICECOMITEM (that you go to the sheriff). A writ, now obsolete, which might be directed to the coroner, commanding him to deliver a writ to the sheriff, when the latter, having had a *pone* delivered him, suppressed it. *Reg. Orig.* 83. [PONE.]

ACCEPTANCE. "A thing in good part, and as it were a kind of agreeing to some act done before, which might have been undone and avoided if such acceptance had not been." *Cowel.* If, for instance, a tenant for life grants a lease to a man and then dies, this lease will be at an end. But if the remainderman accepts rent from the lessee, then such acceptance will render the lease made by the tenant for life valid and binding against the remainderman. *Fawcett, L. & T.* On the same principle, acceptance of rent may confirm a lease, which has been put an end to by notice, the acceptance here operating as a withdrawal, waiver or abandonment of the notice. [NOTICE TO QUIT.] But what acts shall amount to such an acceptance is often a question of great nicety and difficulty. [ABANDONMENT, ACCEPTANCE OF.]

ACCEPTANCE OF A BILL is an engagement by the drawee (*i.e.* the person on whom the bill is drawn) to pay the bill according to the tenor of his acceptance.

ACCEPTANCE OF A BILL—*continued.*

After the acceptance the drawee is called the *acceptor*. The acceptance must be in writing, and it is usually made by the acceptor's writing the word "accepted" across the bill and signing his name. *Stat.* 19 & 20 *Vict. c.* 97, *s.* 6; *Byles on Bills;* 2 *Steph. Com.* 117.

ACCEPTANCE SUPRA PROTEST, or an *acceptance for honour*, is an acceptance of a bill for the honour of the drawer or an indorser, when the drawee refuses to accept. It is made by some friend of the drawer or indorser to prevent the bill being sent back upon him as unpaid, after a protest has been drawn up declaratory of its dishonour by the drawee. This operates not as an engagement to pay absolutely, but only to pay in the event of its being presented to, and dishonoured by, the drawee when it arrives at maturity, on its then being protested for non-payment, and afterwards duly presented for payment to the "acceptor for honour." The latter then becomes absolutely liable to the holder, but, on the other hand, has a right of recourse against the party for whose honour he accepted it, or any party who may be antecedent to him in the series of names. 2 *Steph. Com.* 122, 123; *Byles on Bills.*

ACCEPTILATION, in the Roman law, signifies a verbal release of a contract.

ACCEPTING SERVICE is where the attorney for a defendant undertakes on his behalf to accept service of a writ or other process of a court, so as to avoid the necessity of such writ or process being served on his client. [SERVICE, 3.] This undertaking the courts will enforce, if necessary, by attachment. *Kerr's Act. Law*, 232. [ATTACHMENT.]

ACCEPTOR. A person who accepts a bill of exchange. [ACCEPTANCE OF A BILL; BILL OF EXCHANGE.]

ACCESSION. A mode of acquiring property by right of occupancy, founded on the civil law; whereby the original owner of anything which receives an accession by natural or artificial means, as by the growth of vegetables, &c., the pregnancy of animals, &c., is entitled to it under such its state of improvement: but if the thing itself, by such operation, is changed into a different species, as by making wine, oil, or bread, out of another's grapes, olives, or wheat, it belongs to the new operator; who is only to make a satisfaction to the former proprietor for the materials which he has so converted. 2 *Bl.* 404; 2 *Steph. Com.* 22.

In international law, accession is used as a technical expression denoting the absolute or conditional acceptance, by one or several states, of a treaty already concluded between other sovereignties.

The word means also the coming of a king or queen to the throne on the death of the prior occupant thereof.

ACCESSORY is he who is not the chief actor in an offence, nor present at its performance, but is some way concerned therein, either *before* or *after* the fact committed. An accessory *before* the fact is one who being absent at the time of the crime committed, doth yet procure, counsel, or command another to commit a crime. An accessory *after* the fact is he that receives, favours, aids, assists, or comforts any man that hath done any murder or felony, whereof he hath knowledge; as by furnishing means of escape or concealment, or assisting to rescue or protect him. In manslaughter and offences of a like character a man cannot be accessory before the fact, for manslaughter in judgment of law ensues upon a sudden debate or affray; if it be premeditated it is murder. In high treason there are no accessories, but all are principals, *propter odium delicti;* in misdemeanours all are likewise principals, but for a different reason, viz., that the law, *quæ de minimis non curat*, does not condescend to distinguish the different shades of guilt therein. 4 *Bl.* 35; 4 *Steph. Com.* 39—45; *Cox & Saunders, Cr. Law.*

ACCESSORY TO ADULTERY. The Divorce Court cannot decree a divorce, if the petitioner has been accessory to, or connived at, the adultery; or has condoned it; or if the petition is presented or prosecuted by collusion. 20 & 21 *Vict. c.* 85, *ss.* 30, 31. The word "accessory" was introduced into this statute for the purpose of noticing a more positive and actual aid in the adultery than is included in the word "connivance." 2 *Steph. Com.* 280.

ACCIDENT. As a ground for seeking the assistance of a court of equity, accident means not merely inevitable casualty, or the act of God, or, as it is called, *vis major*, but also such unforeseen events, misfortunes, losses, acts, or omissions as are not the result of negligence or misconduct.

ACCIDENT—*continued.*

Against the consequences arising from the accidental loss, or destruction, of a deed, the courts of equity will grant relief, as will now the courts of law, in the case of the loss of a negotiable instrument. *C. L. P. Act*, 1854, *s.* 87; 3 *Steph. Com.* 542, *n.*; *Lush's Pr.* 462.

ACCOLLADE (Fr. *Accoler;* Lat. *Collum amplecti*). The ceremony used in knighthood, by the king's putting his hand about the knight's neck. *Cowel.*

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

ACCOMMODATION BILL. A bill accepted by the drawee, without any value received for it, for the convenience and *accommodation* of the drawer. The accommodation acceptor, thus becoming liable upon it, may, if compelled to pay, have his remedy over against the drawer. [ACCEPTANCE OF A BILL; BILL OF EXCHANGE.]

ACCOMPT. [ACCOUNT.]

ACCORD. An agreement between the party injuring and the party injured, by reason of any trespass or breach of contract; which when performed is a bar to all actions on account of the injury, the party injured having thereby received satisfaction for, or redress of, the injury. *Kerr's Act. Law.* [SATISFACTION.]

ACCOUNT, ACTION OF. An action which lies against him who ought to render an account, but who refuses to do so. It is now rarely resorted to, proceedings in equity being considered preferable. 3 *Bl.* 164; 2 *Steph. Com.* 104, *n.* (*n*); *Kerr's Act. Law.*

ACCOUNT STATED. An account no longer open or current, but closed by the statement, agreed to by both the parties, of a balance due to the one or other of them. From this *statement* the law implies a promise by the debtor to pay the balance; hence the action for money found to be due from the defendant to the plaintiff on *accounts stated* between them. 3 *Bl.* 164; 2 *Steph. Com.* 104, *n.* (*n*).

ACCOUNTANT-GENERAL. An officer of the Court of Chancery who had the custody of the suitors' monies, which were kept in his name in the Bank of England. Now abolished by the Court of Chancery Funds Act (35 & 36 Vict. c. 44), by which the duties of the Accountant-General are transferred to the Paymaster-General. 3 *Steph. Com.* 458, *n.*; *Hunt. Eq.*

ACCOUPLE. Married. [NE UNQUES ACCOUPLÉ.]

ACCREDULITARE. To purge oneself of an offence by oath. *Cowel.*

ACCRESCENDI JUS. [JUS ACCRESCENDI.]

ACCRETION. Generally synonymous with accruer. [ACCRUE.] But the word is specially used to denote an accession to an owner of land on the sea shore, or fresh land recovered from the sea by alluvion or dereliction. 1 *Steph. Com.* 452. [ALLUVION; DERELICTION.]

ACCROACH or **ACCROCHE** (Fr. *accrocher*, to fix or hook). As used 25 Edw. 3, st. 3, c. 8, it signifies to encroach. Accroaching royal power means attempting to exercise royal power. 4 *Bl.* 76; 4 *Steph. Com.* 150.

ACCROCHE. [ACCROACH.]

ACCRUE. *Lit.* to grow to, as interest accrues to principal, or as the *accruing costs* are added to a judgment when execution is issued. It also means to arise, as when a cause of action is said not to have accrued to the plaintiff within six years, *actio non accrevit infra sex annos.*

ACCUMULATION. When the interest of a fund, instead of being paid over to some person or persons, is itself invested as often as it accrues, so as to be reserved for the benefit of some person or persons in the future, the income is said to be accumulated, and a direction for this purpose in a deed or will is called a direction for accumulation. Restrictions are imposed upon accumulation, partly by the rules against perpetuities [PERPETUITY], and partly by the act called the Thellusson Act (39 & 40 Geo. 3, c. 98). 1 *Steph. Com.* 555, 556; 2 *Steph. Com.* 13. [THELLUSSON ACT.]

ACHAT (Fr. *Achat;* Lat. *Emptio*). A contract or bargain. *Cowel.*

ACKNOWLEDGMENT MONEY is money paid by the copyhold tenants of some manors on the death of their landlords as an *acknowledgment* or recognition of the title of the new lords. *Cowel.*

ACKNOWLEDGMENT OF DEEDS, BY MARRIED WOMEN. The method provided by stat. 3 & 4 Will. 4, c. 74, for ascertaining and verifying the consent of a married woman to a conveyance of her property: to give validity to which instruments, the wife must be examined separately and apart from her husband by a judge or commissioners appointed for the purpose, touching her knowledge of the contents of the deed, and her consent thereto, and must declare the same to have been freely and voluntarily executed by her. 1 *Steph. Com.* 583; *Fawcett, L. & T.* 9.

ACQUIESCENCE. A means by which a right may be lost, though the party entitled thereto might have asserted it successfully had he presented his claim in due time.

ACQUIETANCIA DE SHIRIS ET HUNDREDIS. To be free from suit and service in shires and hundreds. *Cowel.*

ACQUIETANDIS PLEGIIS. An obsolete writ, which lay for a surety against a creditor who refused to acquit him after the debt was paid. *Reg. Orig.* 158.

ACQUISITIVE PRESCRIPTION. Prescription whereby a right is acquired, otherwise called positive prescription. [PRESCRIPTION.]

ACQUITTAL (Fr. *Acquitter;* Lat. *Acquietare*, to discharge, or keep in quiet) has several significations. Thus where there is a lord paramount, mesne lord and tenant holding of the mesne lord, the mesne ought to *acquit* the tenant of all and every manner of service to the lord paramount, because the tenant must do his service to the mesne only. *T. L.* Acquittal now, however, ordinarily signifies a deliverance, and setting free from the suspicion or guilt of an offence. Thus he that is discharged of a felony by judgment, is said to be *acquietatus de felonid;* and if it be drawn in question again, he may plead *autrefois acquit.* 4 *Bl.* 335; 4 *Steph. Com.* 401—403.

ACQUITTANCE. A discharge in writing of a sum of money, or other duty which ought to be paid or done. *T. L.* If under seal, it is called a release.

ACRE FIGHT. An ancient duel fought with sword and lance, by the English and Scotch, between the frontiers of their kingdoms. *Cowel.*

ACT IN PAIS (Fr. *Pais* or *Pays*, country). An act done "in the country," as distinguished from an act done in court, which is a matter of record. 2 *Bl.* 294; 1 *Steph. Com.* 502. [MATTER IN PAIS.]

ACT OF ATTAINDER. An act of parliament passed for attainting a person, or rendering a person liable to the consequences of attainder. [ATTAINDER.]

ACT OF BANKRUPTCY. An act or event done or suffered by a person, which would be available against him for an adjudication in bankruptcy, is called an "act of bankruptcy." "Acts of bankruptcy" under the present law of England are enumerated in sect. 6 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71). 2 *Steph. Com.* 152; *Robson, Bkcy.* [ADJUDICATION; BANKRUPT.]

ACT OF GOD. A phrase used to define those occurrences which man has no power to foresee or prevent: a destructive storm, for instance, or a sudden and unforeseen death.

ACT OF GRACE. An act of parliament proceeding originally from the Crown is sometimes called an act of grace or pardon. 1 *Bl.* 185; 2 *Steph. Com.* 387, *n.* (*o*). In Scotland an act so termed was passed in 1696 for providing maintenance for debtors imprisoned by their creditors.

ACT OF INDEMNITY. A statute passed for the protection of those who have committed some illegal act, subjecting them to penalties. An annual indemnity act used to pass for the protection of those who had acted in certain capacities without the necessary qualification; as justices for instance, without taking the oaths. Indemnity acts have also been passed after a suspension of the Habeas Corpus Acts (57 Geo. 3, cc. 3, 55; 58 Geo. 3, c. 6), and to protect a ministry who have issued an order in council not justifiable in law. 2 *Steph. Com. n.* (*t*).

ACT OF LAW. The application of a legal doctrine to a given event.

Thus the eldest son of an intestate succeeds to his father's real estate by act of law.

ACT OF NATURALIZATION. A statute passed to confer on an alien all or some of the rights and privileges of a British subject. 1 *Bl.* 374; 2 *Steph. Com.* 410.

ACT OF PARLIAMENT. A statute; a law made by the legislature, the Queen, lords, and commons in parliament assembled.

Acts of parliament are divisible broadly into three classes:—

1. "Public General Acts," being acts which have been *passed as public bills*, and when passed are to be *judicially noticed*, and are therefore public.

2. "Local and Personal Acts," which have been *passed as private bills*, but when passed are to be *judicially noticed*, and are therefore also public. The number of each such act among the acts of its class is expressed in Roman characters.

3. "Private Acts," which are not only *passed as private bills*, but, when passed, are *not to be judicially noticed*, but to be given in evidence in the ordinary way.

The third class is further divided into private acts printed and private acts not printed; but this distinction is not of any general interest.

It will thus be seen that the distinction between the first and second classes of acts is mainly *in the manner of their passing through Parliament;* and that between the second and third is mainly *in their legal effect when passed.*

The popular notion, that public acts always have reference to the whole community, but private acts concern only localities or individuals, is easily refuted by a cursory glance at the Public General Statutes, among which will be found some acts of a purely local, and some even of a personal character. [BILL, 4.]

ACT OF SETTLEMENT. The statute 12 & 13 Will. 3, c. 2, by which the crown was settled (on the death of Queen Anne) upon Sophia, Electress of Hanover, and the heirs of her body being Protestants. 2 *Steph. Com.* 399, 441.

ACT OF SUPREMACY. The statute 1 Eliz. c. 1, by which the supremacy of the Crown in matters ecclesiastical was established. 2 *Steph. Com.* 704.

ACT OF TOLERATION. [TOLERATION ACT.]

ACT OF UNIFORMITY. The name given to two acts of parliament, by which the public worship of the Church of England is mainly regulated. The first of these was passed in the first year of Queen Elizabeth, and is known as the statute 1 Eliz. c. 2. The second, usually described as *the* Act of Uniformity, is known as the statute 13 & 14 Chas. 2, c. 14. 2 *Steph. Com.* 703, 704.

ACT OF UNIFORMITY AMENDMENT ACT. Statute 35 & 36 Vict. c. 35, passed in 1872, whereby certain relaxations are allowed in the public service of the Church of England. 2 *Steph. Com.* 704, *n.* (*e*).

ACTIO NON was, until 1834, the formal commencement to a plea in bar: "that the said plaintiff ought not to have or maintain his aforesaid action," &c.; *actionem non habere debet, &c.* Abolished first by rule of court in Hilary Term, 1834, and afterwards replaced by a simpler form, 15 & 16 Vict. c. 76, ss. 66, 67. *Steph. Plead.* 348, 349.

ACTIO NON ACCREVIT INFRA SEX ANNOS (the action has not accrued within six years). The plea of the Statute of Limitations. [ACCRUE; LIMITATIONS, STATUTE OF.]

ACTIO PERSONALIS MORITUR CUM PERSONA. [ACTIONS PERSONAL.]

ACTION (Lat. *Actio*). The lawful demand of one's right. It is defined by Justinian, *jus prosequendi in judicio quod alicui debetur;* a right of prosecuting, in a judicial proceeding, that which is due to any one. But it is now generally used to denote the actual pursuit of this right, or the means of its exercise. The action itself is regarded as merely the formal method prescribed by the law for enforcing a right or redressing a wrong. In this view, *i.e.* with reference to the right enforced or redress obtained, actions are divided into *civil* and *penal*, and also into *real, personal, and mixed.* 3 *Bl.* 116, 117; 3 *Steph. Com.* 359. By stat. 22 & 23 Vict. c. 63, s. 5, an action is defined, for the purposes of that Act, to include every judicial proceeding instituted in any court, civil, criminal, or ecclesiastical. *Lush's Pr.* 967, 968. [ACTIONS CIVIL AND PENAL; ACTIONS MIXED; ACTIONS REAL AND PERSONAL.]

ACTION OF THE WRIT. A phrase which has become obsolete since the disuse and subsequent abolition of objections to the writ itself; but which was used when the defendant pleaded some matter by which he showed that the plaintiff had no cause to have the writ he brought, though it might well be that he might have another writ or action for the same matter. Such a plea was called a plea to the action of the writ; whereas, if by the plea it appear that the plaintiff had

ACTION OF THE WRIT—*continued.*

no cause to have an action at all for the thing demanded, then it is called a plea to the action. *T. L.*

ACTION ON THE CASE (Lat. *Actio super casum*). A remedy, given by statute Westminster the Second, c. 24, for wrongs and injuries committed without immediate violence, and so called because when actions were commenced by original writs sued out of Chancery, as they continued to be from the subdivision of the *aula regis* till the early part of the present century, the plaintiff's whole case or cause of complaint was set forth at length in the writ. 3 *Bl.* 122; 3 *Steph. Com.* 363, 365; *Kerr's Act. Law.* [CASE.]

ACTION UPON THE STATUTE. An action grounded upon some statute. Thus every action upon the case for consequential damage is an action upon the statute of Westminster the Second, c. 24. But as this statute belongs to a remote period of our history, it is more usual to use the words "action upon the statute" to signify an action brought upon some penal statute. [ACTIONS POPULAR; QUI TAM ACTION.]

ACTIONEM NON. [ACTIO NON.]

ACTIONES NOMINATÆ (named actions). Previous to the statute 13 Edw. 1 (West. 2nd), c. 24, there were certain methods prescribed and forms of action settled for redressing those wrongs which most usually occur, and the original writs for which were called *actiones nominatæ*. Where any special consequential damage arose, which could not be foreseen and provided for in the ordinary course of justice, the above-mentioned statute enabled the injured party to bring a special action on his own case, by a writ formed according to the peculiar circumstances of his own particular grievance. [ACTION ON THE CASE.]

ACTIONS ANCESTRAL, POSSESSORY AND DROITURAL, were actions for the recovery of land, distinguished with reference to the title relied upon by the plaintiff or demandant; as in an action *ancestral*, the seisin or possession of his ancestor; in a *possessory* action, his own possession or seisin. *T. L.*

An action possessory is sometimes distinguished from an action droitural, inasmuch as (in theory, at least) the object of the former is to ascertain the right of possession; and that of the latter the right of property. 3 *Steph. Com.* 390. [ACTIONS REAL AND PERSONAL.]

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

ACTIONS MIXED partook of the nature both of real and personal actions, for therein real property was demanded and also personal damages for a wrong sustained. These suits are all abolished, unless one form of the action of ejectment, in which arrears of rent are recovered by the landlord by the same judgment as the possession of the property, may be so considered. 3 *Bl.* 118; 3 *Steph. Com.* 361; *Kerr's Act. Law.* [ACTIONS REAL AND PERSONAL.]

ACTIONS PERSONAL. An action personal, in its most limited sense, signifies an action for a purely personal right (as for a bodily injury, or injury to the reputation), which must be brought, if at all, by the party injured, and is not transmissible to his representatives, according to the maxim, *Actio personalis moritur cum personâ*, "a personal action dies with the person." But this maxim must not be understood to apply in cases of breach of contract causing damage to a man's estate through the medium of a personal injury, as by incapacitating him from work, or depriving his family of his support. 3 *Steph. Com.* 370, 371; *Lush's Pr.* 165; *Underhill on Torts.* [LORD CAMPBELL'S ACT; PERSONAL RIGHTS. *See also* ACTIONS REAL AND PERSONAL.]

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

ACTIONS REAL AND PERSONAL. 1. By the *real actions* of the English law we understand specially the old feudal actions brought for the recovery of land or any freehold interest therein. 3 *Bl.* 117—119, 167—207; 3 *Steph. Com.* 361—363; *Wms. R. P. Introduction.* By stat. 3 & 4 Will. 4, c. 27, s. 36, passed in 1833, all the real and mixed actions then in existence were abolished, with four exceptions therein specified. And, of these four, one (the action of "ejectment") was entirely remodelled by the Common Law Procedure Act of 1852; and the three others, by the Common Law Procedure Act of 1860, are assimilated in their procedure to personal actions. *Kerr's Act. Law*, 95, n.

2. *Actions personal*, as opposed to actions real, are such whereby a man claims a debt, or personal duty, or damages in lieu thereof; and likewise whereby a man claims a satisfaction or damages for some injury done to his person or property. The former are said to be founded on contracts, or to arise *ex contractu vel quasi ex contractu;* the latter upon torts or wrongs, or to arise *ex delicto vel quasi ex delicto.* Of the former nature are all actions for debts, and claims of that nature, non-delivery of goods, and non-performance of agreements; of the latter, all actions for trespasses, assaults, defamatory words, and the like. 3 *Bl.* 117.

ACTIONS RESCISSORY. The name given in Scotland to those actions whereby deeds, &c. are declared void. *Bell.*

ACTIVE TRUST. A trust requiring active duties on the part of the trustee. 1 *Steph. Com.* 370. [TRUST.]

ACTON BURNEL. The statute made 11 Edw. I. an. 1283, ordaining the statute-merchant; and so called because it was made at Acton Burnel, a castle in Shropshire, anciently belonging to the family of Burnel. *T. L.*

ACTOR. The proctor or advocate in civil courts or causes. *Actor dominicus* was often used for the lord's bailiff or attorney; *actor ecclesiæ* was the forensic term for the advocate or pleading patron of a church, and *actor villæ* for the steward or head bailiff of a town or village. *Actor* is also a plaintiff, as contrasted with *reus*, a defendant. *Cowel.* 3 *Steph. Com.* 270.

ACTS OF COURT. Legal memoranda in the nature of pleadings used in the Admiralty Courts. *Bouvier.*

ACTS OF SEDERUNT are ordinances of the Court of Session in Scotland, for the ordering of processes and expediting of justice. *Bell.* They correspond to General Rules and Orders in England and Ireland.

ACTUARY (Lat. *Actuarius*). A clerk or scribe that registers the canons and constitutions of the convocation. *Cowel.* This title is now given to the persons who calculate the risks and premiums for fire, life, and other insurances.

AD ADMITTENDUM CLERICUM. [ADMITTENDO CLERICO.]

AD COMMUNEM LEGEM. [COMMUNEM LEGEM.]

AD DAMNUM (to the damage). That part of the declaration of the plaintiff, which states the damage he has sustained by the breach of contract or wrong complained of.

AD DIEM (at or to the day). Words in a plea of payment as anciently recorded in Latin, *solvit ad diem*, "he paid at the day."

AD FACIENDUM ET RECIPIENDUM. [HABEAS CORPUS.]

AD INQUIRENDUM. A writ judicial, commanding inquiry to be made of anything touching a cause depending in the king's courts, for the better execution of justice; of which you may see great diversity in the Table of the Register Judicial, tit., *Ad Inquirendum. T. L.* The only form of this writ now used is the writ of inquiry issued after judgment for the plaintiff. *Kerr's Act. Law*, 43. [WRIT OF INQUIRY.]

AD JURA REGIA. A writ that lay for one holding a crown living against him that sought to eject him, to the prejudice of the king's title in right of his crown. *Reg. Orig.* 61.

AD LITEM (for the suit). A guardian appointed by the court to defend a suit on behalf of an infant is called a guardian *ad litem.* [GUARDIAN; INFANT.]

AD OSTIUM ECCLESIÆ (at the door of the church). One of the five species of dower formerly recognized. The tenant in fee simple, of full age, openly at the church door, where all marriages were formerly celebrated, after affiance made and troth plighted between them, endowed his wife with the whole, or such quantity as he pleased, of his lands, at the same time specifying and ascertaining the same, on which the wife, after her husband's death, might enter without further ceremony. Under Henry II.

AD OSTIUM ECCLESIÆ—*continued.*

this was the most usual species of dower, but after Edward IV. it fell into total disuse. 2 *Bl.* 132—135; 1 *Steph. Com.* 270, 277.

AD PROSEQUENDUM. [HABEAS CORPUS.]

AD QUOD DAMNUM is a writ which, at common law, ought to be sued out before the Crown grants certain liberties, as a fair, market, or such like, which may be prejudicial to others. And thereby it shall be inquired if it should be a prejudice to grant them, and to whom it shall be prejudicial, and what prejudice shall come thereby. *T. L.* There was also another writ of *ad quod damnum*, to be sued out whenever it was proposed to alter the course of a common highway for the purpose of inquiring whether the change might in anyway be prejudicial to the public. 3 *Steph. Com.* 135. A similar writ was given by stat. 27 Edw. 1, st. 2, in order that inquiry might thereby be made what injury, if any, could arise from a licence being granted by the Crown to alienate in mortmain. 2 *Bl.* 271; 1 *Steph. Com.* 458. But all of them are now obsolete.

AD RESPONDENDUM. [CAPIAS AD RESPONDENDUM; HABEAS CORPUS.]

AD SATISFACIENDUM. [CAPIAS AD SATISFACIENDUM.]

AD SECTAM (at the suit of). Used, generally in its abbreviated forms *ads.* and *ats.*, in the designation of the title of an action when the defendant's name is placed first. Thus, the suit *Brown* v. *Smith* may also be described Smith *ats.* Brown.

AD SUBJICIENDUM. [HABEAS CORPUS.]

AD TERMINUM QUI PRÆTERIT. A writ of entry which formerly lay for the lessor or his heirs, when a lease had been made of lands and tenements, for term of life or years, and, after the term had expired, the lands were withheld from the lessor by the tenant, or other person possessing the same. Other remedies are now provided by 4 Geo. 2, c. 28, and 11 Geo. 2, c. 19; and the writ itself is abolished by 3 & 4 Will. 4, c. 27, s. 36. [DOUBLE RENT; DOUBLE VALUE.]

AD VALOREM (according to the value). A duty, the amount of which depends upon the value of the property taxed, is called an *ad valorem* duty. *Wms. R. P.; Fawcett, L. T.* 97—99.

AD VENTREM INSPICIENDUM (or *De ventre inspicienda*). 1. A writ issued where a widow is suspected to feign herself with child, in order to produce a supposititious heir to an estate, to examine whether she be with child or not; and, if she be, to keep her under proper restraint, till she be delivered. 1 *Bl.* 456; 2 *Steph. Com.* 287.

2. The phrase is also used sometimes to designate the order of a Court (before whom a woman is capitally convicted, and pleads in stay of execution that she is quick with child), directing a jury of matrons to inquire into the fact. 4 *Bl.* 395; 4 *Steph. Com.* 467.

AD VITAM AUT CULPAM (for life or until misbehaviour). A phrase used to describe the tenure of a judicial or other office, implying that such office is to be vacated only upon the death or through the delinquency of the possessor. [QUAMDIU BENE SE GESSERIT.]

ADALAT. [ADAWLUT.]

ADAWLUT. A court of justice. *Wilson's Gloss. Ind.*

ADDITION. A title given to a man besides his proper name and surname; that is to say, of what estate, degree, or mystery he is, and of what town, hamlet, or country. *Cowel.*

ADELING, ATHELING, or ETHLING (Sax. *Ædelan;* Dutch, *Edel*, signifying noble or excellent). A title of honour among the Anglo-Saxons, properly pertaining to the king's children, and successors of the crown. This title Edward the Confessor, being himself without issue, gave to his grand nephew, Edgar, intending him to be the heir of his kingdom. *Spelman.*

ADEMPTION OF A LEGACY is the implied revocation of a bequest in a will by some subsequent act of the testator; as when a specific chattel is bequeathed, and the testator afterwards sells it; or when a parent bequeaths a legacy to his child, and afterwards makes a provision for the child in satisfaction thereof. *Sm. Man. Eq.; Chute, Eq.*

ADHERENCE. The action by which, in Scotland, the mutual obligation of marriage may be enforced by either party. *Bell.* It corresponds to the English action for the restitution of conjugal rights.

ADHERENT. Being *adherent* to the king's enemies, as by giving them aid, comfort, or intelligence, by sending them provisions, by selling them arms, or the like, constitutes high treason, by stat. 25 Edw. 3, c. 2: 4 *Bl.* 82; 4 *Steph. Com.* 158.

ADIATION (Lat. *Aditio*). An expression used in Dutch law for the entering upon an inheritance by the instituted heir. The adiation of an inheritance consists in the intention of the party to enter thereon, signified by words or acts. *Grotius on Dutch Jurisprudence, ed. Herbert*, 1845, *pp.* 147, 148.

ADJOURNED SUMMONS. A summons taken out in the chambers of a judge, and afterwards adjourned into court to be argued by counsel. *Hunt. Eq.*

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

ADJUDICATION IN IMPLEMENT. Action of adjudication in implement is the action given in the law of Scotland to a grantee of an estate, whose full legal title thereto the grantor refuses to complete. *Bell.*

ADJUNCTS. Assessors to the High Court of Delegates, now abolished.

ADJUSTMENT, in marine insurance, is the acknowledgment by the underwriters, when a loss insured against has occurred, of the actual amount of the loss, and of the indemnity which the assured is entitled to receive, and, in the case of several underwriters, of the proportion which each underwriter is liable to pay in respect thereof. *Crump, Mar. Ins.* 16.

ADLAMWR (one returning). A proprietor who for some cause entered the service of another proprietor without agreement; if he left him after the expiration of a year and a day, he was liable to the payment of thirty pence to his patron. *Anc. Inst. Wales.*

ADLEGIARE (Fr. *Aleier*). To purge oneself of a crime by oath. *Cowel.*

ADMEASUREMENT OF DOWER (Lat. *Admensuratio dotis*). A writ, now abolished, which lay for the heir against a widow, who held from the heir or his guardian more land as dower than she was by law entitled to. *T. L.*; 1 *Steph. Com.* 272, *n.* [DOWER.]

ADMEASUREMENT OF PASTURE (Lat. *Admensuratio pasturæ*). An old writ for the adjustment of rights of pasture, abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36. It lay where one, having a limited right of common of pasture, put in more beasts to feed than he was entitled to; or, in legal language, "surcharged the common." The writ was directed to the sheriff, charging him to inquire, by the oaths of a jury of twelve men, what and how many cattle each commoner was entitled to feed. 3 *Bl.* 238, 239; 3 *Steph. Com.* 412, *n.*

ADMINICLE (Lat. *Adminiculum*). Aid or support. 1 *Edw.* 4, *c.* 1; *Cowel.* In Scotch law, adminicle is a writing or deed adduced for the purpose of proving the tenor of a lost deed to which it refers. *Bell.*

ADMINISTRATION has several significations. The Queen's ministers, or collectively the ministry, is not unfrequently called the *Administration*, as charged with the administration, or management of public affairs. 2 *Steph. Com.* 458. So we speak of the administration of justice by judges, magistrates, &c.

The affairs of a lunatic may be said to be *administered* by his committee; the affairs of a bankrupt, by his trustee; and the affairs of an absent person, by his agent, factor, or attorney, &c. But the word is specially used in reference to the following cases:—

1. The administration of a deceased's estate; that is, getting in the debts due to the deceased, and paying his creditors to the extent of his assets, and otherwise distributing his estate to the persons who are by law entitled thereto. The person charged with this duty is spoken of as "executor" or "administrator," according as he has been appointed by the deceased in his will, or by the Court of Probate. [ADMINISTRATION SUIT; ADMINISTRATOR; EXECUTOR.]

2. The administration of a convict's estate under ss. 9—20 of the Forfeitures Abolition Act, 1870. *Cox & Saunders, Cr. Law*, 438, 439.

ADMINISTRATION SUIT. A suit instituted in Chancery for the administration of a deceased's estate. This suit may be instituted by an executor or administrator, or any person interested in the deceased's estate as creditor, legatee, or next of kin. Where, however, there is no doubt as to the solvency of a deceased's estate, the proper course for a creditor is not to institute an administration suit, but to sue the deceased's representative at law.

ADMINISTRATION SUMMONS. A summons obtainable in the chambers of a judge in Chancery for an order to take account of the debts and liabilities affecting the personal estate of a deceased person. This summons may be obtained by executors or administrators under stat. 23 & 24 Vict. c. 38, s. 14, or by any person claiming to be interested in the estate as creditor, legatee, or next of kin, under stat. 15 & 16 Vict. c. 86, s. 45. *Hunt. Eq.*

ADMINISTRATOR is one to whom the administration of the estate of a deceased is committed by letters of administration from the Court of Probate, in cases where no executor has been appointed by the will of the deceased, or where the person or persons so appointed have refused to act. If the administrator die, his executors are not administrators, but a new administration may be granted, of such of the goods as remain to be administered, to some person, who is then called an administrator *de bonis non*. So administration may be granted *durante absentiâ*, when the executor is out of the realm; or *pendente lite*, where the validity of the will itself is questioned; or *cum testamento annexo*, where the testator has left a will and has not appointed an executor, or has appointed an executor who is either unable or unwilling to act. If a stranger, that is not administrator nor executor, take the goods of the deceased, and administer of his own wrong, he shall be charged and sued not as an administrator, but as an executor *de son tort*. [EXECUTOR DE SON TORT.] There is also another sort of administrator, where one makes his will, and makes an infant his executor. Here administration will be committed to some friend during the minority of the executor, *durante minore ætate*. And this administration ceases when the infant comes of age. *T. L.; 2 Bl.* 503; 2 *Steph. Com.* 178 *et seq.* The word "administrator" is also used to designate the officer appointed by the Crown under s. 9 of the Forfeitures Abolition Act, 1870 (33 & 34 Vict. c. 23), to administer the property of a person convicted of treason or felony. *Cox & Saunders, Cr. Law*, 438, 439.

ADMINISTRATRIX. A woman to whom administration is granted. [ADMINISTRATION; ADMINISTRATOR.]

ADMIRAL, or Lord High Admiral, has been defined to be a high officer that has the government of the navy, and the hearing and determining of all causes, as well civil as criminal, belonging to the sea; and for that purpose has a Court called the Admiralty. *T. L.* His functions in the government of the navy, however, are usually committed to the Lords, or Lords Commissioners, of the Admiralty, who are appointed by letters patent to perform them, this great office being rarely conferred on any one individual. The judicial duties of the admiral are performed by his deputy, who is called the Judge of the Admiralty. [ADMIRALTY, THE HIGH COURT OF.]

ADMIRALTY, THE HIGH COURT OF, is the Court of the Lord High Admiral, having a civil as well as a criminal jurisdiction. The Civil Court (sometimes called the *Instance Court*) has jurisdiction over "all causes of merchants and mariners, and things happening within the main sea" (*Cowel*) out of the reach of the common law, and is a court of record (24 *Viet. c.* 10), the appeal being to the Crown in council. The jurisdiction over questions concerning booty of war, formerly determined in a separate court, called the *Prize Court*, is now also vested in the Admiralty. 3 *Steph. Com.* 341—346. This court, as a criminal tribunal, takes cognizance of all offences committed on the sea, or upon the coasts out of the body of any county; but as these crimes can now be prosecuted in the Central Criminal Court, or before the judges of assize, this branch of its jurisdiction is practically obsolete. 4 *Steph. Com.* 311.

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

ADMISSIONS, in *evidence*, are the testimony which the party admitting bears to the truth of a fact against himself; as in an action, suit, or other civil proceeding, that a certain letter was signed and sent by him, or that a certain deed is his deed. In practice these are usually made in

ADMISSIONS—*continued.*

writing by the attornies in an action, in order to save the expense of formal proof. *Kerr's Act. Law:* [NOTICE TO ADMIT] Admission, in *pleading*, is when a fact averred in a pleading by one party is not denied by the other; as if in an action for detaining goods the defendant pleads *non detinet, i. e.* that he does not detain them, here the defendant cannot at the trial say that the goods are not the plaintiff's.

ADMITTANCE. The admission of the tenant by the lord of the manor into the possession of a copyhold estate; whereby the tenant's title to his estate is said to be perfected. 2 *Bl.* 366; 1 *Steph. Com.* 635.

ADMITTENDO CLERICO. A writ, now practically obsolete, which lay for one who had, by the proper legal proceeding, established his right of presentation to a benefice; and was directed to the bishop requiring him to admit his, the patron's, clerk. 3 *Bl.* 250; 3 *Steph. Com.* 613, *n.*

ADMITTENDO IN SOCIUM. A writ for the association of certain persons with the justices of assize. *Cowel.*

ADMONITIO TRINA. A triple or threefold warning, given, in old times, to a prisoner standing mute, before he was subjected to the *peine forte et dure.* 4 *Bl.* 325; 4 *Steph. Com.* 391. [MUTE; PEINE FORTE ET DURE].

ADMONITION. A judicial reprimand to an accused person on being discharged from further prosecution. This was authorized by the civil law as a punishment for slight misdemeanors.

ADMORTIZATION. [AMORTIZATION.]

ADNICHILED (Lat. *Nihil;* or, as it was written of old, *Nichil*) signifies annulled, made void, or brought to nothing. *Cowel.* In modern phrase, *annihilated.* 28 *Hen.* 8, *c.* 7.

ADVANCE ON FREIGHT. A sum paid in advance by the charterer of a ship or his agent on account of freight to become due. [FREIGHT.]

ADVANCEMENT. That which is given to a child by a father, or other person standing *in loco parentis*, in anticipation of what the child might inherit. 2 *Steph. Com.* 211; *Chute, Eq.* 27.

ADVENTURE. Goods sent abroad under the care of a supercargo or other agent to be disposed of by him, to the best advantage, for the benefit of the owners. Also used for a mischance causing the death of a man.

ADVERSE POSSESSION. Where one person is in possession of property under any title, and another person claims to be the rightful owner of the property under a different title, the possession of the former is said to be an "adverse possession" with reference to the latter. A rightful owner neglecting to assert his claim within a given period (defined, according to the circumstances of the case, by various acts of parliament called Statutes of Limitation) is henceforth barred of his right thereto. [LIMITATION.]

ADVICE, LETTER OF. A notification by one person to another in respect of a business transaction in which they are mutually engaged. Thus it is used of a notification, by consignor to consignee, of goods having been forwarded to him. So when one merchant draws bills upon another he usually *advises* him of the fact.

ADVOCATE. A person privileged to plead for another in court. This title was, formerly, with us confined to those who practised in the Ecclesiastical and Admiralty Courts; but now that these courts have been thrown open to all barristers-at-law, the title has lost its distinctive meaning. 3 *Steph. Com.* 272.

ADVOCATE, LORD. One of the great officers of state of Scotland, and the principal Crown lawyer in that country. He is appointed by the Crown, and acts as chief public prosecutor. He has the aid of four junior barristers, who are appointed by himself, and are called *Advocates Depute. Bell.*

ADVOCATE, QUEEN'S. A member of the College of Advocates, appointed by letters patent, who has to advise the Crown in questions involving ecclesiastical and international law. His rank is not fully settled, but he is usually placed after the attorney-general. 3 *Steph. Com.* 274, *n.* (*k*).

ADVOCATION. The process, in Scotland, of removing a cause from an inferior to the supreme court, in order that a judgment pronounced in the inferior court may be reviewed, or that the future proceedings in the cause may be conducted in the supreme court. *Bell.*

ADVOCATIONE DECIMARUM. A writ, now obsolete, which lay for claiming the fourth part, or more, of tithes which belong to the church. *T. L.*

ADVOCATES, FACULTY OF. In Scotland the barristers practising before the Supreme Court are called *advocates*. The Faculty of Advocates is a corporate body, consisting of the members of the bar in Edinburgh, founded in 1532, the members of which are entitled to plead in every court in Scotland, and in the House of Lords. A large portion of its members, however, are not active practitioners. *Bell.*

ADVOCATUS. [ADVOWEE.]

ADVOW, AVOW (Lat. *Advocare;* Fr. *Avouer*), signifying to justify or maintain an act formerly done. Thus, if one takes a distress for rent, and he that is distrained upon sues out a replevin, gets back his goods, and brings an action for the trespass, he that took the distress, which the plaintiff alleges to have been a trespass, in justifying or maintaining the act, is said to *avow*. *T. L.* The defendant is then called *avowant*, and the plea an *avowry*. 3 *Steph. Com.* 614; *Kerr's Act. Law.* [REPLEVIN.]

ADVOWEE or **AVOWEE** (Lat. *Advocatus*), is he that hath right to present to a benefice. So *advowee paramount* is, by the Statute of Provisors, 25 Edw. 3, taken for the king, the highest patron. *Cowel.*

ADVOWSON (Lat. *Advocatio*). The right to present to a benefice (*Stat. West.* 2, *c.* 5), the *jus patronatûs* of the Canon Law; so termed, because they that originally obtained the right of presenting to any church, were maintainers of, or great benefactors to, that church, either by building, or increasing it; and are therefore sometimes termed *patroni*, sometimes *advocati*, and sometimes *defensores*. Advowsons are either *appendant* or *in gross*, or partly the one and partly the other. An advowson is *appendant* when it is annexed to the possession of a manor, as appurtenant to it, and is termed therefore an *incident*, because it may be separated, or cut off, from the manor; whereupon it will become an advowson *in gross*, and be thenceforth annexed to the person of its owner, as it can never become appendant again. Or if a partial right of presentation be granted to a stranger, the advowson may be *appendant* for the term of the lord, and *in gross* for the term of the stranger. Advowsons are also said to be *presentative*, *collative*, or *donative*. An advowson is *presentative* when the patron has the right to present his clerk to the bishop, and to demand his institution if he be qualified; *collative* when the bishop and patron are one and the same person, so that the bishop performs by one act (*collation*), the separate acts of presentation and institution; and *donative* when the patron by a *donation* could place the clerk into possession without presentation, institution, or induction. 2 *Bl.* 21. There may also be an *advowson of the moiety of the church* (*advocatio medietatis ecclesiæ*) when there are two several patrons, and two several incumbents to the same benefice, the one having one, the other the other moiety. So there may be joint patrons, as when each has a moiety of the advowson (*medietas advocationis*), and must join in the presentation, there being but one incumbent. The advowson of religious houses belonged often to the founders; in like manner as they who endowed a parish church were patrons of it. *Cowel;* 2 *Steph. Com.* 715—719.

ADVOWTRY. Adultery.

ÆFESN (Lat. *Pasnagium*, *Pannagium*). The remuneration to the proprietor of a domain for the privilege of feeding swine under the oaks and beeches of his woods. *Anc. Inst. Eng.*

ÆSTIMATIO CAPITIS (the price of a man). King Athelstan ordained that fines were to be paid *pro æstimatione capitis;* for offences committed against several persons, according to their degrees and quality. *Cowel.*

ÆTATE PROBANDA. A writ obtainable, before the abolition of military tenures in 1660, by the king's tenant holding in chief, by chivalry, and being a ward by reason of nonage, directing the sheriff of the county to inquire whether the tenant were of full age, so as to be entitled to receive his lands into his own hands. *Reg. Orig.* This writ sometimes directed the sheriff to impanel a jury against a day certain, before commissioners authorized under the great seal to deal in such a case, who then constituted a commission *pro ætate probandâ.*

AFFEOTUM, CHALLENGE PROPTER. [CHALLENGE.]

AFFEERERS. Such as are appointed in courts leet, to set the fines on such as have committed faults arbitrarily punishable, and for which no express penalty is appointed by statute. *T. L.; Cowel.* Hence we have "affeere an amerciament," *i. e.*, to mitigate the rigour of a fine. 4 *Bl.* 379; 4 *Steph. Com.* 446, *n.*

AFFIDARE (Lat. *Fidem ad alium dare*). To plight one's faith, or swear fealty. *Cowel.*

AFFIDATIO DOMINORUM. An oath formerly taken by the lords of parliament. *Cowel.*

AFFIDATUS. A tenant by fealty. *Cowel.*

AFFIDAVIT (Lat. *Affido*). An oath in writing, sworn before some one who has authority to administer it. To make affidavit is to testify upon oath. *Cowel;* 2 *Steph. Com.* 628; *Lush's Pr.* 872—886.

AFFILIATION. The process by which a single woman applies to a magistrate charging a person by name as the father of a child born to her. The magistrate then issues a summons to the person so charged, to appear before two or more justices in petty session, who are to hear the evidence on both sides. If the woman's evidence is corroborated in some material particular by other testimony, to the satisfaction of the justices, they may adjudge the man to be the *putative father* of the child in question, and make an order on him for the payment to the mother of a weekly sum of money for its maintenance. 2 *Steph. Com.* 297—299.

AFFINITY. The relationship resulting from marriage, between the husband and the blood relations of the wife; and also between the wife and the blood relations of the husband. 2 *Steph. Com.* 242.

AFFIRM. To ratify or confirm a former law or judgment. *T. L.* Hence a court of appeal is said to affirm the judgment of the court below. To *affirm* also means to make a solemn declaration, equivalent to a statement upon oath. [AFFIRMATION.]

AFFIRMATION. The testimony given either in open court, or in writing, of those who are permitted to give their evidence without having an oath administered to them, as all persons, having conscientious objections to take an oath, are now enabled by law to do. 2 *Steph. Com.* 338; *Cox & Saunders, Cr. Law.*

AFFIRMATIVE, THE (as opposed to the negative), is some positive fact or circumstance which is alleged to be or have been, and which is generally therefore to be proved, according to the rule of law "that the affirmative of the issue must be proved." [RIGHT TO BEGIN.]

AFFOREST. To turn ground into forest.

AFFRAY (Fr. *Effrayer*, to affright or scare). The fighting of two or more persons in some public place, to the terror of her majesty's subjects; for, if the fighting be in private, it is no affray but an *assault.* It is punishable now by indictment, and differs from a riot in not being premeditated. 4 *Bl.* 145; 4 *Steph. Com.* 252.

AFFREIGHTMENT (Lat. *Affretamentum*). The freight of a ship. [FREIGHT.]

AFORETHOUGHT. A word used to define the premeditation, which generally distinguishes murder from the other crimes classed under the head of homicide. It matters not in law for how short a time this premeditation may have been conceived in the mind. [MALICE.]

AFTER-MATH. The second crop of grass; or the right to have the last crop of grass or pasturage.

AGAINST THE FORM OF THE STATUTE. A phrase used to indicate that the matter complained of, whether in an action or an indictment, was prohibited by statute. Formerly if the plaintiff, in stating a cause of action founded on a statute, omitted these words, he lost his case. So in an indictment this conclusion was necessary. But now, in both cases, although the words are still used, they are not of essential importance. 3 *Steph. Com.* 563; 4 *Steph. Com.* 372, 373.

AGARD. An old word signifying an award; hence a defendant denying, in an action on an award, that any such award was made, is said to plead *nul tiel agard*, or "no such award."

AGE. The periods of life when men and women are enabled by law to do that which before, for want of age and consequently of judgment, they could not legally do. *Cowel;* 1 *Bl.* 463; 2 *Steph. Com.* 302. [DOLI CAPAX; FULL AGE; INFANT.]

AGE PRIER (Lat. *Ætatis precatio*) was made formerly when a real action was brought against an infant for land which he had by descent. He might *pray his age*, that is, show the matter to the Court, and pray that the action might be stayed until his full age. *T. L.*

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

AGENT. A person authorized, expressedly or impliedly, to act for another, who is thence called the principal, and who is, in consequence of, and to the extent of, the authority delegated by him, bound by the acts of his agent. 2 *Steph. Com.* 65—67. This term includes most kinds of agents, such as factors and brokers, and the stewards of landowners. It is also usually applied to designate the London solicitor acting on the instructions of the solicitor in the country.

AGENT AND PATIENT. A phrase used to indicate that a person is at once the doer of a thing and the party to whom it is done; as if a man be indebted to another, and after makes this creditor his executor, and dies, the executor may retain so much of the goods of the deceased in his hands as his own debt amounts to; and by this retainer he is the *agent and the patient*, that is, the party to whom the debt is due, and the party that pays the same. *T. L.*

AGGRAVATION, or, as it is called in the language of pleading, *matter of aggravation*, is that which is introduced into the declaration for the purpose of increasing the amount of damages, but which does not affect the right of action itself. *Steph. Plead.* [ALIA ENORMIA.]

AGGREGATE. [CORPORATION.]

AGILD (Sax. *A gild*; Lat. *Sine mulctâ*). Free from penalty, not subject to the customary fine or imposition. *Cowel.*

AGILLARIUS. A hay-ward, *i. e.* a herd-ward, a keeper of cattle. Otherwise called *Bubulcus*, a cow-ward. Hence the word *coward*. *Cowel.*

AGIO. A commercial term used to express the difference in value between bank-notes, or other nominal money, and the coin of the country. *M'Culloch's Comm. Dict.*

AGIST (Fr. *Giste*, a bed or resting-place; Lat. *Stabulari*) signifies, in our common law, to take in and feed the cattle of a stranger in the king's forests. Those officers of the forest who thus take in cattle and gather money for the feed of them are called *agisters*, and the feed or herbage of the cattle is called *agistment*. *T. L.* Agisters, called also guest-takers, were formerly appointed by letters-patent, four for every forest. Agistment now, however, generally means the taking in by any one of other men's cattle to graze in his ground at a certain rate per week, or the payment made for so doing. There is also an *agistment* of sea-banks, viz., where lands are charged to keep up the sea banks, and are hence termed *terræ agistatæ*. *Cowel;* 2 *Bl.* 452; 2 *Steph. Com.* 80.

AGNATES (Lat. *Agnati*), in Scotch law, are relations on the father's side; as cognates (*cognati*) are relations through the mother. A distinction derived from the Roman law, according to which the *agnati* were the legal relations, and the *cognati* the natural relations. 2 *Bl.* 235; 1 *Steph. Com.* 414.

AGREEMENT (said to be from the Latin *Aggregatio mentium*) is the consent or joining together of two minds in respect of anything done or to be done; also the written evidence of such consent. An agreement, or *contract*, exists either where a promise is made on one side, and assented to on the other; or where two or more persons enter into an engagement with each other, by a promise on either side. *T. L.*; 2 *Steph. Com.* 54.

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

AGWEDDI (*Ag-gwedd*, conjunction). A portion given with a female upon her marriage. *Anc. Inst. Wales.*

AID (Fr. *Aide*; Lat. *Auxilium*). Sometimes signifies a *subsidy* (14 *Edw.* 3, *st.* 2, *c.* 1), but more usually a service or payment due from tenants to their lords. This

AID—*continued.*

aid was demanded for three purposes, viz., to ransom the lord's person, if taken prisoner; to make the lord's eldest son a knight, and to give a marriage portion to the lord's eldest daughter. This imposition, a relic of the old feudal laws, was abolished by 12 Car. 2, c. 24. *T. L.; Cowel;* 1 *Steph. Com.* 195.

AID OF THE KING. [AID PRAYER.]

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

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

AIEL, written also Aile, Ayel, and Ayle (Fr. *Aïeul;* Lat. *Avus,* a grandfather). A writ which lay for one, whose grandfather had died seised (*i.e.* possessed) of lands, against a stranger who entered on that day in prejudice of the rightful heir. Abolished by stat. 3 & 4 Will. 4, c. 27.

AILE. [AIEL.]

AIMA or **AYMA.** Land granted by the Mogul government for religious and charitable uses in relation to Mohammedanism. *Wilson's Gloss. Ind.*

AIMADAR. Holder of land granted for religious and charitable uses in connection with Mohammedanism.

AKUBAT. Punishment; torture. *Wilson's Gloss. Ind.*

ALBA FIRMA, or White Rents. A rent, payable in white or silver money, and so-called to distinguish it from the *reditus nigri* or black-mail, which was payable in work, grain and the like. Also called Blanch-firmes. 2 *Bl.* 42, 43; 1 *Steph. Com.* 676.

ALBINATUS JUS (Lat. *Alibi natus,* born elsewhere). The *droit d'aubaine* of French law, which entitled the king at the death of an alien to all he was worth unless he had peculiar exemption. This prerogative was abolished in 1790. 1 *Bl.* 372; 2 *Steph. Com.* 409, *n.*

ALDERMAN (Sax. *Ealderman,* signifying literally elder man). An officer at one time of great power and dignity. He presided with the bishop in the *schyregemote,* taking cognizance of civil questions, while the latter attended to disputes of a spiritual nature, and he was *ex officio* a member of the *witanagemote.* His importance declined when the bishop left the shiremote, and the trial of causes was gradually transferred to the superior courts. 3 *Bl.* 37. There were anciently aldermen of the county, and aldermen of the hundred, &c., &c.; and one officer indeed had the title of *aldermannus totius Angliæ.* But in modern times this title is confined to the persons associated with the mayor in the government of a city or town corporate. 3 *Steph. Com.* 35.

ALE CONNER, sometimes called *Ale taster,* is an officer appointed by the court-leet, sworn to look to the goodness of ale and beer within the precincts of the leet. Ale conners are also annually appointed on Midsummer-day by the liverymen of London, but their office is a sinecure.

ALE SILVER. A rent or tribute, yearly payable to the Lord Mayor of London, by those that sell ale within the city. *Cowel.*

ALE TASTER. [ALE CONNER.]

ALER SANS JOUR. [ALLER SANS JOUR; EAT INDE SINE DIE.]

ALFET (Sax. *Alfoeth*). The cauldron in which hot water was put, in order that a person charged with an offence might plunge in his fore-arm; and thereby prove his innocence. *Cowel.*

ALGARUM MARIS, for *Laganum maris* [LAGAN.]

ALIA ENORMIA (other wrongs). The plaintiff's declaration in an action of trespass sometimes concludes by way of summary, "and *other wrongs* to the plaintiff then and there did against the peace, &c." This brings in evidence various "matters of aggravation," and is called in pleading an allegation of *alia enormia.* [AGGRAVATION.]

ALIAS (else, otherwise). [ALIAS DICTUS.] An *alias* writ is a second writ, issued after a former writ has been sued out, in the same cause or matter, to no effect. So called from the words of the writ,

ALIAS—*continued.*

"We command you, as we have formerly commanded you," *sicut alias præcipimus.* 3 *Bl.* 283; 4 *Steph. Com.* 383.

ALIAS DICTUS (otherwise called). When to the real name and addition of a defendant is added the name by which he may be known, or his description as given in a particular document on which he is to be charged, this second description is called an *alias dictus*, or, in more ordinary phraseology, an *alias.*

ALIBI (elsewhere). When an accused person, in order to show that he could not have committed the offence with which he is charged, sets up as his defence that he was *elsewhere* at the time when the crime is alleged to have taken place, this defence is called an *alibi.*

ALIEN (Lat. *Alienus*). A person born without the dominions of the Crown of England, that is, out of the allegiance of the Queen. But to this rule there are some exceptions. Thus, the children of the sovereign, and the heirs of the Crown, wherever born, have always been held natural born subjects; and the same rule applies to the children of our ambassadors born abroad. And by various statutes extending from 25 Edw. 3, st. 2, down to 33 & 34 Vict. c. 14, the restrictions of the common law have been gradually relaxed, so that many, who would formerly have come under the definition of an alien, may now be regarded as natural born subjects to all intents and purposes. For the rights and disabilities of aliens, see 2 *Steph. Com.* 408—412, and 33 *Vict. c.* 14. By this last-mentioned statute a British-born subject may under certain circumstances expatriate himself and become an alien. [NATURALIZATION.]

ALIEN AMI. An alien born in, or the subject of, a friendly state.

ALIEN ENEMY. An alien born in, or the subject of, a hostile state.

ALIEN, TO (Fr. *Aliener*, Lat. *Alienare*, to alienate, to put away from one's self). To transfer property to another. The word is generally used of landed property. *Cowel*; 2 *Bl.* 287—294; 1 *Steph. Com.* 467—480.

ALIENATION. A transferring of property, or the voluntary resignation of an estate by one man, and its acceptance by another. 1 *Steph. Com.* 467.

ALIENI JURIS (of another's right). An expression applicable to those who are in the keeping or subject to the authority of another, and have not full control of their person and property. In English law there are generally reckoned three classes of such persons; infants (*i.e.* minors), married women and lunatics.

ALIMENT. To aliment, in the Scotch law, is to give support to a person unable to support himself, and is used especially in reference to the mutual obligation of parents and children to support each other. *Bell.*

ALIMONY (Lat. *Alimonia*). An allowance for the support of a wife judicially separated from her husband, settled at the discretion of the judge on consideration of all the circumstances of the case, and usually proportioned to the rank and quality of the parties. 2 *Steph. Com.* 278.

ALIO INTUITU. With another intention, that is, with a purpose other than the ostensible one.

ALITER (otherwise). A phrase used for the sake of brevity in pointing out a distinction.

ALIUNDE (from another source, from another place, in another way). Thus if, when a case is not made out in the method anticipated, it may be proved *aliunde*, that is, by other and different evidence.

ALL FOURS. A phrase, often used in our courts of justice, to signify that a case or a decision agrees in all its circumstances with some other case or decision.

ALLEGATION. The assertion or statement of a party to a suit or other proceeding (civil or criminal) which he undertakes to prove. Especially is the word used in ecclesiastical suits, in which if a defendant has any circumstances to offer in his defence, he must do so by way of "defensive allegation." 3 *Steph. Com*, 315. Sometimes the defendant's plea is called a *responsive* allegation, and the plaintiff's reply to it a *rejoining* allegation.

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

ALLEGIANCE is such natural or legal obedience which every subject owes to his prince. *T. L.* It is defined by Blackstone to be "the tie which binds the subject to the sovereign, in return for that protection which the sovereign affords the subject." Allegiance is either *natural* and perpetual, or *local* and temporary; the former, being such as is due from all men born within the

ALLEGIANCE—*continued.*

sovereign's dominions immediately upon their birth; the latter, such as is due from an alien, or stranger born, during the time that he continues within the king's dominion and protection. 1 *Bl.* 366—370; 2 *Steph. Com.* 399—406. Now, by ss. 4 and 6 of the Naturalization Act, 1870 (33 Vict. c. 14), British born subjects may in certain cases cease to be such, and renounce their allegiance.

ALLEGIARE. To defend or justify by due course of law.

"ALLEGING DIMINUTION." The special assignment of error in an outbranch of the record; that is, the allegation of some error in a subordinate part of the record of an action. Now practically obsolete, because unnecessary. *Lush's Pr.* 670. [NISI PRIUS RECORD.]

ALLER SANS JOUR (to go without day) is to be dismissed the court because there is no day of further appearance assigned. *T. L.* [EAT INDE SINE DIE.]

ALLEVIARE. To levy or pay an accustomed fine or composition. *Cowel.*

ALLOCATION (Lat. *Allocatio*). Properly a placing or adding to; in law an allowance made upon an account in the Exchequer. *Cowel.*

ALLOCATIONE FACIENDA. An old writ directed to the Lord Treasurer and Barons of the Exchequer, upon complaint of some accountant (that is, some official person owing an account to the Crown), commanding them to allow him such sums as he had by virtue of his office lawfully and reasonably expended. *Reg. Orig.*

ALLOCATO COMITATU. A second writ of *exigent*, allowed on the former not being fully served and complied with, &c. [EXIGENT; OUTLAWRY.]

ALLOCATUR (it is allowed). The certificate of the master, or taxing officer of a court, after an attorney's bill has been *taxed* by him, that the amount certified by him is allowed as costs, or, as they are then called, "taxed costs." *Lush's Pr.* 307—309. [TAXATION OF COSTS.]

ALLOCATUR EXIGENT. In the process of outlawry, if the sheriff made return to a writ of *exigent* or *exigi facias*, that there had not been five county courts or hustings between the issue of the exigent and the day on which it was made returnable, another writ was sued out, called an *allocatur exigent*, by which the defendant was called upon to appear at the next and subsequent county court or hustings, until he had been demanded five times, as required. *Lush's Pr.* 764. [EXIGENT; OUTLAWRY; RETURN.]

ALLODIUM. Free lands, which pay no fines or services, and are not holden of any superior. *Cowel;* 2 *Bl.* 60; 1 *Steph. Com.* 173, 174.

ALLOTMENT NOTE. A writing by a seaman, whereby he makes an assignment of part of his wages in favour of his wife, father or mother, grandfather or grandmother, brother or sister. Every allotment note must be in a form sanctioned by the Board of Trade. The allottee, that is, the person in whose favour it is made, may recover the amount in the county court. *Stat.* 17 & 18 *Vict. c.* 104, *ss.* 168, 169.

ALLUVION. Land that is gained from the sea by the washing up of sand and earth, so as in time to make *terra firma.* 2 *Bl.* 262; 1 *Steph. Com.* 452. [DERELICTION.]

ALMARIA or **ARMARIA.** The archives or muniments of a church or library. *Cowel.*

ALMESFEOH (Sax. alms money). It was taken for *Peter pence*, anciently paid in England on the first of August, and first given by *Ina*, king of the West Saxons: it was called also *Romefeoh*, *Romescot*, and *Heorthpening*. *Cowel.*

ALMONER or **ALMNER**, is defined to be an officer of the king's house, whose office is to distribute the king's alms every day. *T. L.* But in modern times his duties are considered fully performed by an attendance at the distribution of royal alms on Maundy Thursday; that is, the Thursday before Easter.

ALNAGER (Lat. *Ulniger*, derived probably from Fr. *Alne* or *Aûne*, an ell). An officer of the king, who anciently, by himself or his deputy, was to look to the soundness of the woollen cloth made throughout the land, and to levy thereon a duty called aulnage. *Cowel.* Abolished by the statute 11 & 12 Will. 3, c. 20.

ALODIUM. [ALLODIUM.]

ALTAMGHA (from the Turkish *Al*, red, and *Tamghá*, a stamp or impression). A royal grant under seal of some of the former native princes of Hindustan, and recognized by the British Government as conferring a title to rent-free land in perpetuity, hereditary and transferable. *Wilson's Gloss. Ind.*

ALTARAGE (Lat. *Altaragium*) at first signified the offerings made upon the altar. Afterwards it included tithes of wool, lambs, colts, calves, &c., and other small tithes. *Cowel.*

ALTO ET BASSO, or *in alto et basso*. Words anciently used to denote the absolute submission to arbitration of all differences, small and great, high and low. *Cowel.*

AMALPHITAN CODE. A code of sea laws compiled for the trading republic of Amalphi toward the end of the eleventh century. It consisted of the laws on maritime subjects which were or had been in force in countries bordering on the Mediterranean; and on account of its being collected into one regular system, it was for a long time received as authority in these countries. *Bouvier.*

AMBACTUS. A servant or client. *Cowel.*

AMBIDEXTER. Properly a man that can equally use both his hands; but in a legal sense it is used of a man who takes bribes from both the parties to an action to promote their respective interests. *T. L.* [EMBRACERY.]

AMBIGUITY. Uncertainty of meaning in the words of a written instrument. Where the doubt arises upon the face of the instrument itself, as where a blank is left for a name, the ambiguity is said to be *patent*, as distinguished from a *latent* ambiguity, where the doubt is introduced by collateral circumstances or extrinsic matter, the meaning of the words alone being *primâ facie* sufficiently clear and intelligible. A *patent* ambiguity in a deed cannot, according to law, be explained by parol evidence, and this defect renders the instrument, as far as it extends, inoperative. Latent ambiguities may, however, be explained by parol evidence; since the doubt having been produced by circumstances extraneous to the deed, the explanation must of necessity be sought for through the same medium. 1 *Steph. Com.* 500. *Pleadings* must not be ambiguous or doubtful in meaning; and when two different meanings present themselves, that construction shall be adopted which is most unfavourable to the party pleading. *Steph. Pl.*

AMBULATORY. Changeable, revocable; as when we say that a man's will is ambulatory in his lifetime.

AMERCIAMENT or **AMERCEMENT.** A punishment in the nature of a fine; but in old times an amerciament seems to have differed from a fine, in that a fine was a penalty certain, imposed under some statute by a court of record; an amerciament was imposed by a jury at their discretion, whereby the offending party stood *at the mercy* of the lord. *T. L.*

A plaintiff who failed in his action was formerly liable to be *amerced*. 3 *Bl.* 376; 3 *Steph. Com.* 550.

AMHINIOGAN TIR (land borderers). Witnesses in a cause for landed property whose lands bordered on that in dispute. *Anc. Inst. Wales.*

AMI. A friend. [NEXT FRIEND.]

AMICUS CURIÆ (a friend of the court). A bystander, usually a barrister, who informs a judge in court on a point of law on which the judge is doubtful or mistaken.

AMITTERE LEGEM TERRÆ. To be put out of the protection of the law, so far as relates to the suing in any of her Majesty's courts; to lose the liberty of swearing in court. Now practically obsolete. 4 *Steph. Com.* 415.

AMMODWR (*Am-bod-wr*, a compactor). One before whom a compact is made, and so admissible as a witness to prove the terms of it. *Anc. Inst. Wales.*

AMORTIZATION (Fr. *Amortissement*) is an alienation of lands and tenements in mortmain. *T. L.* [MORTMAIN.]

AMORTIZE. To alienate lands in mortmain.

AMOVE. To remove.

AMOVEAS MANUS, or **OUSTER LE MAIN** (that you remove your hands). The name of the form by which, in the suit of an individual, judgment is given against the Crown: so called from the words "*quod manus domini regis amoveantur et possessio restituatur petenti, salvo jure domini regis;*" that the hands of our lord the king be removed and possession be restored to the petitioner, saving the right of our lord the king. 3 *Steph. Com.* 655—657.

AMPLIATION (Lat. *Ampliatio*). An enlargement; but, in a legal sense, a deferring of judgment, until the cause be further examined. *Cowel.*

AMY (Lat. *Amicus;* Fr. *Ami*). [NEXT FRIEND.]

AN, JOUR ET WASTE. [YEAR, DAY, AND WASTE.]

ANCESTOR (Lat. *Antecessor*). One who has preceded another in a direct line of descent; a former possessor. The word *ancestor*, in a legal sense, is not exclusively applied to the *ancestor* of a family; but extends to any person from whom an estate is inherited. *T. L.*

ANCESTRAL ACTIONS. [ACTIONS ANCESTRAL, POSSESSORY, AND DROITURAL.]

ANCHORAGE. A duty paid by the owners of ships for the use of the haven where they cast anchor. *Cowel.*

ANCIENT DEMESNE or **ANTIENT DEMESNE.** A tenure existing in certain manors, which, though now perhaps granted out to private subjects, were in the hands of the Crown at the time of Edward the Confessor, or William the Conqueror. Some of the tenants in these crown manors were for a long time pure and absolute villeins, dependent on the will of the lord. Others were in a great measure enfranchised by the royal favour, and had many immunities and privileges granted to them.

Tenants in antient demesne differed from copyholders in so far as their services were fixed and determinate. 2 *Bl.* 99; 1 *Steph. Com.* 224.

According to Scriven there are three sorts of tenants in ancient demesne: one, who hold their lands freely by the grant of the king; a second, who hold of a manor, which is ancient demesne, *but not at the will of the lord*, and whose estates pass by surrender, or deed of grant, or bargain and sale, and admittance, and who are denominated customary freeholders; and a third, who hold of a manor, which is ancient demesne, by copy of court roll, *at the will of the lord*, and who are copyholders of base tenure. *Scriven on Copyholds.*

ANCIENT LIGHTS. Windows and other openings which have remained in the same place and condition, and have been enjoyed by the same title for more than twenty years. *Stat.* 2 *&* 3 *Will.* 4, *c.* 71; 1 *Steph. Com.* 691, 692.

ANCIENT WRITINGS. Deeds and other documents which are more than thirty years old. These when put in evidence "prove themselves," that is, they do not ordinarily require precise proof of their execution by the parol evidence of witnesses. 3 *Bl.* 367.

ANCIENTS. Gentlemen in the Inns of Court and Chancery who were of a certain standing. *Cowel.*

ANCILLARY (Lat. *Ancilla*, a slave). Auxiliary.

ANCIPITIS USUS (of doubtful use). A phrase used, especially with reference to the law of contraband, of articles of doubtful use, *i. e.*, which might be contraband or not according to circumstances.

ANIMUS CANCELLANDI. ANIMUS REVOCANDI. The intention of cancelling. The intention of revoking.

ANIMUS FURANDI. The intention of stealing.

ANIMUS MANENDI. The intention of remaining, which is material for the purpose of ascertaining a person's *domicile.* [DOMICILE.]

ANIMUS REVERTENDI. The intention of returning.

ANN or **ANNAT.** In Scotland, half a year's stipend, over and above what is owing for the incumbency, due to a minister's widow or child or next of kin after his decease. *Bell.*

ANNATS (*Annates*). [FIRST FRUITS.]

ANNIENTED (Fr. *Anéantir;* Lat. *Abjicere*). Frustrated; brought to nought.

ANNI NUBILES, the marriageable age of a woman. A woman is held able to consent to marriage at the age of twelve. And when it is said that the consent of parents or guardians is required, this merely refers to the penalties incurred by the parties marrying without such consent, or the minister who celebrates such marriage.

ANNOISANCE. A nuisance. 22 *Hen.* 8, *c.* 5. [NUISANCE.]

ANNUA PENSIONE. A writ which has long been obsolete, by which the king, having due unto him an annual pension from an abbot or prior for any of his chaplains, demanded the same of the said abbot or prior. *Cowel.*

ANNUAL RENT. The Scotch term for annual interest or rent charge. *Bell.*

ANNUITY. A yearly sum payable. An annuity may be charged upon real estate, in which case it is more properly called a rent charge: or it may be a yearly sum chargeable only upon the person of the grantor. Even in the latter case it may be made descendible to a man and his heirs, while personalty in general can devolve only upon the executors or administrators. 1 *Steph. Com.* 675.

Annuities are often granted by Government, or by the Commissioners for the Reduction of the National Debt, to depositors in savings banks, under certain acts of parliament.

ANNUITY OF TEINDS. Yearly payment of teinds. [TEINDS.]

ANNUITY TAX. An impost levied in Scotland for the maintenance of ministers of religion.

ANNULLING AN ADJUDICATION IN BANKRUPTCY. The effect of annulling an adjudication in bankruptcy, or, as it is more concisely expressed, annulling a bankruptcy, is not, as was once supposed, to render everything done under the bankruptcy null and void *ab initio;* but merely to stop all further proceedings in the bankruptcy, leaving everything done under it, up to the annulling, in full force and operation. And this doctrine seems to be recognized in s. 81 of the Bankruptcy Act, 1869, by which it is provided that all payments, &c. made by a trustee in bankruptcy, or any person acting under his authority, shall be valid, notwithstanding the annulment of the adjudication. *Robson, Bkcy.* And it seems that any office or status which the bankrupt may have lost by the adjudication will not be restored *ipso facto* by the annulment, though the disability of regaining the same in the future will be thereby removed.

ANNULUM ET BACULUM. The ring and pastoral staff or crosier, by the delivery of which the Crown formerly granted to archbishops and bishops investiture of the temporalities annexed to their office. 1 *Bl.* 378; 2 *Steph. Com.* 665.

ANNUS LUCTUS (the year of grief). The year after a husband's death, within which his widow was, by the civil law, not permitted to marry. 1 *Bl.* 456, 457; 2 *Steph. Com.* 287, 288.

ANSWER. 1. In Chancery.—The usual mode of a defence to a bill in Chancery. A defendant, in his answer, states at length the facts upon which he relies for his defence; and he is bound to answer such interrogatories as may be administered to him by the plaintiff which are relevant to the subject-matter of the suit, and not legally objectionable. He may also state in his answer any facts which he wishes to use at the hearing of the case. 3 *Steph. Com.* 596, 598; *Hunt. Eq.*

2. In Divorce.—The defence of a respondent or co-respondent in the Divorce Court is called an answer. And generally an answer to an accusation means the defence of the accused person thereto.

ANTE LITEM MOTAM. Before a suit is put in motion.

ANTEJURAMENTUM and PRÆJURAMENTUM. Also called *Juramentum Calumniæ*, in which both the accuser and the accused were to make this oath before any trial or purgation; namely, the accuser was to swear that he would prosecute the criminal, and the accused was to make oath, on the very day that he was to undergo the ordeal, that he was innocent of the crime of which he was charged. If the accuser failed to take this oath, the criminal was discharged; and if the accused did not take his, he was held guilty, and not admitted to purge himself. *Leg. Hen.* 1, *c.* 66.

ANTIENT DEMESNE. [ANCIENT DEMESNE.]

ANTIQUA STATUTA (ancient statutes). The Acts of Parliament from Richard I. to Edward III.

APOSTATA CAPIENDO. A writ formerly directed to the sheriff for the taking of the body of one who, having entered into, and professed, some order of religion, left his said order, and, contrary to the rules, departed from his house and wandered in the country. And upon certificate of this matter, made by the abbot or prior of the house in the Chancery, and the praying of the said writ, he had it directed to the sheriff for the apprehension and re-delivery of the offender to the abbot of the house. *T. L.; Cowel.*

APPANAGE or APANAGE. [APPENNAGE.]

APPARATOR or APPARITOR. A messenger who cites offenders to appear in the spiritual courts, and serves the process thereof. *Cowel.*

APPARENT HEIR. One whose right of inheritance is indefeasible, provided he outlive his ancestor. 1 *Steph. Com.* 389. But in Scotch legal phraseology, an apparent heir is the person to whom the succession has actually opened, but who has not completed his title to his predecessor's estate. *Bell.*

APPEAL. 1. An accusation by a private subject against another for some heinous crime, demanding punishment on account of the particular injury suffered, rather than for the offence against the public. Originally appeals lay for treason, but these were abolished by the statutes 5 Edw. 3, c. 9, 25 Edw. 3, c. 24, 1 Hen. 4, c. 14. In the cases of larceny, rape, arson, and mayhem, the persons robbed, ravished, maimed, or whose

APPEAL—*continued.*

houses were burnt, might institute this private process. All appeals of death must have been sued within a year and a day after the completion of the felony by the death of the party. These *appeals* might be brought previous to any *indictment;* and if the appellee were acquitted thereon, he could not be afterwards *indicted* for the same offence; but, if acquitted upon an *indictment*, he could afterwards be prosecuted by the party injured. If the appellee were acquitted, the appellor suffered one year's imprisonment, and paid a fine to the king, besides restitution of damages to the party for the imprisonment and infamy he had sustained. If the appellee were found guilty, he suffered the same judgment as if he had been convicted by indictment; with this difference, that on an appeal, which was at the suit of a private subject, to make atonement for a private wrong, the king could not pardon the offender, but the appellor, by his release, might discharge the appeal. Having become entirely obsolete, an appeal of murder was brought in the year 1818, which led the legislature immediately afterwards to abolish this species of prosecution altogether. 4 *Bl.* 312; 4 *Steph. Com.* 379, 380.

2. A complaint to a superior court of an injustice done by an inferior one. 4 *Bl.* 312.

APPEARANCE. This term, whether applied to plaintiff or defendant, has reference to an ancient state of practice, by which the parties personally, or their respective attornies, actually confronted each other in open court. As regards the plaintiff, no particular form of appearance is now used; but as regards the defendant, the form is observed of his delivering to the proper officer of the court a memorandum importing either that he appears in person, or that some solicitor, whose name is given, appears on his behalf. 3 *Steph. Com.* 488, 596; *Lush's Pr.* 390; *Hunt. Eq.*

APPELLANT. [APPELLATE JURISDICTION.]

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

APPELLEE. [APPEAL, 1; APPROVER, 1.]

APPELLOR. [APPEAL, 1; APPROVER, 1.]

APPENDANT. Annexed to, or belonging to, another that is more worthy. Thus we have advowsons and commons *appendant* to a manor, and common of fishing *appendant* to a freehold; and *appendants* arise always by prescription, as distinguished from *appurtenances*, which may be created at any time. *Cowel;* 1 *Steph. Com.* 650.

APPENNAGE or **APENNAGE** (French). A child's part or portion. The portion of the king's younger children in France, where there was a law called the "Law of Apenages," whereby the sons had duchies, counties or baronies granted to them and their heirs, the reversion being reserved to the Crown, together with all matters of regality, such as coinage, levying taxes and the like. *Cowel.*

APPOINTEE. A person to whom or in whose favour what is technically termed "a power of appointment" is exercised. [APPOINTMENT; POWER.]

APPOINTMENT. Besides its ordinary meaning this word is specially used of the appointment, under a *power of appointment*, of a person who is to enjoy land or other property, or some estate or interest therein. [POWER.]

APPORTIONMENT. The dividing of a legal right into its proportionate parts, according to the interests of the parties concerned. The word is generally used with reference to the adjustment of rights between two persons having successive interests in the same property, such as a tenant for life and the reversioner. By the common law, if the interest of a person in the rents and profits of land ceased between one day of payment and another (as by the death of a tenant for life), the sum which had accrued since the last day of payment was lost to him or his representatives, and went to the person entitled to the reversion. Several acts have been passed for the apportionment of rent, the last being stat. 33 & 34 Vict. c. 35, passed in 1870, by which it is provided that all rents, annuities, dividends, and other periodical payments in the nature of income, shall be considered as accruing from day to day, and shall be apportionable in respect of time accordingly. 1 *Steph. Com.* 261, 678, *Fawcett, L. & T.*

APPOSAL OF SHERIFFS. The charging them with money received to their account in the Exchequer. *Cowel.*

APPRAISEMENT, COMMISSION OF. A commission to value treasure-trove, waifs, and estrays, seized by the king's officer. This commission was formerly issued after the filing of an information in the king's Exchequer, and a proclamation for the owner (if any) to come in and claim the effects. After the return of the commission, a second proclamation was made; and, if no claimant appeared, the goods were condemned to the use of the Crown. 3 *Bl.* 262; 3 *Steph. Com.* 670.

APPRENTICE (Fr. *Apprendre*, to learn). One who is bound by deed indented, or indentures, to serve his master and be maintained and instructed by him. This is usually done to persons of trade, in order to learn their art and mystery. 1 *Bl.* 426; 2 *Steph. Com.* 229.

APPRENTICII AD LEGEM (apprentices at the law). The name given in early times to barristers, as opposed to serjeants (*servientes ad legem*). 1 *Steph. Com.* 17.

APPROBATE AND REPROBATE. To take advantage of the beneficial parts of a deed, and reject the rest. This the law does not in general admit of. *Bell.*

APPROPRIARE COMMUNIAM. To enclose or appropriate any parcel of land that was before open common, and thus to discommon it. *Cowel.*

APPROPRIATION. 1. The perpetual annexation of an ecclesiastical benefice to the use of some spiritual corporation, sole or aggregate, being the patron of the living. This contrivance of appropriating livings seems to have sprung from the monastic orders, who obtained all the advowsons within their reach, and then *appropriated* the benefices to the use of their own corporations. In order to complete such appropriation effectually, the king's licence and the consent of the bishop had to be obtained. The consent of the patron was also implied, as the appropriation could only be made to such spiritual corporation as was also the patron of the church; the whole being nothing else but an allowance for the patrons to retain the tithes and glebe in their own hands, without presenting any clerk, they themselves undertaking to provide for the service of the church. [VICAR.] When the monasteries and religious houses were dissolved, the appropriations belonging to them became vested in the Crown, and many of these were afterwards granted out to subjects, and are now in the hands of lay persons, called by way of distinction *lay impropriators*. An appropriation may be severed, and the church become disappropriate, by the appropriator or patron presenting a clerk, who after his institution and induction becomes complete parson; and also by the dissolution of the corporation which has the appropriation; and the appropriation being once severed, can never be reunited again unless by a repetition of the same solemnities. 1 *Bl.* 384; 2 *Steph. Com.* 677—683.

2. The application of a particular payment for the purpose of paying a particular debt. The debtor has the first right of appropriation, but, as a general rule, the creditor may apply the payment if the debtor does not.

APPROVE (Lat. *Approbare*). To improve; especially of land. *Cowel*; 1 *Steph. Com.* 655.

APPROVEMENT. 1. The improvement or partial inclosure of a common.

2. The profits arising from land approved. [APPROVE]

3. The act of an approver. [APPROVER.]

APPROVER (Lat. *Approbator*). 1. A person, formerly called an *appellor*, who, when indicted of treason or felony, and arraigned for the same, did confess the fact before plea pleaded, and appeal or accuse others, his accomplices, of the same crime, in order to obtain his pardon. This could only be done in capital offences. If the accused, or, as he was called, the *appellee*, were found guilty, he suffered the judgment of the law, and the approver had his pardon *ex debito justitiæ*; but if the jury acquitted the appellee, the approver received judgment to be hanged, upon his own confession of the indictment. The modern practice, however, is for the justices of the peace, in cases where it appears probable that the evidence will otherwise be insufficient to obtain a conviction, to hold out a hope to some one of the accomplices, that if he will fairly disclose the whole truth as a witness on the trial, or, as it is termed, become *Queen's evidence*, and bring the other offenders to justice, he shall himself escape punishment. The reception of the evidence is in the discretion of the Court, and, should it prove to be unsatisfactory, the approver is liable to be tried for the offence, and may be convicted on his own confession. 4 *Steph. Com.* 394.

2. Bailiffs of lords in their franchises were also called approvers. *Cowel.*

APPROVER—*continued.*

3. Approvers in the marches of Wales were such as had licence to buy and sell beasts there. *Cowel.*

APPROVERS OF THE KING (Lat. *Approbatores regis*) are such as have the letting of the king's demesnes in small manors to his best advantage. And in stat. 1 Edw. 3, c. 8, the sheriffs call themselves the *king's approvers. Cowel.*

APPURTENANCES, or THINGS APPURTENANT (Lat. *Pertinentia*). Things both corporeal and incorporeal belonging to another thing as the more principal, such as hamlets to a manor, common of pasture, turbary, piscary, and the like. *Cowel;* 1 *Steph. Com.* 486. [APPENDANT.]

Common appurtenant may arise not only from long usage but from grant, and it may extend to beasts not generally commonable, thus differing in some degree from *common appendant.* 1 *Steph. Com.* 651.

ARABANT. A term used to signify those who held by the tenure of ploughing and tilling the lands of the lord within the manor. *Cowel.*

ARBITRAMENT. [ARBITRATION.]

ARBITRATION is where two or more parties submit all matters in dispute to the judgment of *arbitrators*, who are to decide the controversy; and if they do not agree, it is usual to add, that another person be called in as *umpire*, to whose sole judgment it is then referred: or frequently there is only one arbitrator originally appointed. The decision, in any of these cases, is called an *award;* but sometimes, when the umpire gives the decision, it is termed *umpirage.* The Common Law Procedure Act, 1854, contains many important provisions with respect to arbitration. 3 *Bl.* 16; 3 *Steph. Com.* 259—262; *Lush's Pr.* 1037.

ARCHAIONOMIA, also called Lambard's Archaionomia, is a collection of Saxon laws published in the reign of Queen Elizabeth, with a Latin version by Lambard. *Bouvier.*

ARCHBISHOP. The chief of all the clergy in his province. He has the inspection of the bishops of that province, as well as of the inferior clergy; or, as the law expresses it, the power to *visit* them. There are two archbishops for England and Wales. 2 *Steph. Com.* 667, 668.

ARCHDEACON. An ecclesiastical officer subordinate to the bishop throughout the whole of a diocese or in some particular part of it. He is usually appointed by the bishop, and has a kind of episcopal authority. He *visits* the clergy, and has his separate court for punishment of offenders by spiritual censures, and for hearing all other causes of ecclesiastical cognizance. As a general rule, the jurisdictions of the archdeacon and the bishop are concurrent. 1 *Bl.* 383; 2 *Steph. Com.* 675, 676.

ARCHERY. The service rendered by a tenant in keeping a bow for the use of his lord. *Cowel.*

ARCHES, COURT OF, is a court of appeal belonging to the Archbishop of Canterbury, whereof the judge, who sits as deputy to the archbishop, is called the *Dean of the Arches*, because he anciently held his court in the church of St. Mary-le-Bow (*Sancta Maria de Arcubus*). This court was afterwards held in the hall at Doctors' Commons, and subsequently at Westminster. Its proper jurisdiction is only over the thirteen peculiar parishes belonging to the archbishop in London; but, the office of Dean of the Arches having been for a long time united with that of the archbishop's principal official, he now, in right of the last-mentioned office (as doth also the official principal of the Archbishop of York), receives and determines appeals from the sentences of all inferior ecclesiastical courts within the province. Many original suits are also brought before him, in respect of which the inferior judge has waived his jurisdiction. [LETTERS OF REQUEST.]

From the Court of Arches and from the parallel Court of Appeal in the province of York, an appeal lies to the Judicial Committee of the Privy Council. 3 *Steph. Com.* 306.

ARGENTUM DEI (God's money). Money given in earnest upon the making of any bargain. *Cowel.*

ARGUMENTATIVE PLEA. A plea not direct and positive. 3 *Bl.* 310.

ARMA LIBERA. A sword and a lance which were usually given to a servant when he was made free. *Cowel.*

ARMA REVERSATA (reversed arms). A punishment which a man was subjected to when convicted of treason or felony. *Cowel.*

ARMARIA. [ALMARIA.]

ARMIGER. Esquire. A title of dignity, originally belonging to such gentlemen as bore arms. [ESQUIRE.]

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

ARMS AND ARMOUR, in legal language, is extended to anything that a man, in his anger or fury, takes into his hand to cast at, or strike another. *T. L.* In all actions of trespass, and in indictments, it was formerly necessary to allege that the acts complained of were done *vi et armis,* "with force and arms," the force being the gist of the action; but this is no longer required. 3 *Steph. Com.* 563; 4 *Steph. Com.* 373.

ARPENS or **ARPENT.** An acre. According to the old French account mentioned in Domesday Book, one hundred perches make an *arpent. Cowel.*

ARRAIGN, ARRAIGNMENT (Lat. *Ad rationem ponere,* to call to account). To arraign is to call a prisoner to the bar of the court, to answer the matter charged upon him in the indictment. The prisoner is to be called to the bar by his name; the indictment is to be read to him distinctly in the English tongue, after which, it is to be demanded of him, whether he be guilty of the crime whereof he stands indicted, or not guilty. 4 *Bl.* 322; 4 *Steph. Com.* 389, 390.

ARRAIGNS, CLERK OF THE. A person who assists the clerk of assize, more particularly in taking the *arraignments.* [ARRAIGN.]

ARRAY is the setting forth in order of a jury of men that are impanelled upon a cause, from whence comes the verb *to array* a panel, that is, to set forth in order the men that are impanelled. *T. L.* Hence we say to "challenge the array," and to "quash the array." [CHALLENGE.]

ARRAY, COMMISSIONS OF. Commissions issued by the sovereign to officers in whom they could confide, to muster and array (or set in military order) the inhabitants of every district. They fell into disuse on the introduction of commissions of lieutenancy under the Tudors. 1 *Bl.* 411; 2 *Steph. Com.* 585.

ARRENTATION. (Spanish *Arrendar*). The licensing an owner of lands in the forest to enclose them with a low hedge and little ditch, according to the assize of the forest, under a yearly rent. *Saving the arrentations* is reserving the power to grant such licences. *Cowel.*

ARREST. A restraint of a man's person, obliging him to be obedient to the law. An arrest is the beginning of imprisonment, whereby a man is first taken, and restrained of his liberty, by power or colour of a lawful warrant; also it signifies the decree of a court, by which a person is arrested.

One person may, without warrant, arrest another on reasonable suspicion of felony, and will be protected in doing so—

1. If the person arresting be a peace officer; *or*

2. If he can prove that the felony was committed by some one; *or*

3. If the arrest be made in joining in a "hue and cry." 4 *Steph. Com.* 351.

ARREST OF JUDGMENT. A staying or withholding of judgment, although there has been a verdict in the case, on the ground that there is some error on the face of the record, from which it appears that the plaintiff has at law no right to recover in the action. 3 *Bl.* 393; 3 *Steph. Com.* 562; *Lush's Pr.* 625; *Kerr's Act. Law.*

ARRESTANDIS BONIS NE DISSIPENTUR. A writ which lay for one whose cattle or goods were taken by another, who was likely to make away with them during the dispute, and would hardly be able to make satisfaction for them afterwards. *Reg. Orig.* 126, 127.

ARRESTANDO IPSUM QUI PECUNIAM RECEPIT. A writ which formerly lay for the apprehension of a man who had taken money on enlisting for the king's wars, and then hid himself when he should have gone. *Reg. Orig.* 24 b.

ARRESTMENT. The Scotch term for the arrest of a person or the seizure of his effects.

Arrestment of effects is, in the Scotch law, a process in the nature of an attachment, whereby the person, in whose hands any part of the personal estate of a debtor is lodged, is prohibited from delivering over the same, until the creditor so arresting is paid, or the debtor gives security to answer the demand. *Bell.*

ARRESTMENT JURISDICTIONIS FUNDANDÆ CAUSA. An arrestment made in Scotland for the purpose of founding jurisdiction; that is, the seizure of the effects in Scotland of a person resident out of Scotland, for the purpose of giving jurisdiction to a Scotch court in an action against such person. *Bell.*

ARRESTO FACTO SUPER BONIS MERCATORUM ALIENIGENARUM. A writ that lay for a denizen against the goods of an alien found within the kingdom, as a recompense for goods taken from him in a foreign country, after restitution had been denied. *Reg. Orig.* 129.

ARRETTED is he that is convened before any judge, and charged with a crime. *Cowel.*

ARRHÆ. Earnest, evidence of a completed bargain. *Bell.*

ARRIAGE AND CARRIAGE, in the law of Scotland, were indefinite services formerly demandable from tenants. Now, by stat. 20 Geo. 2, c. 50, ss. 21, 22, all indefinite services are prohibited, and none can now be demanded except such as are enumerated in the lease, or in writing apart. *Bell.*

ARRURA. A day's work of ploughing. *Cowel.*

ARSER IN LE MAIN (burning in the hand). [BENEFIT OF CLERGY.]

ARSON. The malicious and wilful burning of the house or outhouse of another man. 4 *Bl.* 220; 4 *Steph. Com.* 99.

ART AND PART means where a person is guilty of aiding and abetting a criminal in the perpetration of a crime—

1. By giving a warrant or mandate to commit a crime;
2. By giving advice to the criminal how to conduct himself in it;
3. By assistance in the execution of it. *Bell.*

ARTICLED CLERK. A person bound by articles to serve with some practising attorney or solicitor, previously to being admitted himself as an attorney or solicitor. The period of service under articles is in general five years; but in certain cases it is only four years; in others three years. 3 *Steph. Com.* 215—218; *Stats.* 6 & 7 *Vict. c.* 73; 23 & 24 *Vict. c.* 127; 37 & 38 *Vict. c.* 68.

ARTICLES. A word used in various senses.

1. Agreements between different persons expressed in writing, sealed or unsealed, are often spoken of as "articles." A contract made in contemplation of marriage is in general spoken of as "marriage articles," if it contemplate a further instrument to carry out the intention of the parties; the final instrument being called the marriage settlement. So also we speak of "articles of partnership," "articles of association," &c. The use of the term is somewhat capricious. [*See also* ARTICLED CLERK.]

2. Rules are sometimes spoken of as "articles;" as when we speak of "articles of war," "articles of the navy," "articles of a constitution," "articles of religion," &c.

3. The complaint of the promoter in an ecclesiastical cause is called "articles." So, an impeachment by the House of Commons is expressed in what are called "articles of impeachment." *See* 2 *Steph. Com.* 590, 595; 3 *Steph. Com.* 20, *n.*; 4 *Steph. Com.* 300.

ARTICLES OF THE PEACE. A form of complaint by a person who fears that another may do him some bodily hurt. Articles of peace may be exhibited in the Queen's Bench, Assize Court, or Sessions Court; and upon the articles being sworn to by the complainant, sureties of the peace are taken on the part of the party complained against. And the court may require bail for such time as they shall think necessary for the preservation of the peace. 4 *Steph. Com.* 293.

ARTICULI CLERI (Articles of the Clergy). Statutes made touching persons and causes ecclesiastical, such as 9 Edw. 2, stat. 2; 14 Edw. 3, stat. 3. *Cowel.*

ARURA. [ARRURA.]

AS AGAINST. An expression indicating a partial effect or influence. Thus a bill in Chancery may be dismissed as against certain parties to it, who have been wrongfully made parties, while maintained against others.

ASBAB. Goods, effects, implements. *Wilson's Gloss. Ind.*

AS OF. A judgment *as of* Trinity Term is a judgment not delivered in Trinity Term, but having the same legal effect.

ASPORTAVIT (he carried away). The technical words in indictments for larceny, when indictments were in Latin, were *felonice cepit et asportavit:* "he feloniously took and carried away:" the carrying away being an essential part of the crime, though the slightest removal is sufficient.

ASSACH or **ASSATH.** A kind of excuse or purgation, formerly a custom in Wales, by which an accused person cleared himself by the oaths of 300 men. Abolished by 1 Hen. 5, c. 6. *T. L.*

ASSART (Lat. *Assartum*, Fr. *Assartir*, to make plain). An offence committed in the forest, by pulling up by the roots the woods that are thickets and covert for the deer, and by making them plain as arable land. This is reputed the greatest offence or trespass that can be done in the forest to vert or venison. It is more than *waste;* for whereas waste of the forest is but the felling and cutting down of the coverts, which may grow up in time again, an *assart* is a plucking them up by the roots and utterly destroying them. *Manwood; Cowel.*

ASSAULT (fr. Fr. *Assailler*) is defined by Blackstone "to be an attempt or offer to beat another, without touching him: as if one lifts up his cane, or his fist, in a theatening manner at another; or strikes at him, but misses him: this is an assault, *insultus;*" and though no actual suffering is proved, yet the party injured may have redress by action for damages as a compensation for the injury. It is thus distinguished in law from a *battery*, which is the unlawful beating of another, and includes the least touching of another's person wilfully or in anger. Practically, however, the word assault is used to include the battery. 3 *Bl.* 120; 3 *Steph. Com.* 373.

ASSAY (Fr. *Essay*). A proof, a trial. Thus the *assay* of weights and measures is the examination of them by the clerks of the market. *Cowel.*

ASSAYER OF THE KING (Lat. *Assayator regis*), is an officer of the Mint, appointed by stat. 2 Hen. 6, c. 12, to be present at the taking in of the bullion, as a party indifferent between the master of the Mint and the merchant, to set the true value of the bullion according to the law. *T. L.*

ASSEDATION. An old term in Scotch law signifying a lease or feu-right. *Bell.*

ASSEMBLY, UNLAWFUL. [UNLAWFUL ASSEMBLY.]

ASSENSU PATRIS. Dower *assensu patris* was a species of dower made *ad ostium ecclesiæ*, when the husband's father was alive, and the son, by his consent, expressly given, endowed his wife with parcel of his father's lands. Now abolished by s. 13 of the Dower Act, 3 & 4 Will. 4, c. 105. 1 *Steph. Com.* 270.

ASSESSORS. Persons who assess the public rates or taxes. The term is also frequently applied to persons who assist a judge or magistrate with their special knowledge of the subject which he has to decide: thus we speak of "legal assessors," "nautical assessors," &c.

ASSETS (Fr. *Assez*, enough). By *assets* is meant such property as is available for the payment of the debts of an insolvent individual or company, or of a person deceased.

Assets of a deceased person are divided into *real assets*, consisting of what is called *real estate*, and *personal assets*, consisting of what is called *personal estate*, which are administered according to different rules.

Assets of a deceased person are also divided into *legal* and *equitable* assets. Legal assets are such as a creditor of the deceased may make available in an action at law for the payment of his debt. They include all personal assets, being such as devolve upon the executor *virtute officii;* and such real assets as the testator has not charged with, or made subject to, the payment of his debts.

Equitable assets are such as can be made available to a creditor in a court of equity only. They include such real assets as the testator has left expressly for the payment of his debts.

Until the year 1870, equitable assets were the only assets of a deceased which were divisible *pari passu* among *all* his creditors, in proportion to their claims. In the administration of legal assets, creditors by specialty (that is, by writing under seal) were preferred to other creditors; though, in order that a specialty creditor might claim a priority in the administration of real assets, the specialty must have purported (as it generally would) to bind the *heirs* of the debtor. These distinctions are abolished by stat. 32 & 33 Vict. c. 46; so that the distinction between legal and equitable assets is no longer of any practical importance.

ASSETS ENTER MAINS. The personal assets of a deceased which come to the hands of his executor or administrator. *Cowel.*

ASSETS PER DESCENT. Real assets of a deceased person descending to his heir. *Cowel.*

ASSIDERE or **ASSEDARE.** To tax equally. Sometimes it signifies to assign an annual rent to be paid out of a particular farm. *Cowel.*

ASSIGN, TO (Lat. *Assignare*), has two significations: 1, to make over a right or interest to another; 2, to point out, or

ASSIGN, TO—*continued.*

set forth. In the former sense we speak of the "assignment of a lease," which is the making over the lease to another; in the latter sense we have—to assign error, to assign perjury, to assign waste, &c. *Cowel.*

Assign, as a substantive, is used in the sense of assignee. 1 *Steph. Com.* 469. [ASSIGNEE.]

ASSIGNATION, in Scotland, means an assignment.

ASSIGNEE or **ASSIGN**. One who is appointed by another to do any act, or perform any business, or enjoy any commodity; and he is always such a person who occupies a thing in his own right, as distinguished from a *deputy* who doth it in the right of another. Such an assignee may be either *by deed* or *in law*. Assignee by deed is he that is appointed by a person, as when a lessee assigns his lease to another; an assignee in law is he whom the law so makes, without any appointment of the person, as an administrator who is the assignee in law to the intestate. *Cowel.*

Assignees *in bankruptcy* were those in whom the property of a bankrupt became vested for the benefit of the creditors. They are now, by "The Bankruptcy Act, 1869," called *trustees. Robson, Bkcy.*

ASSIGNMENT OF DOWER. The act by which the share of a widow in her deceased husband's real estate is ascertained and set apart to her. *See* 1 *Steph. Com.* 271.

ASSIGNMENT OF ERRORS. The statement of the case of the plaintiff in error, setting forth the errors complained of. [PLAINTIFF IN ERROR.] It corresponds with the declaration in an ordinary action.

ASSIGNOR. One who appoints another his assignee. [ASSIGNEE.]

ASSISA CADERE. To be non-suited. *Cowel.*

ASSISA CONTINUANDA. A writ directed to the justices of assize, for the continuance (*i. e.* the adjournment) of a cause, where certain records alleged cannot be procured in time by the party desiring to use them. *Reg. Orig.*

ASSISA PANIS ET CEREVISIÆ (assise of bread and beer). 1. The title given to the statute 51 Hen. 3, stat. 1, passed in 1266, which determined the price, weight, and measure of bread and ale.

2. The power or privilege of *assising* or adjusting the weights and measures of bread and beer. *Cowel.*

ASSISA PROROGANDA. A writ directed to the justices of assize, to stay proceedings on account of a party being employed in the king's business. *Reg. Orig.* 221. Now obsolete.

ASSISE. A word which signifies, under various circumstances: 1. A jury. 2. A particular form of action, now abolished. 3. A commission for trying cases, civil and criminal. 4. The sittings under such commission. 5. A statute or ordinance. 6. An adjustment or measure. [ASSIZE, and following Titles.]

ASSISORS, in Scotland, were the same as jurors in England. *Cowel; Skene on Crimes*, tit. 9, c. 28.

ASSITHMENT was a weregeld or compensation for murder, by a pecuniary mulct, due to the heirs of the person murdered. *Cowel.*

ASSIZE (Lat. *Assideo*, to sit together) signifies, originally, the jury who are summoned by virtue of a writ of assize, who try the cause and "sit together" for that purpose. By a figure it was made to signify the court or jurisdiction, which summoned this jury together by a commission of assize, or *ad assisas capiendas;* and hence the judicial assemblies held by the Queen's commission in every county to deliver the gaols, and to try causes at *nisi prius*, are termed in common speech the *assizes*. 3 *Bl.* 185. It is also an *ordinance* or *statute*, as the "Assize of Bread and Ale," the "Assize of Clarendon," and "Assize of Arms;" and is sometimes used to denote generally anything reduced to a certainty in respect to number, quantity, quality, weight or measure. *Cowel.*

ASSIZE, COURTS OF, are composed of two or more commissioners, called judges of assize, who are sent by special commission from the Crown, on *circuits* all round the kingdom, to try, by a jury of the respective counties, the truth of such matters of fact as are then under dispute in the courts of Westminster Hall. These judges of assize are the successors of the ancient "justices in eyre," *justiciarii in itinere;* they usually make their circuits in the respective vacations after Hilary and Trinity Terms, and now sit by virtue of four several authorities. 1. Commission of *Oyer and Terminer*, which gives them power to deal with treasons, murders,

ASSIZE, COURTS OF—*continued.*

felonies, &c., and this is their largest commission; 2. Of *gaol delivery*, which requires them to try every prisoner in gaol, for whatsoever offence he be there; 3. Of *Nisi Prius*, which empowers them to try all questions of fact issuing out of the courts of Westminster that are then ripe for trial by jury; and 4. *Commission of peace* in every county of their circuit, by which all justices of the peace, having no lawful impediment, are bound to be present at the assizes, to attend the judges. If any make default, the judges may set a fine upon him at their pleasure and discretion. The sheriff of every shire is also to attend in person, or by sufficient deputy. There was formerly a fifth commission, that *of assize*, but the abolition of assize and other real actions has thrown this commission out of force. 3 *Steph. Com.* 352; *Cowel.* [ASSIZE, WRIT OF; CIRCUIT; NISI PRIUS.]

ASSIZE DE UTRUM or **ASSISA JURIS UTRUM.** [JURIS UTRUM.]

ASSIZE OF DARREIN PRESENTMENT (or last presentation). A writ which lay when a man, or his ancestors, 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 him that was the real patron. In which case the patron had this writ directed to the sheriff to summon an assize or jury, to inquire who was the last patron that presented to the church then vacant, of which the plaintiff complained that he was deforced (*i.e.* unlawfully deprived) by the defendant; and according as the assize determined that question, a writ issued to the bishop, to institute the clerk of that patron in whose favour the determination was made. 3 *Bl.* 245; 3 *Steph. Com.* 415, n. Abolished by stat. 3 & 4 Will. 4, c. 27, s. 36. [QUARE IMPEDIT.]

ASSIZE OF MORT D'ANCESTOR. [MORT D'ANCESTOR.]

ASSIZE OF NOVEL DISSEISIN. A writ which lay to recover possession of lands, of which the claimant had been lately disseised (that is, dispossessed). Abolished by stat. 3 & 4 Will. 4, c. 27, s. 36. 3 *Bl.* 187; 3 *Steph. Com.* 410, *n.*

ASSIZE OF NUISANCE. A writ (abolished by stat. 3 & 4 Will. 4, c. 27, s. 36) wherein it was stated that the party injured complained of some particular fact done, *ad nocumentum liberi tenementi sui* (to the injury of his freehold), and therefore commanded the sheriff to summon an assize, that is, a jury, and view the premises, and have them at the next commission of assizes, that justice might be done therein; and if the assize was found for the plaintiff he had judgment of two things:—1. To have the nuisance abated; and 2. To recover damages. 3 *Bl.* 221; 3 *Steph. Com.* 405, *n.*

ASSIZE OF THE FOREST. A statute touching orders to be observed in the royal forests. *T. L.; Cowel.*

ASSIZE, RENTS OF, are the certain established rents of the freeholders and ancient copyholders of a manor, which cannot be departed from or varied. Those of the freeholders are frequently called *chief*-rents, *reditus capitales;* and both sorts are indifferently denominated *quit*-rents, *quieti reditus*, because thereby the tenant goes quit and free of all other services. 2 *Bl.* 42; 1 *Steph. Com.* 676.

ASSIZE, WRIT OF. An action, now abolished, used for the purpose of regaining *possession* of lands whereof the demandant or his ancestors had been unjustly deprived by the tenant or possessor of the freehold, or those under whom he claimed. It was introduced in the time of Henry II., when justices in eyre were appointed to go round the kingdom in order to take these assizes. It was a real action, which proved the title of the demandant by showing his or his ancestor's possession, and it was not necessary (as it was in a writ of entry) to show the unlawful commencement of the tenant's possession. 3 *Bl.* 184; 3 *Steph. Com.* 390, *n.* [ENTRY, WRIT OF.]

ASSIZES DE JERUSALEM. A code of feudal law prepared at a general assembly of lords after the conquest of Jerusalem. *See* 4 *Steph. Com.* 413, *n.*

ASSOCIATE. 1. An officer in each of the superior courts of common law, whose duty is to keep the records and documents of the court to which he is attached, to attend its *Nisi Prius* sittings, and in each case to enter the verdict and to make up the postea or formal entry of the verdict, and deliver the record to the party entitled thereto. *Stat.* 15 *&* 16 *Vict. c.* 73, *ss.* 1—6; *Lush's Pr.* 569. *See also* 17 *&* 18 *Vict. c.* 125, *s.* 2.

2. A person associated with the judges and clerk of assize in the commission of general gaol delivery.

ASSOCIATION. A commission granted either by writ or patent to the justices of assize, to have other persons associated to them to take the assizes, that a sufficient supply of commissioners may never be wanting. It usually takes place when, from the illness of a judge, the press of business, or some other cause, additional help is required. 3 *Bl.* 60.

ASSOIL (Lat. *Absolvere*), signifies to deliver or discharge a man of an excommunication.

In Scotch law, when judgment is given in favour of a defendant, the court "assoilzies" him, or absolves him from the charge.

ASSUMPSIT (he has undertaken). A voluntary promise, by which a man, for a consideration, *assumes* and takes upon him to perform or pay anything to another. *T. L.*

This word now is chiefly applied to an action which lies where a party claims damages for breach of *simple contract*, *i. e.* a promise not under seal. 3 *Steph. Com.* 863.

ASSURANCE. 1. The legal evidences of the transfer of property are called the *common assurances* of the kingdom. They are also called *conveyances*, and are in general effected by an instrument called a *deed*. 1 *Steph. Com.* 480.

2. Insurance. [INSURANCE.]

ASSYTHMENT. [ASSITHMENT.]

ASTRICTION TO A MILL is that service by which the grain growing on certain lands must be carried to a certain mill, to be manufactured into flour or meal, the owner paying a "multure" or price for the grain. *Bell.*

AT ARM'S LENGTH. When a person, having been under the influence or control of another, ceases to be so, he is said to be "at arm's length" with him.

ATHE (*Adda*). The privilege of administering an oath in some cases of right and property: from the Saxon *ath* (an oath). *Cowel.*

ATIA. [DE ODIO ET ATIA.]

ATS. [AD SECTAM.]

ATTACHIAMENTA BONORUM. A distress levied upon the goods or chattels of any one sued for a personal debt by the legal *attachiatores*, or bailiffs, as a security to answer the action. *Cowel.*

ATTACHIAMENTA DE SPINIS ET BOSCO. The privilege granted to the officers of the forest to take thorns, brush, or windfall within the precincts or liberties committed to their charge. *Cowel.*

ATTACHMENT. The taking into the custody of the law the person or property of one already before the court, or of one whom it is sought to bring before it. This is done by means of a judicial writ, called a *writ of attachment*. An attachment differs from an *arrest* or *capias*, as it may extend to a man's goods as well as to his person; and from a *distress*, as it may extend to his person as well as his goods. The process of attachment is the method which has always been used by the superior courts of justice for the punishment of all "contempts of court." *T. L.*; 4 *Bl.* 283; 3 *Steph. Com.* 528.

ATTACHMENT, FOREIGN. The attachment of the goods of foreigners found within any liberty or city for a debt due. *T. L.* A "foreigner" here means a person resident outside the jurisdiction of the court. The expression "foreign attachment" is also used in the same sense as a *garnishment*, which is a process by which a creditor may attach property belonging to his debtor which may be in the hands of a third party. See 3 *Steph. Com.* 598, and *n.* (*p*).

ATTACHMENT OF PRIVILEGE is twofold; either giving power to apprehend a man in a privileged place, or, by virtue of a man's office or privilege, to call another into that court to which he himself belongs, and in respect of which he is privileged. *T. L.* Now abolished.

ATTACHMENTS, COURT OF, also called the Woodmote and the Forty Days' Court, was one of the Forest Courts, instituted for the government of the royal forests in different parts of the kingdom, and for the punishment of all injuries done to the deer or *venison*, and to the coverts or *vert* in which such deer were lodged. This court, which, like the other forest courts, has fallen into total disuse, was the lowest court of all, and was held before the verderors of the forest once in every forty days. The offenders might be attached by their bodies (*i. e.* personally arrested) if taken in the act of killing venison or stealing wood; but if otherwise, they were to be attached by their goods. In this Forty Days' Court the foresters brought in their *attachments*, or presentments *de viridi et venatione*; and the verderors received the same, enrolled them,

ATTACHMENTS, COURT OF—*continued.*

and certified them under their seals to the court of *justice-seat*, or to the *sweinmote;* for the lowest court could only inquire of, but could not convict, offenders. 3 *Bl.* 71. [VERDEROR.]

ATTAINDER. When a person convicted of treason or felony was sentenced to death for the same, or when judgment of outlawry for treason or felony was pronounced against any one, he was said to be *attainted*, and the fact was called an *attainder*. The consequences of attainder were "forfeiture" and "corruption of blood." 4 *Bl.* 380, 381. Attainders are abolished by stat. 33 & 34 Vict. c. 23, s. 1; but nothing therein is to affect the law of forfeiture consequent upon outlawry. 4 *Steph. Com.* 10, 453; *Cox & Saunders, Cr. Law*, 433. [CORRUPTION OF BLOOD; FORFEITURE.]

ATTAINT, WRIT OF. A writ, now abolished, which was in the nature of an appeal, and was the principal remedy for the reversal of an improper verdict. It lay to inquire whether a jury of twelve men had given a false verdict, that so the judgment following thereupon might be reversed. The jury who were to try the former verdict must have been twenty-four, and were called the grand jury in the attaint. If the first jury were found to have given a false verdict, they incurred infamy, with imprisonment and forfeiture of their goods; which two latter punishments were, in course of time, commuted into a pecuniary penalty. The practice of setting aside verdicts upon motion and granting *new trials* superseded the use of attaints, and the writ itself is now abolished by statute 6 Geo. 4, c. 50, s. 60. *Cowel;* 3 *Bl.* 402; 3 *Steph. Com.* 561, *n.*

ATTENDANT TERM. A term held "upon trust to attend an inheritance;" that is, an estate for years in land held in trust for the party entitled to the inheritance thereof on the expiration of the term of years. [OUTSTANDING TERM.]

ATTERMINING. The purchasing or gaining longer time for the payment of a debt. *Cowel.*

ATTESTATION. The subscription by a person of his name to a deed or will executed by another, for the purpose of testifying to its genuineness.

(1) Deed. A deed ought to be duly attested, that is, show that it was executed by the party in the presence of a witness or witnesses: though this is necessary rather for preserving the evidence, than for constituting the essence, of the deed. 2 *Bl.* 307; 1 *Steph. Com.* 495.

(2) Will. Every will must now, by the Wills Act of 1837, be made in the presence of two or more witnesses present at the same time, such witnesses *attesting* and subscribing the will in the presence of the testator. 1 *Steph. Com.* 598, 599. Before this Act three witnesses were necessary for a will of real property, but none for a will of personal property.

ATTESTATION CLAUSE. The clause wherein a witness to a deed or will certifies to its genuineness. [ATTESTATION.]

ATTORN. 1. In feudal times a lord could not alien or transfer the fealty he claimed from a vassal without the consent of the latter; for it was esteemed unreasonable to subject a vassal to a new superior, with whom he might have a deadly enmity, without his own approbation. In giving this consent, the vassal was said to *attorn* (or *turn* over his fealty to the new lord), and the proceeding was called an *attornment*. 2 *Bl.* 71, 72; 1 *Steph. Com.* 468. This doctrine of attornment was extended to all lessees for life or years, and became very troublesome, until by stat. 4 & 5 Anne, c. 16, s. 9, attornments were made no longer necessary to complete any grant or conveyance; though in certain exceptional cases they are still necessary. 2 *Bl.* 288, 290; 1 *Steph. Com.* 470.

2. To *attorn* also means to *turn over* or intrust business to another; hence the word *attorney* is used to signify a person intrusted with the transaction of another's business.

ATTORNARE REM. To *attorn* or turn over money and goods, or to appropriate them to some particular use. *Cowel.*

ATTORNATO FACIENDO VEL RECIPIENDO. A writ formerly in use, commanding the sheriff or bailiff of a county, hundred, or other court, to receive and admit an attorney to appear on behalf of the person taking out the writ. *Cowel.*

ATTORNEY. One appointed by another man to do something in his stead. *T. L.* [ATTORN; ATTORNEY-AT-LAW; POWER OF ATTORNEY.]

ATTORNEY-AT-LAW is one who is put in the place, stead or *turn* of another, to manage his matters of law. Formerly every suitor was obliged to appear in person, but now it is permitted in general that attornies may be made to prosecute

ATTORNEY-AT-LAW—*continued.*

or defend any action in the absence of the parties to the suit. 3 *Bl.* 25. Attornies are officers of the Superior Courts of Law at Westminster, and correspond to the solicitors of the Court of Chancery and the proctors of the Admiralty and Ecclesiastical Courts. As nearly every attorney is also a solicitor, the words are generally used indiscriminately, and are popularly supposed to mean the same thing; but the distinction between the two is clear and precise. [SOLICITORS.]

The corresponding officers of the Supreme Court of Judicature erected under stat. 36 & 37 Vict. c. 66 (the Supreme Court of Judicature Act) are to be called solicitors.

ATTORNEY-GENERAL. The principal law officer of the Crown, and the head of the bar of England. It is his duty, among other things, to file, *ex officio*, informations in the name of the Crown. [INFORMATION.] The attorney and solicitor-general take precedence of the premier serjeant. 3 *Steph. Com.* 72, *n.*, 273, 274, *n.*

ATTORNEY OF THE DUCHY COURT OF LANCASTER (now styled "attorney-general"). The second officer of that court, who, for his skill in law, is placed as assessor to the Chancellor of the Duchy, the Chancellor being for the most part some honourable person, chosen rather for some special trust reposed in him, than for any great learning. *Cowel.*

ATTORNMENT. Besides the meaning specified above [ATTORN], the word "attornment" is inaccurately applied to such an acknowledgment of tenancy as operates by way of "estoppel." 1 *Steph. Com.* 470, *n.*; *Fawcett, L. & T.* 130. [ESTOPPEL.]

AUBAINE, DROIT DE. [ALBINATUS JUS.]

AUCTIONS ACT. Stat. 30 & 31 Vict. c. 48, passed in 1867, for amending the law relating to sales by auction.

AUDIENCE COURT (*Curia audientiæ Cantuariensis*) is a court belonging to the Archbishop of Canterbury, and held in his palace. It is of equal authority with the Arches Court, though inferior both in dignity and antiquity. *T. L.* The Archbishop of York has also an audience court. *Toml.* But these courts, as separate courts, have long since been disused. *Gibson's Codex*, 1005, *n.*

AUDIENDO ET TERMINANDO. A writ, but more properly a commission, directed to certain persons, when any riotous assembly, insurrection, or heinous misdemeanor or trespass, is committed in any place, for the appeasing and punishment thereof. *Cowel.* [OYER AND TERMINER.]

AUDITA QUERELA. A writ, nearly obsolete, that lies for the defendant against whom judgment is given, and who is therefore in danger of execution, or is perhaps actually in execution; but who is entitled to be relieved upon some matter of discharge which has happened since the judgment; as if the plaintiff has given a general release, or if the defendant has since paid the debt. It is a writ directed to the court in which the judgment is recovered, stating that the complaint of the defendant has been heard, *auditâ querelâ defendentis;* and then setting forth the matter of complaint, and enjoining the court to call the parties before them, and cause justice to be done. But the indulgence now shown by the court in granting relief *upon motion* has almost superseded the remedy by *auditâ querelâ.* This writ is not allowed now unless by rule of court or order of a judge. 3 *Steph. Com.* 577, n. (*n*).

AUDITOR is defined to be an officer of the king, or some other great person, who, by yearly examining the accounts of all under officers accountable, makes up a general book that shows the difference between their receipts or charge and their payments or allowances. *T. L.; Stat.* 33 *Hen.* 8, *c.* 33.

The name has in modern times been assumed by persons employed to check the accounts of corporations, companies and partnerships.

AUDITORS OF THE IMPRESTS were formerly the officers in the Exchequer who audited and made up the great accounts of Ireland, Berwick, the Mint, and of any money *imprested* to any man for the king's service (*i. e.*, paid for the enlistment of soldiers). *Cowel.*

Now superseded by the Commissioners for auditing the Public Accounts, under stat. 25 Geo. 3, c. 52, passed in 1785.

AUDITORS OF THE RECEIPTS. The auditor of the receipts was an officer of the Exchequer, who filed the tellers' bills and made an entry of them, and gave the Lord Treasurer an account of the money received the week before. *Cowel.*

AUGMENTATION. The name of a court, erected in the 27th year of King Henry VIII., for the purpose of inquiring into

AUGMENTATION—*continued.*

the profits of such religious houses and their lands as were given to the Crown by an act of parliament passed the same year. It was dissolved in the first year of the reign of Queen Mary. The name of the court arose from this, that the revenues of the Crown were *augmented*, by the suppression of the said houses, by so much as the king reserved to the Crown. *T. L.; Cowel.*

AUGMENTATION OF TEINDS AND STIPENDS. The increase, in Scotland, of payments made by the heritors for the support of the ministers of the establishment, sanctioned from time to time by the Court of Session. *Bell.*

AULA REGIA (or *Aula Regis*). A court established by William the Conqueror in his own hall. This court was composed of the king's great officers of state resident in his palace, and usually attendant on his person, assisted by persons learned in the laws, who were called the king's justiciars or justices, and by the greater barons of parliament, all of whom had a seat in the *aula regia*, and formed a kind of Court of Appeal, or rather of advice, in matters of great moment and difficulty. This court was at first bound to follow the king's household in all his progresses and expeditions, whereby the trial of common causes was found very burdensome to the subjects. By the eleventh chapter of *Magna Charta*, it was enacted that thenceforth, "*Communia placita non sequantur curiam regis, sed teneantur in aliquo certo loco.*" (Common pleas should not follow the king's court, but be held in some certain place.) This "certain place" was established in Westminster Hall. In the reign of Edward I. this court was broken up into several distinct courts:—The Court of Chancery, from which original writs were issued under the Great Seal to the other courts; the Common Pleas, for determining causes between private subjects; the Court of King's Bench, for pleas of the crown or criminal causes; and the Court of Exchequer, for the recovery of the king's debts and duties. 3 *Steph. Com.* 335, 338.

AULNAGER. The king's officer, whose duty it was to measure all cloths made for sale. 1 *Bl.* 275; 2 *Steph. Com.* 518. [ALNAGER.]

AUMONE and ALMOIN (Fr. *Aumosne*, alms). Tenure in *aumône* was where lands were given to some church or religious house, upon condition that some service or prayers should be offered at certain times for the good of the donor's soul. *Cowel.* [FRANKALMOIGN.]

AUNCEL WEIGHT (hand-sale weight) was an ancient manner of weighing in England, by the hanging of balances at each end of a staff, which, when lifted up with the hand in the middle, showed the equality or difference of the things weighed. This weight, being subject to much deceit, was forbidden by the statutes 25 Edw. 3, stat. 5, c. 9, and 8 Hen. 6, c. 5, and others. *T. L.; Cowel.* The auncel weight was the forerunner of the modern *steelyards* which are now so extensively used.

AURES. The cutting off the ears; a punishment inflicted by Saxon laws on those who robbed churches; and afterwards on thieves in general. *Cowel.*

AURUM REGINÆ (queen's gold). A royal revenue which belonged to every queen consort during her marriage with the king. It was due from every person who made a voluntary offering or fine to the king amounting to ten marks or upwards, for and in consideration of any privileges, grants, licences, pardons, or other matter of royal favour conferred upon him by the king: and it was due in the proportion of one-tenth part more over and above the entire offering or fine made to the king, and became an actual debt of record to the queen's majesty by the mere recording of the fine. 1 *Bl.* 221; 2 *Steph. Com.* 446.

AUTER, AUTERFOIS, &c. [AUTRE; AUTREFOIS, &c.]

AUTRE VIE. The life of another; thus an estate *pur autre vie* is an estate for the life of another. 1 *Steph. Com.* 254, 258.

AUTREFOIS ACQUIT (beforetime acquitted). By this plea a prisoner charged with an offence pleads that he has been tried before and acquitted of the same offence. The plea, however, is only good in reference to a verdict of *acquittal* by a *petty jury;* and, therefore, if a man be committed for trial, and no bill be found against him, or if the petty jury having him in charge be discharged by the judge before verdict, he is still liable to be indicted for the same crime. 4 *Steph. Com.* 401–403.

AUTREFOIS ATTAINT. A plea by an accused person that he has formerly been attainted for the same crime. Before the statute 7 & 8 Geo. 4, c. 28, this plea might have been pleaded where

AUTREFOIS ATTAINT—*continued.*

a man, after being attainted of one felony, was afterwards indicted for *another* offence: for, the prisoner being dead in law by the first attainder, it was deemed superfluous to endeavour to attaint him a second time. But, by sect. 4 of that statute, no plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder be for the same offence as that charged in the indictment. 4 *Steph. Com.* 403, 404.

Attainders are now abolished. *Ibid.* 461; *Stat.* 33 & 34 *Vict. c.* 23.

AUTREFOIS CONVICT. A plea by an accused person that he has been previously convicted of the same crime of which he is accused. This plea is a good plea in bar to an indictment. 4 *Steph. Com.* 403.

AUXILIUM. An aid or service paid by a tenant to his lord. [AID: see also the following Titles.]

AUXILIUM AD FILIUM MILITEM FACIENDUM ET FILIAM MARITANDAM. A writ directed to every county, where the king, or other lord, had tenants, to levy of them reasonable *aid* towards the knighting of his son and the marriage of his daughter. Abolished by 12 Car. 2, c. 24, passed in 1660. *Cowel.*

AUXILIUM FACERE ALICUI IN CURIA REGIS. To be another's friend and solicitor in the king's court. *Cowel.*

AUXILIUM VICECOMITI (aid to the sheriff). The aid or customary dues formerly paid to the sheriff for the better support of his office. *Cowel.*

AVAIL OF MARRIAGE. The Scotch expression for *value of marriage.* [VALOR MARITAGII.]

AVENAGE (Lat. *Avena*, oats). A certain quantity of oats paid to a landlord in lieu of some other duties, or as a rent from the tenant. *Cowel.*

AVENTURE. [ADVENTURE; MISADVENTURE.]

AVERAGE. 1. That service which the tenant owes the lord, to be done by the beasts of the tenant. *T. L.*

2. *General Average* is the contribution which the proprietors, in general, of a ship, cargo, and freight, make towards the loss sustained by any individual of their number, whose property has been sacrificed for the common safety. The proportion which the value of the property so sacrificed bears to the entire value of the whole ship, cargo, and freight, is first ascertained; and then the property of each owner contributes in the proportion so found. Under the usual maritime policies the underwriters are liable for these payments made by the assured. 2 *Steph. Com.* 134; *Crump, Mar. Ins. s.* 271.

3. *Particular Average*, as distinguished from General Average, is a loss upon the ship, cargo or freight, severally, to be borne by the owner of the particular property on which it happens; and, in cases where the loss is not total, it is called *average* or *partial* loss. In every case of partial loss the underwriter is liable to pay such proportion of the sum he has subscribed as the damage sustained by the subject of insurance bears to the whole value at the time of insurance. *Bouvier; Crump, Mar. Ins. s.* 356.

4. *Petty Average* consists of small charges paid by the master for the benefit of the ship and cargo, such as pilotage, towage, &c.

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

AVERCORN. A reserved rent in corn, paid to religious houses by their farmers or tenants. *Toml.*

AVERIA CARUCÆ. Beasts of the plough. 3 *Steph. Com.* 251.

AVERIIS CAPTIS IN WITHERNAM (cattle taken in withernam). A writ, granted in favour of a person whose cattle were unlawfully taken by another, and driven out of the county where they were taken, so that they could not be "replevied." This writ enabled him to take to his own use the cattle of the wrong-doer. *Reg. Orig.* 82. [REPLEVIN; WITHERNAM.]

AVERIUM. An heriot, consisting of the best live beast the tenant dies possessed of. [HERIOT.]

AVERMENT (Lat. *Verificatio*) has different meanings. 1. A positive statement of facts as opposed to an argumentative or inferential one. 2. The offer of a defendant to make good or justify his plea. In any stage of the pleadings, when either side advances or affirms any new matter, he is understood to *aver* it to be true, as every such pleading formerly had this conclusion, "and this he is ready to verify." This was called a *general* averment, as opposed to a *particular* one, where a special method of verification was mentioned. *T. L.; Cowel;* 3 *Bl.* 313. 3. The technical

AVERMENT—*continued.*

name (in pleading) for allegations, such as occur in declarations on contracts, of the due performance of all the conditions precedent, which the form and effect of each contract show to be necessary. Formerly, all such averments had to be specifically alleged: but now, by s. 57 of the Common Law Procedure Act, 1852, the performance of conditions precedent may be averred generally.

AVOCAT, in France, is a barrister; one whose duty it is to plead in a court of justice.

AVOIDANCE. 1. A vacancy; especially of the vacancy of a living by the death of the incumbent. *Cowel.*

2. Making void or null; especially of a plea by a defendant in *confession and avoidance* of the plaintiff's declaration. [CONFESSION AND AVOIDANCE.]

3. Destroying the effect of a written instrument, or of any disposition therein,

(1) By revocation on the part of any person entitled to revoke the same.

(2) By establishing its invalidity in a court of justice. 2 *Bl.* 308; 1 *Steph. Com.* 496, 497.

AVOUE, in France, is a solicitor.

AVOWRY. [ADVOW; REPLEVIN.]

AVOWTERER. An adulterer. *T. L.*

AVOWTRY. Adultery.

AVULSION. The sudden removal of soil from the land of one man, and its deposit upon the land of another, by the action of water. The soil in such case belongs to the owner from whose land it is removed. *Bell.*

AWARD. The decision of an arbitrator. [ARBITRATION.]

AWAY-GOING CROP. A crop sown during the last year of a tenancy, but not ripe till after its expiration. *Fawcett, L. & T.* 300. [EMBLEMENTS.]

AYANT CAUSE, in France, is one to whom the rights of another in an action are transferred by legacy, gift, sale, exchange, &c.

AYEL, AYLE. [AIEL.]

BA FARZANDAN (*Ind.*) A term which, when inserted in a grant, implies that it is made to the grantee and his posterity. *Wilson's Gloss. Ind.*—(Cf. "and the heirs of his body" in the English law.)

BABOO or BABU, in India, is a title of respect attached to a name, like "Mr." or "Esq." *Wilson's Gloss. Ind.*

BACKADATION or BACKWARDATION. A premium given to obtain the loan of stock against its value in money, when stock is more in demand than money. *Keyser.*

BACKBERIND THIEF. A thief taken carrying those things that he hath stolen in a bundle or fardel on his back. *T. L., Cowel.*

BACKING A WARRANT. The indorsement by a justice of the peace, in one county or jurisdiction, of a warrant issued in another. 4 *Bl.* 291, 292; 4 *Steph. Com.* 347; *Oke, Mag. Syn.*

BACKSIDE. A term formerly used in conveyances, and even in pleadings, denoting a yard at the back of a house, and belonging thereto. 1 *Chitty's Gen. Pract.* 177.

BAGA. A bag. [PETTY BAG.]

BAGA PARVA. A little bag. [PETTY BAG.]

BAIL (Fr. *Bailler*, to deliver). The freeing or setting at liberty one arrested or imprisoned, upon others becoming sureties for his appearance at a day and place certainly assigned. The reason why it is called bail is, that the party is delivered (or *bailed*) into the hands of those that bind themselves for his forthcoming. Bail and mainprise differ in this, that he that is mainprised is always said to be at large; whereas a person let to bail is still accounted by law to be in the custody of his sureties; and they may, if they will, keep him in prison. [MAINPRISE.] Also, the sureties in such case are commonly said to become bail. *Cowel; Lush's Pr.* 713—754; *Kerr's Act. Law.* [COMMON BAIL; SPECIAL BAIL.]

BAIL BOND. A bond taken by a sheriff for the appearance of a defendant, generally for double the sum indorsed on the writ. 3 *Steph. Com.* 497; *Lush's Pr.* 711; *Kerr's Act. Law.*

BAIL COURT. A branch of the Court of Queen's Bench in which a single judge sits during term, armed with the power of the full court, under stat. 1 Will. 4, c. 70, for the purpose of "adding and justifying special bail" (*i. e.* of taking new bail in addition to, or substitution for, existing bail, and for ascertaining

BAIL COURT—*continued.*

the sufficiency of persons offering themselves as bail) and otherwise disposing of applications of ordinary occurrence in practice, and for other purposes. 3 *Steph. Com.* 331, *n.*; *Lush's Pr.* 350; *Kerr's Act. Law.* [COURT OF QUEEN'S BENCH.]

BAIL PIECE. [BAILPIECE.]

BAILABLE OFFENCE. An offence for which justices are bound to take bail. 4 *Steph. Com.* 356.

BAILEE. A person to whom goods are entrusted by way of bailment. [BAILMENT.]

BAILIE, in Scotch Law, signifies a magistrate of a borough. *Bell.*

BAILIFF (Lat. *Ballivus.*) A subordinate officer, appointed to execute writs and processes, and do other ministerial acts. Thus, there are bailiffs of hundreds, appointed over those respective districts by the sheriffs; *bound* bailiffs, employed by the sheriffs on account of their adroitness, and *bound* annually to the sheriff, with sureties, for the due execution of their office; *special* bailiffs, appointed on the application of a party in a suit, and for whose doings or neglects the sheriff is not responsible; and bailiffs of manors, employed to pay rents issuing out of the manor, fell trees, distrain beasts doing damage, and generally to look after the property (cf. Latin *villicus*). There are also bailiffs of liberties, bailiffs of county courts, &c. *T. L.*; *Cowel*; 1 *Bl.* 345; 2 *Steph. Com.* 633; *Lush's Pr.* 207.

BAILIWICK. The county over which a sheriff exercises jurisdiction; also that liberty which is exempted from the sheriff of the county, over which the lord of the liberty appointeth a bailiff, with such powers within his precinct as the undersheriff exercised under the sheriff of the county, such as the bailiff of Westminster, &c. *Stat.* 27 *Eliz. c.* 12; *Toml.*

BAILLIE. [BAILIE.]

BAILMENT. A delivery of goods from one person, called the *bailor*, to another person, called the *bailee*, for some purpose, upon a contract, express or implied, that, after the purpose has been fulfilled, they shall be re-delivered to the bailor, or otherwise dealt with according to his directions, or kept till he reclaims them. 2 *Steph. Com.* 80. See 2 *Bl.* 451; *Story on Bailments.*

Bailments are of three kinds:—

1. Those for the exclusive benefit of the *bailor*, as if A. leaves plate with B. to keep safely and securely without reward.
2. Those for the mutual benefit of *bailor* and *bailee;* as, if C. lets a horse to D. for so much per hour; or if E. gives F. (a tailor) clothes to repair, in the course of his trade, &c.
3. Those for the exclusive benefit of the *bailee;* as, if G. lends H. a book to read, without reward.

If the bailee fraudulently appropriates the goods, he is guilty of larceny. *Stat.* 24 *&* 25 *Vict. c.* 96, *s.* 3; *Cox & Saunders' Cr. Law.*

BAILPIECE. The slip of parchment on which the recognizance entered into by parties becoming bail is transmitted to the court. *Kerr's Act. Law.*

BAIRMAN. A bankrupt. *Bell.*

BALIVO AMOVENDO. A writ to remove a bailiff out of his office for want of sufficient living in his bailiwick. *Cowel.* [BAILIFF.]

BAN or BANS. [BANNS.]

BANC or BANCO, SITTINGS IN. Sittings of one of the Superior Courts of Westminster, for the purposes of determining matters of law and transacting other judicial business. Under 33 Vict. c. 6, s. 4, any of the Superior Courts may hold sittings *in banc* in two divisions at the same time, and may be assisted by the judges of the other courts. Sittings *in banc* are opposed to sittings at *nisi prius*, in which a judge sits to try a cuse, assisted by a jury. *See* 3 *Steph. Com.* 350.

BANCO. [BANC.]

BANERET or KNIGHT BANNERET (Lat. *Miles vexillarius*). A baneret is a knight made in the field, with the ceremony of cutting off the point of his standard, and making it, as it were, a banner; and accounted so honourable, that banerets are allowed to display their arms in the field in the king's army, as barons do. They were next to barons in dignity; and it may be conjectured that they were anciently called by summons to the court of parliament. *Cowel;* 1 *Bl.* 403; 2 *Steph. Com.* 632.

But it seems that, unless created banerets, *sub vexillis regis, et ipso rege personaliter præsente* (under the king's standards, and the king himself present in person), they were not entitled to precedence over baronets. [BARONET.]

BANK CHARTER. Certain exclusive privileges of banking granted to the Bank of England by 8 & 9 Will. 3, c. 20, and subsequent statutes; now in part relinquished. 3 *Steph. Com.* 222, 223.

BANK CHARTER ACT OF 1844. Stat. 7 & 8 Vict. c. 32, by which the Bank Charter was continued, with certain modifications, but made terminable at twelve months' notice. The act contains important provisions with reference to the issue of bank notes, and various matters relating to banks in general. 3 *Steph. Com.* 225—229; *Fenn's Compendium; M'Culloch's Comm. Dict.*

BANK HOLIDAYS ACT. The stat. 34 & 35 Vict. c. 17, passed in 1871, appointing certain days, called Bank Holidays, to be kept as holidays for certain purposes, and empowering her Majesty in council to appoint other days to be kept as Bank Holidays, either in addition to, or in substitution for, those mentioned in the act. 2 *Steph. Com.* 119, *n.* (*s*). Extended by the "Holidays Extension Act, 1875" (38 Vict. c. 14).

BANK POST BILL. An instrument issued by a bank for the remittance of money to persons in the country or abroad. A bank post bill is in the first instance made payable to order, at a certain number of days after sight. When indorsed by the payee, it becomes payable to bearer, and negotiable as any other bill or note, until ultimately paid by the bank which issued it. *Grant on Bankers.* [ORDER, PAYABLE TO.]

BANK RATE. The minimum rate of discount charged for the time being by the Bank of England for discounting the bills of the first mercantile houses. The fluctuations in the Bank Rate are notified from time to time to the public. See *Fenn's Compendium*, 10*th ed.* (*ed. Nash*), *pp.* 92, 93; *M'Culloch's Dict.* (*ed. Reid*), *pp.* 103, 104.

BANKRUPT. The definition of this word has varied at different periods of our legal history. A bankrupt may perhaps be defined generally as a person who, by reason of some act or circumstance indicating a failure to meet his liabilities, and called an "act of bankruptcy," has been adjudicated a "bankrupt" by a court of competent jurisdiction for that purpose. The present law of bankruptcy for England and Wales is regulated by statute 32 & 33 Vict. c. 71, generally called the Bankruptcy Act, 1869, and by rules made in pursuance thereof. Acts of bankruptcy are defined in sect. 6 of the act. Until the year 1861 none but a "trader" could be made a bankrupt; a non-trader failing to meet his liabilities being an "insolvent." But this distinction was abolished by the Bankruptcy Act of 1861. Traders and non-traders are, however, in some respects even yet on a different footing in certain matters appertaining to bankruptcy. *Robson, Bkcy.*

BANKRUPTCIES ANNULLED. [ANNULLING AN ADJUDICATION IN BANKRUPTCY.]

BANKRUPTCY. The status of a bankrupt. [BANKRUPT.]

BANKRUPTCY ACT. An act of parliament for regulating the law of bankruptcy. During the last thirty years the following bankruptcy acts have been passed: 12 & 13 Vict. c. 106, in the year 1849, for England and Wales; 19 & 20 Vict. c. 79, in 1856, for Scotland; 20 & 21 Vict. c. 60, in 1857, for Ireland; 24 & 25 Vict. c. 134, in 1861, for England and Wales; 32 & 33 Vict. c. 71, in 1869, for England and Wales; and 35 & 36 Vict. c. 58, in 1872, for Ireland. The last two of these acts regulate the present bankruptcy law for England and Wales, and for Ireland, respectively.

BANKRUPTCY, ACT OF. [ACT OF BANKRUPTCY; BANKRUPT.]

BANKRUPTCY COURT. A court having jurisdiction in bankruptcy. Under the present law the principal Court of Bankruptcy is the London Court of Bankruptcy, sitting in Portugal Street, Lincoln's Inn Fields, and presided over by a judicial officer called the Chief Judge in Bankruptcy. Many of the county courts are inferior courts of bankruptcy jurisdiction, and from these, in respect of that jurisdiction, an appeal lies to the Court of Bankruptcy in London. From the Court of Bankruptcy in London there is an appeal to the Court of Appeal in Chancery. *Robson, Bkcy.*

BANKRUPTCY DISQUALIFICATION ACT, 1871. The stat. 34 & 35 Vict. c. 50, being an act for disqualifying bankrupts from sitting or voting in the House of Lords. *Robson, Bkcy.*

BANKRUPTCY RULES. Rules made by the Lord Chancellor and the Chief Judge in Bankruptcy for the regulation of proceedings in bankruptcy. Two principal sets of such rules have been issued under the Bankruptcy Act of 1869:—1. The rules

BANKRUPTCY RULES - *continued.*

of 1870, 319 in number, issued on the 1st of January, 1870, when the Act of 1869 came into operation. To these is appended a schedule of forms, called the Bankruptcy Forms of 1870. 2. The rules of 1871, which were twenty-eight supplementary rules, issued on July 7, 1871. *Robson, Bkcy.*

BANNERET. [BANERET.]

BANNIMUS. The form of expulsion of any member from the University of Oxford, by affixing the sentence in some public place, as a denunciation or promulgation of it. *Toml.*

BANNS. A public notice given of anything. In England we use this word "banns" especially in the publishing of matrimonial contracts in the church before marriage, so that if any man can say ought against the intention of the parties he may do so in time. *Cowel; 1 Bl.* 439; *2 Steph. Com.* 246—7.

BAR. A term used in several senses.

1. Of the place where prisoners stand to be tried; hence the expression "prisoner at the bar."

2. Of the place where barristers stand in court to speak for their clients; hence the term *barristers.*

3. Of the profession of a barrister, and the persons who practise it.

4. Of an impediment: thus we speak of uses or limitations in a deed "in bar of dower," because they are intended to prevent a wife becoming entitled to dower out of the lands comprised in the deed. [DOWER.]

5. Of *pleas in bar,* which are pleas which go to the root of a plaintiff's action, and, if allowed, destroy it entirely.

6. A trial at bar in one of the superior courts of common law (generally the Court of Queen's Bench) means a trial before the full court, or a quorum which shall represent the full court. *Bl. & Steph. Com.*

BAR FEE. A fee of twenty pence which every prisoner acquitted of felony anciently paid to the gaoler. *Cowel.*

Abolished by stats. 14 Geo. 3, c. 20; 55 Geo. 3, c. 50; 8 & 9 Vict. c. 114. *4 Steph. Com.* 434—5, *and note (c).*

BAR OF THE HOUSE. The place at which witnesses before either House of Parliament are examined, and to which persons guilty of a breach of privilege are brought to receive judgment. *May's Parl. Pract.*

BARGAIN AND SALE is properly a contract made of manors, lands, tenements, hereditaments, and other things, transferring the property from the bargainor to the bargainee. Prior to the Statute of Uses (27 Hen. 8, c. 10) the effect of a bargain and sale was, that the bargainor stood seised of the land to the use of the bargainee, to the extent to which it was affected by the transaction; *i. e.,* though the bargainor's estate was still good *at law,* yet a court of *equity* considered the estate as belonging to the bargainee, who had paid the money. But the Statute of Uses had the effect of transferring the bargainee's interest into a *legal estate.* [USES, STATUTE OF.]

A bargain and sale must, by 27 Hen. 8, c. 16, be by deed indented, sealed, and enrolled, either in the county where the lands lie, or in one of the King's Courts of Record at Westminster, within six months after the date of the deed. *Cowel; 2 Bl.* 338; *1 Steph. Com.* 362, 533; *Wms. R. P.*

BARMASTER. The Barmaster of the High Peak is an officer appointed by Her Majesty, under statute 14 & 15 Vict. c. 94, s. 9, to execute all precepts and warrants directed to him by the steward of the Barmote Courts, and to accompany the steward in taking views of the mines. He holds his office during the pleasure of her Majesty, and may (with such consent as is specified in the Act) appoint deputy barmasters for certain districts or "liberties" (seven in number) within the jurisdiction of the Barmote Courts. *Stat. 14 & 15 Vict. c. 94, ss. 9, 13.* [BARMOTE COURTS.]

BARMOTE COURTS are two courts, called the Great and Small Barmote Courts, having jurisdiction under s. 16 of the High Peak Mining Customs and Mineral Courts Act, 1851 (14 & 15 Vict. c. 94), over the parts of the hundred of High Peak in Derbyshire, in which the Queen, in right of the Duchy of Lancaster, is entitled to the mineral duties. The Great Barmote Court is held in April and October in each year, at Monyash, for swearing in the grand jury and other formal matters. The Small Barmote Court is held at various times and places, as occasion may require, for the trial of actions. Both courts are Courts of Record under s. 15 of the Act. They are presided over by a judge, called "the steward," appointed by the Queen, and holding office during her pleasure. Proceedings in the Small Barmote Court

BARMOTE COURTS—*continued.*

may, for just cause, be removed by *certiorari* into the Court of Queen's Bench under s. 29 of the Act. See 3 *Steph. Com.* 348, *n.*

BARNARD'S INN. One of the Inns of Chancery. [INNS OF CHANCERY.]

BARON has the following meanings:—

1. It is taken for a degree of nobility next unto a viscount. In old times, probably, the word was used to indicate persons holding signiories or manors or lordships of the king. It is supposed that soon after the Conquest all such came to the Parliament and took their seats in the Upper House. These afterwards becoming too numerous, it grew to a custom that none should come but such as the king thought good to call by writ, which writ ran, *hâc vice tantum* (for this occasion only). After this, men seeing this nobility to be but casual, obtained of the king letters patent to settle such honour upon them and their heirs male; and these were, on creation, intituled barons by patent, whose posterity be now those barons that be called Lords of Parliament, of whom the king may create at his pleasure. But, nevertheless, there are barons by writ as well as by patent. *Cowel.*

2. A judge of the Court of Exchequer. These judges are so called because barons of the realm were wont to be employed in that office. *Cowel.* [There are at the present day six of such judges.]

3. Baron is the word used of a husband in relation to his wife. *Cowel.*

4. The chief magistrates of London were also anciently called barons before they had a lord mayor, as appears by several ancient charters. *Cowel.* See also 1 *Bl.* 398, 433; 2 *Steph. Com.* 238, 604.

BARONET (Lat. *Baronettus*) is a dignity or degree of honour, and hath precedency before banerets, knights of the bath, and knights bachelors, excepting only such banerets as are made *sub vexillis regis in aperto bello, et ipso rege personaliter præsente.* [BANERET.]

This order was created by King James I. in 1611, and it is supposed that where the word "baronet" is mentioned in the old statutes and ancient authors, it is a mistake for "baneret." *Cowel;* 1 *Bl.* 403; 2 *Steph. Com.* 613.

BARONY. The honour that gives title to a baron. *Cowel.* Also a tract of land in Ireland.

BARRATOR (or **BARRETOR**). 1. A deceiver, a vile knave or unthrift. *Cowel.*

2. A person guilty of barratry. [BARRATRY.]

BARRATRY. 1. Any wilfully wrongful or fraudulent act committed by the master of a ship or the mariners, causing damage to the ship or cargo, to which the owner is not a consenting party. 2 *Steph. Com.* 131; *Crump, Mar. Ins.*

2. *Common barratry* is the offence of *frequently* inciting and stirring up suits and quarrels between her majesty's subjects, either at law or otherwise. 4 *Bl.* 134; 2 *Steph. Com.* 235.

3. The offence committed by a judge who is induced by a bribe to pronounce judgment. *Bell.*

BARRE. [BAR.]

BARRE-FEE. [BAR FEE.]

BARRISTER. A counsel who pleads at the bar of a court. In our old books barristers were styled apprentices, *apprenticii ad legem*, being looked upon as merely learners, and not qualified to execute the full office of an advocate till they were of sixteen years' standing, when they might be called to the state and degree of serjeants (*servientes ad legem*), 1 *Bl.* 23; 3 *Bl.* 26; 3 *Steph. Com.* 272.

BARRMOTE. [BARMOTE COURTS.]

BARTON is a term used in Devonshire and other parts for the demesne lands of a manor; sometimes for the manor-house itself; and in some places for outhouses and fold-yards. *Cowel.* [DEMESNE.]

BAS CHEVALIERS. Low or inferior knights.

BASE COURT. An inferior court, not of record, as the court baron.

BASE ESTATE. The estate which base tenants have in their land; base tenants being those who hold at the will of their lord. Pure copyholders are reckoned among base tenants. *Cowel.* [COPYHOLD.]

BASE FEE. 1. An estate held at the will of the lord. *Cowel.*

2. But in modern times the term "base fee" is used to signify an estate descendible to heirs general, but terminable on an uncertain event. So long, however, as it lasts, it differs in nothing from a fee simple.

Thus if land be granted to the use of A. and his heirs until B. returns from Rome, and then to the use of B. and his heirs, A.'s estate, so long as it lasts, is a base fee. 2 *Bl.* 109; 1 *Steph. Com.* 239.

BASKET TENURE OF LANDS. One John of Liston, in the reign of king John, held a manor by the service of making the king's baskets. *Toml.*

BASSA TENURA. [BASE ESTATE.]

BASTARD, in English law, is one that is born of parents not legally married. *Cowel;* 2 *Bl.* 247; 1 *Steph. Com.* 438.

In the Scotch and other systems derived from the Roman Civil Law, one born a bastard may be legitimated by the subsequent marriage of the parents. *Bell.*

BASTARD EIGNE. When a man has a bastard son and after marries the mother, and by her has a legitimate son, the eldest son is *bastard eigné* (eigné being from the French aisné or aîné), and the younger son is *mulier puiné.* 2 *Bl.* 248; 1 *Steph. Com.* 438, 439.

BASTARDY. A defect of birth objected to one begotten out of wedlock. *Cowel.* The word is also used with special reference to proceedings taken before magistrates by the mothers of illegitimate children to compel the fathers to contribute to the support of such children. 2 *Steph. Com.* 298; *Oke, Mag. Syn.* [AFFILIATION.]

BASTARDY ACTS. Acts of Parliament passed for the purpose of enforcing the claims of mothers of illegitimate children for the support of such children against the fathers thereof. The acts by which the present law on the subject is regulated are stat. 7 & 8 Vict. c. 101, passed in 1844, and stat. 35 & 36 Vict. c. 65, passed in 1872, amended by stat. 36 & 37 Vict. c. 9, passed in 1873.

BASTON (*Bâton*). A French word signifying a staff or club. In the statutes it sometimes denotes an officer in attendance upon the king's court with a painted staff, for the taking into custody persons committed by the court. *Stat.* 1 *Rich.* 2, *c.* 12; 5 *Eliz. c.* 23; *Cowel.*

BATABLE GROUND was the land lying between England and Scotland, when the kingdoms were distinct, as to which it was a question, or *debate,* to whom they belonged. *Cowel.*

BATH, KNIGHT OF THE. [KNIGHT OF THE BATH.]

BATTEL. [WAGER OF BATTEL.]

BATTERY. A violent striking or beating of any man. *Cowel;* 3 *Bl.* 120; 4 *Bl.* 216; 3 *Steph. Com.* 378; 4 *Steph. Com.* 97, 331.

BEACON. A Saxon word betokening a signal, from which comes our word *beckon,* to give notice to. *Cowel;* 1 *Bl.* 264; 2 *Steph. Com.* 502.

BEACONAGE (*Beconagium*). Money paid towards the maintenance of a beacon. *Cowel.* See 3 *Bl.* 108; 3 *Steph. Com.* 343.

BEADLE. [BEDEL.]

BEAR, on the Stock Exchange, is a seller of stock which he cannot deliver. *Keyser.* [BULL, 2.]

BEARERS signifies such as bear down or oppress others, and is all one with maintainers. 4 *Edw.* 3, *c.* 11; *Cowel.* [MAINTENANCE.]

BECAUSE OF VICINAGE. [COMMON, I. 3.]

BEDEL (Fr. *Bedeau*) signifies a messenger or apparator of a court that cites men to appear and answer; also an inferior officer of a parish or liberty. *Cowel.*

BEDELARY. The same to a bedel as *baliva,* or bailiwick, is to a bailiff. *Cowel.*

BEDFORD LEVEL REGISTRY. An office for the registration of conveyances of lands forming part of the great level of the fens. *Wms. R. P.*

BEN. REG. [BENGAL REGULATIONS.]

BENCH. A word often used with reference to judges and magistrates; thus we speak of "judges on the bench," "the judicial bench," "a bench of magistrates."

BENCH WARRANT. A warrant issued by the presiding judicial officer at assizes or sessions for the apprehension of an offender; so called in opposition to a justice's warrant, issued by an ordinary justice of the peace or police magistrate. 4 *Steph. Com.* 381.

BENCHERS. Principal officers of each inn of court, in whom the government of the inn is vested. 1 *Steph. Com.* 19.

BENEFICE. An ecclesiastical living, or care of souls of a parish. *Cowel;* 4 *Bl.* 107; 3 *Steph. Com.* 306, *n.;* 4 *Steph. Com.* 173. The word was also anciently used of the interest of a grantee of lands under a feudal grant; which interest was afterwards called a feud. 4 *Bl.* 107; 1 *Steph. Com.* 173; 4 *Steph. Com.* 173.

BENEFICIAL INTEREST. This expression is used to indicate a right of substantial enjoyment, in opposition to merely nominal ownership. Thus, if A. holds lands in trust for B., A. is said to have the legal estate, and B. is said to have the beneficial interest.

BENEFICIO PRIMO ECCLESIASTICO HABENDO. An old writ directed from the king to the chancellor or lord keeper, to bestow the benefice that first shall fall in the king's gift, above or under such a value, upon this or that man. *Cowel.*

BENEFIT BUILDING SOCIETY. A society established to raise a subscription fund, by advances from which the members shall be enabled to build or purchase dwelling-houses, or to purchase land, such advances being secured to the society by mortgage of the premises so built and purchased. 3 *Steph. Com.* 89.

BENEFIT OF CLERGY (Lat. *Privilegium clericale*), or, as it is more shortly expressed, "clergy," originally consisted in the privilege allowed to a clerk in orders, when prosecuted in the temporal court, of being discharged from thence, and handed over to the Court Christian in order to make canonical purgation, that is, to clear himself on his own oath and that of twelve persons as his compurgators. In England this was extended to all who could read, and so were capable of becoming clerks, and ultimately allowed by stat. 5 Ann. c. 6, without reference to the ability to read. By stat. 4 Hen. 7, c. 13, it was provided that laymen allowed their "clergy" should be burned in the hand, and should claim it only once; and, as to the clergy, it became the practice in cases of heinous and notorious guilt to hand them over to the ordinary *absque purgatione faciendâ* (without making purgation); the effect of which was that they were to be imprisoned for life. This proceeding of delivery over to the ordinary was abolished in 1576 by stat. 18 Eliz. c. 7, which provided that, after an offender has been allowed his clergy, and burned in the hand, he shall be discharged out of prison, with a proviso that the judge may, if he think fit, continue the offender in gaol for any time not exceeding a year. Henceforth burning in the hand became an ordinary punishment for the first commission of a "clergyable" offence. By subsequent statutes other punishments were enacted to be inflicted at the discretion of the judge, in lieu of burning in the hand. The privilege of benefit of clergy was entirely abolished in 1827 by stat. 7 & 8 Geo. 4, c. 28, s. 6.

Benefit of clergy had no application except in capital felonies; and from several of these it had been taken away by various statutes, constituting the offences to which they respectively applied "felony without benefit of clergy." 3 *Bl.* 364—374; 4 *Steph. Com.* 440, *n.*

BENERTH. A service which a tenant rendered to his lord with his plough and cart. *Cowel.*

BENEVOLENCE. This word is used for a voluntary gratuity given by subjects to the king. This invention for raising money for the king's use grew first from Edward IV.'s days. *Cowel.* And as, under succeeding princes, benevolences were often extorted without a real and voluntary consent, it was made an article in the Petition of Right, 3 Car. 1, that no man shall be compelled to yield any gift, loan or benevolence, tax, or such like charge, without common consent by act of parliament. 1 *Bl.* 140; 1 *Steph. Com.* 166; *Hall. Const. Hist.*

BENEVOLENTIA REGIS HABENDA. The form of purchasing the king's pardon and favour, in ancient fines and submissions, to be restored to estate, title and place. *Toml.*

BENGAL REGULATIONS (abbreviated into "Ben. Reg.") are the regulations passed by the Governor-General of India in Council for the provinces of Bengal, Behar and Orissa, and other provinces, relating for the most part to the administration of justice and to the revenue. Such of them as were in force at the end of 1853 were published in three volumes, by Richard Clarke, Esq., late of the Madras Civil Service.

BEQUEATH. To dispose of personal property by will. In refereuce to real property the word "devise" is generally used.

BEQUEST. A disposition by will of personal property.

BERGHMASTER. A chief officer among the Derbyshire miners, who also performs the duty of a coroner. *Cowel.* [BARMASTER.]

BERGHMOTH or **BERGHMOTE** (from the Saxon *bergh*, a hill, and *gemote*, an assembly). An assembly or court upon a hill, for deciding in questions of minerals between the miners of the Derbyshire Peak. *Cowel.* [BARMOTE COURTS.]

BERNET. Arson, burning; from the Saxon *byrnan*, to burn. Sometimes it is used to signify any capital offence. *Cowel.*

BERTON is that part of a great country farm, where the barns, stables, and other inferior offices stand. *Cowel.*

BERWICA. A word often found in Doomsday Book, signifying a village; or something appurtenant to a manor. *Spelman* thinks it means a lesser manor appurtenant to a greater. *Cowel.*

BESAIEL, BESAILE, or BESAYLE, *great-grandfather.* A writ that lay for one who was entitled as heir to enter upon the lands of a deceased great-grandfather, against a stranger who had wrongfully entered into possession of the lands. *Cowel;* 3 *Bl.* 186. Now abolished by stat. 3 & 4 Will. 4, c. 27, s. 36.

BETTER EQUITY. Where A. has, in the contemplation of a Court of Equity, a superior claim to land or other property than B. has, he is said to have a *better equity.* Thus, a second mortgagee, advancing his money without knowledge of a prior mortgage, has a better equity than the first mortgagee who has not secured for himself the possession of the title deeds, or has parted with them, so as to enable the mortgagor to secure the second advance as upon an unincumbered estate.

BEYOND SEAS. An expression to indicate that a person is outside of the United Kingdom, the Channel Islands, and the Isle of Man. *Stat.* 19 *&* 20 *Vict. c.* 97, *s.* 12; 3 *Steph. Com.* 471, 476; *Lush's Pr.* 2, *n.* (*j*).

Formerly, however, under the old Statute of Limitations, 21 Jac. 1, c. 16, Ireland was held to be beyond the seas.

BIDDING OF THE BEADS. A charge or warning that the parish priest gave to his parishioners at certain special times, to say some particular prayers or do other acts of devotion. *Cowel.*

BIGAMUS. A person guilty of bigamy.

BIGAMY (*Bigamia*). 1. A word used in the common law for an impediment that hindereth a man to be a clerk, by reason that he hath been twice married, grounded upon the words of St. Paul in 1 Tim. ch. iii. ver. 2. This law was abolished by 1 Edw. 6, c. 12. *Cowel.*

2. The offence of marrying a second time, by one who has a former husband or wife still living and not divorced. 4 *Bl.* 163; 4 *Steph. Com.* 277—280; *Cox & Saunders' Cr. Law.*

BILAGINES. By-laws of corporations. [BY-LAWS.]

BILANCIIS DEFERENDIS. A writ, now obsolete, directed to a corporation for the carrying of weights to any haven, there to weigh the wool that persons by our ancient laws were licensed to transport. *Toml.*

BILINGUIS (two-tongued). In a legal sense is used for a jury *de medietate linguæ,* of which part are Englishmen and part strangers. *Cowel.* Abolished by stat. 33 Vict. c. 14. [DE MEDIETATE LINGUÆ.]

BILL. This word has several significations:—

1. An account delivered by a creditor to his debtor in respect of goods supplied or work done. Thus, a *bill of costs* is a bill furnished by a solicitor to his client.

2. A bill in equity is the written statement whereby the plaintiff in a chancery suit complains of the wrong upon which the suit is based, and seeks the appropriate redress. *Hunt. Eq.*

3. A bill of indictment against a prisoner is the presentment charging his offence, and submitted to the grand jury. If the grand jury think that the presentment is supported by probable evidence, they "return" it, that is, deliver it to the proper officer of the court, endorsed with the words, "A true bill against A. B." (the prisoner), and thereupon the prisoner is said to stand indicted of the crime, and bound to make answer to it. If the grand jury do not think the presentment supported by probable evidence, they "return" it with the words "No bill against C. D.," who may thereupon claim his discharge. They are then said to "ignore the bill." 4 *Bl.* 305; 4 *Steph. Com.* 367.

4. Bill in Parliament. A measure submitted to either House of Parliament for the purpose of being passed into law. When a measure has been actually passed into law, it is called an "Act."

Bills are divided into public and private bills. It may be laid down generally (though not without exception) that bills for the particular interest or benefit of any person or persons, of a public company or corporation, a parish, a city, a county, or other locality, are treated as *private bills,* to be distinguished from measures of public policy in which the whole community are interested, which are called *public bills.* But considerable difficulties often arise in determining to what class particular bills properly belong.

Private bills are introduced by the solicitation of the parties concerned; and, by the standing orders of both Houses, private bills are required to be brought in upon petition; and the payment of fees by their promoters is an indispensable condition to their progress.

A public bill must be introduced by a member of the House. In the House of Lords, any peer is at liberty to present a bill, and have it laid upon the table; but, in the Commons, a member must first move for and obtain permission from the House, before he can bring in a bill. *May, Parl. Pract.*

5. See also the Titles following.

BILL OF ATTAINDER. A bill brought into Parliament for attainting any person or persons. [ATTAINDER.]

BILL OF EXCEPTIONS. If, during a civil trial, a judge, in his directions to the jury, or his decision, mistakes the law, counsel on either side may require him publicly to seal a *bill of exceptions*, which is a statement in writing of the point wherein he is supposed to err.

This bill of exceptions is in the nature of an appeal; examinable, not out of the court out of which the record issues for the trial of *nisi prius*, but in the Appellate Court of Exchequer Chamber. 3 *Bl.* 372; 3 *Steph. Com.* 546.

Bills of exceptions are abolished, for the future, by rule 49 of the Schedule to the Judicature Act, 1873 (36 & 37 Vict. c. 66), which comes into operation in November, 1875.

BILL OF EXCHANGE. An open letter of request from one man to another, desiring him to pay a definite sum named therein to a definite ascertained person, or to his order. 2 *Bl.* 466; 2 *Steph. Com.* 114; *Lush's Pr.* 31, 32; *Byles on Bills.*

The person signing the letter of request is called the *drawer;* the person to whom it is addressed, or on whom it is drawn, is called the *drawee*, and when he has "accepted" the bill, that is, has admitted his liability under it, he is called the *acceptor;* and the person to whom the payment is to be made is called the *payee.* If the payee further indorses it as payable to a fourth person, such fourth person is called the *indorsee.*

BILL OF GROSS ADVENTURE, in French maritime law, is a written instrument containing a contract of bottomry, respondentia, or any other kind of maritime loan. *Bouvier.*

BILL OF HEALTH. A certificate, properly authenticated, that a certain ship therein named comes from a place were no contagious distempers prevail, and that none of the crew at the time of her departure were infected with any such distemper. *Bouvier.*

BILL OF LADING. A mode of authenticating the transfer of property in goods sent by ship. It is, in form, a receipt from the captain to the shipper or consignor, undertaking to deliver the goods, on payment of freight, to some person whose name is therein expressed, or endorsed thereon by the consignor. The delivery of this instrument will transfer to the party so named (usually called the consignee), or to any other person whose name he may think fit to endorse thereon, the property in such goods. 2 *Steph. Com.* 49; *Lush's Pr.* 14.

BILL OF MIDDLESEX was a writ directed to the sheriff of Middlesex, commanding him to take a defendant, and have him before our lord the king, at Westminster, on a day prefixed, to answer for a supposed trespass. By the common law and custom of the realm, the Court of King's (or Queen's) Bench has always had power to determine all offences and trespasses, and it has never needed any original writ from the Crown to give it cognizance of any misdemeanor in the county wherein it sits; but a process of its own became necessary for the purpose of bringing before the Court persons accused of committing forcible injury, and this was done by *Bill of Middlesex.* By this process the Court of Queen's Bench, sitting in Middlesex, assumed jurisdiction in civil cases. 3 *Bl.* 285; 3 *Steph. Com.* 333, *n.* Abolished by 2 Will. 4, c. 39. [AC ETIAM; LATITAT.]

BILL OF PAINS AND PENALTIES. A bill introduced into parliament for affecting any person or persons with pains and penalties short of death.

BILL OF PARTICULARS. A specific statement by a plaintiff to a defendant of what he seeks to recover by his action. [PARTICULARS OF PLAINTIFF'S DEMAND.]

BILL OF PEACE. A bill filed in Chancery for quieting litigation by a person threatened with a multiplicity of actions, all involving the same point. *Haynes, Eq.*

In some cases the same object may be effected by what is called a *consolidation rule,* without recourse to Chancery. [CONSOLIDATION RULE.]

BILL OF REVIEW. A bill in Chancery for reviewing a judgment either (1) upon error appearing on the face of the decree; or (2), by leave of the court, upon oath made of the discovery of new evidence which could not have been had or used at the time when the decree was made. 3 *Steph. Com.* 603; *Hunt. Eq.*

BILL OF RIGHTS. A declaration delivered by the Lords and Commons to the Prince and Princess of Orange, 13th February, 1688-9, and afterwards enacted in parliament, when they became king and queen, by 1 W. & M. st. 2, c. 2. The object of it was to insist on the rights and liberties asserted therein as being the "true, ancient, and indubitable rights of the people of this kingdom." This

BILL OF RIGHTS—*continued.*

declaration contains thirteen clauses, asserting the illegality of suspending laws by regal authority without consent of parliament; of the commitments and prosecutions of subjects for petitioning the king; of the raising and keeping a standing army within the kingdom in time of peace, without consent of parliament; that elections ought to be free; that excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; that parliaments ought to be held frequently, &c. 1 *Bl.* 128; 2 *Steph. Com.* 399, 469; *May's Parl. Pract.*

BILL OF SALE. An assignment in writing of chattels personal. 2 *Steph. Com.* 49. Provision is made by the Bills of Sale Act, 1854 (17 & 18 Vict. c. 36), for the registration of bills of sale within twenty-one days from the making thereof; otherwise, if the grantor continues in possession or apparent possession, the bill of sale is void against his execution creditors and assignees in bankruptcy. *Robson, Bkcy.; Hunt's Law of Fraudulent Conveyances and Bills of Sale.*

BILL OF SIGHT. A document furnished to the customs' officer by an importer of goods, who, being ignorant of their precise quality and quantity, describes the same to the best of his knowledge and information. *Stat.* 16 & 17 *Vict. c.* 107, *s.* 61.

BILL OF STORE. A kind of licence granted at the custom-house to merchants, to carry such stores and provisions as are necessary for their voyage, custom free. *Cowel.*

BILL OF SUFFERANCE. A licence granted at the custom-house to a merchant, to suffer him to trade from one English port to another without paying custom. *Cowel.*

BILLA VERA. A true bill found by a grand jury. [BILL, 3; GRAND JURY.]

BILLETING SOLDIERS. Soldiers are said to be "billeted" when they are dispersed among the several innkeepers and victuallers throughout the kingdom. 2 *Steph. Com.* 589.

BILLS OF EXCHANGE ACT. The stat. 18 & 19 Vict. c. 67, passed in 1855, for providing a more summary process in actions on bills of exchange. *Lush's Pr.* 1027; *Kerr's Act. Law.*

BILLS OF MORTALITY are returns of the deaths which occur within a particular district.

In the metropolis, the cities of London and Westminster, the borough of Southwark, and thirty-four out-parishes in Middlesex and Surrey, are said to be "within the bills of mortality," because, prior to the Registration Act of 1836 (6 & 7 Will. 4, c. 86), the deaths occurring within these limits were supposed to be carried to the account of certain tables of deaths, published every year by the Company of Parish Clerks. *Knight's English Cyclopædia.* This system is now practically superseded by the system of civil registration established under the above Act. *See* 3 *Steph. Com.* 233—238.

BIRETTUM. The cap or coif of a judge or serjeant-at-law. *Cowel.*

BISHOP. The principal officer of the Church in each diocese. He is the chief of the clergy within his diocese, but is subordinate to the archbishop of the province, to whom he is sworn to pay obedience. 1 *Bl.* 155, 156; 2 *Steph. Com.* 671.

BISHOP'S COURT. The consistory court in each diocese, held, under the authority of the bishop, by his chancellor. 2 *Steph. Com.* 672; 3 *Steph. Com.* 305.

BISSEXTILE, vulgarly called Leap-year. It is called bissextile, because formerly, in each such year, the *sixth* day before the calends of March was *twice* reckoned, viz., on the 24th and 25th of February. These days were, in each Leap-year, by 21 Hen. 3, to be accounted but one day. *Cowel;* 2 *Bl.* 141; 1 *Steph. Com.* 283.

BLACK ACT. The statute 9 Geo. 1, c. 22, by which certain acts are constituted felonies, and an action is given against the inhabitants of the hundred to make satisfaction in damages to persons who have suffered by such offences. 3 *Bl.* 161. Now repealed by stat. 7 & 8 Geo. 4, c. 27. 4 *Steph. Com.* 101, *n.*

BLACK BOOK. A book kept in the Exchequer, containing a collection of treaties, charters, &c.

BLACK CAP. The full head dress of a judge; which is worn when sentence of death is passed upon an offender.

BLACK MAIL denoted, in the northern counties, a certain rate of money, corn, cattle, or other consideration, paid unto some inhabiting near the borders, allied with certain persons known to be great robbers and spoil-takers within the said counties; for protection and safety from the danger of such as did usually rob and steal in those parts. These robbers were called moss-troopers, and several statutes

BLACK MAIL—*continued.*

were passed against them. *T. L.; Cowel;* 4 *Bl.* 244.

Also rents paid in grain or baser money were called *reditus nigri*, or *black mail*, as opposed to *reditus albi* or *white rents*, which were payable in silver. 2 *Bl.* 43; 1 *Steph. Com.* 676. [ALBA FIRMA.]

BLACK ROD is the usher belonging to the most noble order of the Garter; so called because of the black rod he carries in his hand. He is also usher of the House of Lords. *T. L.; Cowel.* He is also called the *gentleman usher*, as opposed to his deputy, who is called the *yeoman usher*. He is appointed by letters patent from the Crown. He executes the orders of the House for the commitment of parties guilty of breaches of privilege and of contempt, and assists at the introduction of peers, and other ceremonies. *May's Parl. Pract.*

BLACKSTONE. Sir William Blackstone was a judge of the Court of Common Pleas from 1770 to 1780. He was born July 10, 1723, and in the years from 1765 to 1769 published the four volumes of his famous Commentaries on English Law. He died Feb. 14, 1780. *Foss' Judges of England.*

BLANCH-FIRMES. [ALBA FIRMA.]

BLANCH-HOLDING. One of the ancient tenures of the law of Scotland, *ob præclara in rempublicam merita, et partam bello gloriam* (on account of illustrious services to the state, and glory obtained in war). *Bell.* It corresponds nearly to free and common socage in England.

BLANK BAR (also called *common bar*) was a plea which a defendant sometimes pleaded in an action of trespass, when he wished the plaintiff to point out with greater particularity the place where the trespass was committed.

BLANK INDORSEMENT. [INDORSEMENT.]

BLASPHEMY. The offence of denying the being or providence of the Almighty, or contumelious reproaches of our Saviour Christ; also all profane scoffing at the Holy Scripture, or exposing it to contempt and ridicule. 4 *Bl.* 59; 4 *Steph. Com.* 207.

BLOCKADE. An operation of war by which one of the belligerents is able so to apply his force to one of the enemy's ports or coast lines as to render it dangerous to attempt to enter. A blockade to be binding must be effective; that is, must be maintained by a force sufficient to prevent access to the coast of the enemy, or at least to render the same highly dangerous. The occasional and accidental absence, however, of the blockading squadrons will not suspend the blockade. Any attempt on the part of a neutral ship to enter or leave a blockaded place is deemed a breach of blockade, and exposes the vessel to seizure and confiscation. *Phillimore's Int. Law, Part X. ch.* 2; *Twiss's Law of Nations, Part II. ch.* 6. [DECLARATION OF PARIS.]

BLOODWIT is a word often used in ancient charters, and signifies an amerciament for blood shed. *Cowel.*

BLOODY-HAND signifies the apprehension of a trespasser in the forest against venison, with his hands or other parts bloody, though he be not found chasing or hunting. *Cowel.*

BOARD sometimes means a department of State, as recently the Board of Control and the Poor Law Board, and now the Local Government Board: sometimes an elected body representing a larger constituency, as the Metropolitan Board of Works, Local Boards of Health, Boards of Directors, &c.

BOARD FOR REPAIR OF HIGHWAYS. A board appointed in large parishes to discharge the functions of surveyor of highways for the parish. 3 *Steph. Com.* 134. [SURVEYOR OF HIGHWAYS.]

BOARD OF CONTROL. A board of commissioners for the affairs of India, appointed in 1784, to operate as a check upon the directors of the East India Company. The Board of Control continued until its abolition, in 1858, by stat. 21 & 22 Vict. c. 106, which provided that henceforth the powers and rights vested in the East India Company in trust for her Majesty should cease, and should become vested in her and be exercised in her name. 1 *Steph. Com.* 113.

BOARD OF GREEN CLOTH. A board composed of the lord steward and treasurer of the royal household, comptroller and other officers, having the management of the royal household; so called from the green cloth on the table. *Toml.*

BOARD OF TRADE. A committee of the Privy Council, charged with the consideration of matters relating to trade and foreign plantations, the supervision of railways and merchant shipping, and other matters of a miscellaneous character. 2 *Steph. Com.* 462.

BOCHORD is, as it were, bookhoard, or a hoard for books, that is, a place where books, writings or evidences are kept. *Cowel.*

BOCLAND *quasi* **BOOKLAND**, also called charter-land, was land held by deed under certain rents and free services, and in effect differed nothing from free-socage land. *Cowel;* 2 *Bl.* 90.

BODY OF AN INSTRUMENT signifies the main and operative part, as opposed to the recitals, &c.

BOIS. Wood.

BOLTING. The sifting and debating of cases, which *Cowel*, writing in the 17th century, describes as conducted in Gray's Inn in the manner following: — An ancient and two barristers sit as judges; three students bring each a case, out of which the judges choose one to be argued; which done, the students first begin and argue, and after them the barristers.

BOMBAY REGULATIONS. Regulations passed for the presidency of Bombay, and the territories subordinate thereto. They were passed by the governors in council of Bombay until the year 1834, when the power of local legislation ceased, and the Acts relating thereto were thenceforth passed by the Governor General of India in Council. *Clarke on Bombay Regulations.*

BONA FIDE. In good faith, without fraud or deceit. *Cowel.*

BONA NOTABILIA are such goods as a party dying hath in another diocese than that wherein he dies, amounting to 5*l.* at least, which whoso hath, his will must be proved before the archbishop of the province. *Cowel.* Now that the granting of probates and letters of administration is transferred, by stat. 20 & 21 Vict. c. 77, to the new Court of Probate, the law as to *bona notabilia* has become obsolete. 2 *Steph. Com.* 192, 193.

BONA VACANTIA. Goods found without any apparent owner, and in which, therefore, no one can claim a property but the king; such as royal fish, shipwrecks, treasure trove, waifs and estrays. 1 *Bl.* 299; 2 *Steph. Com.* 539.

BONA WAVIATA. Such goods stolen as are waived (or thrown away) by a thief in his flight, for fear of being apprehended. 1 *Bl.* 297; 2 *Steph. Com.* 547. [WAIFS.]

BOND. An instrument under seal, whereby a person binds himself to do or not to do certain things. The person so binding himself is called the *obligor;* the person to whom he is bound, who is entitled to enforce the bond, is called the *obligee.* As a matter of form, the obligor binds himself to pay a certain sum, called a *penal sum* or *penalty*, to which a condition is added, that, if he does or does not do a particular act (that is, if he complies with the conditions which the bond is intended to secure), the bond shall be void, otherwise it is to be of full force and effect. 2 *Steph. Com.* 108.

BOND AND DISPOSITION IN SECURITY. The phrase now generally used to designate a mortgage of land in Scotland.

BOND NOTE. A written description of goods intended to be shipped, delivered by the exporter or his agent to the officer of customs. *Stat.* 16 & 17 *Vict. c.* 107, *s.* 120.

BOND TENANTS. A name sometimes given to copyholders and customary tenants. 2 *Bl.* 148.

BONDED GOODS. Imported goods deposited in a government warehouse until duty is paid. *Chambers' Bookkeeping, App.* p. ix.

BONIS ARRESTANDIS. [ARRESTANDIS BONIS NE DISSIPENTUR.]

BONIS NON AMOVENDIS is an old writ directed to the sheriffs of London, &c., to charge them, that one condemned by judgment in an action, and prosecuting a writ of error, be not suffered to remove his goods, until the error be tried. *Cowel.*

BONO ET MALO. Special writs of gaol delivery, which it was anciently the course to issue for each particular prisoner, were termed writs *de bono et malo.* 4 *Bl.* 270; 4 *Steph. Com.* 315.

BOOK LAND. [BOCLAND.]

BOOK OF COMMON PRAYER. The book prescribed by the Acts of Uniformity, constituting the standard of faith, worship and discipline in the Church of England. 2 *Steph. Com.* 703, 704.

BOOKS OF RATES. Two books set forth by parliamentary authority, containing the customs imposed by parliament; one of these books was signed by Sir Harbottle Grimston, speaker of the House of Commons in Charles II.'s time; the other by Sir Spencer Compton, speaker in the time of George II. 1 *Bl.* 316.

BOON DAYS or DUE DAYS. A certain number of days in the year in which the tenants of copyhold lands performed base or corporal services for their lord, as

BOON DAYS—*continued.*

ploughing, reaping, &c. *Scriven on Copyholds*, 2, 413.

BOOTY OF WAR. Prize of war on land, as opposed to prize at sea. 3 *Steph. Com.* 343.

BORDER WARRANT, in Scotch law, is a warrant granted by a judge ordinary on the border between England and Scotland, on the application of a creditor, for arresting the person or effects of a debtor residing on the English side, until he finds security *judicio sisti*. *Bell.* [JUDICIO SISTI.]

BORDHALFPENNY. A duty formerly payable in fairs and markets for setting up tables, *bords* and stalls, for the selling of wares. *Cowel.*

BORDLANDS. The demesnes which lords keep in their hands for the maintenance of their *bord* or table. *Cowel.*

BORDLODE. A service required of the tenant to carry timber out of the woods of the lord to his house. *Cowel.*

BOROUGH is defined by Cowel as "a corporate town which is not a city." As used in the Municipal Corporations Act, 5 & 6 Will. 4, c. 76, it means a corporate town, whether sending representatives to parliament or not. According to Blackstone, however, a borough is a town, either corporate or not, that sendeth burgesses to parliament. 1 *Bl.* 115; 1 *Steph. Com.* 125.

In the Borough Electors Act, 1868 (31 & 32 Vict. c. 41), the term "parliamentary borough" is to mean a borough which, prior to the Representation of the People Act, 1867, returned a member or members to parliament; and a "municipal borough" a place subject to the Municipal Corporations Act (5 & 6 Will. 4, c. 76). 1 *Steph. Com.* 125, *n.*

The term "borough" is, however, used variously in different acts of parliament, according to the exigencies of each case.

BOROUGH COURT. The Court of Record for a borough, generally presided over by the recorder. *See* 3 *Bl.* 80; 3 *Steph. Com.* 293.

BOROUGH ENGLISH. A customary descent of lands or tenements, whereby, in all places where the custom holds, lands and tenements descend to the youngest son; or, if the owner of the land have no issue, then to the youngest brother. *Cowel;* 1 *Bl.* 75; 1 *Steph. Com.* 54, 56, 211.

BOROUGH REEVE. An officer of a borough.

BOROUGH SESSIONS. The sessions held quarterly, in a borough, before the recorder, where there is one, on a day appointed by him.

BORSHOLDER. [HEADBOROUGH.]

BOTE. Compensation. Thence cometh manbote, that is, compensation or amends for a man slain. To give to boot is to give by way of compensation. *Cowel.*

BOTELESS. Remediless, fruitless: as when we say "it is bootless to attempt" such a thing: that is, it is vain to attempt it. *Cowel.*

BOTHAGIUM. Dues paid to the lord of the manor for the pitching of booths in a market or fair. *Cowel.*

BOTTLER OF THE KING (Lat. *Pincerna regis*). An officer that provideth the king's wines. *Cowel.*

BOTTOMRY. A maritime bond in the nature of a mortgage of a ship, when the owner borrows money to enable him to carry on his voyage, and pledges the keel or bottom of the ship as a security for the repayment. In which case it is understood that, if the ship be lost, the lender loses his whole money; but, if it returns in safety, then he shall receive back his principal, and also the premium or interest agreed upon. *Cowel;* 2 *Bl.* 457, 458; 2 *Steph. Com.* 92.

BOTTOMRY BOND. [BOTTOMRY.]

BOUGHT AND SOLD NOTES are copies of entries and memoranda made by brokers of their transactions in buying and selling stock, and delivered to the vendors and purchasers for whom they act. The copy of any such entry, delivered to the purchaser, is called the *bought* note: the copy delivered to the vendor is called the *sold* note.

BOUGHT NOTE. [BOUGHT AND SOLD NOTES.]

BOUND BAILIFFS. Sheriffs' officers who serve writs, make arrests, &c. The sheriff being answerable for the misdemeanors of these bailiffs, they are usually *bound* in an obligation with sureties for the due execution of their office, and are thence called *bound bailiffs*. 1 *Bl.* 345, 346; 2 *Steph. Com.* 633. [BAILIFF.]

BOW BEARER. An under officer of the forest, sworn to oversee, and true inquisition make of all manner of trespasses

BOW BEARER—*continued.*

done, either to vert or venison, of which he was to make presentment in the next Court of Attachments, without any concealment had to his knowledge. *Cowel.* [ATTACHMENTS, COURT OF.]

BOWLES' CASE. [LEWIS BOWLES' CASE.]

BOX DAY. In the Court of Session, in Scotland, Box Days are days appointed by the judges, two in each of the spring and autumn vacations, and one in the Christmas vacation, on which papers are appointed to be "lodged," that is, deposited with the proper officer of the court to be filed. *Bell; Paterson.*

BRACTON. A famous lawyer of the reign of Henry III., renowned for his knowledge both of the common and civil laws. He wrote a celebrated book, *De Legibus et Consuetudinibus Angliæ* (Concerning the Laws and Customs of England). *Cowel;* 1 *Bl.* 72; 1 *Steph. Com.* 51.

BRAWLING. Quarrelling or chiding, or creating a disturbance, in a church or churchyard. 4 *Bl.* 146; 4 *Steph. Com.* 253.

BREACH. The breaking of a duty or contract is called a breach, and the word is specially used in the following expressions:—

1. *Breach of Close.* Unlawfully entering upon another person's land. 3 *Bl.* 209; 3 *Steph. Com.* 399.

2. *Breach of Covenant or Contract.* A non-fulfilment of a covenant or contract, whether by commission or omission.

3. *Breach of the Peace.* A disturbance of the public peace. 4 *Bl.* 142; 4 *Steph. Com.* 248.

4. *Breach of Pound.* Taking by force, out of a pound, things lawfully impounded. 3 *Bl.* 146; 3 *Steph. Com.* 254, 255.

5. *Breach of Prison.* The escape from arrest of a person lawfully arrested for a crime. 4 *Bl.* 129, 130; 4 *Steph. Com.* 225—237.

6. *Breach of Privilege.* An act or default in violation of the privilege of either house of parliament, as, for instance, by false swearing before a committee of the House, or by resisting the officers thereof in the execution of their duty. *May's Parl. Pract.*

7. *Breach of Promise.* Violation of a promise; a phrase used especially with reference to the non-fulfilment of a promise to marry.

8. *Breach of Trust.* A violation by a trustee of the duty imposed upon him by the instrument creating the trust.

BREAKING A CLOSE. An unlawful entry on another's land. [BREACH, 1.]

BREAKING BULK signifies opening a box or parcel of goods; a phrase used especially with reference to the fraudulent conduct of a bailee, entrusted with a box of goods, who causes the box to be broken open for the purpose of appropriating the goods, or for other fraudulent intention. Section 2 of the Fraudulent Trustees Act, 1857 (20 & 21 Vict. c. 54), incorporated in the Larceny Act of 1861 (24 & 25 Vict. c. 96, s. 3), provided that a bailee fraudulently converting to his own use goods entrusted to him shall be guilty of larceny, although he shall not break bulk. *Cox & Saunders' Cr. Law,* 27. [BAILMENT.]

BREAKING OF ARRESTMENT is where a debtor, whose debt has been arrested in favour of some person other than his creditor by reason of a debt due from the creditor to such other person, disregards the arrestment, and pays the debt to his creditor, as if the arrestment had not been made. *Bell.* [ARRESTMENT.]

BREHON. The name given to the law of Ireland at the time of its conquest by King Henry II., from the judges, who were denominated Brehons. 1 *Bl.* 100; 1 *Steph. Com.* 91.

BREVE, which haply may be so called from the *brevity* of it, is any writ directed to the chancellor, judges, sheriffs, or other officers. *Cowel.* [WRIT.]

BREVE DE RECTO. [WRIT OF RIGHT.]

BREVE ESSENDI QUIETI DE THEOLONIO. Abolished by stat. 3 & 4 Will. 4, c. 27, s. 36. [DE ESSENDO QUIETUM DE THEOLONIO.]

BREVET. [BREVET RANK.]

BREVET D'INVENTION. In French law, a patent for an invention.

BREVET RANK is where an officer holds a place in the *army at large* beyond that which he is entitled to hold *in his particular regiment.* Therefore, officers holding brevet rank take place according to such brevet rank at *general* courts-martial, but not at *regimental* courts-martial.

BREVIA ANTICIPANTIA. Writs of prevention at common law, for the purpose of preventing an anticipated injury.

BREVIA ANTICIPANTIA—*continued.*

These writs have been long superseded by injunctions in equity. Some of the writs in question were abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36. *Haynes, Eq. Lect. IX.*

BREVIA MAGISTRALIA. Old writs framed by the Masters in Chancery.

BREVIA TESTATA. Written memoranda, of which our modern deeds are nothing more than amplifications, introduced by our feudal ancestors to perpetuate the tenors of the various conveyances and investitures, when grants by parol had become the foundation of frequent dispute and uncertainty. 2 *Bl.* 307; 1 *Steph. Com.* 495.

BREVIATE OF A BILL IN PARLIAMENT. An epitome of the contents of a bill, which was formerly annexed to every bill in parliament, and read by the Speaker to the House. *May's Parl. Pract.*

BREVIBUS ET ROTULIS LIBERANDIS. A writ or mandate directed to an outgoing sheriff to deliver unto the new sheriff, chosen in his room, for the county, with the appurtenances, *una cum rotulis, brevibus, &c., i.e.*, with the rolls, writs, and all other things belonging to that office. *Reg. Orig.* 295.

BRIBERY. The taking or giving of money for the performance or non-performance of a public duty.

BRIEF. An abridgment of a client's case written out by the solicitor for the instruction of counsel in a civil or criminal proceeding.

BRIGBOTE or **BRUGBOTE.** Contribution to the repair of bridges. It signifies also freedom from giving aid to the repair of bridges. *Cowel.*

BRITTON. A famous lawyer of the reign of Edward I., at whose command, and by whose authority, he wrote a learned book of the law of this realm. *Cowel;* 1 *Bl.* 72; 3 *Bl.* 408; 4 *Steph. Com.* 503.

BROAD ARROW. The mark on government stores, indicating that they belong to the Crown. 4 *Steph. Com.* 195.

BROCAGE or **BROKERAGE.** The wages or hire of a *broker. Cowel.*

BRODEHALFPENY. [BORDHALFPENNY.]

BROKER (from the French word *Broieur*). A grinder or breaker into small pieces; because he that is of that trade draws the bargain into particulars, not forgetting to grind out something for his own profit. There is another sort of brokers, commonly called *pawnbrokers*, who have a shop, and let out money to necessitous people upon pawns, not without extortion. These we may call more properly *friperers. Cowel.*

A broker, in modern times, is an agent between the contracting parties in mercantile transactions. 2 *Steph. Com.* 77, 78.

BROKERAGE. The wages or hire of a broker. *Cowel.*

BUDGET. The financial statement of the national revenue and expenditure for each year, submitted to parliament by the Chancellor of the Exchequer. *May's Parl. Pract.*

BULL. 1. An instrument granted by the Pope of Rome, and sealed with a seal of lead, containing in it his decrees, commandments or other acts, according to the nature of the instrument. *Cowel;* 4 *Bl.* 109, 110; 4 *Steph. Com.* 177, 179.

2. A *bull*, on the Stock Exchange, is one who *buys* stock for settlement at a future date, with a view to gain by a rise in price in the interval. A *bear* is one who *sells* stock, with a view to buy back at a lower price. Hence the phrase "bull and bear transactions," to signify speculations for the rise and fall of stock. *Fenn's Compendium.*

BULLION. The ore or metal whereof gold is made. It signifies with us gold or silver in mass or billet. *Cowel.*

BURDEN OF PROOF. The duty of proving one's case. The burden of proof is said to lie on the party *against* whom, in the absence of evidence (or of further evidence, as the case may be), the decision or verdict would be given.

Thus, in general, the burden of proof lies upon the plaintiff or prosecutor: but he may adduce evidence to shift the burden on to the other side. For instance, in a case of theft, if the prosecutor shows the prisoner to have been in possession of stolen goods shortly after they were missed, he throws upon the defence the duty of proving that they were honestly received. So if on a charge of murder, it be proved that the prisoner killed the deceased, and the accused alleges that he was insane at the time, upon him will lie the duty of proving his allegation.

BURG or **BURGH.** [BOROUGH.]

BURGAGE TENURE. A tenure whereby burgesses, citizens, or townsmen hold their lands or tenements of the king or other lord, for a certain yearly rent. It is a kind of socage. *Cowel;* 2 *Bl.* 82; 1 *Steph. Com.* 21.

BURGESSES are properly the inhabitants of a borough or town, driving a trade there. But in particular we call those burgesses, who serve in parliament for any such borough or corporation. *Cowel;* 1 *Bl.* 174; 2 *Steph. Com.* 333, 360.

BURGHMOTE. A court of a borough or city. *Cowel.*

BURGLARY (Lat. *Burgi latrocinium*) is the crime of house-breaking by night; and it consists either (1) in breaking into a house by night, with intent to rob or do some other felony; or (2) in breaking out of a house by night, after having committed a felony therein, or after having entered with intent to commit a felony. *Cowel;* 4 *Bl.* 223—227; 4 *Steph. Com.* 104—111; *stat.* 24 & 25 *Vict. c.* 96, *s.* 51; *Cox & Saunders' Cr. Law,* 53. [HOUSEBREAKING; NIGHT.]

BURKING. A species of murder, named from Burke, the first known criminal by whom it was perpetrated. His victims were killed by pressure or other modes of suffocation, and the bodies were sold to the surgeons for dissection. He was tried before the High Court of Justiciary in Edinburgh, Dec. 24, 1828, and hanged according to his sentence, Jan. 28, 1829. *Annual Register, vols.* 20, 21; *Haydn's Dictionary of Dates.*

BURNING IN THE HAND. [BENEFIT OF CLERGY.]

BUTLERAGE OF WINES, otherwise called "prisage," was an ancient right, belonging to the Crown, of taking two tuns of wine from every ship (English or foreign) importing into England twenty tuns or more; but this, by charter of Edward I., was exchanged into a duty of two shillings for every tun imported by merchant strangers, and was then called "butlerage," because paid to the king's butler. *Cowel;* 1 *Bl.* 315; 2 *Steph. Com.* 561.

BY-LAWS or **BYE-LAWS** are laws made *obiter,* or *by-the-by,* such as are made in court leets or court barons, for the peculiar good of those who make them, farther than the common or statute law doth bind. The like are generally allowed by letters-patent of incorporation to any guild or fraternity, for the better regulation of trade among themselves, or with others. *T. L.; Cowel.* At the present day we apply the expression to laws made by local boards, corporations, and companies, under powers conferred by acts of parliament: thus we speak of the bye-laws of a borough; of a railway company, &c. And, independently of statutory powers, bye-laws made by a corporation aggregate are binding on its members, unless contrary to the laws of the land, or contrary to and inconsistent with their charter, or manifestly unreasonable. 1 *Bl.* 475, 476; 3 *Steph. Com.* 12, 13; *Grant on Corporations.*

C. L. P. A., or more frequently **C. L. Proc. Act.** Abbreviations for Common Law Procedure Act.

CA. SA. [CAPIAS AD SATISFACIENDUM.]

CABINET. Those privy councillors who, under the name of cabinet ministers or cabinet council, actually transact the immediate business of the government, and assemble for that purpose from time to time as the public exigencies require. The "cabinet council" is a body unknown to the law, and one whose members are never officially made known to the public, nor its proceedings recorded. 2 *Steph. Com.* 458.

CADASTRE, in French law, is the official statement of the quantity and value of landed property in any district, made for the purpose of justly apportioning the taxes payable on such property. *Bouvier; Littré.*

CADUCIARY RIGHT, in Scotch law, is the Crown's right of escheat to the estate of a deceased person on failure of heirs. *Maclaren on Wills and Successions,* 135, 239. [ESCHEAT.]

CÆTERORUM. Administration *cæterorum* is administration granted to the residue of an estate, after a *limited* power of administration, already given, has been exhausted. *Wms. Exors.* 525. [ADMINISTRATION, 1; ADMINISTRATOR.]

CAIRNS' ACT. The stat. 21 & 22 Vict. c. 27, passed in 1858, by which the Court of Chancery was empowered to give damages in certain cases; also to summon a jury for the trial of issues of fact. 3 *Steph. Com.* 461, *n.; Hunt. Eq.*

CALENDAR OF PRISONERS. A list of prisoners' names at a quarter sessions or assizes, with the crimes with which they stand charged, and the dates of their committal, &c. There are blank spaces left for the verdict, sentence, &c. The calendar of prisoners is described in 4 *Bl.* 403, and 4 *Steph. Com.* 478, as "a list of all the prisoners' names, with their separate judgments in the margin."

CALANGIUM. Challenge, claim or dispute. *Cowel.*

CALL DAY. The day in each term (generally the sixteenth day of term) on which students are called to the bar. [CALL TO THE BAR.]

CALL OF THE HOUSE. The calling over the names of members in either house of parliament, pursuant to a resolution of the house ordering the attendance of the members thereof, which order may be enforced by fine and imprisonment. *May's Parl. Pract.*

CALL TO THE BAR. The conferring upon a student of an Inn of Court the rank or degree of barrister at law. 1 *Steph. Com.* 19.

CALLING THE JURY. This consists in successively drawing out of a box, into which they have been previously put, the names of the jurors on the panels annexed to the *nisi prius* record, and calling them over in the order in which they are so drawn; and the twelve persons whose names are first called, and who appear, are sworn as the jury; unless some just cause of challenge or excuse, with respect to any of them, shall be brought forward. 3 *Steph. Com.* 520, 521. [NISI PRIUS RECORD.]

CALLING THE PLAINTIFF. It is usual for a plaintiff, when he or his counsel perceives that he has not given evidence sufficient to maintain his case, to be voluntarily nonsuited, or to withdraw himself; whereupon the crier is ordered to *call the plaintiff;* and if neither he nor anybody for him appears, he is nonsuited. The phrase is synonymous with nonsuiting the plaintiff. 3 *Bl.* 376; 3 *Steph. Com.* 551.

CALLS ON CONTRIBUTORIES. Demands made by a joint stock company, or its official liquidator, upon persons liable to contribute to its assets. 3 *Steph. Com.* 24.

CALUMNY, OATH OF, in the Scotch law, was an oath formerly taken by a party, at the commencement of a cause, that the facts set forth by him were true. *Bell.*

CALVIN'S CASE. A case decided in the year 1608 (the sixth year of James I.), in which it was held, that persons, born in Scotland after the accession of James I. to the crown of England, were not aliens in England.

CALYE'S CASE, decided in 1584, is the leading case on the liability of innkeepers in respect of the property of their guests. *Smith's Leading Cases.* The law on the subject is now amended by stat. 26 & 27 Vict. c. 41, passed in 1863. 2 *Steph. Com.* 84—86.

CAMBIST. A person who deals in promissory notes or bills of exchange; a broker. *Bouvier.*

CAMERA SCACCARIA. The Exchequer Chamber. [COURT OF EXCHEQUER CHAMBER.]

CAMERA STELLATA. The Star Chamber. [STAR CHAMBER.]

CAMPBELL'S ACTS. [LORD CAMPBELL'S ACTS.]

CAMPUS MAII or **MARTII.** An assembly of the people every year in March or May, where they confederated together to defend the country against all enemies. *Laws of Edward the Confessor; Toml.*

CANCELLARIUS. [CANCELLI.]

CANCELLI. Lattice-work placed before a window, a doorway, the tribunal of a judge, or any other place. Hence was derived the word *cancellarius,* which originally signified a porter, who stood at the latticed or grated door of the emperor's palace. From this word has come the modern "chancellor." *Smith's Dict. Ant.*

CANDLEMAS DAY. The feast of the Purification of the Blessed Virgin Mary (February 2), one of the Scotch quarter days. *Bell.*

CANON. 1. A cathedral dignitary, appointed sometimes by the Crown and sometimes by the bishop. 2 *Steph. Com.* 674. The benefice attached to it is called a *canonry.* [CHAPTER.]

2. A rule or law.

CANON LAW. A body of Roman ecclesiastical law, compiled in the twelfth, thirteenth and fourteenth centuries, from the opinions of the ancient Latin fathers, the decrees of General Councils, and the decretal epistles and bulls of the Holy See. 1 *Bl.* 82; 1 *Steph. Com.* 64.

In the year 1603 certain canons were enacted by the clergy under James I. But, as they were never confirmed in parliament, it has been held that, where they are not merely declaratory of the ancient canon law, but are introductory of new regulations, they do not bind the laity; whatever regard the clergy may think proper to pay them. 1 *Bl.* 83; 1 *Steph. Com.* 66, 67.

CANTRED is as much in Wales as a hundred in England; for *cantre* in the British tongue signified *centum* (a hundred). *Stat.* 28 *Hen.* 8, *c.* 3; *Cowel.*

CAPAX DOLI. [DOLI CAPAX].

CAPE. A writ judicial, formerly used in the old real actions for the recovery of land. It was of two kinds, the *cape magnum* or *grand cape*, and the *cape parvum* or *petit cape*.

Cape magnum was a writ which issued where the tenant or defendant made default at the day appointed for his appearance, and by it the sheriff was directed to take possession, into the hands of the Crown, of the premises claimed; also a further day was assigned for the appearance of the defendant, at which, if he came not, the land was forfeited, and the demandant was entitled to judgment.

Cape parvum was a writ of the same kind, which issued when the tenant or defendant, *having appeared* at the day assigned, *afterwards* made default. *Cowel.*

But the proceedings in real actions are now abolished by stat. 3 & 4 Will. 4, c. 27, s. 36, and stat. 23 & 24 Vict. c. 126, s. 26, so that the cumbrous process above described is now mere matter of history. See 3 *Steph. Com.* 606. [ACTIONS REAL AND PERSONAL.]

CAPE AD VALENTIAM. A species of *Cape magnum* [CAPE] awarded against one who had warranted the title of a defendant to lands sought to be recovered from him in a real action, and who, on being summoned to justify his warranty, failed to appear, so that the plaintiff or demandant recovered possession. The writ lay to recover land of the same value belonging to the "vouchee" or person summoned. *Cowel.*

CAPIAS. The writ by which process is issued against an accused person after indictment found, where the accused is not in custody, in cases not otherwise provided for by statute. 4 *Steph. Com.* 381. For other kinds of *capias*, see the following Titles.

CAPIAS AD AUDIENDUM JUDICIUM. A writ issued in cases where a defendant has, in his absence, been found guilty of misdemeanour, to bring him in to receive judgment. 4 *Bl.* 375; 4 *Steph. Com.* 440.

CAPIAS AD RESPONDENDUM. A writ under which an absconding defendant in a civil action was formerly arrested or obliged to give special bail. 3 *Bl.* 281; 3 *Steph. Com.* 498, *n.*

CAPIAS AD SATISFACIENDUM (generally called a *ca. sa.*). A writ by which, on a judgment for an amount exceeding 20*l.*, execution might issue against the person of the debtor, who might be arrested and imprisoned thereunder. This writ has been practically abolished by sect. 4 of the Debtors Act, 1869 (32 & 33 Vict. c. 62). It differed from the *capias ad respondendum*, which lay to compel an appearance of the defendant at the beginning of a suit. 3 *Bl.* 414, 415; 3 *Steph. Com.* 571, *n.*; *Lush's Pr.* 610—614; *Kerr's Act. Law; Robson, Bkcy.*

CAPIAS IN WITHERNAM. A writ in the nature of a reprisal, formerly issuing in two cases:—

1. For the arrest of a person, who, having had another in his custody, and being ordered to release him on security being given to the sheriff for his appearance, caused him instead to be "eloigned," or taken out of the sheriff's jurisdiction. 3 *Bl.* 129.

2. For taking the goods of a person, who, having "distrained" goods and being ordered to deliver them up on a proper security being given, caused them instead to be "eloigned," or taken out of the sheriff's jurisdiction, or to places to him unknown. 3 *Bl.* 149, 413; 3 *Steph. Com.* 423, *n.* (*x*); *Lush's Pr.* 1019.

CAPIAS PRO FINE was a writ which formerly issued upon judgment given for the plaintiff in an action, directing that the defendant be taken up (*capiatur*) till he paid a fine to the king for the public misdemeanour, coupled with the private injury, in cases of force, falsehood in denying his own deed, or unjustly claiming property in replevin, or of contempt by disobeying the command of the king's writ, or the express prohibition of some statute. Abolished by 5 & 6 Will. & M. c. 12. *Cowel;* 3 *Bl.* 398, 399.

CAPIAS UTLAGATUM. A writ of execution which lieth against him that is outlawed, by which the sheriff, upon the receipt thereof, apprehendeth the party outlawed. *Cowel;* 3 *Bl.* 284; 4 *Bl.* 319, 320; 4 *Steph. Com.* 384; *Lush's Pr.* 764.

CAPIATUR. "He be taken up." 3 *Bl.* 398. [CAPIAS PRO FINE.]

CAPITA, DISTRIBUTION PER. A distribution of an intestate's personal estate, wherein each claimant has a share in his own right as in equal degree of kindred

CAPITA, DISTRIBUTION PER—*contd.*
to the deceased, and not as representing another person. As if an intestate leave three brothers only, his personal estate is distributed to each equally "per capita." Contrasted with distribution *per stirpes.* [STIRPES, DISTRIBUTION PER.] 2 *Bl.* 517; 2 *Steph. Com.* 211, 212.

CAPITAL. The nett amount of property belonging to a merchant, after deducting the debts he is owing. This term, however, is more strictly applied, either to the sum of money which he has embarked in his business at first, or to the available sum he may afterwards have at command for carrying it on. *Chambers' Bookkeeping.*

CAPITAL PUNISHMENT AMENDMENT ACT, 1868. The stat. 31 Vict. c. 24, for the execution within prisons of capital sentences. 2 *Steph. Com.* 641; *Cox & Saunders' Cr. Law,* 389—394.

CAPITE. Tenants *in capite* were those who held land *immediately* from the king in right of his Crown. *Cowel;* 2 *Bl.* 59, 60; 1 *Steph. Com.* 186. [FEUDAL SYSTEM.]

CAPITULA RURALIA. Assemblies or chapters held by rural deans or parochial clergy within the precinct of each deanery.

CAPITULAR AND EPISCOPAL ESTATES ACT. The stat. 14 & 15 Vict. c. 104, passed in 1851, for enabling ecclesiastical corporations, with the approval of the Church Estate Commissioners, to sell to their lessees the reversion of the premises comprised in their respective leases, and to enfranchise copyholds or effect exchanges, &c. 2 *Steph. Com.* 738.

CAPTION. 1. When a commission is executed, and the commissioners' names subscribed and returned, that (says *Cowel*) is called the caption.

2. The caption of an indictment is the preamble, stating the court in which the indictment was preferred, when and where held, and generally also the names of twelve at least of the grand jurors, though this is not necessary. *Archbold's Pl. & Ev. Crim. Cas.* 38.

3. In Scotch law, caption is an order to incarcerate a debtor who has disobeyed an order, given to him by what are called "letters of horning," to pay a debt or to perform some act enjoined thereby. *Bell.*

CAPTURE. A seizure; a word especially used of the seizure of a ship or cargo, &c. at sea by a belligerent in time of war. *See* 2 *Steph. Com.* 17, 18; *Crump, Mar. Ins.*

CAPUT BARONIÆ. The castle or chief mansion-house of a nobleman, which, if there be no son, must descend to the eldest daughter, and not be divided. *Cowel.*

CAPUT LUPINUM (the head of a wolf). Anciently an outlawed felon was said to have a *caput lupinum,* so that he might be knocked on the head like a wolf by anyone that should meet him. Now, however, a person so doing is guilty of murder, unless it happens in the endeavour to apprehend him. 4 *Bl.* 319, 320; 4 *Steph. Com.* 384.

CARCAN. In French law, a species of pillory, abolished in 1832. *Littré.*

CARCANUM. A prison. *Laws of Canute.*

CARGO. Goods and merchandises lawfully shipped in accordance with the usages of trade for purposes of commerce. *Crump, Mar. Ins.*

CARGO BOOK. A book which every master of a coasting ship is required to keep. It contains the names of the ship and of the master, the port to which the ship belongs, and the port to which she is bound, also accounts of goods taken on board at the respective ports of lading, and other particulars required by the customs laws. 3 & 4 *Will.* 4, *c.* 52, *s.* 112; 16 & 17 *Vict. c.* 107, *s.* 155.

CARRIER. A person that carries goods for another for hire.

A *common carrier* is one who exercises the business of carrying as a public employment, and undertakes to carry goods for all persons indiscriminately. The law casts upon the common carrier a duty to carry, which no one else is bound to do, except upon agreement. *Chitty on Carriers;* 2 *Steph. Com.* 86—89.

CARRYING COSTS. A verdict is said to "carry costs" in those cases where by law it involves the payment of costs by the unsuccessful party to the party in whose favour the verdict is given, without any discretion on the part of the judge. *See* 3 *Bl.* 399, 400; 3 *Steph. Com.* 574.

CART BOTE. Wood to be employed in making and repairing instruments of husbandry. 2 *Bl.* 35; 1 *Steph. Com.* 256. [BOTE.]

CARTA. [CARTA DE FORESTA; CHARTA; CHARTER; MAGNA CHARTA.]

CARTA DE FORESTA. A forest charter, confirmed in parliament in the ninth year of Henry III., by which many forests unlawfully made were disafforested, so as to remit to the former owners their right; while, in the forests that remained entire, many abuses were reformed or mitigated. 1 *Steph. Com.* 667.

CARTE BLANCHE. A white sheet of paper; a phrase used especially to signify a paper given by one man to another with nothing on it but the signature of the former, so that the latter may fill it up at his discretion. Hence the figurative expression. "to give any one *carte blanche*," that is, unlimited authority.

CARTEL. An instrument executed between two belligerent powers for settling the exchange of prisoners of war. *Twiss' Law of Nations, Part II. s.* 179; *Phillimore's International Law, Vol. III. pp.* 181—183.

CARTEL SHIP. A ship employed in effecting the exchange of prisoners of war. [CARTEL.]

CARUCA. A plough. *Cowel.*

CARUCÆ AVERIA. Beasts of the plough. 3 *Steph. Com.* 351.

CARUCAGIUM. [CARUCATA.]

CARUCATA. A plough land, from *caruca*, a plough. It is a certain quantity of land, by which the subjects have been sometimes taxed. The tribute levied upon a carue or plough of land is called *carucagium.*

CARUE (Fr. *Charrue*). A plough.

CASE. A form of action which lies for wrongs or injuries not accompanied with immediate violence; sometimes called consequential injuries, that is, injuries arising indirectly and consequently from the act complained of. 3 *Bl.* 122; 3 *Steph. Com.* 59; *Smith's Act. Law; Kerr's Act. Law.*

CASE RESERVED. [RESERVING POINTS OF LAW.]

CASE, SPECIAL. [SPECIAL CASE.]

CASE STATED. A statement of facts prepared by one court for the opinion of another on a point of law. Thus it was formerly the practice of the Court of Chancery to refer difficult questions of law, which might arise in the course of a suit, to one of the common law courts, in the form of a "case stated" for the opinion of the common law court. 3 *Bl.* 453. This was abolished by s. 61 of the Chancery Jurisdiction Act, 1852 (15 & 16 Vict. c. 86). Now by stat. 22 & 23 Vict. c. 63, a case may be stated by an English court for the opinion of a Scotch court, in a matter involving Scotch law, &c. *Lush's Pr.* 967.

We also speak of a "case stated" by justices of the peace under stat. 20 & 21 Vict. c. 43, for the opinion of a superior court in a matter of law.

A counsel who opens a case before a jury is also said to "state the case" to the jury. 3 *Steph. Com.* 529.

CASH ACCOUNT is a phrase used especially for the credit given by a bank, under which the person entitled to the credit may draw to the extent of the sum agreed upon, and repay and draw again as long as the bank chooses to continue the credit. *Bell.*

CASH BOOK. A book used by merchants for entering cash received and paid, and discount received and allowed. In it "cash received" is entered on the debtor or left-hand side, the imaginary personage "Cash" being *debited* with the sums so received; whereas "cash paid" is entered on the creditor or right-hand side, the sums so applied being placed to the *credit* of "cash." *Chambers' Bookkeeping; Coombs' Solicitors' Bookkeeping.*

CASSATION, in French law, is a decision emanating from the sovereign authority, by which a decree or judgment is quashed (*cassatur*).

The Court of Cassation in France is the supreme judicial tribunal and court of final resort. *Bouvier.*

CASSETUR BREVE (let the writ be quashed). The name of a judgment quashing or making void a writ of summons in an action, on a plea in abatement by the defendant. 3 *Bl.* 303. On a plea of abatement being pleaded, the plaintiff himself may enter a *cassetur breve* and abandon his action, without paying costs to the defendant. *Lush's Pr.* 468; *Kerr's Act. Law.*

CASTELLAIN. A keeper or captain, sometimes called a constable, of a castle. *Cowel.*

CASTELLARIUM. The jurisdiction of a castle.

CASTELLORUM OPERATIO. Castle-work, or service required by lords of their tenants for the repairing or rebuilding of castles. *Cowel.*

CASTIGATORY FOR SCOLDS. It is laid down by Blackstone, that a common

CASTIGATORY FOR SCOLDS—*continued.* scold, *communis rixatrix* (for our law Latin confines it to the feminine gender), may be indicted as a public nuisance to her neighbourhood, and, if convicted, shall be sentenced to be placed in a certain engine of correction, called the trebucket, castigatory, or *cucking* stool, which, in the Saxon language, is said to signify the scolding stool; though now it is frequently corrupted into *ducking* stool, because the residue of the judgment is, that, when she is so placed therein, she shall be plunged in the water for her punishment. 4 *Bl.* 168; 4 *Steph. Com.* 276.

CASTING AN ESSOIGN. Alleging an excuse for failure to appear in an action. 3 *Steph. Com.* 605, 606, *n.* (*c*). [ESSOIGN.]

CASTLE. A house of strength, imbattled, or other fortress defensible. Sir Edward Coke lays it down that no subject may build a castle without the licence of the king. 1 *Bl.* 263; 2 *Steph. Com.* 498, 499.

CASTLE GUARD. [CASTLE WARD.]

CASTLE WARD. An imposition laid upon such of the king's subjects as dwell within a certain compass of any castle, towards the maintenance of such as watch and ward the castle. *Cowel.*

CASU CONSIMILI (in a like case). A writ of entry implicitly given by Stat. West. 2, 13 Edw. 1, c. 24, which lay for a reversioner to recover land which a tenant for life, or other limited interest, not being a tenant in dower, had attempted to dispose of for a greater estate than that which he held in the land. It was so called because it was a case *like* to that which formed the subject of the writ in *casu proviso*. *Cowel;* 3 *Bl.* 183, *n.* [CASU PROVISO.] Abolished by stat. 3 & 4 Will. 4, c. 27, s. 36.

CASU PROVISO is a writ of entry given by the Statute of Gloucester, 6 Edw. 1, c. 7, to a reversioner of land which a dowress (or tenant in dower) of the land had disposed of in fee, or for other greater estate than that which she held in the land. It could be brought in the lifetime of the dowress, and in this respect it differed from the writ *ad communem legem*. *Cowel;* 2 *Bl.* 137, *n.*; 3 *Bl.* 183, *n.* Abolished by stat. 3 & 4 Will. 4, c. 27, s. 36. [COMMUNEM LEGEM.]

CASUAL EJECTOR. The fictitious tenant (generally called Richard Roe) in the old action of ejectment. [EJECTMENT.]

CASUAL PAUPER. A person who applies for relief in a parish in which he is not settled. 3 *Steph. Com.* 56.

CASUALTIES OF SUPERIORITY, in the feudal language of the Scotch law, are payments from an inferior to a superior, that is, from a tenant to his lord, which arise upon *uncertain events*, as opposed to the payment of rent at fixed and stated times. *Bell.*

By sect. 23 of the Conveyancing and Land Transfer (Scotland) Act, 1874, no casualties or duties are to be payable to the grantor of a feu, or his successors in the superiority, in the absence of express condition or covenant; and it shall not be lawful to condition or stipulate for any casualty to be paid on the succession of the heir or the acquisition of a singular successor, or in any way except at fixed intervals.

CASUS OMISSUS. A case inadvertently left unprovided for by statute.

CATALLA. Chattels. [CHATTELS.]

CATALLIS REDDENDIS was a writ which lay where goods, being delivered to any man to keep until a certain day, were not upon demand delivered at that day. It might otherwise be called a *writ of detinue*. It answered to the *actio depositi* of the Roman law. *Cowel.*

CATCHPOLE. A name formerly given to a sheriff's deputy, or to a constable, or other officer whose duty it is to arrest persons.

CATHEDRAL. The principal church of a diocese. 2 *Steph. Com.* 671, and *n.* (*a*).

CATHEDRATIC. A sum of two shillings payable to the bishop by the inferior clergy *in argumentum subjectionis et ob honorem ecclesiæ* (as a proof of subjection and for the honour of the church). *Cowel.*

CAUSA JACTITATIONIS MATRIMONII (a cause of boasting of marriage) was when one of two parties had falsely boasted or gave out that he or she was married to the other, whereby a common reputation of their matrimony might ensue, and the other took proceedings in the Ecclesiastical Court to enjoin perpetual silence on that head. 3 *Bl.* 93; 2 *Steph. Com.* 238, *n.*

CAUSA MATRIMONII PRÆLOCUTI. A writ of entry that lay for a woman who gave land to a man in fee or for life, to the intent that he might marry her, and he refused to do so within a reasonable time. *Cowel;* 3 *Bl.* 183, *n.*

CAUSA MORTIS. [DONATIO MORTIS CAUSA.]

CAUSAM NOBIS SIGNIFICES (that you signify the cause to us). An old writ which lay against a mayor of a town or city, who, having by the king's writ been commanded to give seisin (*i. e.* possession of land) unto the king's grantee, delayed to do so. The writ called upon him to show cause why he so delayed the performance of his charge. *Cowel.*

CAUSE LIST. The list of causes made out for each day during the sittings of the courts, and exhibited in a conspicuous place in each court. The list is generally made out at the close of the previous day's sitting, and appears in the newspapers on the following morning. See *Lush's Pr.* 548.

CAUSE OF ACTION. The ground on which an action can be maintained; as when we say that such a person has no cause of action. But the phrase is often used to signify the matter of the complaint or claim on which a given action is in fact grounded, whether or not legally maintainable. *See* 3 *Steph. Com.* 509.

CAUSES CELEBRES. Celebrated cases.

CAUTION in ecclesiastical, admiralty, and Scotch law, signifies *surety* or *security*. It is also called *cautionry*. *Bell.*

CAUTION JURATORY. [JURATORY CAUTION.]

CAUTIONE ADMITTENDA. A writ that lay against a bishop who kept an excommunicated person in prison for his contempt, notwithstanding that he offered sufficient *caution* or pledges to obey the commandments and orders of holy church from henceforth. *Cowel.*

CAUTIONER. A person who becomes surety for another.

CAVEAT (let him beware). An intimation made to the proper officer of a court of justice to prevent the taking of any step without intimation to the party interested to appear and object to it. *Bell. See also* 3 *Bl.* 98, 246; 2 *Steph. Com.* 32, 191, *n.*, 248, *n.*, 252, *n.*; *Hunt, Eq.*

CAVEAT EMPTOR (let the buyer beware). A maxim implying that the buyer must be cautious, as the risk is his and not that of the seller. The rule of law as to the sale of goods is, that if a person sells goods and chattels as his own, and the price be paid, and the *title* prove deficient, the seller may be compelled to refund the money. But as to the soundness of the wares, the vendor is not bound, at least by English law, to answer, unless, *knowing* them to be faulty, he represented them as sound, or else expressly *warranted* them. 2 *Steph. Com.* 76. The same is now the law of Scotland. *Stat.* 19 & 20 *Vict. c.* 60, *s.* 5.

CAYAGIUM. A duty or toll paid to the king for landing goods at some quay or wharf.

CENTENARII. Officers in France in the middle ages. Each *centenarius* was the head officer of a district containing a hundred freemen; and the *centenarii* themselves were subject to a superior officer called the *comes*. 1 *Bl.* 116; 1 *Steph. Com.* 126, *n.*

CENTRAL CRIMINAL COURT. The court established by stat. 4 & 5 Will. 4, c. 36, for trial of offences committed in London, Middlesex, and certain suburban parts of Essex, Kent, and Surrey; the judges or commissioners whereof are the Lord Mayor of London; the Lord Chancellor or Lord Keeper; the Judges of the Courts at Westminster; the Judge of the Admiralty; the Dean of the Arches; the Aldermen of London; the Recorder and Common Serjeant of London; the Judge of the City of London Court; any person who has been Lord Chancellor or Lord Keeper, or a Judge of any of the Courts at Westminster; and such others as the Crown shall from time to time appoint. The court sits at least twelve times in the year. Practically, those who preside for the trial of offences there are, one or more Judges of the Superior Courts of Law at Westminster; the Recorder of London; the Common Serjeant of the City of London, and the Judge of the City of London Court. This Court superseded "the Court of the Sessions House in the Old Bailey," which sat for the trial of offences in London and Middlesex. Offences committed outside the ordinary jurisdiction of the Central Criminal Court may be tried there by order of the Court of Queen's Bench, under stats. 19 & 20 Vict. c. 16, and 25 & 26 Vict. c. 65.

CEPI CORPUS (I have taken the body). The sheriff's return to a *capias* or other writ requiring him to seize the body of a party, indicating that he has complied with the writ. *Cowel;* 3 *Bl.* 288. *See also Lush's Pr.* 738. [CAPIAS.]

CERTIFICATE is used for a writing made in any court, to give notice to another court of anything done therein. *Cowel.* The word is also used in many special senses, some of which will be found in the following Titles.

CERTIFICATE INTO CHANCERY. Before the passing of the Chancery Amendment Act, 1852, it was frequently the practice of the chancery judges, when a question of common law arose in a chancery suit, to send the material facts to a court of common law for the opinion of such court as to the law; and the opinion of the common law court was "certified" to the chancery judge, and the written statement of such opinion was called the certificate. 3 *Bl.* 453. [CASE STATED.]

CERTIFICATE OF CHIEF CLERK. The written statement of a chief clerk in Chancery, embodying the result of inquiries and accounts in a chancery suit taken before the chief clerk, in accordance with the decree made by the judge in the suit. *Hunt. Eq.* [CHIEF CLERK.]

CERTIFICATE OF CONFORMITY. A certificate formerly granted to a bankrupt, indicating that he had conformed in all points to the directions of the law. 2 *Bl.* 482, 483; 2 *Steph. Com.* 161, *n.* Under the Bankruptcy Act of 1849, the certificate was of the first, second or third class, according to the deserts of the bankrupt. An order of discharge is now substituted for the certificate of conformity. *Robson, Bkcy.*

CERTIFICATE OF SHARES. A document declaring its owner entitled to shares or stock in a joint stock company.

CERTIFICATE, TRIAL BY. A form of trial in which the evidence of the person certifying was the only proper criterion of the point in dispute; as if the issue be whether A. was absent with the king in his army out of the realm in time of war. This (says Blackstone) shall be tried by the certificate of the mareschall of the king's host in writing under his seal, which shall be sent to the justices. 3 *Bl.* 333; 3 *Steph. Com.* 513. Now practically obsolete.

CERTIFICATION. 1. A writ formerly granted for a review of a matter decided in an action; especially where, in the old action called the assize of novel disseisin, a party had appeared, not personally, but by a bailiff or agent, who lost the case through having omitted to state all the necessary facts; and the principal accordingly desired an opportunity to state the case in all its bearings to the court, and obtain a fuller examination of the question in dispute. [ASSIZE OF NOVEL DISSEISIN.]

2. The term used in a Scotch judicial writ to express the penalty or other consequence which would be incurred by disobedience to the writ. *Bell.*

CERTIORARI. A writ commanding an inferior court *to certify* an indictment or other proceeding to a superior court, with the view to its removal thither for trial. Thus—

1. An indictment against a peer for felony is removed into parliament, or into the court of the Lord High Steward, by writ of *certiorari*.

2. An indictment may be removed from an inferior court to the Court of Queen's Bench by writ of *certiorari*. 4 *Bl.* 262, 265; 3 *Steph. Com.* 652; 4 *Steph. Com.* 385—387.

In many cases of summary conviction the right to *certiorari* has been taken away by statute.

CERTIORARI, BILL OF, IN CHANCERY. A bill praying for the removal into the Court of Chancery of a suit instituted in an inferior court.

CESS or CESSE. An assessment or tax. *Toml.*

CESSAVIT. A writ that formerly lay to recover land against a tenant who had for two years neglected to perform such service, or to pay such rent, as he was bound by his tenure to do or to pay, and had not upon his land or tenement sufficient goods or chattels to be distrained. *Cowel.* It lay also where a religious house, having lands given it on condition of performing some certain spiritual service, as reading prayers or giving alms, neglected it. 3 *Bl.* 232.

CESSER. The ceasing or termination.

CESSET EXECUTIO. Let execution be stayed. Thus, on a judgment in favour of a party in respect of a reversion claimed by him at the expiry of a lease, there must be a *cesset executio* during the continuance of the lease.

CESSET PROCESSUS (let process be stayed). An order to stay proceedings in an action.

CESSIO BONORUM (the yielding up of goods). The cession, or yielding up, by a debtor, of his goods to his creditors. 2 *Bl.* 473.

CESSION is the name given to the vacancy created by an incumbent of a living in taking another benefice, whereby the first is adjudged void according to stat. 21 Hen. 8, c. 13. *Cowel;* 1 *Bl.* 392; 2 *Steph. Com.* 691.

CESSOR. A tenant of land who neglects the duties to which he is bound by his tenure. *Cowel.* [CESSAVIT.]

CESTUI QUE TRUST. The person for whose benefit a trust is created. 2 *Steph. Com.* 372; *Wms. R. P.; Lewin on Trusts.*

CESTUI QUE USE. The person for whose benefit a use is created. 2 *Bl.* 328; 2 *Steph. Com.* 360, 361; *Wms. R. P.*

CESTUI QUE VIE. He for whose life any land or tenement is granted. *Cowel;* 2 *Bl.* 123; 1 *Steph. Com.* 258; *Wms. R. P.* Thus, if A. be tenant of lands for the life of B., B. is called the *cestui que vie.*

CHACEA. A station of game more extended than a park, and less than a forest. It is sometimes taken for the liberty of chasing or hunting within a district; sometimes for the way through which cattle are drove to pasture, commonly called in some places a *droveway. Toml.* [CHASE.]

CHAFEWAX or CHAFFWAX. An officer in Chancery that fitteth the wax for the sealing of the writs, and such other instruments as are there to be made out. *Cowel.*

By stat. 2 & 3 Will. 4, c. 111, passed in 1832, provision was made for the abolition of this office when it should become vacant, and it was definitely abolished by stat. 15 & 16 Vict. c. 87, s. 23, passed in 1852.

CHALLENGE, in a legal sense, signifies an objection taken against persons or things: against persons, as in the case of challenge to jurors; against things, as against a plaintiff's declaration in an action. *Cowel.*

Challenges to a jury are of two kinds:—

1. *Challenges to the array,* by which a party excepts to the whole panel of the jurors, by reason of the partiality of the sheriff or his under officer who arrayed the panel, or for some other cause.

2. *Challenges to the separate polls,* by which a party excepts to individual jurors. These may be made (1) *propter honoris respectum* (by reason of honour), as if a lord of parliament be empanelled on a jury; (2) *propter defectum:* as if a man have not estate sufficient to qualify him for being a juror; (3) *propter affectum,* for suspicion of bias or partiality; (4) *propter delictum,* for some crime or misdemeanor that affects the juror's credit and renders him infamous. Challenges to the number of twenty may also, on trials for felony, be made by a prisoner without assigning cause, in which case they are called *peremptory* challenges. The Crown may also challenge jurors in the first instance without assigning cause, until all the panel is gone through and it is found that there cannot be a full jury without the persons so challenged. 3 *Bl.* 358—364; 4 *Bl.* 352—354; 3 *Steph. Com.* 521—526; 4 *Steph. Com.* 421—424.

Challenges *propter affectum* are also divided into *principal challenges,* and *challenges to the favour.* See FAVOUR, CHALLENGE TO.

CHAMBERDEKINS. Irish beggars, who, by stat. 1 Hen. 5, c. 8, were by a certain time ordered to avoid this land. *T. L.; Cowel.*

CHAMBERLAIN. This word is variously used in our chronicles, laws and statutes; as—

1. The Lord Great Chamberlain of England, to whose office belongs the government of the palace at Westminster;

2. The Lord Chamberlain of the King's House, the King's Chamberlain, to whose office it especially appertaineth to look to the king's chamber and wardrobe, and to govern the under servants belonging to the same. He has also authority to license theatres within the metropolis, and within those places where the sovereign shall usually reside; also to license plays intended to be acted for hire at any theatre in Great Britain. *Cowel;* 3 *Bl.* 38; 3 *Steph. Com.* 201—203.

3. The Chamberlain of London is the receiver of the rents and revenues belonging to the city. *Pulling on the Customs of London, pp.* 83, 123.

CHAMBERS. The offices of a judge or of a barrister are called by this name. A large part of the business of the Superior Courts is transacted in chambers: in Chancery, by a judge or his chief clerk; in the Common Law Courts, by a judge or a master. Applications by way of summons, and inquiries incidental to a suit, are made in chambers. *Lush's Pr.* 947; *Hunt. Eq.*

CHAMBERS OF THE KING (*Regiæ cameræ*). The havens or ports of the kingdom are so called in our ancient records. *Cowel.*

CHAMPARTY or CHAMPERTY (Lat. *Campi partitio,* a dividing of the land), signifieth in our common law a maintenance of any man in an action or suit, upon condition to have part of the things (be it lands or goods) when it is recovered. *Cowel.* It is an offence against public justice. 4 *Bl.* 135; 4 *Steph. Com.* 237.

CHAMPION. A man who fought for another in trial by battel. 3 *Bl.* 338. But *Cowel* says that in the common law it is taken no less for him that trieth the combat in his own case, than for him that fighteth in the quarrel or place of another. Wager of battel is now abolished by stat. 59 Geo. 3, c. 46. [WAGER OF BATTEL.]

CHAMPION OF THE KING. An officer whose duty it is, at the coronation of our kings, when the king is at dinner, to ride armed into Westminster Hall, and, by a herald, make a challenge that, if any person shall deny the king's title to the Crown, he is there ready to defend it; which done, the king drinks to him, and sends him a gilt cup with a cover full of wine, which he hath for his fee. *Cowel.*

CHANCELLOR. A word used in several senses.

1. The Lord High Chancellor, who presides over the Court of Chancery, and is Speaker of the House of Lords, and is to be the principal judge of the High Court of Justice under the Judicature Act, 1873. He is a privy councillor by virtue of his office, and visitor of all hospitals and colleges of the king's foundation for which no other visitor is appointed. To him belongs the appointment and removal of justices of the peace throughout the kingdom. Sir Edward Coke tells us that the word chancellor, *cancellarius*, is so termed *à cancellando*, from cancelling the king's letters-patent when contrary to law, which is the highest point of his jurisdiction. *Cowel;* 3 *Bl.* 38, 47; 2 *Steph. Com.* 382; 3 *Steph. Com.* 320. [But see CANCELLI.]

2. The Chancellor of the Duchy of Lancaster, who presides over the court of the duchy, to judge and determine controversies relating to lands holden of the king in right of the Duchy of Lancaster. This court has a concurrent jurisdiction with the Court of Chancery in matters relating to the duchy. *Cowel;* 3 *Bl.* 78; 3 *Steph. Com.* 347, *n.*

3. The Chancellor of the Exchequer is an officer who formerly sat in the Court of Exchequer, and, with the rest of the court, ordered things for the king's best benefit. *Cowel.* This part of his functions is now practically obsolete; and the Chancellor of the Exchequer is now known as the minister of state who has control over the national revenue and expenditure. *See* 2 *Steph. Com.* 458.

4. The Chancellor of a University, who is the principal officer of the university. His office is for the most part honorary. The Chancellor's Court has a jurisdiction over the members of the university, and the judge of the court is the vice-chancellor or his deputy. 3 *Bl.* 83; 3 *Steph. Com.* 299, 300; 1 *Steph. Com.* 67; 4 *Steph. Com.* 325.

5. The Chancellor of a Diocese is the officer appointed to assist a bishop in matters of law, and to hold his consistory courts for him. 1 *Bl.* 382; 2 *Steph. Com.* 672.

CHANCE-MEDLEY, or casual affray, is a phrase properly applied to such killing as happens in self-defence upon a sudden *rencontre.* It is sometimes erroneously applied to any manner of manslaughter by misadventure. *Cowel;* 4 *Bl.* 184; 4 *Steph. Com.* 30, 54.

CHANCERY, also called the High Court of Chancery, is the court presided over by the Lord Chancellor. It is, in matters of civil property, by much the most important of any of the king's superior and original courts of justice. In this court there are two distinct tribunals, the one *ordinary,* being a court of common law, the other *extraordinary,* being a court of equity. 3 *Bl.* 47, 48. It is important, however, to observe that the so-called "extraordinary" jurisdiction of the court is now its *ordinary* jurisdiction, and that the so-called "ordinary" jurisdiction is only occasionally brought into exercise, the chief province of the High Court of Chancery now being to administer that large portion of our law which is distinguished from the common law, and which is termed *equity.* The High Court of Chancery is one of the courts which, under sect. 3 of the Supreme Court of Judicature Act, are to be united and consolidated so as to form one Supreme Court of Judicature. 3 *Steph. Com.* 319, 320; *Chute, Eq.*

CHANCERY JURISDICTION ACT. The stat. 15 & 16 Vict. c. 86, passed in 1852, for the amendment of the procedure in the Court of Chancery.

CHANGER. An officer belonging to the king's mint, whose business was chiefly to exchange coin for bullion, brought in by merchants or others. *Cowel.*

CHANTRY. [CHAUNTRY.]

CHAPEL cometh of the French *Chapelle,* that is, *ædicula* (a little temple), and is of two sorts, either adjoining to a church

CHAPEL—*continued.*

as a parcel of the same (as in the case of a lady chapel), or else separate from the mother church, where the parish is wide, and commonly called a chapel of ease, because it is built for the ease of one or more parishioners that dwell too far from the church. *Cowel.*

CHAPELLAINE or **CHAPLAINE** (Lat. *Capellanus*) is he that performeth divine service in a chapel. *Cowel.*

CHAPELRY is the same thing to a chapel as a parish is to a church. *Cowel.*

CHAPERON. A hood or bonnet mentioned in stat. 1 Rich. 2, c. 7, where, in Ruffhead's edition, it is translated "hat." It was anciently worn by knights of the Garter. But, in heraldry, a chaperon is a little escutcheon fixed in the forehead of the horses that draw a hearse to a funeral. *Cowel.*

CHAPITERS (Lat. *Capitula*) signifies in our common law a summary of such matters as are to be inquired of or presented before justices in eyre, justices of assize, or justices of the peace in their sessions. So it is used 3 Edw. 1, c. 27. *Cowel.*

CHAPTER (*Capitulum*) signifieth in our common law, as in the canon law, a congregation of clergy in a cathedral, conventual, regular, or collegiate church; also the place in which the business of the collegiate body is transacted. Such a collegiate body is so called as being a kind of head, not only to rule and govern the diocese in the vacation of a bishopric, but also in many things to advise the bishop when the see is full. *Cowel.*

A chapter consists of certain dignitaries called canons, appointed sometimes by the Crown, sometimes by the bishop, and sometimes by each other. 1 *Bl.* 382; 2 *Steph. Com.* 674.

CHARGE. A word used in various senses.

1. Of the address delivered by the presiding judicial officer to the grand jury or petty jury, at assizes or sessions, instructing them in their duties. 4 *Bl.* 303; 3 *Steph. Com.* 548; 4 *Steph. Com.* 361.

2. Of the bishop's address to his clergy at a visitation.

3. Of a criminal accusation against any one.

4. Of an allegation in a bill in equity which the plaintiff does not know to be true, or at least cannot prove, but which he suspects to be true, and as to which he wishes to have the answer of the defendant. Charges are also used in stating, as a conclusion of law, the relief to which the plaintiff considers himself entitled. *Hunt. Eq.*

5. Of a thing done that bindeth him that doth it, or that which is his. *Toml.* An incumbrance on land or on a fund is often called a "charge."

CHARGE D'AFFAIRES. A resident minister of an inferior grade accredited by the government of one state to the minister of foreign affairs of another. A *chargé d'affaires* may be originally sent and accredited by his government, or may be merely a *chargé d'affaires* temporarily substituted in the place of the public minister of his nation during his absence. *Wh. Int. Law; Phillimore's Int. Law, Vol. II. p.* 243.

CHARGE SHEET. The paper on which are entered the charges intended to be brought before a magistrate.

CHARGES. 1. The charges in a bill in Chancery. [CHARGE, 4.]

2. The expenses of a suit.

CHARGING ORDER. An order obtained by a judgment creditor, *i. e.*, a party who has obtained a judgment for a sum of money in a suit or action against another, under stat. 1 & 2 Vict. c. 110, s. 14, and 3 & 4 Vict. c. 82, that the property of the judgment debtor in government stock, or in the stock of any public company in England, corporate or otherwise, shall (whether standing in his own name or in the name of any person in trust for him) stand *charged* with the payment of the amount for which judgment shall have been recovered, with interest. 3 *Steph. Com.* 587, 588.

CHARITABLE TRUSTS ACTS. The statutes 16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; and 32 & 33 Vict. c. 110. 3 *Steph. Com.* 74; *Wms. R. P.*

CHARITABLE USES. Uses for the maintenance of schools, hospitals, &c. According to the preamble of stat. 43 Eliz. c. 4, passed in 1601, charitable uses include the following uses of land or other property:—

(1) For relief of aged, impotent, and poor people;

(2) For maintenance of sick and wounded soldiers;

(3) For maintenance of schools of learning, free schools and scholars in universities;

(4) For repair of bridges, ports, havens, causeways, churches, sea-banks and highways;

(5) For education and preferment of orphans;

CHARITABLE USES—*continued.*

(6) For relief, stock, or maintenance for houses of correction;

(7) For marriages of poor maids;

(8) For aid and help of young tradesmen, handicraftsmen, and persons decayed;

(9) For relief or redemption of prisoners and captives;

(10) For aid or ease of any poor inhabitants concerning payment of Fifteens [FIFTEENTH], setting out of soldiers and other taxes. *See also* 2 *Bl.* 278, 376; 3 *Steph. Com.* 70—91; *Wms. R. P.* [MORTMAIN.]

CHARITY. [CHARITABLE USES.]

CHARITY COMMISSIONERS. A body of commissioners for England and Wales, appointed by the Crown under the Charitable Trusts Acts. [CHARITABLE TRUSTS ACTS.] They have power to examine into all charities, and to prosecute all necessary inquiries by certain officers called inspectors; to require trustees and other persons to render written accounts and statements, or to attend and be examined on oath, in relation to any charity or its property; to authorize suits concerning the same, and to sanction building leases, &c. 3 *Steph. Com.* 74; *Wms. R. P.*

CHARTA. A word made use of not only for a charter, for the holding an estate, but also a statute. *Toml.*

CHARTA DE FORESTA. [CARTA DE FORESTA.]

CHARTA MAGNA. [MAGNA CHARTA.]

CHARTEL. A letter of defiance or challenge to a duel, formerly in use, when combats were in practice, to decide difficult controversies in law, not otherwise to be determined. *Cowel.*

CHARTER is taken in our law for written evidence of things done between man and man. Britton, in his 39th chapter, divideth charters into the charters of the king and charters of private persons. Charters of the king are those whereby the king passeth any grant to any person or more, or to any body politick; as a charter of exception, that a man shall not be empannelled upon a jury; a charter of pardon, whereby a man is forgiven a felony, or other offence committed against the king's crown and dignity; a charter of the forest, wherein the laws of the forest are comprised. [CARTA DE FORESTA.] Charters of private persons are deeds and instruments under seal for the conveyance of lands, &c. *Cowel.* 2 *Bl.* 295, 346; 1 *Steph. Com.* 481.

CHARTERER. An owner of freehold land in Cheshire. *Toml.* But the word is most frequently used to indicate one who "charters" or hires a ship under a charter-party. [CHARTER-PARTY.]

CHARTER-LAND. Land held by deed under certain rents and free services, which in effect differed nothing from free-socage lands. It was otherwise called book-land. 2 *Bl.* 90.

CHARTER-PARTY (Lat. *Charta partita*, a writing divided). A mercantile instrument, by which one who would export goods from this country, or import them from abroad, engages for the hire of an *entire* vessel for the purpose, at a freight or reward thereby agreed for. Upon the execution of such an instrument, the ship is said to be *chartered* or *freighted*, and the party by whom she is engaged is called the *charterer* or *freighter*. But where, instead of taking the entire vessel, the owner of goods merely bargains for their conveyance, on board of her, for freight (other goods being at the same time conveyed for other proprietors), she is described not as a *chartered*, but as a *general* ship; and in this case no *charter-party* is usually executed, but merely a *bill of lading*. *Cowel;* 2 *Steph. Com.* 140. [BILL OF LADING.]

CHARTIS REDDENDIS. An old writ which lay against him, who, having had charters of feoffment delivered him to be kept, refused to deliver them. *Cowel.* [FEOFFMENT.]

CHASE signifies—

1. The driving of cattle to or from any place. *Cowel.*

2. A place for receiving deer, &c. It was something between a forest and a park; being commonly less than a forest, and yet of a larger compass, and stored with greater diversity both of keepers and of wild game, than a park. *Cowel.* Also a chase differs from a park in not being enclosed. 2 *Bl.* 38.

3. A right of keeping and hunting beasts of chase, or royal game, either in one's own ground, or in that of another. 2 *Bl.* 38; 1 *Steph. Com.* 669.

CHATTEL INTEREST IN LAND. An interest in land or real estate, which for most purposes is subject to the law of personalty. [CHATTELS; REAL AND PERSONAL PROPERTY.]

CHATTELS (Lat. *Catalla*). The name given to things which in law are deemed personal property. Chattels are divided into *chattels real* and *chattels personal;* chattels real being interests in land which devolve after the manner of personal estate, as leaseholds. As opposed to freeholds, they are regarded as personal estate. But as being interests in real estate, they are called *chattels real* to distinguish them from moveables, which are called *chattels personal. Cowel;* 2 *Bl.* 385—387; 2 *Steph. Com.* 2; *Wms. R. P. & P. P.*

CHAUD-MEDLEY. The killing of a man in an affray in the *heat* of blood or passion; a word often erroneously used as synonymous with chance-medley. 4 *Bl.* 184; 4 *Steph. Com.* 54.

CHAUNTRY. A church or chapel endowed with lands or other yearly revenue, for the maintenance of one or more priests daily to sing mass for the souls of the donors and such others as they do appoint. *T. L.; Cowel.*

CHAUNTRY RENTS. Rents paid to the Crown by the servants or purchasers of chauntry lands.

CHEATORS. [ESCHEATORS.]

CHECK or **CHEQUE.** [CHEQUE.]

CHECK ROLL. A roll or book containing the names of such as are attendants in pay to great personages, as their household servants, 19 Car. 2, c. 1. *Cowel.*

CHEQUE. A written order addressed to A. to deliver money to B. is called a cheque drawn on A. in favour of B. A cheque is generally drawn on a banker, but this is not necessary.

A cheque may be drawn in favour of a specified person, or payable to his order, or payable to bearer. But (unlike an ordinary bill of exchange) it gives no right of action upon it to the person in whose favour it is drawn, and is worth nothing until acted upon; and the authority to act upon it is withdrawn by the donor's death.

A *flash* cheque is a cheque drawn upon a banker by a person who knows he has not, at the time, sufficient funds in the banker's hands to meet the cheque.

A *crossed* cheque is a cheque crossed with two lines, between which are *either* the name of a bank *or* the words "and company" in full or abbreviated. In the former case the banker on whom it is drawn must not pay the money for the cheque to any other than the banker named; in the latter case he must not pay it to any other than a banker. 2 *Steph. Com.* 116, 117; *Stats.* 19 & 20 *Vict. c.* 25, and 21 & 22 *Vict. c.* 79.

CHEVAGE (*Chevagium*). A sum of money paid by villains to their lords in acknowledgment of their villenage. *Cowel.*

CHEVISANCE. A bargain or contract. It signifies also an unlawful contract in point of usury. *Cowel.* [USURY.]

CHIEF BARON. The title given to the judge who presides in the Court of Exchequer.

CHIEF CLERK. The Chief Clerks are officers of the courts of equity. They are twelve in number, three being attached to the chambers of the Master of the Rolls, and three to each of the Vice-Chancellors. They are appointed by these judges respectively, by virtue of the stat. 15 & 16 Vict. c. 80. Their duties are to take accounts and institute inquiries in aid of the suits which come before the respective courts. *Hunt. Eq.*

CHIEF CONSTABLE. This expression is used by Sir Edward Coke as synonymous with *high constable.* 2 *Steph. Com.* 652. But the term is now used to indicate a person at the head of a constabulary force. This officer is appointed in counties by the justices of the county, subject to the approval of the Home Secretary. 2 *Steph. Com.* 656. [CONSTABLE.]

CHIEF, EXAMINATION IN, is the examination of a witness by the party who produces him.

CHIEF JUDGE IN BANKRUPTCY. The judge of the London Court of Bankruptcy appointed under the Bankruptcy Act, 1869. He must be one of the judges of her Majesty's Superior Courts of Common Law or of Equity. *Robson, Bkcy.* [BANKRUPTCY COURT.]

CHIEF JUSTICE. The title given to the heads of the Courts of Queen's Bench and Common Pleas. And this title is in general given to the principal judicial officer of any superior court of justice within her Majesty's dominions, and in the United States of America.

CHIEF-RENTS. The certain established rents payable to the lord of a manor by the freeholders thereof. 2 *Bl.* 42, 43; 1 *Steph. Com.* 676.

CHIEF, TENANTS IN. Those who hold land immediately of the king; otherwise called tenants *in capite*.

CHILTERN HUNDREDS. Her Majesty's hundreds of Stoke, Desborough, and Bonenham. The office of steward or bailiff of these hundreds is ordinarily given by the Treasury to any member of the House of Commons who chooses to apply for it; which application is generally made for the purpose of enabling the applicant to retire from the House; it being a settled principle of parliamentary law, that a member, after he is duly chosen, cannot relinquish his seat; and, in order to evade this restriction, a member who wishes to retire accepts office under the Crown, which legally vacates his seat, and obliges the House to order a new writ. *May's Parl. Pract.*

CHIMIN (Fr. *Chemin*). A way. It is divided into two sorts, the king's highway, and a private way; the former being one by which the king's subjects have free liberty to pass; the latter being one by which one man or more have liberty to pass, either by prescription or by charter, through another man's ground. *Cowel.*

CHIMINAGE. A toll for wayfarage through a forest. *Cowel.*

CHIMNEY-MONEY, otherwise called "fumage," "fuage," "hearth-money," and "smoke farthings," was a tax payable by custom as early as the Conquest upon every chimney in a house.

But the first *parliamentary* establishment of it in England was by stat. 13 & 14 Car. 2, c. 10, whereby a hereditary revenue of 2*s.* for every hearth, in all houses paying to church and poor, was granted to the king for ever. It was abolished by stat. 1 W. & M. st. 1, c. 10. *Cowel;* 1 *Bl.* 324, 325.

CHIRCHGEMOTE (Lat. *Forum ecclesiasticum*). A Saxon word signifying a synod, or a meeting in a church or vestry. *Cowel.*

CHIROGRAPH (handwriting). A public instrument or gift of conveyance, written on two parts of the same piece of parchment with some words or letters of the alphabet between them; through which the parchment was cut, either in a straight or indented line, in such a manner as to leave half the word on one part and half on the other. 2 *Bl.* 296. This practice, which was for the purpose of rendering easy the proof of correspondence of the parts, was observed in the case of fines of land until their abolition in 1833; but in all other cases it has long since been disused. 1 *Steph. Com.* 483. [DEED; FINE, 1.]

CHIROGRAPHER OF FINES. That officer of the Common Pleas who engrosseth fines in that court. *Cowel.* Fines were abolished in 1833 by stat. 3 & 4 Will. 4, c. 74. [CHIROGRAPH; FINE, 1.]

CHIVALRY (*Servitium militare*) cometh of the French *chevalier*, and signifieth in our common law a tenure of land by knight-service. *Cowel;* 2 *Bl.* 62; 1 *Steph. Com.* 189, 190. [KNIGHT-SERVICE.]

CHIVALRY COURT. [COURT OF CHIVALRY.]

CHIVALRY, GUARDIAN IN. [GUARDIAN.]

CHOP CHIRCH or **CHOP-CHURCH.** A nick-name given to those that used to exchange benefices; as to *chop* and *change* is a common expression. *Stat.* 9 *Hen.* 6, *c.* 65; *Cowel.*

CHORAL, or **VICAR-CHORAL**, signifies one that by virtue of any orders of the clergy was in ancient time admitted to serve God in the quire, which in Latin is termed *chorus*. *Cowel.*

CHOSE, a thing. *Choses* are of two kinds —*choses in action*, and *choses in possession*. A *chose in action* is a thing of which a man has not the present enjoyment, but merely a right to recover it (if withheld) by a suit or action at law. Thus money at a bank, or money due on a bond, is a *chose in action*. A *chose in possession* is a thing of which the owner is in the actual enjoyment. *Cowel;* 2 *Bl.* 389; 2 *Steph. Com.* 10—12.

CHOSE LOCAL and **CHOSE TRANSITORY.** According to *Cowel*, a *chose in possession* may be a *chose local*, annexed to a place, as a mill; or a *chose transitory*, which is moveable, and may be carried from place to place. But these expressions are now obsolete.

CHRISTIAN COURTS (Lat. *Curiæ Christianitatis*) are the ecclesiastical courts. 3 *Bl.* 64; 3 *Steph. Com.* 304. [ECCLESIASTICAL COURTS.]

CHRISTMAS DAY. [QUARTER DAYS.]

CHURCH DISCIPLINE ACT. The stat. 3 & 4 Vict. c. 86, passed in 1840, for better enforcing church discipline. 2 *Steph. Com.* 672; 3 *Steph. Com.* 310, *n.*

Amended by the Public Worship Regulation Act, 1874, stat. 37 & 38 Vict. c. 85.

CHURCH-RATES. The rates by which the expenses of the church are defrayed. These rates are charged on all lands and houses in the parish; are assessed on the occupiers; and are made by a majority of the parishioners present at a vestry, to be summoned for that purpose by the churchwardens. But since the stat. 31 & 32 Vict. c. 109, passed in 1868, they are not in general compulsory on the persons rated, and the only consequence of refusing to pay them is a disqualification from interfering with the monies arising from the rate. 1 *Bl.* 395; 3 *Bl.* 92; 2 *Steph. Com.* 698; 3 *Steph. Com.* 313. [DOMINICALS; EASTER DUES AND OFFERINGS.]

CHURCH REVE is the same as churchwarden, and signifies the guardian or overseer of the church. *Cowel.* [CHURCHWARDENS.]

CHURCHWARDENS. The guardians or keepers of the church, and representatives of the body of the parish. They are sometimes appointed by the minister, sometimes by the parish in vestry assembled, and sometimes by both together, as the custom of the place directs. In general the minister chooses one, and the parishioners another. They are chosen yearly in Easter week. They have the care and management of the goods belonging to the church, such as the organ, bells, Bible, and parish books. *Cowel;* 1 *Bl.* 394; 2 *Steph. Com.* 696—700.

CHURL (*Churle, Ceorle, Carl*) was in the Saxon times a tenant at will, of free condition, who held land of the Thanes, on condition of rents and services. The churls were of two kinds: one that rented an outlying portion of the lord's estate, like our farmers; the other that tilled and manured the demesnes (yielding work and not rent), and were therefore called his sockmen or ploughmen. *Cowel.*

CINQUE PORTS. The five ports of Hastings, Romney, Hythe, Dover and Sandwich; to which Winchelsea and Rye have since been added. They have an especial governor or keeper, called by his office the Lord Warden of the Cinque Ports, and divers privileges granted unto them. *Cowel;* 3 *Bl.* 79. The jurisdiction of the Lord Warden in civil suits is now taken away by stat. 18 & 19 Vict. c. 48, but they still possess a peculiar maritime jurisdiction. 2 *Steph. Com.* 499, *n.*

CIRCADA. A tribute anciently paid to the bishop or archdeacon for visiting the churches. *Cowel.*

CIRCONSTANCES ATTENUANTES, extenuating circumstances. When a prisoner in France is charged with murder, the jury may bring in a verdict of guilty with *extenuating circumstances;* in which case the prisoner escapes the capital punishment, and is in general sentenced to hard labour for life.

CIRCUIT. A division of the kingdom comprising several counties. Into each of these circuits two or more commissioners, called judges of assize, are sent by special commission from the Crown. The judges usually make their circuits in the vacations after Hilary and Trinity terms; but a special commission is also issued in the vacation after Michaelmas term into certain parts of the kingdom, occasionally for the trial of causes, but chiefly to secure the more speedy trial of persons charged with offences not triable at quarter sessions. This is called the winter circuit. 3 *Bl.* 59; 4 *Bl.* 422, 424; 3 *Steph. Com.* 349—351.

The kingdom is also divided into circuits for the purposes of the county courts. To each of these circuits is assigned a judge, chosen by the Lord Chancellor. 3 *Steph. Com.* 285.

CIRCUIT PAPER. A paper containing a programme of the circuits of the judges, and the times when, and the places where, the assizes will be held.

CIRCUITY OF ACTION is when an action is rightfully brought, but yet about the bush, as it were, for that it might have been as well otherwise answered and determined, and the suit saved. *Cowel.*

CIRCULAR NOTES are instruments in the nature of letters of credit, drawn by bankers upon their foreign correspondents in favour of persons travelling abroad. *Grant on Bankers.*

CIRCULATING MEDIUM. A phrase applied to money, which may be exchanged for all sorts of other property. *See* 2 *Steph. Com.* 68, 520.

CIRCUMDUCTION OF THE TERM, in Scotch law, is the sentence of a judge declaring the time for giving evidence closed. *Bell.*

CIRCUMSPECTE AGATIS (that ye act circumspectly) is the title of a statute or writ made 13 Edw. 1, st. 4, by which it is declared that the Court Christian shall not be prohibited from holding pleas (*i. e.* from assuming jurisdiction), if a rector should institute a suit against his parishioners for due and accustomed offerings and tithes. *Cowel.* But this only refers to the question of *fact*

CIRCUMSPECTE AGATIS—*continued.*

whether tithes, allowed to be due and accustomed, are withheld; for the question, whether any tithes claimed be due and accustomed, is one for the courts of common law. 3 *Bl.* 88; 3 *Steph. Com.* 310. [EASTER DUES AND OFFERINGS.] But this jurisdiction is rarely exercised, as tithes below 50*l.* in the case of Quakers, or below 10*l.* in the case of other persons, are recoverable before justices in petty sessions. 3 *Steph. Com.* 311; *Oke's Mag. Syn.*

CIRCUMSTANTIAL EVIDENCE. By circumstantial evidence of a fact in dispute we understand proof of circumstances from which, according to the ordinary course of human affairs, the existence of that fact may reasonably be presumed. 3 *Bl.* 371; 3 *Steph. Com.* 545. It is thus opposed to direct or positive evidence of the fact itself.

CIRCUMSTANTIBUS (by-standers). A *tales de circumstantibus* is the filling up of the number of the jury, when necessary, from the by-standers. *Cowel;* 3 *Bl.* 364, 365; 3 *Steph. Com.* 528.

CIROGRAPHUM. [CHIROGRAPH.]

CITATION. A summons to a party to appear; applied particularly to process in the Scotch courts, and in the ecclesiastical courts. 3 *Bl.* 100; *Bell.* And also to the commencement of proceedings in the Probate Court. 3 *Steph. Com.* 486.

The word is also frequently applied to the quoting of legal cases and authorities in courts of law.

CITY is defined by Cowel as being such a town-corporate as hath a bishop and a cathedral church; by Blackstone, as a town incorporated, which is or hath been the see of a bishop. 1 *Bl.* 115. According to Mr. Serjeant Stephen, the cities of this kingdom are certain towns of principal note and importance, all of which either are or have been sees of bishops; yet there seems to be no necessary connexion between a city and a see. 1 *Steph. Com.* 124, 125.

CITY OF LONDON COURT. A court in the city of London, formerly called the Sheriff's Court, which is now, by s. 35 of the County Courts Act, 1867 (30 & 31 Vict. c. 142), classed among the County Courts, so far as regards the administration of justice. 3 *Steph. Com.* 293, *n.* But the privileges of the corporation, in the appointment of the judge and other officers of the court, are not affected by that Act.

CITY OF LONDON POLICE. [CONSTABLE, 3.]

CITY OF LONDON SMALL DEBTS EXTENSION ACT, 1852. The statute 15 & 16 Vict. c. lxxvii., for the more easy recovery of small debts and demands within the city of London and the liberties thereof. This Act regulates the jurisdiction and procedure of the Sheriff's Court of London (now called the City of London Court), and provides for its official staff. [CITY OF LONDON COURT.]

CIVIL BILL COURTS. The local courts of civil jurisdiction in Ireland.

CIVIL DEATH. This expression was formerly used to indicate—

(1) That a man had entered a monastery, and being *professed* in religion, became *dead* in law.
(2) That a man had become outlawed.
(3) That a man had become attainted of treason or felony.

A man "civilly dead" was held in law, for most purposes, especially those connected with property, to be as if actually dead. But it would seem that a grant for the term of a man's "natural life" was construed in the literal and not the legal sense, and could only come to an end by his *natural* death. 1 *Bl.* 132; 2 *Bl.* 121; 1 *Steph. Com.* 141—144; *Wms. R. P.*

The old doctrine of civil death is now obsolete; but a person who has been absent and not heard of for a period of seven years is, for many purposes, presumed to be dead.

CIVIL LAW is defined in Justinian's Institutes as "that law which every people has established for itself;" in other words, the law of any given state. But this law is now distinguished by the term *municipal law:* the term *civil law* being applied to the Roman Civil Law, the methodical compilation of which was completed by Tribonian, under the direction of the Emperor Justinian. [CORPUS JURIS CIVILIS.]

CIVIL LIST. An annual sum granted by parliament at the commencement of each reign, for the expense of the royal household and establishment, as distinguished from the general exigencies of the state. 1 *Bl.* 332; 2 *Steph. Com.* 579.

CIVIL RESPONSIBILITY. To be *civilly* responsible for any act or omission means to be liable in an action or other proceeding at the suit of a private person or corporation, or (in certain cases) at the suit of the Crown suing as for

CIVIL RESPONSIBILITY—*continued.*

a private wrong. This is opposed to criminal responsibility, which means liability to answer in a criminal court.

CIVIL SIDE. The side of a court devoted to civil causes. The building in which an assize is held has generally two rooms, one principally devoted to the civil business, and the other to the criminal business. A judge sitting to try civil causes is said to sit on the civil side of the court.

CLAIM (Lat. *Clameum*). A challenge of interest in anything that is in the possession of another, or at least out of the the possession of the claimant. *Cowel.* [CONTINUAL CLAIM; FINE, 1.]

A *claim* in equity was a modified form of bill in Chancery, not admitting of any further pleading; and the order made on a claim was of the same nature as that made on a bill. Claims were introduced in 1850; but, owing to the improvement made in 1852 in the Chancery procedure, they were little used, and were abolished in 1860 by the 8th of the Consolidated Orders, rule 4. *Hunt. Eq.*

CLAMEA ADMITTENDA IN ITINERE PER ATTORNATUM. A writ whereby the king commanded the justices in eyre to admit of one's claim by attorney, that was employed in the king's service, and could not come in his own person. *Cowel.*

CLANDESTINE MORTGAGES ACT, stat. 4 & 5 Will. & M. c. 16, by which a mortgagor, who mortgages the lands over again to a second mortgagee without discovering the first mortgage, forfeits his equity of redemption in the premises. 1 *Steph. Com.* 307; *Wms. R. P.* Now, by s. 24 of stat. 22 & 23 Vict. c. 35, amended by s. 8 of stat. 23 & 24 Vict. c. 38, such fraudulent mortgagor is liable to two years' imprisonment with hard labour, and also to an action for damages at the suit of the defrauded mortgagee.

CLARENDON, CONSTITUTIONS OF. Certain constitutions made by the parliament at Clarendon, in Wiltshire, A.D. 1164, whereby the king checked the power of the Pope and his clergy, and greatly narrowed the total exemption they claimed from the secular jurisdiction. 4 *Bl.* 422; 4 *Steph. Com.* 497.

CLAUSE ROLLS. [CLOSE ROLLS.]

CLAUSUM FREGIT. "He broke the close," that is, committed an unwarrantable entry upon another's soil. These words are generally used in reference to an action of trespass in entering another's land. 3 *Bl.* 209; 3 *Steph. Com.* 398.

CLAVES INSULÆ. The House of Keys of the Isle of Man. [KEYS.]

CLEAR DAYS. A phrase used to indicate the calculation of days from one day to another, excluding both the first and last day.

CLEARANCE. A certificate given by the collector of a port, in which it is stated that the master or commander (naming him) of a ship or vessel named and described, bound for a port named, and having on board goods described, has entered and cleared his vessel according to law. This certificate, or *clearance*, evidences the right of the vessel to depart on her voyage; and clearance has therefore been properly defined as *a permission to sail. Bouvier.*

CLEARING HOUSE. The place where the operation termed "clearing" is carried on; "clearing" being the settlement of accounts as between different partnerships or companies engaged in the same trade, profession or occupation.

The word is used almost exclusively in reference to *bankers* and *railway companies. M'Culloch's Comm. Dict.; Grant on Bankers.*

The clearing-house for London bankers is in Post Office Court, Lombard Street.

CLEMENT'S INN. One of the inns of Chancery. [INNS OF CHANCERY.]

CLERGY, besides its ordinary sense, signifies "benefit of clergy." [BENEFIT OF CLERGY.]

CLERGYABLE. An offence was said to be *clergyable* when it was one to which the benefit of clergy extended. [BENEFIT OF CLERGY.]

CLERICAL ERROR. An error made by a *clerk* in copying or engrossing a legal document.

CLERICO ADMITTENDO. [ADMITTENDO CLERICO.]

CLERICO CAPTO PER STATUTUM MERCATORUM. A writ formerly directed to the bishop, for the delivery of a clerk (*i. e.*, one in holy orders) out of prison that was in custody upon the breach of a statute merchant. *Cowel.* [STATUTE MERCHANT.]

CLERICO INFRA SACROS ORDINES CONSTITUTO NON ELIGENDO IN OFFICIUM. A writ directed to bailiffs or other officers that have thrust a bailiwick or beadleship upon one in holy orders, charging them to release him again. *Cowel.*

CLERK (Lat. *Clericus*) hath two significations, one as it is in the title of him that belongeth to the holy ministry of the church; the other signification of this word noteth those that by their function, or course of life, practise their pen in any court, or otherwise. *Cowel.* [See the following Titles.]

CLERK ASSISTANT. A person appointed by the Crown under the sign manual to assist the Clerk of the House of Commons. There is a clerk assistant and a second clerk assistant. They are removable only upon an address from the House. They sit at the table of the House, on the left-hand of the Clerk. *May's Parl. Pract.*

One of the chief officers of the House of Lords is also called a clerk assistant. He attends at the table with the Clerk of the Parliaments, to take minutes of all the proceedings, orders, and judgments of the House. *Ibid.*

CLERK OF ASSIZE. An officer in each circuit, who writes all judicial proceedings done by the justices of assize, and acts generally as the clerk of the assize court. He is assisted by the associate, and sometimes also by a deputy clerk of assize, and an officer called the clerk of arraigns.

In stat. 32 & 33 Vict. c. 89, passed in 1869, to amend the law with reference to the qualification of clerks of assize, "clerk of assize," by s. 8, is to include any officer whose duties may be performed by the clerk of assize.

CLERK OF ENROLMENTS (in Parliament). An officer who has custody of bills passed by both Houses for the purpose of obtaining the royal assent. *May's Parl. Pract.*

CLERK OF RECORDS AND WRITS. An officer of the Court of Chancery. The clerks of records and writs are four in number, and their duty is to file bills in Chancery. Business is distributed among them according to the initial letter of the surname of the first plaintiff in the suit. *Consolidated Orders*, 1860, *Order I. Rules* 35—53; *Hunt. Eq.*

CLERK OF THE ACTS. An officer of the Navy whose business it was to receive and enter the commissions and warrants of the Lord Admiral, and to register the acts and orders of the Commissioners of the Navy. *Cowel.*

CLERK OF THE COMMONS. [CLERK OF THE HOUSE OF COMMONS.]

CLERK OF THE CROWN. [See the two following Titles.]

CLERK OF THE CROWN IN CHANCERY. A public officer whose duty it is to issue writs for elections on receiving the Lord Chancellor's warrant; and to deliver to the Clerk of the House of Commons the list of members returned to serve in Parliament; to certify the election of representative peers for Scotland and Ireland, &c. 2 *Steph. Com.* 370, 378; *May's Parl. Pract.* Provision was made by stat. 2 & 3 Will. 4, c. 111, for the abolition of this office when it should become vacant. The office has, however, been continued by stat. 15 & 16 Vict. c. 87, s. 23, passed in 1852, and 37 & 38 Vict. c. 81, s. 8, passed in 1874, by which the duties formerly performed by the Keeper or Clerk of her Majesty's Hanaper are now performed by the Clerk of the Crown in Chancery.

CLERK OF THE CROWN IN THE KING'S BENCH. An officer in the King's (or Queen's) Bench, whose function was to frame, read and record all indictments against offenders there arraigned or indicted for any public crime; also to file informations by order of the Court. He was also termed Clerk of the Crown Office. His functions are now performed by a Master under stats. 6 & 7 Vict. c. 20, passed in 1843, and 23 & 24 Vict. c. 54, passed in 1860.

CLERK OF THE HANAPER. An officer whose duty it was to receive all the money due to the king for the seals of charters, patents, commissions, and writs; as also fees due to the officers for enrolling and examining the same.

By stat. 2 & 3 Will. 4, c. 111, passed in 1832, provision was made for the abolition of this office when it should become vacant; and by stat. 15 & 16 Vict. c. 87, s. 23, passed in 1852, and stat. 37 & 38 Vict. c. 81, s. 8, passed in 1874, its duties are transferred to the Clerk of the Crown in Chancery.

CLERK OF THE HOUSE OF COMMONS. One of the officers of the House of Commons, appointed by the Crown for life, by letters patent, in which he is styled "Under Clerk of the Parliaments, to attend upon the Commons." He is sworn before the Lord Chancellor, on entering upon his office, "to make true entries, remembrances, and journals of the things done and passed in the House of Commons;" he signs all orders of the House, endorses the bills, and reads whatever is required to be read in the

CLERK OF THE HOUSE OF COMMONS—*continued.*

House. He has the custody of records and other documents. *May's Parl. Pract.*

CLERK OF THE MARKET. An officer properly attached to every fair and market in the kingdom, and holding a court with jurisdiction to punish misdemeanors therein. The object of this jurisdiction was principally the recognizance of weights and measures: to try whether they be according to the true standard thereof or no. The appointment was in the hands of the bishop. 4 *Bl.* 274; 4 *Steph. Com.* 323. The functions of this court are now for the most part superseded by stat. 5 & 6 Will. 4, c. 63, which provides for the appointment of inspectors of weights and measures. 4 *Steph. Com.* 324.

CLERK OF THE PARLIAMENTS. The chief officer of the House of Lords, appointed by the Crown, by letters patent. On entering office he is sworn, at the table, before the Lord Chancellor, 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, and not disclose the same before they shall be published, but to such as it ought to be disclosed unto. *May's Parl. Pract.*

CLERK OF THE PEACE. An officer who acts as clerk to the Court of Quarter Sessions, and records all their proceedings. 4 *Bl.* 272; 4 *Steph. Com.* 320.

He has various other duties under different Acts of Parliament. Among other things it is his duty also to issue precepts to the churchwardens and overseers of the parishes within his district, for the preparation of lists of persons liable to serve on juries. *Stat.* 25 *&* 26 *Vict. c.* 107; *Cox & Saunders' Cr. Law*, 296; *Grant on Corporations.*

CLERK OF THE PETTY BAG. An officer of the Court of Chancery whose duty it was to record the return of all inquisitions out of every shire; to make out various patents and commissions, &c. His duties are for the most part obsolete; and by stat. 37 & 38 Vict. c. 81, s. 5, passed in 1874, provision is made for the abolition of his office by the Treasury.

CLERK OF THE PIPE. An officer in the Exchequer, who, having the accounts of debts due to the king, charged them down in the great roll, which was put together like a pipe.

His office was abolished in 1837 by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE PLEAS. An officer in the Court of Exchequer, in whose office all the officers of the court, upon especial privilege belonging to them, should sue or be sued in any action. Abolished in 1837 by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE WARRANTS. An officer belonging to the Court of Common Pleas, who entered all warrants of attorney for plaintiff and defendant; and enrolled all deeds and indentures of bargain and sale acknowledged in court, or before any judges out of the court. *Cowel.* Abolished in 1837 by 7 Will. 4 & 1 Vict. c. 30. But, by s. 28 of that Act, the duties of the office, so far as regards the registration of deeds, wills, and other conveyances of land in Middlesex, are still retained.

CLERK TO THE SIGNET. [WRITER TO THE SIGNET.]

CLIENT. A person who consults a solicitor. A solicitor, also, in reference to the counsel he instructs, is spoken of as a *client*. It has also become common of late to use the word in reference to other professions.

CLIFFORD'S INN. An Inn of Chancery. [INNS OF CHANCERY.]

CLOSE. A word most frequently used for a person's land; thus an unwarrantable entry upon a person's land is called breaking his close. 3 *Bl.* 209; 3 *Steph. Com.* 399.

CLOSE ROLLS. The rolls kept for the record of close writs. 2 *Bl.* 346; 1 *Steph. Com.* 619. [CLOSE WRITS.]

CLOSE WRITS. Grants of the king, sealed with his great seal, but directed to particular persons, and for particular purposes,—and which, therefore, not being proper for public inspection, are closed up and sealed on the outside,—are called writs close, *litteræ clausæ*, and are recorded in the *close rolls;* in the same manner as letters patent, *literæ patentes*, are in the *patent rolls*. 2 *Bl.* 346; 1 *Steph. Com.* 619.

CLOSING EVIDENCE IN CHANCERY. The expiration of the time limited for filing affidavits. *Hunt. Eq.*

CLOUGH. A valley, as used in Domesday Book. *Cowel.*

CLUN'S CASE. The leading case on the apportionment of rent. *Tudor's L. C. R. P.*

COADJUTOR BISHOP. A bishop appointed under stat. 32 & 33 Vict. c. 111, s. 4 (passed in 1869), in aid of a bishop incapacitated by permanent mental infirmity from the due performance of his episcopal duties. 2 *Steph. Com.* 669, *n.*, 673, *n.*

COAL NOTE. A kind of promissory note in the coal trade, bearing on it the words "value received in coals." It was ordered to be used in certain cases by stat. 3 Geo. 2, c. 26, ss. 7, 8, which statute is now repealed by the Statute Law Revision Act of 1867 (30 & 31 Vict. c. 59).

COAST GUARD. A body of officers and men raised and equipped by the Commissioners of the Admiralty, for the defence of the coasts of the realm, and for the more ready manning of the navy in case of war or sudden emergency, as well as for the protection of the revenue against smugglers. *Stat.* 19 *&* 20 *Vict. c.* 83.

COCKET (Lat. *Quo quietus est*). A seal appertaining to the king's custom-house. *Cowel.* Also a document delivered by a shipper of goods, stating in general terms the quantity intended to be exported. The precise amount was afterwards supplied by indorsement. The document, on being certified by the searcher of the customs, was called a *cocket. Hamel on Customs.*

It was also used to signify the custom-house or office where goods were entered.

CODE NAPOLEON, otherwise called the *Code Civil,* is a code composed of thirty-six laws, the first of which was passed in 1803 and the last in 1804, which were united in one body under the name of *Code Civil des Français. Bouvier.*

Sometimes, however, the name is extended to the whole of Napoleon's legislation.

CODICIL. A schedule or supplement to a will, when the testator desires to add, explain, alter, or retract anything, *Cowel;* 2 *Bl.* 500; 1 *Steph. Com.* 589; 2 *Steph. Com.* 188.

COFFERER OF THE KING'S HOUSEHOLD. An officer mentioned 39 Eliz. c. 7. He was a principal officer in the royal household, next to the controller, having a special charge and oversight of other officers of the house for their good demeanour and carriage in their offices. *Cowel.* This office was abolished by stat. 22 Geo. 2, c. 82, passed in 1782.

COGNATI. [AGNATES.]

COGNISANCE. [COGNIZANCE.]

COGNITION. An old Scotch action for ascertaining disputed boundaries. *Bell.*

COGNITIONIBUS MITTENDIS. A writ directed to a judicial officer, who, having taken an acknowledgment or cognizance of a fine, deferred to certify the same into the Court of Common Pleas. The writ directed him so to certify it. *Cowel.* [FINE, 1.]

COGNITIONIS CAUSA. [DECRETT COGNITIONIS CAUSA.]

COGNIZANCE with us is used diversely; sometimes signifying a badge on a serving man's sleeve, whereby he is discerned to belong to this or that master. Sometimes an acknowledgment of a fine [FINE, 1] or confession of a thing done; sometimes a power or jurisdiction. *Cowel.*

A cognizance is also a form of defence in the action of replevin, by which the defendant insists that the goods were lawfully taken as a distress. It differs from an *avowry* in that by an *avowry* the defendant asserts he took the goods in his own right; by a *cognizance* he asserts that he took them as servant for another. 3 *Bl.* 150; 3 *Steph. Com.* 614.

COGNIZANCE OF PLEAS. An exclusive right to try causes within a limited jurisdiction. 2 *Bl.* 38.

COGNIZEE OF A FINE. The party in whose favour a fine was levied. 2 *Bl.* 350, 351; 1 *Steph. Com.* 561. [FINE, 1.]

COGNIZOR OF A FINE. A party who levied a fine. 2 *Bl.* 350, 351; 1 *Steph. Com.* 561. [FINE, 1.]

COGNOVIT ACTIONEM. An instrument in writing whereby a defendant in an action acknowledges a plaintiff's demand to be just. 3 *Bl.* 397; *Lush's Pr.* 818.

Under the Debtors Act, 1869 (32 & 33 Vict. c. 62), ss. 24, 25, 26, such an instrument is invalid unless attested by an attorney attending at the request of the party executing it, and subscribed by such attorney, and also filed in the Court of Queen's Bench within twenty-one days after the execution thereof. 3 *Steph. Com.* 567, 571, *n.*; *Robson, Bkcy.*

COIF. A title given to serjeants-at-law, who are called serjeants of the coif, from the coif they wear on their heads. The use of this coif at first was to cover the clerical tonsure; many of the practising serjeants being clergymen who

COIF—*continued.*

had abandoned their profession. It was a thin linen cover gathered together in the form of a skull or helmet; the material being afterwards changed into white silk, and the form eventually into the black patch at the top of the forensic wig, which is now the distinguishing mark of the degree of serjeant-at-law. *Cowel; Foss' Judges of England;* 8 *Steph. Com.* 272, *n.*

COKE, SIR EDWARD. Lord Chief Justice of the King's Bench in the time of James I. He compiled reports, and was the author of four volumes of "Institutes" on the subject of the common law. 1 *Bl.* 72, 73; 1 *Steph. Com.* 50, 52.

Coke was born February 1, 1552. He entered parliament in 1593, became attorney-general on April 10, 1594, chief justice of the Common Pleas on June 30, 1606, and chief justice of the King's Bench, October 25, 1613. He was removed from office, November 15, 1616, and subsequently entered parliament again. In the last five years of his life he published his First Institute, or Commentary on Littleton, and also prepared for the press the three other volumes of his Institutes, treating respectively of Magna Charta, Criminal Law, and the Jurisdiction of the Courts. He died Sept. 3, 1633. *Foss' Judges of England.*

COLLATE. To bestow a living by *collation.* [ADVOWSON; COLLATION TO A BENEFICE.]

COLLATERAL. That which hangeth by the side. An assurance collateral to a deed is one which is made, over and besides the deed itself. Thus if a man covenant with another, and enter into a bond for the performance of his covenant, the bond is called a collateral assurance. *Cowel.*

COLLATERAL CONSANGUINITY. The relationship between persons who descend from a common ancestor, but neither of whom descends from the other. 2 *Bl.* 204.

COLLATERAL ISSUE on a criminal charge is an issue arising out of a plea which does not bear on the guilt or innocence of the accused. 4 *Bl.* 326; 4 *Steph. Com.* 468.

COLLATIO BONORUM, in the Roman law, was where a portion advanced by a parent in his lifetime to a son or daughter was upon his death reckoned as part of his estate, or, as English lawyers would say, "brought into hotchpot," in order that the estate might be equally distributed amongst the family. 2 *Bl.* 517; 2 *Steph. Com.* 211.

COLLATION TO A BENEFICE. When the ordinary is also the patron, and *confers* the living, the presentation and institution are one and the same act, and are called a collation to a benefice. *Cowel;* 1 *Bl.* 391; 2 *Steph. Com.* 686. [ADVOWSON.]

COLLATIONE FACTA UNI POST MORTEM ALTERIUS. An ancient writ directed to the justices of the Common Pleas, commanding them to direct their writ to the bishop, for the admitting of a clerk in the place of another, presented by the king, who died during the suit between the king and the bishop's clerk; for, judgment once passed for the king's clerk, and he dying before he be admitted, the king may give his presentation to another. *Cowel.*

The above may perhaps be put more clearly in this way:—The king, claiming as patron of a living, gives the living to A. The bishop, on the other hand, disputing the king's right to present, gives the living to B. The king takes proceedings at law, as patron, to enforce his right, but meanwhile his presentee, A., dies, and the king then gives the living to C. Judgment being given in favour of the king, he may then have the above writ directing the bishop to institute C.

COLLATIVE ADVOWSON. [ADVOWSON; COLLATION TO A BENEFICE.]

COLLEGIATE CHURCH. A church consisting of a body corporate of dean and canons, such as Westminster, Windsor, &c., independently of any cathedral. 2 *Steph. Com.* 671, *n.* (*a*).

COLLIGENDUM BONA DEFUNCTI (LETTERS AD). Letters granted, formerly by the ordinary, and now by the Court of Probate, to such discreet person as the Court of Probate shall think fit, authorizing him to keep the goods of a deceased person in his safe custody, and to do other acts for the benefit of such as are entitled to the property of the deceased. These letters differ from letters of administration in so far as they do not make the grantee the legal representative of the deceased. They are granted in the event of the person who is legally entitled to take out probate or letters of administration refusing to do so. 2 *Bl.* 505; 2 *Steph. Com.* 195.

COLLISTRIGIUM. A pillory.

COLLUSION. A deceitful agreement between two or more persons, to defraud another person or other persons of their right, or to frustrate some rule of public policy. The word is generally, though not necessarily, used with reference to collusive legal proceedings.

COLONIES. The distant possessions or dependencies of the British Crown in various quarters of the globe. Colonies are no part of the mother country, but distinct, though dependent dominions. In general they are either gained from other states by conquest or treaty, or else they are acquired by right of occupancy only. 1 *Steph. Com.* 101.

COLONUS. A husbandman or villager, who was bound to pay yearly a certain tribute, or at certain times in the year to plough some part of the lord's land; and from hence comes the word *clown*. *Cowel.*

COLOUR, in pleading, signifies an *apparent* or *primâ facie* right; and the meaning of the old rule that pleadings in *confession and avoidance* [CONFESSION AND AVOIDANCE] should give colour is, that they should *confess* the matter adversely alleged, to such an extent at least as to admit some apparent right in the opposite party, which requires to be encountered and *avoided* by the allegation of new matter.

Thus, if, in an action on a deed of covenant, the defendant pleads a release by the plaintiff, he thereby confesses the plaintiff's *primâ facie* right arising out of the covenant. So, to an action of trespass, for taking the plaintiff's sheep, the defendant might plead, in confession and avoidance, that one J. S. was possessed of them, and sold them to him (the defendant) in market overt [which facts would in general constitute a defence to the action; *see* MARKET OVERT]. For it was held in the case of *Comyns* v. *Boyce*, decided in 1596, and reported in *Croke, Eliz.* 485, that this, though not an *express*, was an *implied* recognition of the plaintiff's right of property in the sheep before the sale, and was therefore not objectionable as giving no colour to the plaintiff's claim. But if the defendant had pleaded that J. S. was possessed of the sheep *as of his own property*, the plea would have been bad, as tending to deny that the property ever was in the plaintiff, and therefore giving no colour to his claim.

The kind of colour above referred to has been called *implied* colour, to distinguish it from *express* colour. Express colour is defined to be "a feigned matter, pleaded by the defendant in an action of trespass, from which the plaintiff seems to have a good cause of action, whereas he has, in truth, only an appearance or colour of cause."

Thus, if, to an action for breaking and entering the plaintiff's close, the defendant pleads that he is in possession *by lawful title* under a third person, this, not admitting even a colourable right on the part of the plaintiff to maintain the action, would be held informal. It is true that the defendant might plead the general issue "not guilty," and give in evidence the special matter upon which he wished to insist. But this would in many cases be inconvenient; and the defendant was permitted in such cases to give *express colour*, which consisted in the insertion of a fictitious allegation of some colourable but insufficient title in the plaintiff, which was avoided by the preferable title of the defendant. This was called *giving colour;* and it was held to cure or prevent the objection which would otherwise arise from the want of *implied colour*.

When colour was thus given, the plaintiff was not allowed to traverse or deny the fictitious matter suggested by way of colour. *Steph. Plead. ed.* 1843, *pp.* 233—243.

All this is now abolished by ss. 49 and 64 of the Common Law Procedure Act, 1852. 3 *Steph. Com.* 505, *n.* (*s*).

COLOUR OF OFFICE is always taken in the worst sense, to signify an act evilly done by the countenance of an office, the office being but a veil to the falsehood. *Cowel.*

COMBARONES. The fellow-barons or commonalty of the Cinque Ports. *Cowel.* [CINQUE PORTS.]

COMBAT. A formal trial of a doubtful cause or quarrels by the sword or bastons of two champions. *Cowel;* 4 *Bl.* 346; 4 *Steph. Com.* 411. [WAGER OF BATTEL.]

COMBINATION, UNLAWFUL. By various acts of parliament, all societies are to be deemed unlawful combinations, of which the members shall take oaths or engagements expressly prohibited by law, or not required by law, or of which the members shall subscribe any unauthorized test or declaration; as well as all societies whose names shall be unknown to the society at large. 4 *Steph. Com.* 198.

COME CEO (as that). A fine "*sur cognizance de droit, come ceo que il ad de son done*" is a fine upon acknowledgment of the right of the cognizee, *as that* which he hath of the gift of the cognizor. 2 *Bl.* 352; 1 *Steph. Com.* 562. [COGNIZANCE; FINE, I.]

COMITATU COMMISSO. A writ whereby a sheriff was authorized to take upon himself the command of a county. *Cowel.*

COMITATU ET CASTRO COMMISSO. A writ whereby the charge of a county, together with the keeping of a castle, was committed to the sheriff. *Cowel.*

COMITATUS. A county.

COMITY OF NATIONS. This expression is generally used to indicate the practice adopted by the courts of justice in one country of giving effect (within certain limits) to the laws of another country, and the judgments given by its courts.

COMMANDERY or COMMANDRY. A manor or chief messuage belonging to the Priory of St. John of Jerusalem in England. He who had the government of any such manor or house was called a *Commander;* who could not dispose of it, but to the use of the Priory, only taking thence his own sustenance, according to his degree. *Cowel.*

COMMANDITE, in French law, is a partnership of several persons, of which some contribute their money, and others their talents or industry. *Ferrière.*

COMMARCHIO. The confines of land. *Cowel.* From thence probably comes the word *marches.*

COMMENDA RECIPERE. The taking by a bishop of a benefice in his own gift, or the gift of some other patron consenting to the same, to be held together with his bishopric. 1 *Bl.* 393. Abolished by stat. 6 & 7 Will. 4, c. 77, s. 18. 2 *Steph. Com.* 692, 693.

COMMENDAM. A benefice that, being void, is commended to the care of some sufficient clerk to be supplied, till it may be conveniently provided with a pastor. Also, when a beneficed parson is made a bishop, and the king gives him power to retain his benefice, he is said to hold it *in commendam. Cowel;* 1 *Bl.* 393; 2 *Steph. Com.* 692; *Hall. Const. Hist. ch.* 6. The holding of livings *in commendam* is for the future abolished by stat. 6 & 7 Will. 4, c. 77, s. 18. 2 *Steph. Com.* 693.

COMMENDARY or COMMENDATORY. He who holds a benefice *in commendam.* [COMMENDAM.]

COMMENDATORY LETTERS. Letters written by one bishop to another, in behalf of any of the clergy or others of his diocese travelling thither, that they may be received among the faithful, or that a clerk may be promoted, or necessaries administered. *Cowel.*

COMMERCE. Traffic, trade or merchandise in buying and selling of goods. Commerce is, however, distinguished from trade, in that the former relates to our dealings with foreign nations, or our colonies abroad; the other to our mutual traffic and dealing among ourselves at home. *Toml.*

COMMISSARY is a title of ecclesiastical jurisdiction. The Commissary is an officer ordained to this especial end, to supply the bishop's jurisdiction and office in the out-places of the diocese, or else in such parishes as be peculiar to the bishop, and exempted from the jurisdiction of the archdeacon; for, where there be archdeacons that have jurisdiction within their archdeaconries, this Commissary is superfluous, and most commonly doth rather vex and disturb the country for his own lucre, than of conscience seek to redress the lives of offenders. *Cowel.*

COMMISSION is taken for the warrant, or letters patent, that all men, exercising jurisdiction, either ordinary or extraordinary, have for their power to hear and determine any cause or action. *Cowel.*

The word is also used in numerous other ways. It is used of the bailment called *mandatum;* of instructions given to an agent; of a broker's remuneration, &c. For certain special instances of its use, see the following Titles.

COMMISSION, ASSENT TO BILLS BY. This is when, under stat. 33 Hen. 8, c. 21, the Queen gives her assent by letters patent under the Great Seal, signed with her hand, and notified in her absence to both Houses assembled together in the upper House. 1 *Bl.* 185; 2 *Steph. Com.* 388; *May's Parl. Pract.*

COMMISSION DAY. The opening day of an assize; so called because the judges' commissions are then opened and read. [ASSIZE, COURTS OF.]

COMMISSION DEL CREDERE. [DEL CREDERE.]

COMMISSION FOR ROYAL ASSENT. [COMMISSION, ASSENT TO BILLS BY.]

COMMISSION OF APPRAISEMENT. A commission to appraise the value of unclaimed goods in the hands of the officers of the Crown. 3 *Bl.* 262; 3 *Steph. Com.* 669, 670. [APPRAISEMENT, COMMISSION OF.]

COMMISSION OF ARRAY. [ARRAY, COMMISSIONS OF.]

COMMISSION OF ASSIZE. [ASSIZE, COURTS OF.]

COMMISSION OF ASSOCIATION. [ASSOCIATION.]

COMMISSION OF BANKRUPTCY. A commission granted by the Lord Chancellor, under stat. 13 Eliz. c. 7, to examine into the affairs of bankrupts. A Court of Bankruptcy was established in 1832 by stat. 1 & 2 Will. 4, c. 56, consisting of one chief judge and six commissioners. The number of commissioners was varied from time to time by Parliament. They were abolished by the Bankruptcy Act of 1869, which instituted a new procedure. 2 *Bl.* 479, 480; *Robson, Bkcy.*

COMMISSION OF CHARITABLE USES. A commission awarded by the Lord Chancellor, under the Statute of Charitable Uses (43 Eliz. c. 4), to inquire of all gifts to such uses, and of all abuses and breaches of trust relative thereto. These commissions have, however, long since been disused, their place being supplied by remedies of a more simple and effective kind. 3 *Steph. Com.* 71—75. [CHARITY COMMISSIONERS.]

COMMISSION OF DELEGATES. A commission under the great seal to certain persons, usually lords, bishops and judges of the law, to sit upon an appeal to the King in the Court of Chancery in ecclesiastical and admiralty suits. *Cowel;* 3 *Bl.* 66, 67.

The Commission or Court of Delegates is now abolished by stat. 2 & 3 Will. 4, c. 92, and its functions transferred to the Judicial Committee of the Privy Council. 3 *Steph. Com.* 307, 308.

COMMISSION OF GAOL DELIVERY. This is a commission empowering judges to try, and deliver, every prisoner who shall be in the gaol when they arrive at the circuit town; whenever or before whomsoever indicted, or for whatever crime committed. 4 *Bl.* 470; 4 *Steph. Com.* 315. [ASSIZE, COURTS OF.]

COMMISSION OF LUNACY. A commission granted by the Lord Chancellor to inquire into the state of mind of an alleged lunatic, under stats. 16 & 17 Vict. c. 70, and 25 & 26 Vict. c. 86, passed in 1853 and 1862 respectively, this commission is directed to certain judicial officers called Masters in Lunacy. It may be either a special one applicable to some particular case, or a general one directing the masters to inquire into such cases as shall be referred to them. The inquiry usually takes place before a jury. 2 *Steph. Com.* 511, 512.

COMMISSION OF NISI PRIUS. [ASSIZE, COURTS OF.]

COMMISSION OF OYER AND TERMINER. A commission granted to judges and others to *hear and determine* treasons, felonies, &c. *Cowel.*

Under this commission, persons may be tried, whether they are in gaol or at large; but the judges can only proceed upon an indictment found at the same assizes. 4 *Bl.* 270; 4 *Steph. Com.* 314, 315. [ASSIZE, COURTS OF.]

COMMISSION OF REVIEW. A commission sometimes granted in former times to revise the sentence of the Court of Delegates in extraordinary cases. 3 *Steph. Com.* 307, 308. [COMMISSION OF DELEGATES.]

COMMISSION OF THE PEACE. A commission under the great seal, constituting one or more persons justice or justices of the peace. 1 *Bl.* 351; 2 *Steph. Com.* 644; 3 *Steph. Com.* 37. [JUSTICE OF THE PEACE.]

COMMISSION TO EXAMINE WITNESSES. By this is meant a commission issued to a foreign country, or other place out of the jurisdiction of a court in which a suit is instituted, for the purpose of obtaining such evidence of witnesses residing in such foreign country or other place, as may be material to the question before the court. *See* 3 *Bl.* 383; 3 *Steph. Com.* 532, 533.

COMMISSIONERS, ECCLESIASTICAL. [ECCLESIASTICAL COMMISSIONERS.]

COMMISSIONERS FOR TAKING AFFIDAVITS IN THE COMMON LAW COURTS. Attorneys appointed under stat. 29 Car. 2, c. 5, and 22 Vict. c. 16, for administering oaths to persons swearing to affidavits to be used in the Common Law Courts.

COMMISSIONERS OF SEWERS. [COURT OF COMMISSIONERS OF SEWERS: see also the following Title.]

COMMISSIONERS OF SEWERS OF THE CITY OF LONDON are a body consisting of the recorder, common serjeant, the twenty-six aldermen, and one commoner

COMMISSIONERS OF SEWERS OF THE CITY OF LONDON—*continued.*

for each ward. They are invested with powers of ordering, making, enlarging, cleansing, scouring, &c. all common sewers, drains and vaults; of paving, cleansing and lighting the streets and squares; of removing projections, &c. *Pulling on the Customs of London.*

COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY are solicitors appointed by the Lord Chancellor to administer oaths to persons making affidavits to be used in chancery suits. Such commissioners are appointed for London and ten miles round, for England generally, and for other parts within her Majesty's dominions. *Hunt. Eq.*

COMMITMENT. The sending of a person to prison. The word is also used of the document or warrant by which a commitment is directed.

COMMITTEE is he or they to whom the consideration or ordering of any matter is referred, either by some court, or consent of the parties to whom it belongeth. As in Parliament, a bill being read is either consented unto and passed, or denied, or neither of both, but referred to the consideration of some discreet men, who thereupon are called committees. *Covel.* [See also the following Titles.]

COMMITTEE, ELECTION. A select committee of the House of Commons for the trial of election petitions. 2 *Steph. Com.* 379, *n.* Superseded by stat. 31 & 32 Vict. c. 125, under which election petitions are tried by a judge of the superior courts.

COMMITTEE, JUDICIAL. [JUDICIAL COMMITTEE.]

COMMITTEE OF COUNCIL ON EDUCATION. The committee of the Privy Council charged to consider applications for aid from the money granted by Parliament for the purpose of education. 2 *Steph. Com.* 462.

COMMITTEE OF INSPECTION. A committee, not exceeding five in number, appointed by the general body of creditors of a bankrupt, for the purpose of superintending the administration by the trustee of the bankrupt's property. *Bankruptcy Act*, 1869, *s.* 14; 2 *Steph. Com.* 156; *Robson, Bkcy.*

COMMITTEE OF LUNATIC. A person to whom the maintenance of a lunatic, or the management of his estate, is committed. 2 *Steph. Com.* 512, 513. In the former case the committee is called a committee of the *person* of the lunatic; in the latter case he is called a committee of his *estate* 1 *Bl.* 305; 2 *Steph. Com.* 513.

COMMITTEE OF SUPPLY. A committee into which the House of Commons resolves itself for considering the amount of supply to be granted to her Majesty. *May's Parl. Pract.*

COMMITTEE OF THE WHOLE HOUSE. A parliamentary committee, composed of every member of the House. To form it in the Commons, the speaker quits the chair, another member being appointed chairman. In the Lords, the chair is taken by the chairman of committees. In these committees a bill is debated clause by clause, amendments made, blanks filled up, and sometimes the bill is entirely remodelled. 1 *Bl.* 183; 2 *Steph. Com.* 385; *May's Parl. Prac.*

COMMITTEE OF WAYS AND MEANS. A committee into which the House of Commons resolves itself, for the purpose of considering the ways and means of raising a supply which has been already voted. 2 *Steph. Com.* 554; *May's Parl. Pract.*

COMMODATUM. A gratuitous loan of a specific chattel. It is a species of bailment. [BAILMENT.]

COMMON, or RIGHT OF COMMON, is a profit which a man hath in the land of another, as to pasture beasts therein, to catch fish, to dig turf, to cut wood, or the like. It is chiefly of five kinds: common of *pasture*, of *piscary*, of *turbury*, of *estovers*, and *in the soil.*

I. Common of *pasture* is the right of feeding one's beasts on another's land. This kind of common is either *appendant, appurtenant, because of vicinage*, or *in gross.*

1. *Common appendant* is a right belonging to the owners or occupiers of arable land, under the lord of a manor, to put commonable beasts upon the lord's waste, and upon the lands of other persons within the same manor. Commonable beasts are either beasts of the plough, or such as manure the ground.

2. *Common appurtenant* ariseth from no connexion of tenure, but may be annexed to lands in other lordships; or may extend to such beasts as hogs, goats, or the like, which neither plough nor manure the ground. This kind of common can be claimed only by special grant or prescription.

3. *Common because of vicinage* is where the inhabitants of two townships, which lie contiguous to each other, have usually

COMMON, or RIGHT OF COMMON—*contd.*

intercommoned with one another; the beasts of the one straying mutually into the other's fields, without any molestation from either. This is only a permissive right; and therefore either township may inclose and bar out the other, though they have intercommoned time out of mind.

4. *Common in gross*, or at large, is such as is neither appendant nor appurtenant to the land, but is annexed to a man's person, being granted to him and his heirs by deed, or claimed by prescriptive right.

II. Common of *piscary* is a liberty of fishing in another man's water.

III. Common of *turbary* is a liberty of digging turf upon another's ground.

IV. Common of *estovers* or *estouviers*—that is, necessaries; from *estoffer*, to furnish—is a liberty of taking necessary wood, for the use or furniture of a house or farm, from off another's estate.

V. Common *in the soil* consists of the right of digging for coals, minerals, stones, and the like.

2 *Bl.* 33—35; 1 *Steph. Com.* 649—654; *Wms. R. P.*

Commons may now be enclosed under stat. 8 & 9 Vict. c. 118, on the Report of the Inclosure Commissioners for England and Wales. 2 *Steph. Com.* 655—657.

COMMON ASSAULT. An assault unaccompanied with circumstances of aggravation.

COMMON ASSURANCES. [ASSURANCE, 1.]

COMMON BAIL is distinguished by *Cowel* from special bail, in that, for common bail, *any* persons will suffice; whereas, for special bail, it was necessary to find *specially responsible persons*. It seems, from 3 *Bl.* 287, that the term *common bail* was especially applied to the two fictitious persons John Doe and Richard Roe, in their capacity as sureties put in by the defendant in an action, upon entering an appearance, for his future attendance and obedience.

COMMON BAR. [BLANK BAR.]

COMMON BENCH. A name sometimes given to the Court of Common Pleas. 3 *Bl.* 37; 3 *Steph. Com.* 333, 334. The "Common Bench Reports" are a series of reports of cases decided in the Court of Common Pleas from the years 1846 to 1856, and consist of eighteen volumes. There is a further series called the "Common Bench Reports, New Series," which consists of fifteen volumes, and is a continuation of the former series down to the year 1864.

COMMON CARRIER. [CARRIER.]

COMMON COUNTS. Counts in a plaintiff's declaration which state the most ordinary causes of action, as for money lent; money received by the defendant for the use of the plaintiff; work and labour; goods sold and delivered, &c. 3 *Steph. Com.* 432, *n.*

COMMON DAY IN PLEA OF LAND. An old phrase signifying an ordinary day in court. *Cowel.*

COMMON FINE. A small sum of money, otherwise called *head silver*, which the resiants within the liberty of some leets (*i. e.*, the persons resident within the jurisdiction of certain courts-leet) paid to the lord, towards the charge of his purchase of the court-leet. *Cowel.*

COMMON FORM, PROOF OF WILL IN. This was the proof of a will by an executor on his own oath before the ordinary, or his surrogate, as opposed to proof in more solemn form, *per testes* (by witnesses), when the validity of the will was disputed. And the same distinction continues substantially under the new Court of Probate. 2 *Bl.* 508; 2 *Steph. Com.* 191—193.

COMMON FORMS. A term most frequently used to denote forms of precedents in conveyancing. *Wms. R. P.*

COMMON INFORMER. An informer who sues on a penal statute which entitles *any* one to sue to recover the penalty imposed. 3 *Bl.* 161; 3 *Steph. Com.* 479.

COMMON INTENDMENT, or COMMON INTENT. Common meaning or understanding according to the subject matter of a written instrument, not strained to any extraordinary or foreign sense. *Cowel.*

COMMON INTENT. [COMMON INTENDMENT.]

COMMON JURY. A jury consisting of persons who possess only the ordinary qualification of property. 3 *Steph. Com.* 516; *see* 3 *Bl.* 358. [JURY.]

COMMON LAW. The ancient unwritten law of this kingdom. 1 *Bl.* 67.

The term "Common Law" is used in various ways:—

1. Of the ancient law above mentioned embodied in judicial decisions, as opposed to statute law, or the law enacted by parliament.

2. Of the original and proper law of England, administered in the Common Law Courts, that is, the Superior Courts of Westminster, and the Nisi Prius Courts, as opposed to the system called

COMMON LAW—*continued.*

Equity, which is administered in the Court of Chancery.

3. Of the municipal law of England as opposed to the Roman civil law, or other foreign law. Thus we speak of states and provinces which have inherited our English jurisprudence as being governed by the *common law*, in opposition to the French or Romano-Dutch law, &c. (as the case may be), by which countries originally colonized from France or Holland, &c. are governed.

4. *Common law*, as a subject of legal study and examination, signifies little more than the procedure in the Common Law Courts, with the law of contracts and of torts; and is opposed not only to equity, but to conveyancing, bankruptcy, and criminal law.

COMMON LAW PROCEDURE ACTS. Three acts of parliament passed in the years 1852, 1854 and 1860 respectively, for the amendment of the procedure in the Common Law Courts. The Common Law Procedure Act of 1852 is stat. 15 & 16 Vict. c. 76; that of 1854, stat. 17 & 18 Vict. c. 125; and that of 1860, stat. 23 & 24 Vict. c. 126.

COMMON NUISANCE, otherwise called a public nuisance, is a nuisance which affects the public in general, and not merely a particular person or a definite number of persons.

COMMON PLEAS. [COURT OF COMMON PLEAS.]

COMMON PRAYER. [BOOK OF COMMON PRAYER.]

COMMON RECOVERY. [RECOVERY.]

COMMON SCOLD (Lat. *Communis rixatrix*). [CASTIGATORY FOR SCOLDS.]

COMMON SEAL. An expression used of the seal of a corporation.

COMMON SERJEANT OF LONDON. A judicial officer of the City of London, next to the recorder. He is *ex officio* one of the judges of the Central Criminal Court. 4 *Steph. Com.* 316.

COMMON, TENANCY IN. A tenancy in common is where two or more hold the *same* land (1) under different titles: or (2) accruing under the same title, other than *descent*, but at different periods; or (3) under the same written instrument, but by words importing that the grantees are to take in distinct shares. This tenancy therefore happens where there is a unity of possession merely; but there may be an entire disunion of interest, of title, and of time. 2 *Bl.* 191—194; 1 *Steph. Com.* 351—355. [COPARCENARY; JOINT TENANCY.]

Tenancy in common may also exist in moveable property. 2 *Bl.* 399; 2 *Steph. Com.* 14, 15.

COMMON, TENANTS IN, are such as occupy the same land under a tenancy in common. [See preceding Title.]

COMMON TRAVERSE. A phrase formerly in more frequent use than at present, to signify the ordinary denial, put in by a party in an action, to his adversary's pleading.

COMMON VOUCHEE. The person who was commonly "vouched to warranty" in the fictitious proceeding called a *common recovery*. The crier of the court was generally employed for this purpose. 1 *Steph. Com.* 569; *Wms. R. P.* [RECOVERY; VOUCHING TO WARRANTY.]

COMMONALTY. Persons who are not the nobility or peerage; the civil state being composed of the nobility and the commonalty. 1 *Bl.* 396, 403; 2 *Steph. Com.* 601.

COMMONS' HOUSE OF PARLIAMENT. The lower House of Parliament, called the Commons' House, because the *Commons* of the realm, that is, the knights of shires, citizens and burgesses sit there. *Cowel.*

COMMONWEALTH. A word which properly signifies the common weal or public policy; sometimes it is used to designate a republican form of Government: and especially the period of English history from the execution of Charles I. in 1649 to the restoration of the monarchy under Charles II. in 1660.

COMMORANCY. The residence together of several persons within a district. *See* 4 *Bl.* 278.

COMMOTE. An old word signifying a part of a shire in Wales. Wales was anciently divided into three provinces; and each of these were again subdivided into *cantreds*, and every cantred into *commotes*. Commote also denoted a great lordship, and might include one or divers manors. *Cowel; Toml.*

COMMUNEM LEGEM. The writ *ad communem legem* was a writ of entry brought by a person entitled in reversion to recover land which had been wrongfully alienated by the tenant for life. 3 *Bl.* 183, *n.* It could be brought only after the death of the tenant for life. Having been long obsolete, it was abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

COMMUNI CUSTODIA was a writ that lay for that lord whose tenant, holding by knight-service, died, and left his eldest son under age, against a stranger who took possession of the person of the heir. Rendered obsolete by the stat. 12 Car. 2, c. 24, passed in 1660, for the abolition of military tenures. *Cowel.*

COMMUNIA PLACITA NON TENENDA IN SCACCARIO (common pleas not to be held in the Exchequer). An old writ formerly directed to the treasurer and barons of the Exchequer, forbidding them to hold plea between two *common* persons (*i. e.*, to assume jurisdiction between two persons, not debtors to the king) in that court, where neither of the parties belonged to it. *Cowel.* [COURT OF EXCHEQUER.]

COMMUNIS RIXATRIX. A common scold. [CASTIGATORY FOR SCOLDS.]

COMMUTATION OF TITHES. The substitution of a rent-charge adjusted according to the average price of corn, for the payment of tithes in kind. 2 *Steph. Com.* 729—738.

COMPANIES ACTS are acts of parliament for the regulation of joint stock companies. The principal statute of the kind now in force is the "Companies Act, 1862" (25 & 26 Vict. c. 89), which has been amended by the "Companies Act, 1867" (30 & 31 Vict. c. 131). 3 *Steph. Com.* 19, 20.

COMPANIES CLAUSES CONSOLIDATION ACT, 1845. The stat. 8 & 9 Vict. c. 16, passed for the purpose of incorporating the clauses of the act into any special act constituting a public company, and embodying by reference the clauses of the above act.

COMPANION OF THE GARTER. One of the knights of that most honourable order. *Cowel.* [GARTER.]

COMPELLING DISCOVERY is where a court of justice orders a party to a suit or action, on the application of the opposite party, to state what documents he has in his possession relative to the matter before the court, and to produce such documents or answer such interrogatories of the opposite party as are material and not open to objection.

COMPENSATION. 1. An allowance for the apprehension of criminals.

2. The money paid by a railway company or other parties taking land under an act of parliament, for the purchase of the interest in the land of the parties entitled thereto.

3. Money paid for damage caused by any wrong or breach of contract, or, under the Felony Act, 1870 (33 & 34 Vict. c. 23), to persons defrauded or injured by any felony. *Cox & Saunders' Cr. Law*, 436.

4. A set-off. [SET-OFF.]

COMPOSITION. 1. A *real composition.* This is when an agreement is made between the owner of lands and the incumbent, with the consent of the ordinary and the patron, that the lands shall, for the future, be discharged from payment of tithes, by reason of some land or other *real* recompence given in lieu and satisfaction thereof. 2 *Bl.* 28; 2 *Steph. Com.* 727.

2. A sum of money agreed to be accepted by the creditors of a debtor in satisfaction of the debts due to them from the debtor. This may now be done by an "extraordinary resolution" of creditors under sect. 126 of "The Bankruptcy Act, 1869; 2 *Bl.* 484; 2 *Steph. Com.* 176, 177; *Robson, Bkcy.*

COMPOUND LARCENY. Larceny combined with circumstances of aggravation, as being larceny from a man's house, or larceny from his person. 4 *Bl.* 239; 4 *Steph. Com.* 123.

COMPOUNDING FELONY is where a party robbed or otherwise injured by a felony takes a reward from the felon, or, in case of theft, takes back the stolen goods, upon agreement not to prosecute for the felony. 4 *Bl.* 133; 4 *Steph. Com.* 232.

COMPOUNDING FOR A DEBT is where the debtor arranges for payment of his debt to the satisfaction of the creditor. *Robson, Bkcy.*

COMPOUNDING INFORMATIONS UPON PENAL STATUTES is when an informer, or person intending to inform against another under a penal statute, makes a composition without leave of one of the courts at Westminster, or takes any money or promise from the defendant to excuse him. 4 *Bl.* 135; 4 *Steph. Com.* 234.

COMPOUNDING MISDEMEANORS signifies entering into an agreement not to prosecute, or to withdraw from a prosecution, for a misdemeanor. It is said to be illegal, if done without leave of the court. But it is not uncommon, when a person has been convicted of a misdemeanor more immediately affecting an individual,—as a battery, imprisonment, or the like,—for the court to permit the defendant to *speak with the prosecutor*, before any judgment is pronounced; and, if the prosecutor declares himself satisfied, to inflict but a trivial

COMPOUNDING MISDEMEANORS—*contd.* punishment. 4 *Steph. Com.* 234, 235. Blackstone disapproves of this practice. 4 *Bl.* 364.

COMPRINT. A surreptitious printing by a man of another's books, to make a gain thereby to himself. *Cowel.*

COMPROMISE. An adjustment of claims in dispute by mutual concession, either without resort to legal proceedings, or on the condition of abandoning such proceedings if already commenced.

COMPTER. [COUNTER.]

COMPTROLLER. 1. One who observes and examines the accounts of the collectors of public money. 2 *Steph. Com.* 529.

2. The *comptroller in bankruptcy* is an officer in London to whom, under the Bankruptcy Act, 1869, the trustee in any bankruptcy is required to forward the statement of his accounts, after they have been audited by the committee of inspection. 2 *Steph. Com.* 171; *Robson, Bkcy.*

3. An officer of the royal household.

4. The *comptroller of the hanaper* was an officer of the Court of Chancery, whose office was abolished in 1842 by stat. 5 & 6 Vict. c. 103, s. 1.

COMPURGATORS. The twelve persons who, when a clerk in holy orders was tried according to the ecclesiastical canons for any felony, and made oath of his own innocence, were called upon to swear that they believed he spoke the truth. 3 *Bl.* 342; 4 *Bl.* 368; 4 *Steph. Com.* 441, *n.* [BENEFIT OF CLERGY.]

COMPUTE, RULE TO. A rule of court to refer the question as to the *amount* of damage recoverable in an action in which the plaintiff had obtained an *interlocutory judgment* (which, for this purpose at least, signifies a judgment entitling him to *some* damages, but not specifying the amount) to a master of the court to compute the precise amount, in cases where the amount of damages was ascertainable by mere calculation. A rule for this purpose is now no longer necessary, the mere direction of the court or a judge to refer the matter being sufficient for the purpose. *Stat.* 15 *&* 16 *Vict. c.* 76, *s.* 92; *Lush's Pr.* 793.

CONACRE. A licence granted by the owner of land in Ireland to another to till and take a particular crop on the land, with a right of entry for the purpose, is called a *letting in conacre. De Moleyns' Practical Guide*, 72.

CONCESSI (I have granted). [GRANT.]

CONCILIUM, RULE FOR. A rule formerly requisite for the purpose of appointing a day for arguing a demurrer; now no longer necessary. *Reg. Gen. Hil. T.* 1853; *Lush's Pr.* 787. [CONSILIUM.]

CONCIONATOR. A common councilman. *Toml.*

CONCLUDED is often used in the same sense as *estopped.* [CONCLUSION; ESTOPPEL.]

CONCLUSION is when a man, by his own act upon record, hath charged himself with a duty, or other thing. In this sense it is tantamount to *estoppel.* [ESTOPPEL.] And this word *conclusion* is taken in another sense, as for the end or later part of any declaration, plea in bar, replication, &c. *Cowel.* [See the following Title.]

CONCLUSION TO THE COUNTRY. The conclusion of a pleading by which a party "puts himself upon his country," that is, appeals to the verdict of a jury.

CONCORD. Part of the process by which a fine of lands was levied, prior to the abolition of fines by the stat. 3 & 4 Will. 4, c. 74. It was the agreement by which the pretended defendant acknowledged that the lands in question were the right of the complainant. 2 *Bl.* 350; 1 *Steph. Com.* 561. [FINE, 1.]

CONCOURSE OF ACTIONS, in Scotch law, is where a civil and criminal proceeding go on concurrently. *Bell; Paterson.*

CONCOURSE OF LORD ADVOCATE. The consent of the Lord Advocate to any proceeding to which his consent is necessary. *Paterson.*

CONCUBINAGE. An exception to a woman claiming dower as the widow of a deceased person, that she was not legally married to the party in whose lands she sought to be endowed. *Cowel.*

CONCURRENT WRITS. Duplicate originals, or several writs running at the same time for the same purpose, for service on, or arrest of, a person, when it is not known where he is to be found; or for service on several persons, as when there are several defendants to an action. *Lush's Pr.* 357, 358, 583, 697; *Kerr's Act. Law.*

CONDESCENDENCE, in Scotch law, is the allegation on which a suit is grounded; corresponding to the *declaration* in an English action. *Paterson's Compendium.*

CONDITIONAL FEE, otherwise called a fee simple conditional, properly comprises every estate in fee simple granted upon condition; but the term is usually under-

CONDITIONAL FEE—*continued.*

stood to refer to that particular species called a "conditional fee" at the common law, which is an estate restrained in its form of donation to *some particular heirs* (exclusive of others); as, to the heirs of a man's body, or to the heirs male of his body; which the judges of former days construed, not as an estate descendible to some particular heirs, but an estate upon condition that the land was to revert to the donor, if the donee had no heirs of his body. This construction of gifts of lands was put a stop to by c. 1 of the Statute of Westminster the Second, commonly called the statute *De donis conditionalibus*, in the year 1285, which provided that thenceforth the will of the donor should be observed *secundùm formam in cartâ doni expressam* (according to the form expressed in the charter of gift). 2 *Bl.* 110—112; 1 *Steph. Com.* 239 - 242. [DE DONIS; ESTATE.]

CONDITIONAL LIMITATION is a phrase used specially in the two following ways:—

1. Of an estate or interest in land so expressly defined and limited by the words of its creation that it cannot endure for any longer time than till a particular contingency happens. 1 *Steph. Com.* 299, 301. That is, a *present* interest, to be divested on a *future* contingency.

2. Of a future use or interest limited to take effect upon a given contingency, in derogation of a preceding estate or interest. This is likewise called a *shifting* or *secondary* use, and also an *executory interest*. It is a future estate to come into possession upon a given contingency. 1 *Steph. Com.* 546 (*n*). [ESTATE; EXECUTORY INTEREST.]

Thus, if land be granted to the use of A. and his heirs until B. returns from Rome, and then to the use of B. and his heirs, A.'s estate is a conditional limitation of the first sort, and B.'s estate is a conditional limitation of the second sort above mentioned.

CONDITIONS PRECEDENT AND SUBSEQUENT. A condition *precedent*, in a conveyance or disposition of an estate, is a condition which must happen or be performed before the estate or interest can vest. A condition *subsequent* is a condition by the failure or non-performance of which an estate already vested may be defeated. 2 *Bl.* 154; 1 *Steph. Com.* 298, 299.

CONDONATION. The pardoning of an offence. The word, however, is especially used with reference to the course of conduct by which a husband or wife is held to have pardoned a matrimonial offence committed by the other; as if a husband takes his wife back knowing that she has committed adultery. The immediate effect of *condonation* is to bar the party condoning of his or her remedy for the offence in question.

CONDUCT MONEY. Money for the payment of the reasonable expenses of a witness at a trial. *Stat.* 6 *&* 7 *Vict. c.* 82, *s.* 7; *Lush's Pr.* 513.

CONE AND KEY. The accounts and keys of a house. To receive *cone* and *key* is to take the charge of a house. *Cowel.*

CONFERENCE, in Parliamentary practice, is a mode of communicating important matters by one House of Parliament to the other, more formal and ceremonious than a message. By a conference both Houses are brought into direct intercourse with each other by deputations of their own members. The object of a communication of this nature is to maintain a good understanding and co-operation between the Houses. *May's Parl. Pract.*

CONFESS AND AVOID. [CONFESSION AND AVOIDANCE.]

CONFESSING ERROR. The consent by a party in whose favour judgment has been given that such judgment shall be reversed, on allegation by the opposite party of "error" in fact or in law. *Lush's Pr.* 670. [ERROR.]

CONFESSION AND AVOIDANCE is when a party, in pleading, *confesses* the facts as stated by his adversary, but alleges some new matter by way of *avoiding* the legal effect claimed for them. As, if a man be sued for an assault, he may admit the assault, but plead that he committed it in self-defence. 3 *Steph. Com.* 504.

CONFESSO, BILL TAKEN PRO. [PRO CONFESSO.]

CONFIDENT PERSON, in the law of Scotland, is a person to whom land or other property is granted by a voluntary (*i. e.*, gratuitous) or fraudulent conveyance. He is considered a "confident" or "confidential" person, because the "granter of the deed" (*i. e.*, the person who has made the conveyance) may be supposed to place *confidence* in him. *Bell; Paterson.*

He corresponds mainly to the "volunteer" of English lawyers. [VOLUNTEER.]

CONFIRMATIO CHARTARUM (confirmation of the charters). A statute enacted

CONFIRMATIO CHARTARUM—*continued.* in the twenty-fifth year of the reign of King Edward I., in confirmation of Magna Charta, which is therein directed to be allowed as the common law, and all judgments contrary to it are declared void. The *Confirmatio Chartarum* further directed that *Magna Charta* should be read twice a year in all cathedral churches, and awarded excommunication as the penalty of its infringement. It further enacted that none but the ancient "aids, tasks or prizes" should be taken but by the common assent of the realm, and for the common profit thereof (a provision omitted in Henry III.'s charter); thus declaring the principle of immunity from arbitrary taxation. 1 *Bl.* 128; 2 *Bl.* 64; 1 *Steph. Com.* 196; 2 *Steph. Com.* 469. [MAGNA CHARTA.]

CONFIRMATION. 1. A conveyance of an estate or right, whereby a voidable estate is made sure and unavoidable. As if a tenant for life leaseth for forty years, and dieth during that term; here the lease for years is voidable by the reversioner; yet if he (the reversioner) hath confirmed the estate of the lessee for years, it is no longer voidable but sure. A confirmation may be implied by law (as in the above case, by the acceptance of rent under the lease), as well as by deed. *Cowel;* 2 *Bl.* 325, 326; 1 *Steph. Com.* 521, 522.

2. *Confirmation by a superior*, in Scotland, corresponds to the admittance, by the lord of a manor, of a new tenant, by which he *confirms* the interest which the new tenant has already acquired in consequence of the surrender to his use on the part of the previous tenant. [ADMITTANCE; SURRENDER]

3. Confirmation is also the Scotch term corresponding to *probate* and *letters of administration* in England.

CONFISCATE. To appropriate to the revenue of the Crown. Goods appropriated to the *fiscus* or imperial treasury were called *bona confiscata*, and by our lawyers *forisfacta* (forfeited; *lit.*, put out of doors); because the property is gone away from the owner. *Cowel;* 1 *Bl.* 299; 2 *Steph. Com.* 550.

CONFLICT OF LAWS. The discordance between the laws of one country and another, as applied to the same subject-matter; as, for instance, in the case of a contract made in one country and intended to be executed in another. See *Story's Conflict of Laws; Westlake's Private International Law.*

CONFORMITY, BILL OF. This expression, according to *Story, Eq. Jur.* 544, 545, is sometimes applied to a bill filed by an executor or administrator against the creditors of the deceased, for the adjustment of their claims; and (according to the same authority) is so called because the plaintiff undertakes, by his bill, to *conform* to the decree of the court, whatever it may be.

CONFUSION. A word in Scotch law, signifying the merger or extinguishment of a debt by the debtor succeeding to the property of his creditor, or *vice versâ. Bell.*

CONFUSION OF GOODS is where the goods of two persons are so intermixed that the several portions can be no longer distinguished; as if the money, corn or hay of one man be intermixed with that of another. 2 *Bl.* 405; 2 *Steph. Com.* 23.

CONGE D'ACCORDER signifies leave to accord or agree for the purpose of levying a fine, prescribed by stat. 18 Edw. I. *Cowel;* 2 *Bl.* 349, 350; 1 *Steph. Com.* 560. [CONCORD; FINE, I.]

CONGE D'ELIRE. The king's permission to a dean and chapter to choose a bishop. The dean and chapter are bound to elect such person as the Crown shall recommend, on pain of incurring the penalties of a *præmunire. Cowel;* 1 *Bl.* 379, 380; 2 *Steph. Com.* 666, 667.

CONGEABLE. A thing lawfully done, or done with leave. *Cowel.*

CONGRESS OF THE UNITED STATES. The principal legislative body of the United States, consisting of a Senate and a House of Representatives. The Senate is composed of members, two of whom are chosen by each State of the Union, for a period of six years. The House of Representatives is chosen by the people of the several States; each State sending representatives according to its population.

The powers of Congress are not theoretically unlimited, like those of the British Parliament; but are specified in the written Constitution of the United States. Almost all the local legislation of the States is carried out by the several State legislatures. Acts of Congress in violation of the Constitution, or in excess of the powers therein conferred, are legally invalid.

CONJOINING PROCESSES. The Scotch expression for the consolidation of actions. [CONSOLIDATION RULE.]

CONJUGAL RIGHTS, SUIT FOR RESTITUTION OF, is a suit by a husband to compel his wife to live with him, or by a wife to compel the husband to take her back. 2 *Steph. Com.* 238, *n.*

CONJURATION. A plot or compact made by men to do any public harm. In our common law it is specially used for such as have personal conference with the devil, or evil spirits, to know any secret, or to effect any purpose. *Stat.* 5 *Eliz. c.* 16; *Cowel.* The laws against conjuration and witchcraft were repealed in 1736, by stat. 9 Geo. 2, c. 5. 4 *Bl.* 62; 4 *Steph. Com.* 211.

CONNIVANCE signifies shutting of the eye. It is used with reference to a person allowing another to commit an act or offence by pretending not to see it: especially with reference to a husband tacitly encouraging his wife to commit adultery, in order that he may obtain a divorce. Such connivance, if established, will deprive the husband of his remedy. 2 *Steph. Com.* 280.

CONQUEST, in its feudal acceptation, signifies *acquisition;* and it is especially used in the law of Scotland to signify the coming to an estate by will, deed, or other instrument: and in this sense it corresponds with the word *purchase* in the English law, and is opposed to *descent*, or succession *ab intestato*, the "heritage" of the law of Scotland. 2 *Bl.* 48; 1 *Steph. Com.* 386.

This distinction between conquest and heritage in the law of Scotland is, for all practical purposes, abolished by stat. 37 & 38 Vict. c. 94, s. 37, passed in 1874.

Conquest also, in the law of Scotland, signifies an addition to a husband's estate which he is enabled to make during marriage. *Bell.* In this sense it corresponds to the "after-acquired property" of English conveyancers.

CONSANGUINEO. The writ of cosinage. [COSINAGE]

CONSANGUINEUS FRATER. A brother by the father's side. 2 *Bl.* 232. But see the following Title.

CONSANGUINITY. Relationship by blood, as opposed to *affinity*, which is relationship by marriage. 1 *Bl.* 434; 2 *Steph. Com.* 194, 242, 243.

CONSCIENCE, COURTS OF. Local courts for the recovery of small debts, formed before the passing of the County Courts Act, 1846, 9 & 10 Vict. c. 95, in various parts of the kingdom, by special acts passed for that purpose. They are now by that Act for the most part abolished. 3 *Bl.* 81; 3 *Steph. Com.* 284.

CONSENT RULE. A proceeding which took place under the old action of ejectment, by which the tenant in possession bound himself to admit all the fictions necessary under that action for trying the title to the land in question—everything, in fact, but the title itself. Except on this condition, the tenant would not be admitted to defend his title. 3 *Steph. Com.* 619. [EJECTMENT.]

CONSEQUENTIAL DAMAGE OR INJURY is damage or injury arising by *consequence* or *collaterally* to one man, from the culpable act or omission of another. 3 *Steph. Com.* 365. As, if A. be guilty of an offensive trade, or other nuisance injurious to health, whereby B.'s health is endangered.

CONSERVATOR OF THE PEACE is he that hath an especial charge, by virtue of his office, to see the king's peace kept. *Cowel.* Some of the conservators of the peace had the power annexed to other offices which they held; others had it merely by itself. Those that were so *virtute officii* still continue; but the latter sort are superseded by the modern justices. Those that were conservators of the peace without office either claimed that power by prescription, or were bound to exercise it by the tenure of their lands, or were chosen by the freeholders in full county court before the sheriff. At the commencement of the reign of Edward III. the election of conservators was taken from the people, and given to the king; and the statute 34 Edw. 3, c. 1, gave them the power of trying felonies; when they acquired the more honorable appellation of justices. 1 *Bl.* 349—351; 2 *Steph. Com.* 642—644.

CONSERVATOR OF THE TRUCE AND SAFE CONDUCTS was an officer appointed by the king's letters patent to inquire of offences done against the king's truce and safe conducts upon the main sea, out of the liberties of the *Cinque Ports. Cowel;* 4 *Bl.* 69; 4 *Steph. Com.* 218.

CONSERVATORS OF THE RIVER THAMES. [THAMES CONSERVANCY ACTS.]

CONSIDERATION. A compensation, or *quid pro quo*, for something promised or done. 2 *Steph. Com.* 59.

There is also a consideration called the consideration of "blood;" that is, natural love and affection for a near relation. This is, for some purposes, deemed a *good* consideration; but it is not held to be *a valuable* consideration, so as to

CONSIDERATION—*continued.*

[illegible] an action on a simple contract. [illegible] 2 *Steph. Com.* 60, 61; [illegible] Contracts.

CONSIDERATUM EST PER CURIAM. It [illegible] adjudged by the Court.

CONSIGNATION, in the law of Scotland, is [illegible] by a debtor into [illegible] other than the [illegible] the creditor [illegible] special [illegible] and creditor. [illegible] money with [illegible]

[illegible] goods [illegible] 2 *Steph.*

[illegible] delivering [illegible]

[illegible]

the *Consolidated Fund of the United Kingdom.* It constitutes almost the whole of the ordinary public income of the United Kingdom of Great Britain and Ireland, and is pledged for the payment of the whole of the interest of the National Debt, and is also liable to several other specific charges imposed upon it from time to time by Act of Parliament. 2 *Steph. Com.* 578, 579.

CONSOLIDATING ACTIONS. [CONSOLIDATION RULE.]

CONSOLIDATION. 1. The uniting of two benefices into one. *Cowel.* 2. The word is also used with reference to the consolidation of two or more parishes into one union, for the purpose of the relief and management of the poor. 3 *Steph. Com.* 50. 3. Also, in Scotland, the merging of the estate of a land, the merging of the estate of a proprietor of land with that of his superior, by the latter taking an "infeftment" or formal assignment of the interest of his inferior. *Bell; Stat.* 37 & 38 *Vict. c.* 94, s. 6.

CONSOLIDATION RULE. A rule for consolidating actions, invented by Lord Mansfield, the effect of which is to bind the plaintiffs or defendants in several actions by the verdict in one, where the questions in dispute, and the evidence to be adduced, are the same in [illegible]. The application for such a rule is most frequently made in actions against underwriters upon policies of insurance. [illegible] *Kerr's Act. Law.*

CONSOLS. The Consolidated Fund of the [illegible] Kingdom. [CONSOLIDATED [illegible]]

CONSPIRACY. A combination or agreement between two or more persons to [illegible] effect a purpose hurtful to [illegible] or to particular classes [illegible] or to the public at [illegible] the offence of falsely [illegible] conspiring to indict an [illegible] 4 *Steph. Com.* 238. [illegible] 4 *Bl.* 136.

CONSTABLE. An inferior officer to whom [illegible] maintaining the peace, and [illegible] by whom it is [illegible] immediately com[illegible]

[illegible] Petty Constables [illegible] are appointed at the [illegible] franchise or hundred [illegible] in default [illegible] at their special [illegible] duty of the high [illegible] to keep the peace

CONSTABLE—*continued.*

within the *hundred*, as the petty constable does within the *parish* or *township*. The utility of the office of high constable having become questionable, the justices for each county were directed by stat. 32 & 33 Vict. c. 47, passed in 1869, to consider and determine whether it was necessary that the office of high constable of each hundred, or other like district within their jurisdiction, should be continued.

Petty constables are inferior officers in every town and parish, subordinate to the high constable. They have two offices united in them; the ancient office of *head-borough*, *tithing-man*, or *borsholder*, an office as ancient as King Alfred; and the more modern office of constable merely, instituted about the reign of Edward III. Their principal duty is the preservation of the peace, though they have also other particular duties assigned to them by Act of Parliament, particularly the service of the summonses and the execution of the warrants of the justices of the peace, relative to the apprehension and commitment of offenders. Petty constables were formerly chosen by the jury at the court leet; or, if no court leet were held, then by two justices of the peace. 1 *Bl.* 355. By stat. 5 & 6 Vict. c. 109, it was provided that the justices should annually issue precepts to the overseers of each parish in their county (not being within any borough), requiring them to return a list of a competent number of men within such parish qualified and liable to serve as constables. But by the Parish Constables Act, 1872 (stat 35 & 36 Vict. c. 92), it is provided that no more parish constables shall be appointed after the 24th of March, 1873, unless for any parish in regard to which the magistrates of the county at their General or Quarter Sessions, or the vestry of the parish, determine that it is necessary that such appointment should be made. 2 *Steph. Com.* 651—655; *Oke's Mag. Syn.*

2. *Metropolitan Police.*

The Metropolitan Police Force is a body of men established in 1829, by stat. 10 Geo. 4, c. 44, and is under the immediate orders of an officer called the Commissioner of Police of the Metropolis, and two assistant commissioners appointed under stat. 19 & 20 Vict. c. 2, passed in 1856. Prior to the passing of the last-mentioned Act, there were two principal commissioners of police, who, in the original Act, are spoken of as "justices," being justices of the peace for the counties of Middlesex, Surrey, Hertford, Essex and Kent; without, however, any power to act as justices at General or Quarter Sessions, or in any manner out of sessions, except for the prevention of crimes, the detection and committal of offenders, and the carrying into execution the purposes of the Act. By s. 4 of the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), these justices were thenceforth to be styled "Commissioners of Police of the Metropolis," and their magisterial jurisdiction was extended to the counties of Berks and Bucks.

The Metropolitan Police District does not include the City of London, but otherwise it extends to a radius of about fifteen miles from Charing Cross. Within this district the Metropolitan Police Force are charged with the preservation of the peace. Moreover, the members of the force have the privileges of constables within the whole extent of the counties of Middlesex, Surrey, Hertford, Essex and Kent. Also, by stat. 23 & 24 Vict. c. 135, passed in 1860, any of the constables belonging to the Metropolitan Police Force may, by order of the Commissioner of Police, and subject to the approbation of a Secretary of State, be employed in her Majesty's dockyards and military stations outside the Metropolitan Police District.

The Metropolitan Police Force is under the general control of the Home Secretary.

For other matters relating to the force, see *Murray's Official Handbook.*

3. *The City of London Police.*

The City of London Police Force was established in 1839, by stat. 2 & 3 Vict. c. xciv, by which, with a few exceptions, the City Police Force is placed upon a nearly uniform plan with that established in the rest of the metropolis. The management of the City Police is placed in the hands of a commissioner, appointed by the Lord Mayor, aldermen, and commons of the City, with the approval of her Majesty. The commissioner is removable by the Crown, or by the Lord Mayor and aldermen, for misconduct or other reasonable cause. See *Pulling on the Customs of London, ch.* 12.

4. *Borough Police or Constabulary.*

In boroughs incorporated under the Municipal Corporations Act (5 & 6 Will. 4, c. 76), a police or constabulary force is maintained for the preservation of the peace therein; and this is ap-

CONSTABLE—*continued.*

pointed by, and is under the superintendence of, the *watch committee* of the borough. 2 *Steph. Com.* 655, 656.

5. *County Constabulary.*

In each county there is now also established a *county constabulary*, under the superintendence of a *chief constable;* an officer appointed by the justices of the county, subject to the approval of the Home Secretary. *Ibid.* 656, 657.

6. *Special Constables.*

These are appointed by the magistrates to execute warrants on particular occasions, or to act in aid of the preservation of the peace on special emergencies, where an increase of the existing police force appears desirable. This office, in the absence of volunteers, is compulsory. *Ibid.* 657, 658; *Oke's Mag. Syn.*

CONSTABLEWICK. The place within which lie the duties of a constable.

CONSTITUTION is a word generally used to indicate the form of the supreme government in a State. Where this is established by a written instrument, as in the United States, the written instrument is called the Constitution. The word is also used of the enactments of the Roman Emperors.

CONSTITUTION, DECREE OF, in the law of Scotland, is a decree by which the extent of a debt or obligation is ascertained; or by which a debt is established against the heir or executor of the original debtor. *Paterson.*

CONSTITUTIONAL. In countries having a written constitution, such as Switzerland and the United States, the word *constitutional* means "in conformity with the constitution," and the word *unconstitutional* means "in violation of the constitution;" the constitution, in all such countries, being the supreme law of the State. But, as applied to the legislation of the British Parliament, the words in question are words of vague and indefinite import; they are often used as signifying merely approval or aversion, as the case may be. Sometimes they are used with greater precision, to indicate conformity with, or variation from, some traditional maxim of legislation, especially in reference to the *constitution* of the supreme legislative body.

CONSTRUCTIVE is an adjective, nearly synonymous with the forced but too frequent sense of the word "implied;" meaning that the act or thing to which it refers does not exist, though it is convenient, for certain legal purposes, to assume that it does. [See the following Titles.]

CONSTRUCTIVE FRAUD. An act, statement, or omission, which operates as a virtual fraud on any individual, or, if generally permitted, would be prejudicial to the public welfare, and yet may have been unconnected with any selfish or evil design, or may amount, in the opinion of the person chargeable therewith, to nothing more than is justifiable or allowable. Instances of constructive fraud are marriage-brokage contracts, by which a party engages to give another a remuneration if he will negotiate a marriage for him. These are void, as tending to introduce matches which are ill-advised. *Sm. Man. Eq.*

CONSTRUCTIVE NOTICE. Notice imputed by construction of law. Whatever is sufficient to put any person of ordinary prudence on inquiry, is constructive notice of everything to which that inquiry might have led. *Sm. Man. Eq.*

Thus, if a man purchases land without any investigation of his vendor's title, he will be deemed to have *constructive notice* of every incumbrance which a proper investigation would have disclosed.

CONSTRUCTIVE TAKING. A phrase used in the law to imply any act short of an actual taking of goods, by which a person shows an intention to convert them to his use; as if a person intrusted with the possession of goods deals with them contrary to the orders of the owner.

CONSTRUCTIVE TOTAL LOSS. [TOTAL LOSS.]

CONSTRUCTIVE TREASON. An act raised by forced and arbitrary construction to the crime of treason; as the accroaching, or attempting to exercise, royal power, was in the 21 Edw. III. held to be treason in a knight of Hertfordshire, who forcibly assaulted and detained one of the king's subjects until he paid him 90*l.* 4 *Bl.* 75, 76; 4 *Steph. Com.* 150.

CONSTRUCTIVE TRUST is a trust which is raised by construction of a Court of Equity, in order to satisfy the demands of justice, *without reference to the presumable intention of any party.* Thus, for instance, a constructive trust may arise where a person, who is only joint owner, permanently benefits an estate by repairs or improvements; for, a lien or trust may arise in his favour, in respect of the sum he has expended in such repairs or improvements. And it

CONSTRUCTIVE TRUST—*continued.*

thus differs from an *implied* trust, which arises from the *implied* or presumed intention of a party. *Sm. Man. Eq.*

CONSUETUDINARIUS. A ritual or book, containing the rites and forms of divine offices, or the customs of abbeys and monasteries. *Cowel.*

CONSUETUDINIBUS ET SERVITIIS (customs and services). An old writ which lay against a tenant who "deforced" (or deprived) his lord of the rent or service due to him. *Cowel.*

Abolished by stat. 3 & 4 Will. 4, c. 27, s. 36.

CONSUL. In the modern sense of the word, a consul is an agent appointed by a State to reside in a city belonging to another State, for the purpose of watching over the commercial interests of the subjects of the State from which he has received his commission. He is not clothed with the diplomatic character. His appointment is communicated to the government of the State wherein he is appointed to reside, and its permission is required to enable him to enter upon his functions. This permission is given by an instrument called an *exequatur. Twiss' Law of Nations, Pt. I. s.* 206; *Phillimore's Int. Law, Pt. VII.*

CONSULTATION. A writ whereby a cause, being formerly removed by prohibition from the Ecclesiastical Court, or Court Christian, to the King's Court, is returned thither again; for the judges of the King's Court, finding the cause to be wrongfully called from the Court Christian, upon this *consultation* or deliberation, decree it to be returned again. *Cowel;* 3 *Bl.* 114. It is analogous to the writ of *procedendo.* [PROCEDENDO.]

CONSUMMATE TENANT BY CURTESY. The estate or interest of a husband as tenant by the curtesy is said to be *consummate* on the death of his wife, as opposed to the *initiate* tenancy which arises on the birth of a child capable of inheriting the estate. 2 *Bl.* 128; 1 *Steph. Com.* 266. [CURTESY.]

CONTANGO. The sum paid per share or per cent. on a settling day of the Stock Exchange, for continuing a "Bull" account to the next settlement. *Fenn's Compendium.* [BULL, 2.]

CONTEMPT OF COURT. Anything which plainly tends to create a disregard of the authority of courts of justice; as the open insult or resistance to the judges who preside there, or disobedience to their orders. Contempt of Court is punishable by the immediate imprisonment of the offender. 4 *Bl.* 283—288; 4 *Steph. Com.* 339—343.

Anything which is a breach of the privileges of either House of Parliament, according to the law and usage of Parliament, is a contempt of the High Court of Parliament, and punishable as a contempt of Court. *May's Parl. Pract.; Hallam's Const. Hist. ch.* 16.

CONTENEMENT seemeth to be the freehold land which lieth to a man's tenement or dwelling-house that is in his own occupation; for in *Magna Charta,* c. 14, you have these words: "A free man shall not be amerced for a small fault, but after the quantity of the fault, and for a great fault after the manner thereof, saving to him his contenement or freehold." Some, however, take it to signify that which is necessary for the support of a man according to his condition of life. Others understand by it the credit or reputation which a man hath by reason of his freehold. *Cowel.*

CONTENTIOUS JURISDICTION. That part of the jurisdiction of a Court which is over matters in dispute, as opposed to its *voluntary* jurisdiction, which is merely concerned in doing what no one opposes. 3 *Bl.* 66.

CONTENTS AND NON-CONTENTS. The "contents" are those who, in the House of Lords, express their assent to a bill; the "non-contents" are those who dissent. *May's Parl. Pract. ch.* 12.

CONTINGENCY WITH DOUBLE ASPECT. An expression sometimes used to denote the express limitation of one contingent remainder in substitution for another contingent remainder. As if land be given to A. for life, and if he have a son, then to that son in fee; and if he have no son, then to B. in fee. 1 *Steph. Com.* 328. [CONTINGENT REMAINDER.]

CONTINGENT INTEREST IN PERSONAL PROPERTY, whether arising from a will or settlement, may be defined, for all practical purposes, as a future interest not transmissible to the representatives of the party entitled thereto, in case he dies before it vests in possession. Thus, if a testator leaves the income of a fund to his wife for life, and the capital of the fund to be distributed among such of his children as shall be living at her death, the interest of each child in the fund during the widow's lifetime is *contingent,* and in case of his death is not transmissible to his representatives.

CONTINGENT REMAINDER is an estate in remainder upon a prior estate of freehold, *limited* (*i. e.* marked out in a deed or other written instrument) to take effect, either to a dubious and uncertain person, or upon a dubious and uncertain event. 2 *Bl.* 169; 1 *Steph. Com.* 326.

Thus, if land be given A., a bachelor, for life, and after his death to his eldest son; this remainder to the eldest son of A. is *contingent*, as it is not certain whether A. will have any son. So, if land be given to A. for life, and after his death to B., in case C. shall then have returned from Rome; B.'s interest during A.'s life, until C. shall have returned from Rome, is a contingent remainder.

A contingent remainder is defined by Fearne as a remainder limited to depend on an event or condition, which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate. *Fearne on Contingent Remainders.*

A contingent remainder (1) cannot take effect until the "prior particular estates" (*i. e.*, the interests for life, or otherwise, appointed to take effect before it) have come to an end; also (2), it cannot take effect unless the requisite contingency has happened. In the former respect it resembles a *vested remainder*, and differs from an *executory interest*. In the latter, it differs from a *vested remainder*, and resembles an *executory interest*. It has the weakness of both these estates, and the strength of neither. [EXECUTORY INTEREST; REMAINDER; VESTED REMAINDER.]

In many cases which may be conceived, the distinction between a vested and a contingent remainder is one of extreme technicality.

CONTINUAL CLAIM. A claim made from time to time, to land or other thing of which we cannot, without danger, attempt to take possession. As if I be dispossessed of land, into which, though I have a right unto it, I dare not enter, for fear of death or beating. It behoveth me to hold on my right of entry, to the best opportunity of me and mine heir, by approaching as near it as I can once every year as long as I live; and so I save the right of entry to my heir. *T. L.; Cowel;* 2 *Bl.* 316; 3 *Bl.* 175. This effect of a continual claim is abolished by stat. 3 & 4 Will. 4, c. 27, s. 11. 1 *Steph. Com.* 509.

CONTINUANCE. An adjournment of the proceedings in an action; or, more strictly, the entry on the record expressing the ground of the adjournment, and appointing the parties to reappear at a given day. Hence, a plea *puis darrein continuance* signifies an allegation of new matter of defence which has arisen *since the last adjournment* or *continuance*. Continuances are not now entered on the record or otherwise. *Cowel;* 3 *Bl.* 316, 317; 3 *Steph. Com.* 508; *Lush's Pr.* 538; *Kerr's Act. Law; Reg. Gen. H. T.* 1853, *Rule* 31.

CONTINUANCE, NOTICE OF. Where a plaintiff cannot be ready for trial on a day for which notice has been given, he may give notice of *continuance* in a town cause, if there will be a future sitting at Nisi Prius in London or Middlesex, whereby he *continues* the notice of trial to the next sittings. *Kerr's Act. Law*, 349, 350.

CONTINUANDO. In actions for trespasses of a permanent nature, where the injury is continually renewed, the plaintiff's declaration may allege the injury to have been committed *by continuation* from one given day to another, which is called laying the action with a *continuando*, and the plaintiff shall not be compelled to bring separate actions for every day's separate offence. *Cowel;* 3 *Bl.* 212.

CONTRA FORMAM COLLATIONIS (against the form of the gift) was an old writ which lay where a man gave lands to a religious house, for the perpetual performance of some divine service, and the abbot or his successor wrongfully alienated the lands; then the donor or his heirs had this writ to recover the lands. *Cowel.*

CONTRA FORMAM FEOFFAMENTI (against the form of the feoffment). An old writ that lay for the heir of a tenant who, having entered into possession of certain lands or tenements, under a charter of "feoffment" from his lord, on the condition of performing certain services, was afterwards "distrained" (*i.e.*, had his goods seized) for the non-performance of services *not* required by the charter of feoffment. *Reg. Orig.* 176; *Cowel.* [FEOFFMENT.]

CONTRA FORMAM STATUTI. [AGAINST THE FORM OF THE STATUTE.]

CONTRA PACEM. "Against the peace of our lord the king, his crown and dignity;" a form formerly used in indictments for offences against the common law; now no longer necessary. *Stat.* 14 & 15 *Vict. c.* 100, *s.* 24; 4 *Steph. Com.* 372, 373.

CONTRABAND, in its primary sense, denotes something prohibited by *ban* or *edict*, and indicates a prohibited trade.

But the most usual application of the term is to such articles as are contraband of war: that is, munitions and such other articles of merchandise carried in a neutral vessel in time of war as are calculated to assist either of the two belligerents against the other.

The latter belligerent is entitled to seize such articles *in transitu*, and in certain cases even to confiscate the ship in which they are carried.

The definition of contraband articles has varied at different times, and on several occasions has been settled by treaties between States. *Twiss' Law of Nations, Pt. II. ch.* 7; *Phillimore's Int. Law, Pt. X. ch.* 1.

CONTRACT. A *contract* is defined by Cowel as a covenant or agreement with a lawful consideration or cause: and Blackstone (2 *Bl.* 446) defines it as an agreement upon sufficient consideration to do or not to do a particular thing. Mr. Serjeant Stephen, however, defines a contract or agreement as follows:—A contract or agreement is either where a promise is made on one side and assented to on the other, or where two or more persons enter into engagement with each other, by promise on either side. Such promise may be by *parol*, that is, by word of mouth, or writing not under seal; or it may be by specialty (*i. e.*, by writing under seal), in which case it is more properly termed a *covenant*. And where a contract is not by specialty, it is called a *parol* or *simple contract*, to distinguish it from a contract by specialty. A simple contract may be either *written* or *verbal*. A simple contract must be made upon a *consideration*, in order that an action may be founded upon it. [CONSIDERATION.] And, in certain cases, defined by the Statute of Frauds (29 Car. 2, c. 3), the contract, or some note or memorandum thereof, must be made in writing and signed by the party to be charged therewith. 2 *Steph. Com.* 54—56; see also *Chitty on Contracts; Smith on Contracts.*

CONTRACT, ACTION OF. An action of contract, or *ex contractu*, is an action in which the wrong complained of is a *breach of contract*, and is opposed to an action of *tort*, which is brought for a wrong *independent of contract*. 3 *Bl.* 117; 3 *Steph. Com.* 429 *et seq.*

CONTRACAUSATOR, in the laws of Henry I., is a criminal, or one prosecuted for a crime. *Cowel.*

CONTRAMANDATIO PLACITI (countermand of a plea), mentioned in the laws of Henry I., is a respiting or giving a defendant further time to answer; or a *countermand* of what was formerly ordered. *Cowel.*

CONTRAPOSITIO. A plea or answer, mentioned in the laws of Henry I. *Cowel.*

CONTRARIENTS. The name given in the reign of King Edward II. to Thomas, Earl of Lancaster, and the barons who took part against the king. In respect of their great power, it was not thought fit to call them *rebels* or *traitors*. *Cowel.*

CONTRATENERE, in the laws of Alfred, means *to withhold*. *Cowel.*

CONTRIBUTION, SUIT FOR. A suit in equity, brought by one of several parties who has discharged a liability common to all, to compel the others to contribute thereto proportionably. [See next Title.]

CONTRIBUTIONE FACIENDA. An old writ that lay where more were bound to one thing, and yet one was put to the whole burden. The writ was to compel the others to contribute thereto. *Cowel.* Now superseded by the suit for contribution mentioned in the previous Title.

CONTRIBUTORY. A person liable to contribute to the assets of a company which is being wound up, as being a member or (in some cases) a past member thereof. 3 *Steph. Com.* 24.

CONTRIBUTORY NEGLIGENCE. Culpable negligence, by which a man contributes to the happening of an accident to himself, for which others are partially, or even mainly, responsible. The injured person will not be entitled to recover damages for the injury if it can be shown that, but for his negligence, the accident would not have happened. *Addison on Torts, pp.* 400-402; *Broom's Com.* 689; *Underhill on Torts*, 14.

CONTROLLER. [COMPTROLLER.]

CONTROVOR. An inventor of false news. *Cowel.*

CONTUMACE CAPIENDO (of taking the contumacious person). A writ for the purpose of enforcing obedience to the decree of an ecclesiastical court, under the provisions of the stat. 53 Geo. 3, c. 127. By that Act it is provided that, where a lawful citation or sentence of the ecclesiastical court has not been obeyed, or where a contempt in face of the court

CONTUMACE CAPIENDO—*continued.*

has been committed, the judge shall have power to pronounce the offender "contumacious and in contempt;" and, after a certain period, to signify the same to the sovereign in Chancery; whereupon a writ *de contumace capiendo* shall issue, for the arrest of the party. 3 *Steph. Com.* 316, 317.

CONUSANCE. [COGNIZANCE.]

CONUSANT. Knowing or understanding. *Cowel.*

CONUSOR. [COGNIZOR OF A FINE.]

CONVENTICLE ACTS. The statutes 16 Car. 2, c. 4, and 22 Car. 2, c. 1, by which all meetings, consisting of five persons or more (exclusive of the family), assembled for the exercise of religion in any manner other than according to the liturgy and practice of the Church of England, were prohibited, and those taking part in them subjected to penalties; also justices of the peace and officers of militia were empowered to disperse by force all such unlawful meetings, and to break open houses for the purpose. These provisions have, however, been mitigated by the Toleration Act, and other subsequent enactments. *Hallam's Const. Hist.*; 2 *Steph. Com.* 706—708.

CONVENTIO. A covenant.

CONVENTION. 1. The name of an old writ that lay for the breach of a covenant.

2. A name given to such meetings of the Houses of Lords and Commons as take place by their own authority, without being summoned by the king. This can only take place at great national crises. Thus, in the year 1660, the Convention Parliament met, which restored King Charles the Second; and in 1688, the Lords and Commons met to dispose of the crown and kingdom in favour of the Prince of Orange. 1 *Bl.* 151, 152; 2 *Steph. Com.* 456.

3. A treaty with a foreign power.

CONVENTIONAL ESTATES are *estates* (*i.e.*, interests in land) expressly created by the acts of parties, as opposed to estates created by construction or operation of law. 2 *Bl.* 120; 1 *Steph. Com.* 254.

CONVENTUALS. Religious persons united together in a *convent*, or house of religion. And a conventual church is a church attached to such a house. *Cowel.*

CONVERSION. 1. The converting by a man to his own use of the goods of another. This will be a ground for an action by the latter for *trover* and *conversion*, or for a prosecution for *larceny* or *embezzlement*, according to circumstances. 3 *Bl.* 152, 153; 3 *Steph. Com.* 425; 4 *Steph. Com.* 131; *Oke's Mag. Syn.*

2. That change in the nature of property by which, for certain purposes, real estate is considered as personal, and personal estate as real, and transmissible and descendible as such. Thus money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are directed to be *converted*. *Sm. Man. Eq.*; *Haynes' Eq.*; *Chute's Eq.*

CONVEYANCE. The transfer of the ownership of property, especially landed property, from one person to another; or the written instrument whereby such transfer is effected.

CONVEYANCER. He who draws conveyances; especially a barrister who confines himself to drawing conveyances, and other chamber practice.

CONVEYANCING. The practice of drawing conveyances and legal documents, which is a branch of the study and practice of the law.

CONVEYANCING AND LAND TRANSFER (SCOTLAND) ACT, 1874. Stat. 37 & 38 Vict. c. 94.

CONVEYANCING COUNSEL TO THE COURT OF CHANCERY are certain counsel, not less than six in number, appointed by the Lord Chancellor, for the purpose of assisting the Court of Chancery, or any judge thereof, with their opinion in the investigation of the title to any estate, in the purchase or mortgage of which it may be proposed to invest money under the control of the Court of Chancery, or to any estate which it may be proposed to sell by order of the Court, or in the settlement of a draft of any conveyance, mortgage, settlement or other instrument. *Stat.* 15 & 16 *Vict. c.* 80, *ss.* 40, 41; *Morgan and Chute's Chancery Acts and Orders, pp.* 157—159, 384; *Haynes' Eq. App.* (*Mr. Barber's Statement*).

CONVICT is he that is found guilty of an offence by the verdict of a jury, or else appeareth and confesseth. *Cowel.*

The term, however, is, by s. 6 of the Felony Act, 1870 (33 & 34 Vict. c. 23), restricted in that Act to mean any person against whom, after the passing of that Act, judgment of death, or of penal servitude, shall have been pronounced or re-

CONVICT—*continued.*

corded by any court of competent jurisdiction in England, Wales or Ireland, upon any charge of treason or felony. *Cox & Saunders' Cr. Law*, 437; *Oke's Mag. Syn.*

CONVICT RECUSANT. One that hath been legally presented, indicted, and convicted for refusing to come to church to hear the Common Prayer. *Cowel.*

CONVICTION is where a man, being indicted for a crime, confesses it, or, having pleaded not guilty, is found guilty by the verdict of a jury. A summary conviction is where a man is found guilty of an offence on summary proceeding before a police magistrate or bench of justices. 4 *Bl.* 280, 362; 4 *Steph. Com.* 329—343, 434, 435; *Oke's Mag. Syn.*

CONVIVIUM. A tenure by which a tenant was bound to provide meat and drink for his lord once or oftener in the year. *Cowel.*

CONVOCATION. The general assembly of the clergy, to consult of ecclesiastical matters in time of parliament. *Cowel.*

There are two convocations, the one for the province of Canterbury, the other for that of York; and there are two distinct houses of either convocation, of which the archbishop and bishops form the upper house, and the lower consists of deans, archdeacons, the proctors for (*i. e.*, representatives of) the chapters, and the proctors for the parochial clergy. In the province of York the two houses do not always sit separately. The convocations can make no canons, or even confer for that purpose, without licence from the sovereign; nor can they make any repugnant to the common or statute law; and none of their canons bind the laity unless they pass both Houses of Parliament. *Cowel;* 1 *Bl.* 279; 2 *Steph. Com.* 525, 526.

CONVOY. A ship of war, or ships of war, appointed to protect merchantmen against hostile inspection and seizure.

COPARCENARY is where lands descend from an ancestor to two or more persons. It arises by common law or particular custom. By common law, as where a landowner dies intestate, leaving two daughters, who inherit equally: by particular custom, as where lands descend by the custom of gavelkind to all the males in equal degree.

An estate in *coparcenary* is distinguished from an estate held in *common*, in that the former always arises from descent *ab intestato;* the latter arises from a deed or will, or the destruction of an estate in joint tenancy or coparcenary. *Cowel;* 2 *Bl.* 187—194; 1 *Steph. Com.* 346—354.

COPARCENERS. Those who hold an estate in coparcenary. [COPARCENARY.]

COPARTNERSHIP. The same as partnership.

COPE. A mineral duty payable to her Majesty out of the mines within the jurisdiction of the Barmote Courts. [BARMOTE COURTS.] This duty amounts to 4*d.* for every load of ore measured at any mine within such jurisdiction, the measure of a load being nine dishes, each containing fifteen pints of water. *Stat.* 14 & 15 *Vict. c.* 94, *schedule, art.* 9.

COPIA LIBELLI DELIBERANDA (a copy of the libel to be delivered). A writ that lay for a man accused of an ecclesiastical offence, when he could not get a copy of the libel (*i. e.*, the written accusation) at the hands of the judge ecclesiastical. *Cowel.*

COPYHOLD signifies tenure by copy of court roll at the will of the lord of a manor according to the custom thereof. It is in *manors* only that copyholds are to be found; and it is by the immemorial *custom* of the particular manor that the copyholder's interest must be regulated. Copyholders were originally villeins or slaves, permitted by the lord, as an act of pure grace or favour, to enjoy the lands at *his* pleasure; being in general bound to the performance of agricultural services, such as ploughing the lord's demesne, carting the manure, and other servile works. The will of the lord originated the custom of the manor, and came at last to be controlled by it. In the reign of Edward I. it seems that this will could be exercised arbitrarily; but in the reign of Edward III. a case occurred in which the entry of a lord on his copyholder was adjudged lawful, *because he did not do his services*, which seems to show that the lord could not, at that time, have ejected his tenant without cause. *Cowel;* 2 *Bl.* 90—98; 1 *Steph. Com.* 214—223, 624—646; *Wms. R. P., Part III.* [See also the following Title.]

COPYHOLD ACTS. 1. The stat. 4 & 5 Vict. c. 35, passed in 1841, by which facilities were afforded for the commutation of the lord's rights in mines and

COPYHOLD ACTS—*continued.*

minerals, and for the enfranchisement of copyholds. No provision, however, was made for compulsory enfranchisement.

2. The stat. 15 & 16 Vict. c. 51, passed in 1852, making the enfranchisement of copyholds compulsory at the instance *either* of the lord *or* of the tenant, and appointing certain commissioners called Copyhold Commissioners to assist in carrying out the provisions of the Act.

3. The stat. 21 & 22 Vict. c. 94, passed in 1858, substituting an award of enfranchisement, confirmed by the Commissioners, for the deed of enfranchisement required by the Act of 1852, and in other respects amending its provisions. *Wms. R. P.* [COPYHOLD; ENFRANCHISEMENT.]

COPYRIGHT. The right of an author to print and publish his own original work, exclusively of all other persons. The law of copyright is now regulated by the stat. 5 & 6 Vict. c. 45, passed in the year 1842, which provides that the copyright of every book published in the life of the author shall endure for his natural life, and for seven years longer; or if the seven years shall expire before the end of forty-two years from the first publication, the copyright shall then endure for such period of forty-two years; and that when the work is posthumous, the copyright shall endure for forty-two years from the first publication, and belong to the proprietor of the author's manuscript. Copyrights in sculptures and designs have also been protected by various Acts of Parliament, of which the most recent are the Copyright of Designs Act, 1858 (21 & 22 Vict. c. 70), for the protection of designs for articles of ornament and utility, and the Act of 1862 (25 & 26 Vict. c. 68), for the protection of paintings, drawings, and photographs. 2 *Steph. Com.* 34—43; *Copinger; Shortt.*

CORAAGE. An imposition extraordinary of certain measures of corn, made upon unusual occasions, and in cases of necessity. *Cowel.*

CORAM NOBIS (before us). A phrase put into the mouth of the Sovereign in speaking of proceedings in the King's Bench.

CORAM NON JUDICE (before one who is not a judge) is when a cause is brought and determined in a court whereof the judges have not any jurisdiction. *Cowel.*

CO-RESPONDENT is properly any person made respondent to, or called upon to answer, a petition, or other proceeding, jointly with another. But, since the passing of the Divorce Act, 1857, the word has become very much confined, and is applied almost exclusively to a person charged by a husband, suing for a divorce, with adultery with the wife, and made, jointly with her, a respondent to the suit.

CORN RENTS. [CORN-RENTS.]

CORNAGE. A tenure binding the tenant to wind a horn when the Scots or other enemies entered the land, in order to warn the king's subjects. It was a species of grand serjeanty. 2 *Bl.* 74; 1 *Steph. Com.* 201.

CORNARE. To blow the horn.

CORN-RENTS. Rents reserved in wheat or malt, whereof one-third was directed, by stat. 18 Eliz. c. 6, passed in 1576, to be so reserved in college leases. This is said to have been an invention of Lord Treasurer Burleigh, and Sir Thomas Smith, then principal Secretary of State, who, observing how greatly the value of money had sunk, and the price of all provisions risen, by the quantity of bullion imported from the new-found Indies (which effects were likely to increase in a greater degree), devised this method for upholding the revenues of colleges. Their foresight and penetration has been apparent. 2 *Bl.* 322.

CORODIO HABENDO. A writ whereby to exact a "corody" of an abbey or religious house. *Cowel.* [CORODY.]

CORODY signifies, in the common law, a sum of money, or allowance of meat, drink and clothing, due to the king from an abbey or other house of religion, whereof he is the founder, towards the reasonable sustenance of such one of his servants as he thinketh good to bestow it on. A corody belonged sometimes also to a bishop, and sometimes to a common person, being the founder of a religious house. *Cowel;* 2 *Bl.* 40.

The word was also used for the right (now disused) in the king to send one of his chaplains to be maintained out of a bishopric, or to have a pension allowed him till the bishop promoted him to a benefice. 1 *Bl.* 283; 2 *Steph. Com.* 531, *n.*, 670.

CORONATION OATH. The oath administered to every King or Queen who succeeds to the Imperial Crown of these realms,

CORONATION OATH—*continued.*

whereby the King or Queen swears to govern the kingdom of England, and the dominions thereto belonging, according to the statutes in parliament agreed on, and the laws and customs of the same; to cause law and justice in mercy to be executed; to maintain the laws of God, the true profession of the gospel, and the Protestant reformed religion established by law; and to preserve unto the bishops and clergy of the realm, and to the churches committed to their charge, all such rights and privileges as by law appertain to them, or any of them. 1 *Bl.* 235; 2 *Steph. Com.* 397, 398.

CORONATORE ELIGENDO. A writ, whereby the sheriff is commanded to call the freeholders of a county together for the election of a coroner, and to certify into the Chancery both the election and the name of the party elected, and to give him his oath. *Cowel;* 1 *Bl.* 347; 2 *Steph. Com.* 635.

CORONATORE EXONERANDO (for relieving a coroner). A writ for the removal of a coroner, or relieving him of his duties, for a cause to be therein assigned; as that he is engaged in other business, is incapacitated by years or sickness, hath not a sufficient estate in the county, or lives in an inconvenient part of it. 1 *Bl.* 347; 2 *Steph. Com.* 636, 637. [CORONER.]

CORONER. An ancient officer of the land, so called because he dealeth wholly for the king and crown.

The Lord Chief Justice of the King's Bench is the sovereign coroner of the whole realm, that is, wherever he remaineth. *Cowel.*

The coroner is chosen by the freeholders, at a county court held for that purpose. For this purpose there is a writ *de coronatore eligendo.* [CORONATORE ELIGENDO.] The principal duty of a coroner is to inquire concerning the manner of the death of any person who is slain, or dies suddenly, or in prison. Another branch of his office is to inquire concerning shipwrecks, and certify whether wreck or not, and who is in possession of the goods. Concerning treasure trove, he is also to inquire who were the finders, and where it is. The coroner is also a conservator of the king's peace, and becomes a magistrate by virtue of his appointment.

He may be removed by the Lord Chancellor for extortion, neglect, inability, or misbehaviour in his office, under stats. 25 Geo. 2, c. 29, and 23 & 24 Vict. c. 116, s. 6, or by the writ *de coronatore exonerando.* [CORONATORE EXONERANDO.] 1 *Bl.* 346—349; 2 *Steph. Com.* 634—642.

CORONER OF THE KING'S HOUSE (otherwise called the coroner of the verge). A coroner having a jurisdiction within a certain compass of the king's court. *Cowel.* [VERGE.]

CORPORATION. A number of persons united and consolidated together so as to be considered as one person in law, possessing the character of perpetuity, its existence being constantly maintained by the succession of new individuals in the place of those who die, or are removed. Corporations are either *aggregate* or *sole.* Corporations aggregate consist of many persons, several of whom are contemporaneously members thereof, as the mayor and commonalty of a city, or the dean and chapter of a cathedral. Corporations sole are such as consist, at any given time, of one person only, as the king or queen, a bishop, a vicar, &c. 1 *Bl.* 467—471; 1 *Steph. Com.* 358; 3 *Steph. Com.* 2 *et seq.; Grant on Corporations.*

CORPOREAL PROPERTY. Such as affects the senses, and may be seen and handled by the body, as opposed to *incorporeal property,* which cannot be seen or handled, and exists only in contemplation. Thus a house is corporeal, but the annual rent payable for its occupation is incorporeal. Corporeal property is, if moveable, capable of manual transfer: if immoveable, possession of it may be delivered up. But incorporeal property cannot be so transferred, but some other means must be adopted for its transfer, of which the most usual is an instrument in writing. 2 *Bl.* 17; 1 *Steph. Com.* 170; *Wms. R. P. Introd.*

CORPUS. The capital of a fund, as opposed to the income.

CORPUS CUM CAUSA. A writ formerly issuing out of the Chancery to remove "both the body and the record" (*i. e.*, to remove a person imprisoned for debt, together with the record of the cause) into the King's Bench. *Cowel.*

CORPUS DELICTI. The body of an offence, or essence of a crime; a phrase used with reference to the establishment of the fact that an offence has been committed; as opposed to the proof that a given person has committed it. *Bouvier.*

CORPUS JURIS CANONICI. The body of the Roman Canon Law. 1 *Bl.* 82; 1 *Steph. Com.* 64, 65. [CANON LAW.]

CORPUS JURIS CIVILIS. The body of the Roman Civil Law, published in the time of Justinian, containing:—1. The Institutes or Elements of Roman Law, in five books. 2. The Digest or Pandects, in fifty books, containing the opinions and writings of eminent lawyers. 3. A new Code, or collection of Imperial Constitutions, in twelve books. 4. The Novels, or New Constitutions, posterior in time to the other books, and amounting to a supplement to the Code. 1 *Bl.* 81; 1 *Steph. Com.* 63, 64.

CORRECTION, HOUSE OF. [HOUSE OF CORRECTION.]

CORRECTOR OF THE STAPLE, mentioned 27 Edw. 3, st. 2, cc. 22 and 23, was a clerk belonging to the staple, appointed to write and record the bargains of merchants there made. *Cowel.* [STAPLE.]

CORREDIUM. The same as corody. [CORODY.]

CORREI CREDENDI, in Scotch law, are persons jointly entitled as creditors to the payment of a debt. *Paterson.*

CORREI DEBENDI. Person jointly indebted. *Bell; Paterson.*

CORRUPTION OF BLOOD was one of the consequences of an attainder for treason or felony, whereby an attainted person could neither inherit lands or other hereditaments from his ancestors, nor retain those he was already in possession of, nor transmit them by descent to any heir; but the same escheated to the lord of the fee, subject to the king's superior right of forfeiture; and the person attainted also obstructed all descents to his posterity, whereon they were obliged to derive a title through him to a remoter ancestor. 4 *Bl.* 388. [ESCHEAT.]

Corruption of blood is now abolished by stats. 3 & 4 Will. 4, c. 106, s. 10, and 33 & 34 Vict. c. 23, s. 1. 1 *Steph. Com.* 446; 4 *Steph. Com.* 459; *Wms. R. P., Part I. ch.* 3.

CORSEPRESENT. An offering made to the church when a corpse came to be buried. Generally the body of the best beast was, according to the law or custom, offered or presented to the priest. *Cowel;* 2 *Bl.* 425, 426; 2 *Steph. Com.* 742. [MORTUARY.]

CORSNED. A kind of superstitious trial used among the Saxons, to purge themselves of any accusation, by taking a piece of cheese or bread, of about an ounce in weight, called *corsned* or *corsned bread,* and eating it with solemn oaths and execrations, that it might prove poison, or their last morsel, if what they said was not strictly true. *Cowel;* 4 *Bl.* 345; 4 *Steph. Com.* 410.

CORTES. The name of the legislative assemblies of Spain and Portugal.

COSENAGE. [COSINAGE.]

COSENING. An offence whereby anything is done deceitfully, which cannot fitly be called by any special name; as by playing with false dice, or the like. 4 *Bl.* 158.

COSHERING. An ancient privilege claimed by lords to lie and feast themselves and their followers at their tenants' houses. *Cowel.*

COSINAGE (*Cognatione, Consanguineo*). One of the old writs available for an heir against an "abator," that is, a person who, on the death of the deceased, entered upon the land to the prejudice of the heir. This particular writ lay where the deceased stood to the heir in the relation of great-great-grandfather or cousin, or more distant relation, either lineally or collaterally. If the deceased stood in the relation of great-great-grandfather to the heir, the writ was also called a writ of *tresaiel* or *tresayle.* 3 *Bl.* 185. This and similar writs, having been long obsolete, were abolished in 1833, by stat. 3 & 4 Will. 4, c. 27, s. 36.

COSTS. The expenses incident to a suit or action, paid in general by the defeated party. Costs in actions at common law were first given to plaintiffs by the Statute of Gloucester, passed in the sixth year of Edward I. And by subsequent statutes of Henry VIII. and James I. the defendant was declared entitled to costs in all cases in which the plaintiff would have been entitled thereto had he succeeded.

Costs in equity are in the discretion of the judge, but are in general given to the successful party.

Costs as between *party and party* are opposed to costs as between *attorney and client,* in that the former are costs which in an action or suit are incurred of necessity: whereas costs as between attorney and client, or, as they are called in Chancery, costs as between solicitor and client, include many items of costs actually paid to the solicitor, though not strictly necessary for the suit. *Lush's Pr.* 887—939; *Kerr's Act. Law; Hunt. Eq.*

COSTS OF THE DAY. Costs ordered to be paid by a plaintiff in an action, who neglects to proceed to trial according to notice. *Lush's Pr.* 496; *Kerr's Act. Law.*

COTARIUS. A cottager. [See next Title.]

COTERELLUS. A servile tenant, whose person, issue, and goods were at the pleasure of his lord; whereas the *cotarius* held a free socage tenure, paying a fixed rent, and doing occasional services. *Cowel.*

COTSETHUS. A cottage holder who, by servile tenure, was bound to work for the lord. *Cowel.*

COTTIER TENANCY, in Ireland, is defined by s. 81 of the Landlord and Tenant (Ireland) Act of 1860 (23 & 24 Vict. c. 154) as a tenancy constituted by an agreement or memorandum in writing, and subject to the following terms, specified in the Act:—

(1) That the tenement consist of a dwelling-house or cottage without land, or with any portion of land not exceeding half an acre.

(2) That the rent do not exceed 5*l.* by the year.

(3) That the tenancy be for not more than a month at a time.

(4) That the landlord undertake to keep and maintain the house in good and tenantable repair.

COUCHANT. Lying down. [LEVANT AND COUCHANT.]

COUCHER, or COURCHER, signifies a factor, residing in some foreign country for traffic. It is used also for the general book wherein corporations, &c. register their particular acts. *Cowel.*

COUNSEL. A word frequently used to denote a barrister-at-law, especially in reference to the solicitors or clients who consult him. [BARRISTER.]

COUNSELLOR-AT-LAW. A barrister-at-law.

COUNT. 1. Count, as a title of honour, is from the Latin *comes*, a title used in the Roman empire to denote the *attendants* of the sovereign. After the Norman Conquest they were for some time called counts or *countees*, from the French; but they did not long retain that name themselves, though their shires are called counties to this day. They were also called earls, which name they have retained. 1 *Bl.* 398; 2 *Steph. Com.* 603.

2. A section of a declaration or indictment.

3. A count of the House of Commons by the Speaker.

After the House has been made, if notice be taken by a member, that forty members are not present, the Speaker counts the house, and should forty members not be present, then, if it is before four o'clock, business is suspended until the proper number come into their places: but if after four o'clock, the Speaker at once adjourns the house until the following day. The house is then said to be *counted out. May's Parl. Pract.*

COUNT OUT. [COUNT, 3.]

COUNTEE. [COUNT, 1.]

COUNTER.

1. The name of two prisons formerly existing in the City of London, whereinto (says *Cowel*) he that once slippeth is like to *account* ere he get out.

They were called the Poultry Counter and the Wood Street Counter.

2. An old word for a serjeant-at-law. *Stat.* 3 *Edw.* 1, *c.* 29; *Lush's Pr.* 270; *Foss' Judges of England.*

COUNTERPART. When the several parts of an indenture are interchangeably executed by the parties thereto, that part or copy which is executed by the grantor is called the *original*, and the rest are *counterparts;* though of late it is most frequent for *all* the parties to execute *every* part, which renders them all originals. 2 *Bl.* 296; 1 *Steph. Com.* 483.

A duplicate copy of a deed is, however, frequently called a counterpart.

COUNTER-PLEA signifieth in our common law a replication to Aid Prayer; that is, where a tenant for life, or other limited interest in land, having an action brought against him in respect of the title to such land, prayed in aid of the lord or reversioner for his better defence; or else if a stranger to an action begun, desired to be received to say what he could for the safeguard of his estate; that which the demandant alleged against either request was called a *counter-plea. Cowel.* [AID PRAYER.]

COUNTERS (Fr. *Conteurs*, Lat. *Narratores*). An old word for such serjeants-at-law as a man retained to defend his cause. *Cowel.* [COUNTER, 2; SERJEANT-AT-LAW.]

COUNTING-HOUSE OF THE KING'S HOUSEHOLD is that which is commonly called the Board of Green Cloth, because the table stands covered with a green cloth. [BOARD OF GREEN CLOTH.]

COUNTRY. A word often used to signify a jury of the country. 3 *Bl.* 349; 4 *Bl.* 349; 3 *Steph. Com.* 513; 4 *Steph. Com.* 416.

COUNTRY CAUSE. A cause in which the *venue* is laid elsewhere than in London or Middlesex. [VENUE.]

COUNTY. A division of the kingdom, made up of an indefinite number of hundreds. The word is plainly derived from *Comes*, the *Count* of the Franks; that is, the earl or alderman (as the Saxons called him) of a shire, to whom the government of it was entrusted. 1 *Bl.* 117; 1 *Steph. Com.* 126.

COUNTY CORPORATE. A city or town with more or less territory annexed to it, to which, out of special grace and favour, the kings of England have granted the privilege to be counties of themselves, and not to be comprised in any other county; but to be governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein. Such are London, York, Norwich, &c. 1 *Bl.* 120. Now, by stat. 38 Geo. 3, c. 52, and subsequent statutes, all causes of action arising, and offences committed, in a county corporate, may be tried in the next adjoining county at large. 1 *Steph. Com.* 133, 134.

COUNTY COURT. 1. A court originally held every month or oftener by the sheriff, intended to try little causes not exceeding the value of forty shillings, in what part of the county he pleased to appoint for that purpose; also for the election of knights of the shire. The freeholders in the county were the real judges in this court; the sheriff being the officer appointed to carry its decisions into effect. It may be held also for the proclamation of outlawries, the election of coroners, and the like. 1 *Bl.* 178; 3 *Bl.* 35, 36; 3 *Steph. Com.* 282.

But the local administration of justice in these courts is almost entirely obsolete; such jurisdiction in civil cases being now conferred by statute on the modern courts of the same name.

2. These latter so-called county courts have been established under the statute 9 & 10 Vict. c. 95, passed in 1846, by an Order in Council of the 9th of March, 1847. By the same order, as well as by the authority of the Lord Chancellor under a subsequent Act (21 & 22 Vict. c. 74), a certain number of county court *districts* are appointed in each county. These districts are grouped in unequal numbers into a variety of circuits, over each of which is assigned a judge, chosen by the Lord Chancellor from amongst the serjeants, Queen's counsel, and barristers-at-law of seven years' standing and upwards; and for each district there is a registrar and other officers. The county courts are held, as a general rule, once in every calendar month, or at such other interval as is directed by the Lord Chancellor. The county courts have jurisdiction for the recovery of small debts and demands, and have also jurisdiction in equity and bankruptcy, defined by Acts of Parliament passed for that purpose. To some county courts also, in the neighbourhood of the sea, a limited jurisdiction is given to try Admiralty cases. 1 *Steph. Com.* 127, 128; 3 *Steph. Com.* 283—292.

COUNTY PALATINE. The counties Chester, Durham, and Lancaster, are called counties palatine. They are so called *à palatio*, because the owners thereof (the Earl of Chester, the Bishop of Durham, and the Duke of Lancaster) had formerly in those counties *jura regalia* (royal rights) as fully as the king had in his palace. They might pardon treasons, murders and felonies; all writs and indictments ran in their names, as in other counties in the king's; and all offences were said to be done against *their peace*, and not, as in other places, *contra pacem domini regis* (against the peace of our lord the king). The isle of Ely (says Blackstone) is not a county palatine, but only a royal franchise; the bishop having by grant of King Henry I. *jura regalia* within the Isle of Ely, whereby he exercised a jurisdiction over all causes, as well criminal as civil. 1 *Bl.* 117—120.

These counties palatine have been now for the most part assimilated to the rest of England. And by the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66, s. 16), the jurisdiction of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham, is, from the time that the Act comes into operation, to be transferred to the High Court of Justice established by the Act. The Chancery Court of Lancaster, however, is expressly retained by s. 95 of the Act. *See* 1 *Steph. Com.* 129—131; 3 *Steph. Com.* 348, 349.

COUNTY SESSIONS. The Court of General Quarter Sessions of the Peace, held in

COUNTY SESSIONS—*continued.*

every county once in every quarter of a year. By statute 11 Geo. 4 & 1 Will. 4, c. 70, s. 35, the quarter sessions are appointed to be held in the first week after the 11th day of October; the first week after the 28th day of December; the first week after the 31st day of March; and the first week after the 24th day of June. This Court is held before two or more justices of the peace. For the county of Middlesex, however, it is enacted that there shall be holden two sessions or adjourned sessions of the peace in every calendar month. 4 *Steph. Com.* 317—320.

COURT (Lat. *Curia*) has various significations—

1. The house where the king remaineth with his retinue. *Cowel.*

2. The place where justice is judicially administered. *Cowel;* 3 *Bl.* 23; 3 *Steph. Com.* 268.

3. The judges who sit to administer justice; and, in jury trials, the judge or presiding magistrate, as opposed to the jury.

4. A meeting of a corporation, or the principal members thereof; as when we speak of the Court of Aldermen, Court of Directors, &c.

5. Other usages of the term will readily occur to our readers. Most of the courts of justice in this country, past and present, will be found described in the Titles following.

COURT, BAIL. [BAIL COURT.]

COURT BARON. A court incident to every manor in the kingdom, to be holden by the steward within the said manor. [MANOR.] This Court Baron is of two natures. 1. The one is a customary court appertaining entirely to the *copyholders*, in which their estates are transferred by surrender and admittance, and other matters transacted relative to their tenures only. 2. The other is a court of common law, not of record, held before the *freehold* tenants who owe suit and service to the lord of the manor; and of this court the steward of the manor is rather the registrar than the judge. The freeholders' court was anciently held every three weeks; and its most important business was to determine, in the real action called the *writ of right*, all controversies relating to lands within the manor. It might also hold plea (*i. e.*, assume jurisdiction) of personal actions, where the debt or damages did not amount to 40*s.* This Court, however, has long ago fallen into disuse, and its jurisdiction is practically abolished by s. 28 of the County Courts Act, 1867 (30 & 31 Vict. c. 142), by which no action or suit, which can be brought in any county court, shall henceforth be maintainable in any hundred or inferior court not being a court of record. 3 *Bl.* 33, 34; 3 *Steph. Com.* 279—281.

COURT CHRISTIAN. A name often used to denote an ecclesiastical court. 3 *Bl.* 64; 3 *Steph. Com.* 304.

COURT, CONSISTORY. [CONSISTORY COURTS.]

COURT, COUNTY. [COUNTY COURT.]

COURT FOR CONSIDERATION OF CROWN CASES RESERVED. A court established by stat. 11 & 12 Vict. c. 78, passed in 1848. This Court is composed of the judges of the Superior Courts of Westminster, or such of them as are enabled to attend, for the purpose of deciding any question of law reserved for their consideration by any judge or presiding magistrate in any court of oyer and terminer, gaol delivery, or quarter sessions, before which a prisoner has been found guilty by verdict. Such question is stated in the form of a special case for the consideration of the judges. 4 *Steph. Com.* 442.

COURT FOR DIVORCE AND MATRIMONIAL CAUSES. A court established in 1857 by the Divorce Act of that year (20 & 21 Vict. c. 85), of which the judges are the Lord Chancellor and the judges of the Superior Courts at Westminster, together with the judge of the Probate Court; which last judge is made *judge in ordinary* of the Divorce Court. To this Court was transferred the matrimonial jurisdiction of the Ecclesiastical Courts, together with the power, hitherto exercised by private acts of parliament, to grant divorces *à vinculo* in certain cases; and, by the Legitimacy Declaration Act, 1858 (21 & 22 Vict. c. 93), persons may apply to this court for a declaration of their legitimacy, or of the validity of the marriages of their fathers and mothers, or of their grandfathers and grandmothers; or for a declaration of their own right to be deemed natural-born subjects. 2 *Steph. Com.* 239.

This is one of the courts which, by s. 16 of the Supreme Court of Judicature Act (36 & 37 Vict. c. 66), is to be merged in the Supreme Court of Judicature.

COURT, HUNDRED. A larger Court Baron, being held for all the inhabitants of a particular hundred, instead of a manor. 3 *Bl.* 34, 35; 3 *Steph. Com.* 281, 282. [COURT BARON; HUNDRED.]

COURT LANDS, *terræ curtiles*, otherwise called demesnes, *terræ dominicales*. Domains kept in the lord's hands to serve his family: called court-lands as being appropriated to the house or court of the lord, and not let out to tenants. *Toml.*

COURT LEET. A court of record held once in the year and not oftener within a particular hundred, lordship, or manor, before the steward of the leet: being the king's court granted by charter to the lords of those hundreds or manors. Its office was to view the *frankpledges*, that is the freemen within the liberty; to present by jury crimes happening within the jurisdiction; and to punish trivial misdemeanors. It has now, however, for the most part fallen into total desuetude; though in some manors a "court leet" is still periodically held for the transaction of the administrative business of the manor. 4 *Bl.* 273, 274; 4 *Steph. Com.* 321—323.

COURT-MARTIAL. 1. A court erected under the Annual Mutiny Acts, with a jurisdiction to try and punish offences against the provisions of the Mutiny Act, and the Articles of War made by the sovereign in pursuance thereof. Courts-martial are (1) General; (2) Detachment-General; (3) District or Garrison; (4) Regimental or Detachment. Of these, only the two first can try a commissioned officer, or pass sentence of death or penal servitude.

2. A court erected under the acts for the government of the navy, for the punishment of offences against naval discipline. The act now in force on the subject is the Naval Discipline Act, 1866. A court for the trial of offences against naval discipline is called a naval court-martial. 2 *Steph. Com.* 589—598; *Simmons on Courts-Martial.*

COURT OF ADMIRALTY. [ADMIRALTY, THE HIGH COURT OF.] This Court is one of those whose jurisdiction is to be transferred to the High Court of Justice under the Supreme Court of Judicature Act, 1873. 3 *Steph. Com.* 341.

COURT OF ARCHDEACON. The most inferior court in the whole ecclesiastical polity, held before a judge appointed by the archdeacon himself, and called his *official*. Its jurisdiction comprises ecclesiastical causes in general arising within the archdeaconry. From the archdeacon's court an appeal generally lies to that of the bishop. 3 *Bl.* 64; 3 *Steph. Com.* 305, 306. [ARCHDEACON.]

COURT OF ARCHES. [ARCHES, COURT OF.]

COURT OF BANKRUPTCY. [BANKRUPTCY COURT.]

COURT OF CHANCERY. [CHANCERY.]

COURT OF CHIVALRY was a court which used to be held before the Lord High Constable and Marshal of England. It was not a court of record, but it had a jurisdiction criminal as well as civil,—relating, in the former case, to deeds of arms and war, and, in the latter, to the redressing of injuries of honour, and of encroachments in the matter of coat-armour, precedency, and other distinctions of families. From its sentences an appeal lay to the king in person. It fell into desuetude in the 18th century: the last case tried in it being Sir Henry Blunt's case in 1737. 3 *Bl.* 68; 4 *Bl.* 268; 3 *Steph. Com.* 335, *n.*; 2 *Knapp's Privy Council Reports*, 151, *n.*; *Phillimore's Int. Law, Vol. III., pp.* 207—209.

COURT OF CLERK OF THE MARKET. A court incident to every fair and market in the kingdom, to punish misdemeanors therein. 4 *Bl.* 275; 4 *Steph. Com.* 323, 324. [CLERK OF THE MARKET.]

COURT OF COMMISSIONERS OF SEWERS. These courts are erected by virtue of a commission under the great seal pursuant to the Statute of Sewers (23 Hen. 8, c. 5), whose powers are confined to such county or particular place as their commission shall expressly name. Their jurisdiction is to overlook the repairs of the banks and walls of the sea coast and of navigable rivers, and to cleanse such rivers and the streams communicating therewith. They may also assess such rates or scots upon the owners of lands within their district as they shall judge necessary. 3 *Bl.* 73, 74; 3 *Steph. Com.* 296—298. [COMMISSIONERS OF SEWERS OF THE CITY OF LONDON.]

COURT OF COMMON PLEAS, or, as it is sometimes called, the Court of Common Bench, is one of the superior courts of common law. It takes cognizance of all actions between subject and subject, without exception. It formerly had an exclusive jurisdiction over real actions, which excelled all others in importance. It has also been entrusted with exclusive

COURT OF COMMON PLEAS—*continued.* jurisdiction in appeals from the decisions of revising barristers, and in some other matters. 3 *Bl.* 36—41; 3 *Steph. Com.* 333, 334. By s. 16 of the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), the business of the Court of Common Pleas is, from the time that the act comes into operation, to be transferred to the Common Pleas division of the High Court of Justice established under that Act. 3 *Steph. Com.* 353, 354.

COURT OF CONSCIENCE. [CONSCIENCE, COURTS OF; COURT OF REQUEST.]

COURT OF CORONERS. A court of record held by a coroner. 4 *Bl.* 274; 4 *Steph. Com.* 323. [CORONER.]

COURT OF DELEGATES. [COMMISSION OF DELEGATES.]

COURT OF ENQUIRY. A regimental court, held under the 13th Article of War, as altered in 1860, for the purpose of hearing complaints of non-commissioned officers and soldiers in any matter respecting their pay or clothing. The soldier, in such case, ought first to address himself to his captain; and it is only on not receiving redress at his hands that he is authorized to apply to the commanding officer of the regiment, who is thereupon *required* to summon a regimental court of enquiry. *Simmons on Courts-Martial*, s. 341.

COURT OF EQUITY. [EQUITY.]

COURT OF ERROR. An expression applied especially to the Court of Exchequer Chamber and the House of Lords, as taking cognizance of *error* brought. 3 *Steph. Com.* 338; *Kerr's Act. Law.* [ERROR.]

COURT OF EXCHEQUER, one of the superior courts of Westminster, is a very ancient court of record, intended principally to order the revenues of the Crown, and to recover the king's debts and duties. It is called the Exchequer, *scaccarium*, from the chequed cloth, resembling a chess-board, which covered the table there, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. The Exchequer consists of two divisions, the *receipt* of the Exchequer, which manages the royal revenue, and the *court*, or judicial part of it. This Court was, down to the year 1842, subdivided into a court of equity and a court of common law. But by the stat. 5 Vict. c. 5 all the equity jurisdiction of the Court of Exchequer is transferred to the Court of Chancery. The Court of Exchequer consists, moreover, of a *revenue* side, and of a common law or *plea* side. On the *revenue* side it ascertains and enforces the proprietary rights of the Crown against the subjects of the realm. On the *plea* side it administers redress between subject and subject in all actions personal. 3 *Bl.* 44—46; 3 *Steph. Com.* 338—340.

From the time when the Supreme Court of Judicature Act, 1873, comes into operation, the business of the Court of Exchequer is to be transferred to the Exchequer division of the High Court of Justice. 3 *Steph. Com.* 353—355.

COURT OF EXCHEQUER CHAMBER. An intermediate court of appeal between the superior courts of common law and the House of Lords. When sitting as a court of appeal from any one of the three superior courts of common law, it is composed of judges of the other two Courts. The powers of this Court are, from the time that the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), comes into operation, transferred to the court of appeal established by that Act. 3 *Bl.* 56, 57; 3 *Steph. Com.* 333, 356.

COURT OF FACULTIES. [FACULTY.]

COURT OF FOREST. [FOREST COURTS.]

COURT OF GREAT SESSIONS IN WALES. A court formerly held twice every year in each county in Wales by judges appointed by the Crown, from which writs of error lay to the Court of King's Bench at Westminster. This court is abolished by stat. 11 Geo. 4 & 1 Will. 4, c. 70, and the Welsh judicature entirely incorporated with that of England. 3 *Bl.* 77; 3 *Steph. Com.* 317, *n.*

COURT OF HIGH COMMISSION. [HIGH COMMISSION COURT.]

COURT OF HUSTINGS. The word *hustings* signifies, in the Saxon language, the *house* of causes, or *things*. Courts of hustings are mentioned in the charters of Great Yarmouth, Lincoln, York, and Norwich; and the name is to this day given to the temporary courts held for the election of members of parliament in every county and borough. But when we speak of *the Court of Hustings*, we generally mean the Court of that name held within the City of London, before the Lord Mayor, Recorder, and Sheriffs. This Court is the representative, within the City, of the ancient county court of

COURT OF HUSTINGS—*continued.*

the sheriff. It had exclusive jurisdiction in all real and mixed actions for the recovery of land within the city, except ejectment. But now that all real and mixed actions, except ejectment, are abolished, the jurisdiction of this court has fallen into comparative desuetude. 3 *Bl.* 80; 3 *Steph. Com.* 293, *n.*; *Pulling on the Customs of London.*

COURT OF KING'S BENCH. [COURT OF QUEEN'S BENCH.]

COURT OF LORD HIGH STEWARD OF GREAT BRITAIN. A court instituted for the trial, during the recess of parliament, of peers or peeresses indicted for treason or felony, or for misprision of either. Into this court indictments against peers of parliament are removed by *certiorari*. The office is created *pro hâc vice* only, whenever the occasion requires it. 4 *Bl.* 264, 265; 4 *Steph. Com.* 302—307.

COURT OF LORD STEWARD OF THE KING'S HOUSEHOLD. A court created by stat. 33 Hen. 8, c. 12, with jurisdiction to inquire of, hear, and determine all treasons, misprisions of treason, murders, manslaughters, bloodshed, and other malicious strikings, whereby blood should be shed in or within the limits (that is, within 200 feet from the gate) of any of the palaces and houses of the king, or any other house where the royal person shall reside. 4 *Bl.* 276. The jurisdiction of this court, relating to manslaughter and malicious striking, was abolished by stat. 9 Geo. 4, c. 31; and its entire jurisdiction has long been obsolete. 4 *Steph. Com.* 325.

COURT OF MARSHALSEA. A court which held plea (*i. e.*, had jurisdiction) of all trespasses committed within the verge of the king's court, where one of the parties was of the royal household; and of all debts and contracts, when both parties were of that establishment. 3 *Bl.* 75. Abolished by 12 & 13 Vict. c. 101, s. 13. 3 *Steph. Com.* 317, *n.*

COURT OF OYER AND TERMINER. [ASSIZE, COURTS OF; OYER AND TERMINER.]

COURT OF PALACE AT WESTMINSTER. A court having jurisdiction of personal actions arising within twelve miles of the palace at Whitehall. Abolished in 1849 by 12 & 13 Vict. c. 101, s. 13. 3 *Steph. Com.* 317, *n.*

COURT OF PECULIARS. A branch of the Court of Arches. The Court of Peculiars has jurisdiction over all those parishes, dispersed through the province of Canterbury, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. 3 *Bl.* 65; 3 *Steph. Com.* 306.

COURT OF PIEDPOUDRE (*Curia pedis pulverizati*, or *Court of powdered foot*). A court of record incident to every fair and market, of which the steward of him who owned the toll of the market was the judge. Its jurisdiction extended to all commercial injuries done in that fair or market, and not in any preceding one. From this court a writ of error lay in the nature of an appeal to the courts at Westminster. Various explanations have been given of the name. The jurisdiction of this court is now practically obsolete. 3 *Bl.* 32, 33; 3 *Steph. Com.* 317, *n.*

COURT OF POLICIES OF ASSURANCE. A court established under the stats. 43 Eliz. c. 12, and 13 & 14 Car. 2, c. 23, for the purpose of determining in a summary way all causes concerning policies of assurance in London, with an appeal by way of bill to the Court of Chancery. 3 *Bl.* 74, 75. This court, having been for some time obsolete, was abolished by the repeal of the above statutes by stat. 26 & 27 Vict. c. 125, passed in 1863. 3 *Steph. Com.* 317, *n.*

COURT OF PROBATE. A court established in 1857 under the Probate Act of that year (20 & 21 Vict. c. 77). To this court was transferred, by that Act, the testamentary jurisdiction of the Ecclesiastical Courts. 2 *Steph. Com.* 192.

This is one of the courts to be merged in the Supreme Court of Judicature under s. 16 of stat. 36 & 37 Vict. c. 66, establishing the Supreme Court of Judicature. 3 *Steph. Com.* 346.

COURT OF QUARTER SESSIONS. [BOROUGH SESSIONS; COUNTY SESSIONS.]

COURT OF QUEEN'S BENCH. One of the superior courts of common law. It is so called because the Sovereign used to sit there in person. This Court may follow the Sovereign's person wherever he goes; and we find that, after Edward I. had conquered Scotland, it actually sat at Roxburgh. This Court keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined before itself, or prohibit their progress below. It superintends all civil corporations in

COURT OF QUEEN'S BENCH—*continued.* the kingdom. It commands magistrates and others to do what their duty requires, in every case where there is no other specific remedy. It protects the liberty of the subject by speedy and summary interposition. It takes cognizance both of criminal and civil causes; the former in what is called the *crown side* or *crown office;* the latter in the *plea side* of the court. 3 *Bl.* 41—44; 4 *Bl.* 265—267; 3 *Steph. Com.* 331—333; 4 *Steph. Com.* 307—310.

The Court of Queen's Bench is one of the courts whose jurisdiction, under the Supreme Court of Judicature Act, 1873, s. 16, is to be transferred to the High Court created under that Act.

COURT OF RECORD. A court whose acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony; which rolls are the *records* of the court. All courts of record are the king's courts, and no other court hath authority to fine and imprison; so that the very erection of a new jurisdiction with the power of fine or imprisonment makes it instantly a court of record. Such common law courts as are *not* courts of record are of inferior dignity, and in a less proper sense the king's courts. And in these, the proceedings not being enrolled or recorded, as well their existence, as the truth of the matters therein contained, shall, if disputed, be tried and determined by a jury. A court not of record, says Blackstone, is the court of a private man, whom the law will not entrust with any discretionary power over the fortune or liberty of his fellow-subjects. 3 *Bl.* 24, 25; 3 *Steph. Com.* 269, 270.

COURT OF REQUEST, otherwise called a *Court of Conscience.* These courts are for the recovery of small debts, established by acts of parliament in various parts of the kingdom, but now for the most part abolished by the County Courts Act, 1846, 9 & 10 Vict. c. 95. [CONSCIENCE, COURTS OF.]

COURT OF SESSION. The superior court, in Scotland, of law and equity, divorce and admiralty, having a universal civil jurisdiction. *Paterson's Compendium.*

COURT OF SHERIFF'S TOURN. [SHERIFF'S TOURN.]

COURT OF STANNARIES OF CORNWALL AND DEVON, established for the administration of justice among the tinners, is a court of record with a special jurisdiction, held before a judge called the vice-warden. All tinners and labourers in and about the stannaries (*i. e.* the mines and works in Devon and Cornwall where tin metal is dug and purified) may sue and be sued in this court in all matters arising within the stannaries, excepting pleas of land, life, and member. But, since the stat. 9 & 10 Vict. c. 95, the plaintiff may choose between the stannary court and the county court of the district in which the cause of action arose. 3 *Bl.* 80, 81; 3 *Steph. Com.* 298, 299.

COURT OF STAR-CHAMBER. [STAR-CHAMBER.]

COURT, PREROGATIVE. [PREROGATIVE COURT.]

COURT ROLLS. The rolls of a manor, whereon are entered all surrenders, wills, grants, admissions, and other acts relating to the manor. They are considered to belong to the lord of the manor, and are kept by the steward as his agent; but they are in the nature of public books for the benefit of the tenants as well as the lord, so that it is a matter of course for the courts of law to grant an inspection of the court rolls in a question between two tenants. *Scriven on Copyholds.*

COURT, SUPREME, OF JUDICATURE. [SUPREME COURT OF JUDICATURE.]

COURTS OF THE UNIVERSITIES. [UNIVERSITY COURTS.]

COUSENAGE. [COSINAGE.]

COUSIN. This word, besides its ordinary sense, has a special meaning in writs and commissions and other formal instruments issued by the Crown, in which it signifies any peer of the degree of an earl. The appellation is as ancient as the reign of Henry IV., who, being related or allied to every earl then in the kingdom, acknowledged that connexion in all his letters and public acts; from which the use has descended to his successors, though the reason has long ago failed. 1 *Bl.* 398; 2 *Steph. Com.* 603, 604.

COUTHUTLAUGH. A person that willingly and knowingly received an outlaw, and cherished and concealed him; in which case he was in ancient time subject to the same punishment as the outlaw himself. *Cowel.*

COVENANT. A clause of agreement contained in a deed whereby a party stipulates for the truth of certain facts, or binds himself to give something to

COVENANT—*continued.*

another, or to do or not to do any act. 2 *Bl.* 304; 1 *Steph. Com.* 490. The word is defined in *Cowel* as the consent of two or more to one thing, to do or give somewhat; but it is most generally applied to a convention or undertaking by deed *under seal*, as opposed to a simple contract.

COVENANT, ACTION OF. An action brought to recover damages for breach of a promise made by deed under seal. 3 *Steph. Com.* 363, 364; *Kerr's Act. Law.*

COVENANT RUNNING WITH THE LAND is a covenant of which successive owners or lessees of the same land are, as such, entitled to the benefit, or liable to the obligation. Thus, a covenant by the lessee of a house to keep it in repair will in general "run with the land," and bind any person to whom the lessee may assign the lease. *Spencer's Case*, 1 *Smith's Leading Cases;* 1 *Steph. Com.* 490, 491, 514.

COVENANT TO STAND SEISED TO USES was where a person seised of land proposed to convey his estate to his wife, child, or kinsman. In its terms it consisted of a covenant by the owner to stand *seised to the use* of the intended transferee. This conveyance was held to be ineffectual, unless the parties to it stood to one another in the relation of marriage, or of near consanguinity; and it is now wholly obsolete. 2 *Bl.* 338; 1 *Steph. Com.* 532, 533.

COVERT BARON. An expression sometimes used of a wife, to indicate that she is under the protection or influence of her husband, who is her *baron* or lord. 1 *Bl.* 442.

COVERTURE. The condition of a wife during her marriage, involving certain disabilities on the one hand, and certain protections or privileges on the other. 1 *Bl.* 442; 2 *Steph. Com.* 263—272.

COVIN. A deceitful agreement between two or more to the prejudice of another. *Cowel.*

COWEL. Dr. John Cowel, from whose "Interpreter" we have largely quoted in this book, was born in Devonshire in the 16th century. He was bred at Eton, and elected a scholar of King's College, Cambridge, in the year 1570. He applied himself to the study of the law, and was admitted to the degree of Doctor of Laws, both in his own university and in that of Oxford. He became Regius Professor of Civil Law in the University of Cambridge, and also Master of Trinity Hall; and in 1603-4 he filled the office of Vice-Chancellor of Cambridge. In 1607 he published his "*Interpreter*, or Book containing the Signification of Words: wherein is set forth the true Meaning of all or the most Part of such Words and Terms, as are mentioned in the Law Writers, or Statutes of this Victorious and Renowned Kingdom, requiring any Exposition or Interpretation." In 1609 this book was complained of by the House of Commons as propagating the doctrines of absolute monarchy. Dr. Cowel died on the 11th of October, 1611, and was buried under Trinity Hall Chapel.

Enlarged editions of his work were published after his death; and from passages added in these posthumous editions some of our extracts have been taken.

CRAVEN. A word of disgrace and obloquy, pronounced by the vanquished champion in trial by battel. [WAGER OF BATTEL.] We retain the word still for a coward. *Cowel;* 3 *Bl.* 340; 4 *Steph. Com.* 413. This form of trial is now abolished by stat. 59 Geo. 3, c. 46.

CREANSOR (Fr. *Créancier*). A creditor. *Cowel.*

CREATION MONEY. An annuity formerly sometimes granted to a peer at his creation, the better to enable him to maintain his dignity. *Co. Litt.* 83 *b.*

CREDITOR. He that *trusts* another with any debt, be it in money or wares. *Cowel.* But the word is generally (though less accurately) used in a larger sense, to signify anyone who has a legal claim against another.

CREDITORS' SUIT. A suit in Chancery instituted by a creditor of a deceased person on behalf of himself and all other creditors of the deceased, for the administration of the estate of the deceased for the benefit of his creditors. *Hunt. Eq.*

CREMENTUM COMITATUS (increase of the county). The improvement of the king's rents, for which the sheriffs of counties anciently answered in their accounts. *Toml.*

CREPARE OCULUM, to put out an eye; the damages for which, under the laws of Henry I., were assessed at sixty shillings. *Cowel.*

CRETIO, in the Roman law, was the time allowed (generally 100 days) to an appointed heir for deciding whether he would take the inheritance or not.

CRIER OF A COURT. An inferior officer of a court, who makes the proclamations required by law, and, in general, administers the oaths to the witnesses. An officer of this name existed in the Court of Chancery until the year 1852, when the office was abolished by stat. 15 & 16 Vict. c. 87, s. 27.

CRIME. A crime, as opposed to a civil injury, is the violation of a right, considered in reference to the evil tendency of such violation, as regards the community at large. 4 *Steph. Com.* 4.

CRIMINAL CONVERSATION, sometimes abbreviated into *crim. con.*, is adulterous conversation, or living with the wife of another man. An action for criminal conversation was formerly allowed by our law to the injured husband. 3 *Bl.* 139. This action is now abolished by s. 59 of the Divorce Act, 1857 (20 & 21 Vict. c. 85). But a husband may, in suing for a divorce, claim damages from the adulterer. 3 *Steph. Com.* 437, 438.

CRIMINAL INFORMATION. [INFORMATION.]

CRIMINAL LAW AMENDMENT ACT, 1871. The stat. 34 & 35 Vict. c. 32, by which it is provided that every person who shall use any violence, or threaten or intimidate, or molest or obstruct, any person (1) *being a master*, to dismiss a workman, or not to offer employment to a workman, or to alter the mode of carrying on his business, or the number of persons employed by him; or (2) *being a workman*, to quit employment or to return work before it is finished, or not to accept employment; or (3) *being a master or workman*, to belong or not to belong to any association, or to pay any fine or penalty imposed by any association or combination;—may be imprisoned, with or without hard labour, for a term not exceeding three months. 4 *Steph. Com.* 241.

CRIMINAL LAW CONSOLIDATION ACTS. The stats. 24 & 25 Vict. cc. 94, 95, 96, 97, 98, 99, 100, passed in 1861, for the Consolidation of the Criminal Law of England and Ireland. *See* 4 *Steph. Com.* 297.

They are published in full by S. C. Greaves, Esq., Q.C., by whom they were framed; by Mr. Serjeant Cox and T. W. Saunders, Esq., Recorder of Bath, together with various acts of parliament enacted since 1861, relating to criminal justice; including several introductory essays on the criminal law, two of them by Mr. Greaves. See also the 18th edition, by Mr. Bruce, of Archbold's Pleading and Evidence in Criminal Cases, 1875; and the 4th vol. of Mr. Serjeant Stephen's Commentaries.

CRIMINAL LETTERS. A form of criminal prosecution in Scotland, corresponding to a criminal information in England. "Criminal letters" are drawn in the form of a summons, and in the Supreme Court run in the name of the Sovereign, and in a sheriff's court run in the name of the judge. *Macdonald; Paterson.*

CRIMINAL PRISONER. [FIRST CLASS MISDEMEANANT.]

CROFT. A little close adjoining to a house, either for pasture or arable land, as the owner pleases. *Cowel.*

CROGATE'S CASE. A case decided in 1608, and reported in the Eighth Part of Sir Edward Coke's Reports (66 *b*—67 *b*), by which it was decided that a replication *de injuriâ suâ propriâ* by the plaintiff in an action of trespass was a good and sufficient replication, if the defendant had pleaded justification for his act by the order of a court *not a court of record*, or had pleaded matter of *excuse* rather than *justification*; but not if the defendant had attempted to justify himself by the order of a *court of record*, or by any authority derived mediately or immediately from the plaintiff himself; or had claimed any interest, whether in his own right or as servant to another, in the land in respect of which the trespass was alleged to have been committed. [ABSQUE TALI CAUSA.]

CROSS ACTION. Where A. brings an action against B. in reference to any transaction, and B. brings an action against A. in reference to the same transaction, these are called "cross actions."

CROSS APPEAL. If both parties to a judgment are dissatisfied therewith, and each accordingly appeals, the appeal of each is called a cross appeal in relation to that of the other; it not being open to a respondent to an appeal, as such, to contend that the decision in the court below was not sufficiently favorable to him. But by Rule 53 in the Schedule to the Judicature Act of 1873, a respondent will be allowed so to contend, if he have within due time given notice of his intention so to do to any parties who may be affected by such contention. 3 *Steph. Com.* 581.

CROSS BILL. A bill brought by a defendant in a Chancery suit against a plaintiff or a co-defendant, praying relief in reference to the same subject-matter. 3 *Bl.* 448; 3 *Steph. Com.* 598, 600.

CROSS DEMAND, a counter-claim. When A. makes a demand against B. and B. makes a demand against A., B.'s demand is called a cross demand.

CROSS-EXAMINATION. The examination of a witness by the opposing counsel. 3 *Steph. Com.* 538.

Also, an examination of a *hostile* witness on behalf of the party producing him is sometimes called cross-examination.

CROSS REMAINDER is where each of two grantees has reciprocally a remainder in the share of the other. 2 *Bl.* 381; 1 *Steph. Com.* 354.

Thus if an estate be granted, as to one half to A. for life, with remainder to his children in tail, with remainder to B. in fee simple; and, as to the other half, to B. for life, with remainder to his children in tail, with remainder to A. in fee simple; these remainders are called cross remainders. [REMAINDER.]

CROSSED CHEQUE. [CHEQUE.]

CROWN. A word often used for the king or queen as being the sovereign of these realms.

CROWN CASES RESERVED. [COURT FOR CONSIDERATION OF CROWN CASES RESERVED.]

CROWN COURT. The court in which the ordinary criminal trials take place at an assizes, as opposed to the Nisi Prius Court, which is for the trial of civil actions and other matters sent down from the courts at Westminster.

CROWN DEBTS. Debts due to the Crown. These are, by various statutes, put upon a different footing from debts due to a subject; and by s. 49 of the Bankruptcy Act, 1869, a bankrupt's discharge is not to relieve him from such debts unless the Commissioners of the Treasury certify in writing their consent to his being discharged therefrom. *Robson, Bkcy.*

CROWN LANDS (Lat. *Terræ dominicales regis*, the demesne lands of the Crown) include the share reserved to the Crown at the original distribution of landed property, and such as came to it afterwards by forfeitures or other means. 1 *Bl.* 286. In modern times the superintendence of the royal demesnes has been vested in the Commissioners of Woods, Forests, and Land Revenues. To the same branch of the royal revenue belong such rights and interests as the Crown enjoys in the foreshore. These have now, by stat. 29 & 30 Vict. c. 62, passed in 1866, been transferred to the Board of Trade. But these restrictions do not apply to the *private estates* of the Crown; which are such estates as have been or shall be hereafter purchased or acquired by her Majesty by monies out of her privy purse, or with other monies not appropriated to any public service; or which have, or shall, come to her, her heirs or successors, by gift, devise, or inheritance from any of her or their ancestors, or from any other person or persons not being kings or queens of this realm. 2 *Steph. Com.* 534—536.

CROWN LAW. The criminal law.

CROWN OFFICE. The *Crown side* of the Court of Queen's Bench, on which it takes cognizance of criminal causes, from high treason down to the most trivial misdemeanor or breach of the peace. 4 *Bl.* 265; 4 *Steph. Com.* 307.

CROWN PAPER. A paper containing the list of cases which await the decision of the Court of Queen's Bench on its Crown side.

CROWN PRIVATE ESTATES. [CROWN LANDS.]

CROWN SIDE. That jurisdiction of the Queen's Bench by which it takes cognizance of criminal causes, including many questions which are practically of a civil nature. 4 *Steph. Com.* 307. It may be added, that any matter in the Court of Queen's Bench, whether of a civil or criminal nature, and whether arising originally in that court, or removed thereto by *certiorari*, is, if sent down for trial at the assizes, tried in the *Nisi Prius* Court, or (as it is often somewhat inaccurately called) the *civil side*, and not in the Crown Court. See 4 *Bl.* 350, 351; 4 *Steph. Com.* 308, 385.

CROWN SOLICITOR. The Solicitor to the Treasury.

CRUELTY TO ANIMALS. This offence is committed where "any person shall cruelly beat, ill-treat, over-drive, abuse or torture any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat or any other domestic animal." *Stat.* 12 & 13 *Vict. c.* 92; 4 *Steph. Com.* 283.

CRY DE PAIS. A "hue and cry" raised in the absence of the constable. *Toml.* [HUE AND CRY.]

CUCKING-STOOL. An engine of correction in which a common scold was placed, for the purpose of being plunged in water. 4 *Bl.* 168; 4 *Steph. Com.* 277. [CASTIGATORY FOR SCOLDS.]

CUI ANTE DIVORTIUM. A writ for a woman divorced, whose husband *before the divorce* had disposed of her estate. 3 *Bl.* 183, *n.* Abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

CUI IN VITA. A writ similar to the preceding, for a widow whose husband *in his lifetime* had disposed of her estate. 3 *Bl.* 183, *n.* This writ is also abolished by stat. 3 & 4 Will. 4, c. 27, s. 36.

CULPRIT. This is originally an abbreviation, whereby the clerk of the assize or clerk of the arraigns, on behalf of the Crown, replied to a prisoner's plea of not guilty, that the prisoner *is* guilty (culpable or *culpabilis*), and that the king is ready to prove him so; *prit* (Fr. *prêt*, ready). This is therefore in the nature of a replication on behalf of the king *virâ voce* at the bar. 4 *Bl.* 339; 4 *Steph. Com.* 406, *n.*

CUM TESTAMENTO ANNEXO. "With the will annexed." [ADMINISTRATOR.]

CUMULATIVE LEGACY. A legacy which is to take effect *in addition* to another disposition whether by the same or another instrument, in favour of the same party, as opposed to a *substitutional* legacy, which is to take effect as a *substitute* for some other disposition.

CUR. ADV. VULT. An abbreviation often used in legal reports to indicate that the court wishes to deliberate (Lat. *curia advisari vult*) before pronouncing judgment. This *curia advisari vult* was formerly entered on the record; but this, by r. 31 of the Hilary Term Rules of 1853, is directed to be done no longer. *Lush's Pr.* 538.

CURATOR. A person entrusted with the charge of an estate, or with the conduct of a minor past the age of pupillarity, or with the management of a lawsuit. *Bell.* For the appointment and duties of an *interim curator*, see the *Felony Act*, 1870 (33 & 34 *Vict. c.* 23), *s.* 21; *Cox & Saunders' Cr. Law*, 442. [INTERIM CURATOR.]

CURE BY VERDICT is where some objection to a declaration or indictment, which might have been maintained before verdict given, is no longer maintainable after the jury have delivered their verdict. [AIDER BY VERDICT.]

CURFEW (Fr. *Couvre-feu*, cover-fire). The ringing of a bell, by which the Conqueror willed every man to take warning for the raking up, or covering up of his fire, and the putting out of his light. *Cowel.*

CURIA. A court of justice. It is sometimes, however, taken for the persons who, as feudatory and other customary tenants, did suit and service at the lord's court, and who were also called *pares curtis*, or *pares curiæ*. 2 *Bl.* 54; *see also* 1 *Steph. Com.* 264, *n.* (*y*).

CURIA ADVISARI VULT. [CUR. ADV. VULT.]

CURIA CLAUDENDA (the court to be closed). A writ that lay against him who, being bound to fence and close up his wall, should refuse or defer to do it. *Cowel.* Abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

CURIA DOMINI. The court of the lord of a manor.

CURIA REGIS. The king's court. A term applied to any of the superior courts, but principally to the *aula regia*. [AULA REGIA.]

CURIALITY. The Scotch name for curtesy. 2 *Bl.* 126; *Bell.* [CURTESY.]

CURSITOR (Lat. *Clericus de cursu*, clerk of the course). An officer or clerk belonging to the Chancery, that maketh out original writs. They be twenty-four in number, which have allotted to each of them several shires. *Cowel.* Abolished in 1835 by 5 & 6 Will. 4, c. 82.

CURSITOR BARON. An officer of the Exchequer, whose duty it was to examine sheriffs' accounts, to administer oaths to officers of excise, &c. *Manning's Exchequer Practice*, *p.* 322. Abolished in 1856 by stat. 19 & 20 Vict. c. 86.

CURTESY is the life estate which a husband has in the lands of his deceased wife; which by the common law takes effect where he has had issue by her born alive, and capable of inheriting the lands. *Cowel;* 2 *Bl.* 126; 1 *Steph. Com.* 263—265.

Thus, if a wife have lands in tail male, *i. e.* descendible to her *male* issue only, the birth of a son will entitle the husband to curtesy, but the birth of a daughter will not.

CURTILAGE signifieth a garden, yard or field, or other piece of ground lying near or belonging to a house or messuage. *Cowel.*

CURTILES TERRÆ. [COURT LANDS.]

CURTIS. A court. [COURT; CURIA.]

CUSTODE ADMITTENDO and **CUSTODE AMOVENDO.** Writs formerly used for the admitting and removing of guardians. *Cowel.*

CUSTODES LIBERTATIS ANGLIÆ AUTHORITATE PARLIAMENTI (guardians of the liberty of England by the authority of parliament) was the style wherein writs and other judicial proceedings ran from the execution of King Charles I. to the usurpation of Cromwell.

CUSTODIAM or **CUSTODIAM LEASE.** A lease from the Crown, under the seal of the Exchequer, whereby the custody of lands, seized into the king's lands, was demised or committed to some person as custodee or lessee thereof. *Tomi.*

CUSTOM. Unwritten law established by long use. *Cowel.* Custom is of two kinds:—

1. General custom, or the common law properly so called. [COMMON LAW.]

2. Particular custom, that is to say, the customs which affect only the inhabitants of particular districts. These it is usual to designate by the word *customs*, to distinguish them from the general customs just referred to.

These particular customs are probably the remains of local customs prevailing formerly over the whole of England, while it was broken into distinct dominions. Such is the custom of *gavelkind* in Kent; and the custom called *borough-English* which prevails in certain ancient boroughs; also the customs of the city of London. All are contrary to the general law of the land, and are good by special usage. 1 *Bl.* 68—79; 1 *Steph. Com.* 45—61.

CUSTOM HOUSE. A house in several cities and post-towns, where the king's customs are received, and all business relating thereunto transacted. *Cowel.* [CUSTOMS ON MERCHANDISE.]

CUSTOM OF LONDON. The customs peculiar to the City of London. We speak of the *custom of London* principally with reference (1) to the law of intestate succession; (2) to the law of foreign attachment. The custom of London in both these points resembles the law of Scotland.

1. As regards intestate succession, the goods of a freeman of London, who died intestate, were, after payment of his debts, divided in equal shares between his widow, his children, and his administrator. If the deceased left *only* a widow, or *only* children, they respectively took one moiety, and the administrator the other moiety; if neither widow nor children, the administrator took the whole. And this portion, or *dead man's part*, the administrator was formerly wont to apply to his own use; but by stat. 1 Jac. 2, c. 17, passed in 1685, the same became subject to the Statutes of Distribution. 2 *Bl.* 518. The custom of London in this respect is abolished by stat. 19 & 20 Vict. c. 94, passed in 1856.

2. The law of foreign attachment [ATTACHMENT, FOREIGN], so far as it consists in making debts due to a judgment debtor available to a judgment creditor (a process called in England "attachment" and in Scotland "arrestment"), has been extended to the whole of England and Wales by ss. 60—67 of the Common Law Procedure Act, 1854. 3 *Steph. Com.* 588, *and note* (*p*); *Lush's Pr.* 620—623.

CUSTOM OF MERCHANTS (*Lex mercatoria*). The branch of law which comprises the rules relating to bills of exchange, partnership and other mercantile matters. Blackstone classes it under the head of *particular customs:* but Mr. Serjeant Stephen disputes the propriety of this classification, as the custom is not local, nor is its obligation confined to a particular district. 1 *Bl.* 75; 1 *Steph. Com.* 55.

CUSTOM OF YORK. A custom of intestacy in the province of York, similar to that of London [CUSTOM OF LONDON]; the main difference being that, in the province of York, the heir at common law, who inherited land in fee simple or fee tail, was excluded from the share of the other children. This custom was also abolished by stat. 19 & 20 Vict. c. 94.

CUSTOMARY COURT BARON. A court in which the estates of copyholders are transferred by surrender and admittance, and other matters transacted relative to their tenures only. 3 *Bl.* 33; 3 *Steph. Com.* 279. [COURT BARON.]

CUSTOMARY FREEHOLD. A kind of tenure of which the incidents are for the most part similar to those of common copyhold; the principal difference being,

CUSTOMARY FREEHOLD—*continued.*

that the holding in a customary freehold is not said to be *at the will of the lord.* 2 *Bl.* 149; 1 *Steph. Com.* 225, 226. [COPYHOLD.]

CUSTOMARY TENANTS are such tenants as hold by the custom of the manor. *Cowel.* Thus copyholders are said to hold "at the will of the lord, according to the custom of the manor;" the will being no longer arbitrary and precarious, but restrained so as to be exerted according to the custom of the manor. 2 *Bl.* 147; 1 *Steph. Com.* 220, 223. [COPYHOLD.]

CUSTOMARY TENURE. A tenure depending on the custom of a manor. [CUSTOMARY TENANTS.]

CUSTOMS AND SERVICES. Duties which tenants owe to their lords by virtue of their tenure. *Toml.* A writ *de consuetudinibus et servitiis* formerly lay for neglect of these, but this writ is now abolished by stat. 3 & 4 Will. 4, c. 27, s. 36.

CUSTOMS CONSOLIDATION ACT. The stat. 16 & 17 Vict. c. 107, passed in 1853, amended by several subsequent statutes; as to which see 2 *Steph. Com.* 563.

CUSTOMS ON MERCHANDISE. The duties, toll, tribute or tariff payable upon merchandise exported and imported. 1 *Bl.* 313; 2 *Steph. Com.* 560.

CUSTOS BREVIUM. The keeper of the writs; a principal clerk in the Court of Common Pleas, whose office was to receive and keep the writs returnable in that Court, and to put them upon files. *Cowel.* There was also a *custos brevium et rotulorum* (keeper of writs and rolls) in the Court of King's Bench. Both of these offices were abolished in 1837 by stat. 7 Will. 4 & 1 Vict. c. 30.

CUSTOS MORUM. An expression applied to the Court of Queen's Bench, as the *guardian of the morals* of the nation. 4 *Bl.* 310; 4 *Steph. Com.* 377.

CUSTOS ROTULORUM is he that hath the custody of the rolls or records of the sessions of the peace. He is always a justice of the peace and of the quorum in the county where he hath his office. *Cowel;* 1 *Bl.* 349; 2 *Steph. Com.* 642. [JUSTICE OF THE PEACE; QUORUM.]

He is the first civil officer, as the lord lieutenant is the first military officer, of the county; but the two offices are usually held by the same person. *Archbold's Practice of Quarter Sessions.*

CUSTOS SPIRITUALIUM (guardian of the spiritualities) is he that exerciseth spiritual or ecclesiastical jurisdiction in any diocese during the vacancy of a see. *Cowel.*

CUSTOS TEMPORALIUM (guardian of the temporalities). He to whose custody a vacant see or abbey was committed by the king as supreme lord. As steward of the goods and profits thereof, he had to give an account of the same to the escheator, and he into the exchequer. *Cowel.*

CUSTUMA ANTIQUA SIVE MAGNA. Ancient duties on wool, sheep-skins, or woolfells, and leather, which were payable by every merchant, as well native as stranger; with this difference, that merchant-strangers paid half as much again as was paid by natives. There was afterwards a duty known as the *Custuma parva sive nova.* [See the following Title.]

CUSTUMA PARVA SIVE NOVA. An impost of threepence in the pound, due from merchant-strangers only, for all commodities, as well imported as exported. This was usually called the alien's duty, and was granted in the 31st year of Edward I. 1 *Bl.* 314, 315; 2 *Steph. Com.* 560, 561.

CUTCHERRY. A court, hall, or office, where any public business is transacted. *Wilson's Gloss. Ind.*

CUT-PURSE (Lat. *Saccularius*). One who privately steals from a man's person, as by picking his pocket or the like, privily without his knowledge. 4 *Bl.* 241; 4 *Steph. Com.* 124, 125.

CUTTER OF THE TALLIES. An officer in the Court of Exchequer, whose duty it was to provide wood for the talleys, and cut the sum paid upon them. *Cowel.* [COURT OF EXCHEQUER; TALLEY.]

Provision was made by stat. 23 Geo. 3, c. 82, s. 1, passed in 1783, for the abolition of this office and other "useless, expensive, and unnecessary offices," upon the death, surrender, forfeiture, or removal of the then holders.

CY PRES. [CYPRES.]

CYNEBOTE. A mulct anciently paid, by one who killed another, to the kindred of the deceased. *Spelman.*

CYPRES. When the intention of a donor or testator is incapable of being literally

CYPRES—*continued.*

acted upon, or where its literal performance would be unreasonable, or in excess of what the law allows, the courts will often allow the intention to be carried into effect *cy près*, that is, *as nearly as may be* practicable, or reasonable, or consistent with law; as (1) when a testator attempts to settle his property on future generations beyond the bounds allowed by law; or (2) where a sum of money is found to be too large for a charitable purpose to which it has been devoted, or for some other reason cannot be applied thereto. 3 *Steph. Com.* 79, 80; *Wms. R. P.*

D. P. (Lat. *Domus Procerum*). House of Lords.

DACOITY or DAKAITI. Gang robbery. *Wilson's Gloss. Ind.; Ben. Reg.* 1803, *Reg. LIII. iii.* 1.

DAMAGE CLEERE (Lat. *Damna Clericorum*). A fee formerly payable by the plaintiff in actions in which the damages were uncertain. The amount of damages being ascertained by the judgment, one-tenth of the same was payable in the Common Pleas, and one-twentieth in the King's Bench, before the plaintiff could obtain execution. This was abolished as from September 29, 1672, by stat. 17 Car. 2, c. 6, passed in 1665. *Cowel.*

DAMAGE FEASANT. Doing hurt or damage (Fr. *faisant*); that is, when one man's beasts are in another man's ground, without licence of the tenant of the ground, and there do seed, tread, and otherwise spoil the corn, grass, woods, and such like. In this case the owner of the soil may distrain them (*i. e.*, take possession of them) until satisfaction be made him for the injury he has sustained. *Cowel;* 3 *Bl.* 6, 7; 3 *Steph. Com.* 245, 249.

DAMAGES. The pecuniary satisfaction awarded by a jury in a civil action for the wrong suffered by the plaintiff. *Cowel.* 3 *Bl.* 116; 3 *Steph. Com.* 359.

DAMNOSA HEREDITAS. A burdensome inheritance; that is to say, an inheritance of which the liabilities exceed the assets. In such case, in the Roman law, the heir, being liable to the full extent of the deceased's liabilities, was a loser by entering upon the inheritance.

DAMNUM ABSQUE INJURIA. A damage without injury, that is, effected without legal wrong. In such case, no action is maintainable. Thus, if I have a mill, and my neighbour builds another mill upon his own ground, whereby the profit of my mill is diminished, yet no action lies against him, for every one may lawfully erect a mill on his own ground. 3 *Steph. Com.* 368, 369.

DAMNUM FATALE. Fatal damage; that is, damage caused by a fortuitous event, or inevitable accident.

DANEGELD or DANEGELT was a tribute laid upon our ancestors, the Saxons, of twelve pence upon every hide of land by the Danes, who in those days lorded it here. *Cowel.* Others say that it was levied for the purpose of clearing the seas of Danish pirates. *Toml.*

DANE-LAGE. Such customs of the Danes as were retained in this kingdom after the Danes had been expelled. 1 *Bl.* 65, 66; 4 *Bl.* 411; 1 *Steph. Com.* 42; 4 *Steph. Com.* 487.

DARBAR. [DURBAR.]

DARREIN. A corruption from the French *dernier*, last.

DARREIN CONTINUANCE. The plea *puis darrein continuance* alleges that "since the last continuance" new ground of defence has arisen. *Kerr's Act. Law. See also Lush's Pr.* 473. [CONTINUANCE.]

DARREIN PRESENTMENT. Last presentation. [ASSIZE OF DARREIN PRESENTMENT.]

DATIVE. A word derived from the Roman law, signifying "appointed by public authority." Thus, in Scotland, an executor-dative is an executor appointed by a court of justice, corresponding to an English *administrator. Paterson.* [ADMINISTRATOR.]

DAUPHIN was formerly the title of the eldest sons of the kings of France.

DAY RULE. A certificate of permission given by the court to a prisoner to go beyond the "rules" of the Queen's Bench prison for the purpose of transacting his business. Abolished by 5 & 6 Vict. c. 22, s. 12.

DAY, YEAR AND WASTE. [YEAR, DAY AND WASTE.]

DAYS IN BANC. An old expression for days set down by statute, or order of the court, when writs should be returned, or the party summoned should appear upon the writ served. *Cowel.*

DAYS OF GRACE. 1. Three days of grace formerly allowed to a person summoned by writ, beyond the day named in the writ, in which to make his appearance. 3 *Bl.* 278.

2. Three days allowed for the payment of a bill of exchange or a promissory note after it has nominally become due. *Chambers' Bookkeeping.* No such days of grace are allowed in the case of bills of exchange and promissory notes purporting to be payable on sight or on demand. 2 *Steph. Com.* 117, *n.*; *Stat.* 34 & 35 *Vict. c.* 74.

DAYSMAN. In some northern parts of England, any arbitrator, umpire, or elected judge is commonly termed a Deies-man or Daysman. *Cowel.*

DE is the first word of many writs and phrases familiar to lawyers. Some of these will be found in the following Titles; others will be found arranged in this work according to the letters of the word immediately succeeding; *ex. gr.*, for De Hæretico Comburendo, *see* Hæretico Comburendo.

DE BENE ESSE may perhaps be translated "for what it is worth." *Cowel* observes on this phrase as follows:—"To take or do a thing *de bene esse* is to allow or accept for the present, till it comes to be more fully examined, and then to stand or fall according to the merit of the thing in its own nature, so that *valeat quantum valere potest.*" Thus, the taking evidence in a chancery suit "*de bene esse*" is the taking evidence out of the regular course, and is looked upon as a temporary and conditional examination, to be used only in case the witness cannot be afterwards examined in the suit in the regular way. *Hunt. Eq.* See 3 *Bl.* 383.

DE BONIS NON. [ADMINISTRATOR.]

DE DIE IN DIEM (from day to day); thus, we speak of a sitting *de die in diem* until a case is concluded.

DE DONIS. The statute of Westminster the Second, 13 Edw. 1, st. 1, c. 1, *De donis conditionalibus*, which provided that, in grants to a man and the heirs of his body or the heirs male of his body, so the will of the donor should be observed according to the form expressed in the deed of gift; and that the tenements so given should go, after the death of the grantee, to his issue (or issue male, as the case might be), if there were any; and, if there were none, should revert to the donor. This statute gave rise to the estate in fee tail, or *feudum talliatum*, generally called an estate tail or entail. 2 *Bl.* 112; 1 *Steph. Com.* 242, 243. [CONDITIONAL FEE.]

DE ESSENDO QUIETUM DE TOLONIO or **THEOLONIO** (about being quiet about a toll). A writ which lay for those who were by privilege free from the payment of toll. *Cowel.* Abolished by stat. 3 & 4 Will. 4, c. 27, s. 36.

DE EXPENSIS CIVIUM ET BURGENSIUM. [DE EXPENSIS MILITUM.]

DE EXPENSIS MILITUM. A writ commanding the sheriff to levy so much a day for the expenses of a knight of the shire. A like writ to levy two shillings a day for every citizen and burgess was called *De Expensis Civium et Burgensium. Cowel.*

DE FACTO. An expression indicating the actual state of circumstances, independently of any remote question of right or title; thus, a king *de facto* is a person acknowledged and acting as king, independently of the question whether some one else has a better title to the crown. See *Austin, Jur., Lecture VI.* By stat. 11 Henry VII., subjects obeying a king *de facto* were excused thereby from any penalties of treason to a king *de jure.* 4 *Bl.* 77. [DE JURE.]

DE IDIOTA INQUIRENDO. A writ by the old common law, to inquire whether a man be an idiot or not. 1 *Bl.* 303, 304. This writ has long been dormant. 2 *Steph. Com.* 509, 510.

DE INJURIA. Abbreviated from *de injuriâ suâ propriâ*, "of his own wrong." [ABSQUE TALI CAUSA.]

DE JURE. Sometimes used of a supposed right in contradistinction to actual fact; thus a government *de jure* is a so-called government which is not a government, but which, according to the speaker or writer, ought to be a government. *Austin, Jur., Lect. VI.* [DE FACTO.]

DE LA PLUS BELLE (of the fairest [land]). Dower *de la plus belle* was where a man, holding lands both in chivalry and in socage, died, leaving a widow and an heir under fourteen. The lord was then entitled to the custody of the lands holden in *chivalry*, and the widow, as mother, of the lands in *socage*. If the widow brought a writ of *dower* against the lord, to be endowed from the lands holden by him, he might pray that she might be adjudged to endow herself of the *fairest* of the lands held by her as guardian. And if judgment to that effect were given, she was thereby ena-

DE LA PLUS BELLE—*continued.*

bled to endow herself by metes and bounds of the *socage* lands, to the value of a third part of the whole of *both* tenements. Thus a burthen commonly incident to all lands was thrown unfairly upon the socage lands, and the lord was relieved of his share of contribution to the widow's dower, to the prejudice to the heir. This form of dower was abolished in 1660 with the military tenures, by the stat. 12 Car. 2, c. 24. 2 *Bl.* 132, 133; 1 *Steph. Com.* 270.

DE LUNATICO INQUIRENDO. An old writ to inquire whether a man be a lunatic or not. Now the Lord Chancellor, under the Lunacy Acts (16 & 17 Vict. c. 70, and 25 & 26 Vict. c. 86), upon petition or information, grants a *commission* in the nature of this writ. 2 *Steph. Com.* 511.

DE MEDIETATE LINGUÆ. A jury composed half of foreigners; a privilege formerly allowed to aliens, but now abolished in civil cases by stat. 6 Geo. 4, c. 50, ss. 3, 47, passed in 1825, and in criminal cases by stat. 33 Vict. c. 14, s. 5, passed in 1870. 3 *Steph. Com.* 522, *n.*

DE NON DECIMANDO. A prescription *de non decimando*, is a claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. Thus the king, by his prerogative, is discharged from all tithes. So a vicar shall pay no tithes to the rector, nor the rector to the vicar, for *ecclesia decimas non solvit ecclesiæ* (the church pays not tithes to the church). 2 *Bl.* 31; 2 *Steph. Com.* 726, 727.

DE NON RESIDENTIA CLERICI REGIS. An ancient writ, where a parson was employed in the king's service, to excuse and discharge him as non-resident. *Cowel; Toml.*

DE ODIO ET ATIA. A writ formerly used commanding the sheriff to inquire whether a prisoner charged with murder was committed on general cause of suspicion, or merely *propter odium et atiam*, for hatred and ill-will; with the view, if the latter was found to be the case, of afterwards issuing another writ to admit him to bail. 3 *Bl.* 128, 129; 3 *Steph. Com.* 642, *n.*

DE ONERANDO PRO RATA PORTIONIS. A writ that was available for one who had had his goods seized for a rent that ought to be paid by others proportionably with him. *Cowel.*

DE NOVO, anew. Thus to begin *de novo* is to begin again from the beginning.

DE PRÆROGATIVA REGIS. The statute 17 Edw. 3, st. 1, c. 9., which directs that the king shall have ward of the lands of natural fools (*i. e.*, idiots), taking the profits without waste or destruction, and finding them necessaries. 1 *Bl.* 303; 2 *Steph. Com.* 509.

DE QUIBUS SUR DISSEISIN was an old writ of entry, otherwise called a writ of entry *sur disseisin en le quibus*, which lay where a man was disseised of lands or tenements, or rents or offices in which he had an estate of freehold, or where a man claimed through ancestors or predecessors who had been disseised. It is spoken of as a writ of entry in the nature of an assize. *Reg. Orig.* 229; *F. N. B.* 191. Having long been obsolete, this writ was abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

DE RATIONABILI PARTE. A writ in the nature of a writ of right, which lay when one of two coparceners usurped the sole possession, to the injury of the other. 3 *Bl.* 194, 195. Abolished by stat. 3 & 4 Will. 4, c. 27, s. 36. [COPARCENARY; see also next Title.]

DE RATIONABILI PARTE BONORUM. A writ formerly given to the wife and children of a deceased person to recover *a reasonable part* of his personal estate. By the common law, as it stood in the reign of Henry II., a man's goods were to be divided into three equal parts, of which one went to his heirs or lineal descendants, another went to his wife, and a third was at his own disposal. But this restraint on the power of bequeathing has now, for a century and a half, been utterly abolished for the whole of England. 2 *Bl.* 492, 493; 2 *Steph. Com.* 179—181. [CUSTOM OF LONDON; DEAD'S PART.]

DE SON TORT. [EXECUTOR DE SON TORT.]

DE SON TORT DEMESNE, of his own wrong. Lat. *De injuriâ suâ propriâ.* [ABSQUE TALI CAUSA.]

DE TALLAGIO NON CONCEDENDO. The stat. 25 Edw. I., by which it was declared, that no tallage or aid should be taken or levied without the goodwill and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land. 1 *Bl.* 310; 2 *Steph. Com.* 556; *May's Parl. Pract.*

DE VENTRE INSPICIENDO. [AD VENTREM INSPICIENDUM.]

DE VICINETO, from the neighbourhood; from which, in ancient times, the jury were always summoned.

DEACON. The lowest degree of holy orders in the Church of England. 1 *Bl.* 388; 2 *Steph. Com.* 660, 684.

DEAD FREIGHT. When a merchant has shipped only a part of a cargo, the freight payable for the part not shipped is called *dead freight*. *M'Culloch's Comm. Dict.*

DEAD MAN'S PART. The part of a deceased's estate which, according to the custom of London, formerly devolved on the administrator for his own use. This was abolished by stat. 1 Jac. 2, c. 17; and the custom itself, as regards the distribution of intestates' effects, is abolished by stat. 19 & 20 Vict. c. 94. 2 *Bl.* 518; 2 *Steph. Com.* 212, *n.* [CUSTOM OF LONDON.]

DEAD'S PART. The part of a man's moveables which, by the law of Scotland, he may distribute by his testament. *Bell.* [DEAD MAN'S PART.]

DEAN. The chief of the clergy appointed for the celebration of divine service in the bishop's cathedral. 1 *Bl.* 382; 2 *Steph. Com.* 674.

DEAN OF THE ARCHES. The judge of the Arches Court, so called because he anciently held his court in the Church of St. Mary-le-Bow (*Sancta Maria de arcubus*). 3 *Bl.* 64, 65; 3 *Steph. Com.* 306. [ARCHES, COURT OF.]

DEATH-BED. A word applied to dispositions of dying persons, which, by the law of Scotland, might formerly be challenged on that account. [REDUCTION EX CAPITE LECTI.]

DEBENTURE. 1. A Custom-house certificate to the effect that an importer of goods is entitled to "drawback." [DRAWBACK.]

2. A bond in the nature of a charge on Government Stock, or the stock of a public company.

DEBET ET SOLET. Words formerly used in a "writ of right," implying that the demandant is suing for something that is now first of all denied him, because he himself, and his ancestors before him, usually enjoyed the thing sued for. *Cowel.* The writ of right is abolished with other real actions, by stat. 3 & 4 Will. 4, c. 27, s. 36.

DEBT, in its popular sense, signifies a pecuniary liability, whether of certain or uncertain amount; but in its legal sense it is used especially of a liquidated sum due. *See* 2 *Bl.* 464; 2 *Steph. Com.* 142—144. And whereas in its popular sense it is used especially of the *liability of the debtor*, in a legal sense it is used also of the *right of the creditor*; thus we speak of assigning a debt, &c.

DEBTEE EXECUTOR is where a person makes his creditor his executor. 2 *Bl.* 18.

DEBTOR EXECUTOR is where a creditor constitutes his debtor his executor. 2 *Bl.* 512.

DEBTORS ACT, 1869. The stat. 32 & 33 Vict. c. 62, for the abolition of imprisonment for debt, and for the punishment of fraudulent debtors. 2 *Steph. Com.* 159—164; *Robson, Bkcy.; Cox & Saunders' Cr. Law*, 401. (Not to be confounded with the Bankruptcy Act, 1869.)

DEBTOR'S SUMMONS. A summons granted against a debtor by a court having jurisdiction in bankruptcy, on the creditor proving that there is due to him from the debtor a liquidated sum of not less than 50*l.*, and that the creditor has failed to obtain payment of his debt after using reasonable efforts to do so. The debtor's summons must state, that in the event of the debtor failing, within seven days if a trader, and within three weeks if a non-trader, to pay or compound for the sum specified in the summons, a petition may be presented against him, praying that he may be adjudged a bankrupt. *Bankruptcy Act*, 1869, *s.* 7; *Bankruptcy Forms*, 1870, *Form* 4; *Robson, Bkcy.*

DECEIT. A wily shift or device, which hath none other particular name. *Cowel.* There was an old writ called a "writ of deceit," which was brought in the Court of Common Pleas to reverse a judgment obtained in a real action by fraud and collusion between the parties. This writ was abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36. There is also an old action of deceit, to give damages in some particular cases of fraud. [DECEPTIONE.] But the remedy in cases of fraud, whereby a man is injured, is now in general by an action on the case for damages. *Pasley* v. *Freeman*, 2 *Smith's Leading Cases.* [ACTION ON THE CASE; CASE.] In some cases proceedings may be taken by bill in Chancery. *Sm. Man. Eq.*

DECEM TALES, ten such. [TALES.]

DECENNARY. The same as a tithing; so called because ten freeholders with their families composed one. 1 *Bl.* 115; 1 *Steph. Com.* 123, 124.

DECEPTIONE. An old writ that lay properly against him, that deceitfully did anything in the name of another, for one that received damage or hurt thereby. *Cowel.* [DECEIT.]

DECIES TANTUM (ten times as much). A writ that lay against a juror who had taken money for the giving of his verdict, to recover *ten times so much* as he took. It lay also against the "embracer" who procured such verdict. *Cowel.*

DECIMATION. The punishing of every tenth soldier by lot. It may be stretched to signify tithing, or paying the tenth part. *Cowel.*

DECINERS (*Decennarii*). Such as were wont to have the oversight of ten households, and the maintenance of the king's peace. *Cowel.*

DECLARATION. The first of the pleadings in an ordinary action, consisting of a written statement by the plaintiff of his ground of action. 3 *Bl.* 293; 3 *Steph. Com.* 500, *n.* This declaration may be delivered at any time after an "appearance" has been entered on behalf of the defendant. *Lush's Pr.* 399.

DECLARATION BY DEBTOR OF INABILITY TO PAY HIS DEBTS. A declaration made in the form prescribed by the Bankruptcy Rules of Jan. 1, 1870, which is Form 1 in the schedule to the rules. To make such a declaration is an act of bankruptcy under s. 6 of the Bankruptcy Act, 1869. *Robson, Bkcy.* [ACT OF BANKRUPTCY.]

DECLARATION OF PARIS. This expression is generally used to denote a certain declaration respecting International Maritime Law, annexed to Protocol No. 23 of the Protocols drawn up at the Congress of Paris in April, 1856. The articles of this declaration were as follows:—

1. Privateering is and remains abolished.

2. The neutral flag covers enemy's goods except contraband of war.

3. Neutral goods, except contraband of war, are not liable to confiscation under a hostile flag.

4. Blockades, to be binding, must be effective. *Parliamentary Papers*, 1856, *Nos.* 2073, 2074; *Twiss' Law of Nations, Part II., s.* 86.

DECLARATION OF TITLE ACT. The stat. 25 & 26 Vict. c. 67, passed in 1862, for enabling an owner of land to apply to the Court of Chancery in a summary way for a declaration of his title thereto.

DECLARATION OF TRUST. A declaration whereby a person admits that he holds property upon trust for another. A declaration of trust of land, whether freehold, copyhold, or leasehold, must, by the Statute of Frauds, be evidenced in writing, and signed by the party declaring the trust. But declarations of trust of money, or chattels personal, need not be so evidenced. *Sm. Man. Eq.*

DECLARATOR. A declaratory action. [DECLARATORY ACTION.]

DECLARATORY ACT. An act of parliament which professes to *declare* existing law, and not to enact new law. Legislative declaration, however, like judicial, is frequently deceptive, and enacts new law under the guise of expounding the old. 1 *Bl.* 86; 1 *Steph. Com.* 70, 71; *Austin on Jurisprudence.*

DECLARATORY ACTION, in the law of Scotland, is an action in which some right is sought to be declared in favour of the pursuer (or plaintiff), but where nothing is demanded to be paid or performed by the defender (or defendant). *Bell.*

DECLARING BY THE BYE. An old phrase indicating that the plaintiff filed his declaration against a party already in custody of the court under process in another suit. *Bouvier.*

DECLINATORY PLEA. A plea of sanctuary, or of benefit of clergy. 4 *Bl.* 333. Abolished, 6 & 7 Geo. 4, c. 28, s. 6. [BENEFIT OF CLERGY; SANCTUARY.]

DECLINATURE. The technical expression in the law of Scotland to indicate that a party objects to the jurisdiction of a judge. *Bell.*

DECREE. The sentence of the Court of Chancery delivered on the hearing of a cause; corresponding to a judgment at law. *Hunt. Eq.* The word is also used in Scotland to signify the final sentence of a court. *Bell.*

DECREE ARBITRAL. The Scotch term for the award of an arbitrator.

DECREE NISI. A decree made for a divorce, which is not to take effect till after the expiration of such time, not less than six months from the pronouncing thereof, as the court shall by any general or special order from time to time direct. During this period any person may show cause why the decree should not be made absolute. *Stats.* 29 *Vict. c.* 32, *s.* 3; 23 & 24 *Vict. c.* 144, *s.* 7; 2 *Steph. Com.* 281.

DECREET COGNITIONIS CAUSA, in Scotland, is a decree in favour of the creditor of a deceased landed proprietor declaring the amount of the debt, for the purpose of making the land of the deceased liable to the payment thereof, when the heir has renounced. *Bell.*

DECREET OF LOCALITY. The adjustment or apportionment of the aggregate stipend due to the minister of a parish in Scotland among the several heritors (or landowners) liable to pay it. *Bell.*

DECREET OF MODIFICATION. The decree of the Teind Court in Scotland, modifying a stipend to a minister from the teinds (or tithes) of the parish. *Bell.*

DECRETAL ORDER. An order in a chancery suit made on motion or otherwise not at the regular hearing of a cause, and yet not of an interlocutory nature, but finally disposing of the cause, so far as a decree could then have disposed of it. *Hunt. Eq.*

DECRETALS are books of the Canon Law, containing the decrees of sundry Popes. *Cowel;* 1 *Bl.* 82; 1 *Steph. Com.* 65. [CANON LAW.]

DECRETUM GRATIANI. A work compiled by one Gratian, an Italian monk, comprising the ecclesiastical constitutions in three books. 1 *Bl.* 82; 1 *Steph. Com.* 64.

DEDBANA. An actual homicide or manslaughter. A word found in the laws of Henry I. *Toml.*

DEDI. I have given. An expression formerly used in conveyances of land, and importing that the grantor *warranted* the goodness of his title to the land conveyed. *Cowel.* But this is now so no longer. *Stat.* 8 & 9 *Vict. c.* 106, *s.* 4; *Wms. R. P.*

DEDICATION OF WAY. The giving up a private road to the use of the public. Three calendar months' notice must be given of the intention to dedicate the way, during which time a vestry is to be called to consider whether the road is of sufficient utility to justify its being kept in repair by the parish; and if the vestry think the road unnecessary, the matter is to be determined by the justices, at the next special sessions for the highways. 3 *Steph. Com.* 180.

DEDIMUS POTESTATEM (we have given power). A writ whereby a commission was given to two or more persons to see that the cognizors who levied fines were of full age, sound memory, and out of prison. 2 *Bl.* 351; 1 *Steph. Com.* 561. [COGNIZOR; FINE, 1.]

DEED. A writing sealed and delivered. 2 *Bl.* 295; 1 *Steph. Com.* 481; *Wms. R. P.* [DELIVERY OF A DEED.]

A deed is either a *deed poll* or a *deed indented.* If a deed be made by more parties than one, there ought to be regularly as many copies of it as there are parties; and the deed so made is called an indenture, because each part used formerly to be cut or *indented* in acute angles on the top or side, to tally or correspond one with the other. Such deeds were formerly called *syngrapha* by the canonists, and with us *chirographa.* Now, by stat. 8 & 9 Vict. c. 106, s. 5, a deed, purporting to be an indenture, is to have the effect of an indenture, though not actually indented.

A deed made by one party only is not and never was indented, but *polled* or shaved quite even, and therefore called a *deed poll*, or a single deed. 2 *Bl.* 295, 296; 1 *Steph. Com.* 183.

DEED OF COMPOSITION is a deed whereby a debtor compounds with his creditors for payment of a percentage on what he actually owes, on condition of being released from his liabilities. Since the passing of the Bankruptcy Act, 1869, a deed is no longer necessary for this purpose; though the "extraordinary resolution" accepting the composition may provide that its terms be embodied in a deed. *B. A.* 1869, *ss.* 126, 127; *Bankruptcy Rules*, 1870, *rule* 281; *Robson, Bkcy.*

DEED OF SEPARATION. [SEPARATION DEED.]

DEED-POLL. [DEED.]

DEEMSTERS. A kind of judges in the Isle of Man, who, without process, writings, or any charge, decide all controversies there. *Cowel.*

DEFAMATION is where a man utters anything of another which may either endanger him in law, as to say that he hath poisoned another, or is perjured; or which may exclude him from society, as to charge him with having an infectious disorder; or which may impair or hurt his trade or livelihood, as to call a tradesman a bankrupt; or which may disparage him in an office of public trust, as to say of a magistrate that he is partial and corrupt. In these cases an "action on the case" may be had without

DEFAMATION—*continued.*

proving any particular damage to have happened. And, in general, where disparaging words are spoken falsely and maliciously, this will entitle the person of whom they are spoken to bring an action for them, provided he aver and prove that he has thereby sustained some special damage. 3 *Bl.* 123—125; 3 *Steph. Com.* 377—381. [ACTION ON THE CASE.]

DEFAULT is an offence in omitting that which we ought to do; as in the expression "wilful neglect or default." It is often taken for non-appearance in court at a day assigned; and judgment given against a party by reason of such non-appearance, or other neglect to take any of the steps required of him within due time, is called *judgment by default. Cowel;* 3 *Bl.* 296, 395; 3 *Steph. Com.* 506, 569; *Lush's Pr.* 393, 493, 646; *Kerr's Act. Law.*

DEFEASANCE. A collateral deed, made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be defeated, or totally undone. *Cowel;* 2 *Bl.* 327; 1 *Steph. Com.* 526, 527. So, a defeasance on a bond or recognizance, or judgment recovered, is a condition which, when performed, defeats or undoes it. It is inserted in a separate deed in the same manner as the defeasance of an estate above mentioned. 2 *Bl.* 342.

DEFECTUM, CHALLENGE PROPTER. [CHALLENGE.]

DEFECTUM SANGUINIS, ESCHEAT PROPTER. [ESCHEAT.]

DEFENCE is defined by Blackstone as an opposing or denial of the truth or validity of the declaration in an action (Fr. *défendre*, to forbid). 3 *Bl.* 296. The more popular notion of the original meaning of the word as applied to legal proceedings is, that it signifies the legal method adopted by a person against whom such proceedings have been taken for *defending* or *protecting* himself against them. [DEFEND.]

DEFEND, in our ancient laws and statutes, is used (like the French *défendre*) to forbid. *Cowel.*

DEFENDANT. A person sued in an action at common law, or charged with a crime. But a person who is charged with felony is more frequently called the *prisoner.*

In a chancery suit a defendant is one who is named in the plaintiff's bill of complaint as a defendant thereto, being one from whom some relief or discovery is required, or who is supposed to be interested in the subject-matter of the suit. It by no means follows that such interest should be opposed to the plaintiff: it frequently happens that the real question is between several sets of defendants, or between one defendant and another, and that the plaintiff is really neutral, and merely desires to act under the direction of the court. This may take place also where there is no conflict of opinion between the parties concerned, but, owing to the lunacy, minority, or other disability of some of the parties entitled, it is impossible to act except under the direction of the court.

DEFENDEMUS (we will defend). A word in a feoffment or donation binding the donor and his heirs to defend the donee, if any man go about to lay any servitude (*i. e.*, to claim any incumbrance) upon the thing given, other than is contained in the donation. *Cowel.* [FEOFFMENT.]

DEFENDER, in Scotch law, is the same as defendant in the English law.

DEFENDER OF THE FAITH. A title given to the King or Queen of England. It was first given by Leo X. to King Henry VIII., for writing against Martin Luther in behalf of the Church of Rome. *Cowel.*

DEFENDERE SE PER CORPUS SUUM. To defend himself by his body; that is, to offer duel or single combat. [WAGER OF BATTEL.]

DEFENSIVE ALLEGATION. The allegation by a defendant in an ecclesiastical suit of the facts and circumstances which he has to offer in his defence. 3 *Bl.* 100; 3 *Steph. Com.* 314, 315.

DEFENSOR. 1. An advocate in court.
2. A guardian or protector.
3. A defendant.
4. A warrantor of lands who comes to defend his warranty.
5. The patron of a church.
6. An officer having the charge of the temporal affairs of a church. *Bouvier.*

DEFENSUM. An inclosure of land or any fenced ground. *Toml.*

DEFORCE. To deprive another of lands. [DEFORCEMENT.]

DEFORCEMENT in English law signifies, in its most extensive sense, the holding of lands or tenements to which another

DEFORCEMENT—*continued.*

person hath a right. But, in its more limited sense, it is only such a detainer of the freehold from him that hath the right of property, but never had any possession under that right, as falls within none of the injuries called *abatement, intrusion,* and *disseisin.* [ABATEMENT, 5; DISSEISIN; INTRUSION.] 3 *Bl.* 172, 173; 3 *Steph. Com.* 387. But in *Cowel* it is defined as holding lands or tenements *by force* from the rightful owner.

In Scotch law, deforcement signifies the crime of opposing a public officer in the execution of his duty. *Bell.*

DEFORCIANT. One who deforces. [DEFORCEMENT.] It is defined by *Cowel* as one that overcometh, and casteth out by force; as if several have right to lands as co-heirs, and one entering keepeth out the rest.

DEGRADATION. 1. Of peers. Where a person who has been in the rank of peers has ceased to be such; as when a peeress, who is such only by marriage, is married to a commoner; or where a peer is deprived of his nobility by act of parliament. 1 *Bl.* 401, 402; 2 *Steph. Com.* 608—612. But degradation must not be confounded with disqualification for bankruptcy, under stat. 34 & 35 Vict. c. 50. See 2 *Steph. Com.* 612; *Robson, Bkcy.*

2. Of ecclesiastics. As thus applied, the word signifies an ecclesiastical censure, whereby a clergyman is deprived of his holy orders.

DEHORS (without). Foreign or extrinsic to the record or deed, or other matter in question. 3 *Bl.* 387; 4 *Bl.* 390.

DEI JUDICIUM (the judgment of God). The old Saxon trial by *ordeal* was so called, because it was regarded as an appeal to God for the justice of a cause. *Cowel.*

DEL CREDERE COMMISSION is a commission for the sale of goods to an agent, who, for a higher reward than is usually given, becomes responsible to his principal for the solvency of the purchaser. In other words, the agent (who is then called a *del credere* agent) guarantees the due payment of the price of the goods sold. 2 *Steph. Com.* 78; *Chitty on Contracts.*

DELATURA. An accusation; and sometimes it hath been taken for the reward of an informer. *Cowel.*

DELEGATES. [COMMISSION OF DELEGATES.]

DELICTO, ACTION EX. A phrase occasionally used to designate an action of *tort;* that is, an action for a wrong which is such independently of contract, as for libel, assault, &c. [ACTIONS REAL AND PERSONAL, 2; TORT.]

DELICTUM, CHALLENGE PROPTER. [CHALLENGE.]

DELICTUM TENENTIS, ESCHEAT PROPTER. [ESCHEAT.]

DELIVERY OF A DEED. This is held to be performed by the person who executes the deed placing his finger on the seal, and saying, "I deliver this as my act and deed." A deed takes effect only from this tradition or delivery. A delivery may be either absolute, that is, to the other party or grantee himself; or to a third person, to hold until some condition be performed by the grantee; in which latter case it is called an *escrow.* 2 *Bl.* 306, 307; 1 *Steph. Com.* 494, 495; *Fawcett, L. & T.* 103.

DEM., in such an expression as Doe dem. Smith, means *demise* in the sense of lease; indicating that Doe as lessee of Smith is the nominal plaintiff. [EJECTMENT.]

DEMANDANT. The plaintiff in a "real action" was called the *demandant.* Real actions are now abolished by stats. 3 & 4 Will. 4, c. 27, s. 36, and 23 & 24 Vict. c. 126, s. 26. [ACTIONS REAL AND PERSONAL.]

DEMESNE (Lat. *Dominicum*) is most frequently used to signify those lands which the lord of a manor keeps in his own hands, as opposed to those which are let out to tenants. The word, however, is very variously used. *Cowel;* 2 *Bl.* 90; 1 *Steph. Com.* 214, 215.

DEMISE (Lat. *Demittere*). To lease. This word generally implies a covenant for quiet enjoyment. The word was formerly applicable to the grant of a freehold estate, but it is not now so applied. *Cowel;* 1 *Steph. Com.* 509, 512; *Fawcett, L. & T.* 229.

DEMISE OF THE CROWN. A phrase used to denote the death of the king or queen, because the kingdom is thereby transferred or *demised* to his successor. *Cowel;* 1 *Bl.* 249.

DEMONSTRATIVE LEGACY. A gift by will of a certain sum to be paid out of a specific fund. *Wms. P. P.*

DEMUR, TO. To deliver a demurrer. [DEMURRER]

DEMURRAGE. The daily sum payable by a merchant, who, having hired a ship, detains it for a longer time than he is entitled to do by his contract. Sometimes the delay itself is called *demurrage*. 2 *Steph. Com.* 141; *Smith's Mercantile Law.*

DEMURRER. A written formula, whereby a party objects to a bill or information, declaration, indictment, or other pleading of his adversary, on the ground that it is, on the face of it, insufficient in point of law. Demurrers at law were formerly either general or special; a *general* demurrer being one expressed in general terms only, and a *special* demurrer setting forth a particular objection. By stats. 27 Eliz. c. 5, and 4 Ann. c. 16, it had been provided that all objections of mere form were to be raised in the shape of special demurrer; and by s. 51 of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), such objections can no longer be raised. 3 *Bl.* 314, 446; 4 *Bl.* 333, 334; 3 *Steph. Com.* 501, 597; 4 *Steph. Com.* 399; *Lush's Pr.* 783; *Kerr's Act. Law; Hunt. Eq.*

It should be observed that, whereas a demurrer in an action at law signifies a legal objection taken by *either* party to the other's pleading, in equity the word is applied only to the objection taken by the *defendant* to the bill or information that it is insufficient to entitle the plaintiff to relief. [See the two following Titles.]

DEMURRER BOOK. A book containing at length a transcript of the proceedings in cases where questions of law arise as to the sufficiency of matters alleged in the pleadings. 3 *Bl.* 317; 3 *Steph. Com.* 511; *Lush's Pr.* 787.

DEMURRER TO THE EVIDENCE. This may arise where a record or other matter is produced in evidence, concerning the legal consequences of which there is a doubt in law; in which case the adverse party may, if he pleases, demur to the whole evidence; and such demurrer admits the truth of every fact which has been alleged, but denies the sufficiency of them all, in point of law, to maintain or overthrow the issue. This proceeding, though not expressly abolished, has been wholly laid aside in modern practice. 3 *Bl.* 372, 373; 3 *Steph. Com.* 547.

DEMY-SANGUE or **DEMY-SANKE.** Half-blood; the relation in which two sons or daughters of the same father but of different mothers, &c. stand to each other. *Cowel.* [HALF-BLOOD.]

DEN AND STROND. A liberty for vessels to run aground or come ashore. *Cowel.*

DENARIUS DEI. God's penny, or earnest money formerly given and received by parties to contracts; so called, because the money so given was given to God—that is, to the Church or the poor; but the pious use is now gone. *Cowel.*

DENARIUS SANCTI PETRI (St. Peter's penny). An annual tribute of one penny from every family to the Pope, formerly paid yearly on the Feast of St. Peter-ad-Vincula, being the 1st of August. It was also called Romefeoh, Romefee, Romepeny, Romescot, and Hearth-peny. *Cowel.*

DENELAGE. [DANELAGE.]

DENIZEN. An alien born who has obtained *ex donatione regis* (from the gift of the king) letters patent to make him an English subject. A denizen is in a kind of middle state, between an alien and natural-born subject, and partakes of both of them. 1 *Bl.* 374.

The grant of letters of denization is not affected by the Naturalization Act, 1870, stat. 33 & 34 Vict. c. 14; see s. 14. 2 *Steph. Com.* 410.

DEODAND. Any personal chattel which is the immediate occasion of the death of any reasonable creature: which was formerly forfeited to the king, to be applied to pious uses, and distributed in alms by his high almoner, though in earlier times it was destined to a more superstitious purpose. 1 *Bl.* 300, 301. Deodands were abolished in 1846 by stat. 9 & 10 Vict. c. 62. 2 *Steph. Com.* 551, 552.

DEPARTURE, in pleading, is the shifting of his ground by a party, or a variation from the title or defence which he has once insisted on. 3 *Bl.* 310; 3 *Steph. Com.* 507.

DEPONENT. A person who gives evidence, whether orally or by affidavit.

DEPORTATION. Transportation, banishment.

DEPOSIT. 1. The act of entrusting money to a bank is called a *deposit* in a bank; and the amount of the money deposited is also called the *deposit*. 3 *Steph. Com.* 81—86. [SAVINGS BANK.]

2. A species of bailment by which a person entrusts another with a chattel to keep safely without reward. In this sense, the Latin form of the word, *depositum*, is more frequently adopted. *Story on Bailments.* [BAILMENT.]

DEPOSIT OF TITLE DEEDS. This is when the title deeds of an estate are deposited (generally with a bank) as a security for the repayment of money advanced. This operates as an equitable mortgage. [EQUITABLE MORTGAGE; MORTGAGE.]

DEPOSITION. A word used to indicate written evidence, or oral evidence taken down in writing. The word is also used to signify the depriving a person of some dignity; and it seems to have been at one time taken to signify death. *Cowel; Toml.*

DEPOSITUM. A species of bailment. [DEPOSIT, 2.]

DEPRIVATION. A depriving or taking away: as when a bishop, parson, vicar, &c. is deposed from his preferment. *Cowel.* Deprivation is of two sorts; *deprivatio à beneficio*, whereby a man is deprived of his promotion or benefice; and *deprivatio ab officio* is that whereby a man is deprived of his orders, which is also called *depositio* or *degradatio*, and is commonly for some heinous crime meriting death, and performed by the bishop in a solemn manner. *Cowel.* See also 1 *Bl.* 382, 393; 2 *Steph. Com.* 673, 693. [DEGRADATION.]

DERELICT. A thing forsaken or thrown away by its owner.

DERELICTION is where the sea shrinks back below water-mark, so that land is gained from the sea. If this gain is gradual, it goes to the owner of the land adjoining; but if it is sudden, the land gained belongs to the Crown. 2 *Bl.* 161, 162; 1 *Steph. Com.* 452.

The word is also used in 2 *Bl.* 10, and 1 *Steph. Com.* 160, to signify the delivering possession of property by one man to another. But that is not its general acceptation.

DERIVATIVE CONVEYANCE. A conveyance which presupposes some other conveyance precedent, and serves to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. 2 *Bl.* 309; 1 *Steph. Com.* 517, 518.

DESCENDER, WRIT OF FORMEDON IN. [FORMEDON.]

DESCENT. The title whereby a man on the death of his ancestor intestate acquires his estate by right of representation as his heir-at-law. 2 *Bl.* 200, 201; 1 *Steph. Com.* 388, 389.

DESCENT CAST was where one who had wrongfully possessed himself of another's lands by *abatement*, *disseisin*, or *intrusion*, died, and his estate descended to his heir. The effect of this *descent cast* (if the rightful owner were under no disability) was, that the heir of the wrongdoer was clothed with an *apparent right of possession*, not to be defeated by mere entry without action; and the *estate* of the rightful owner was turned into a *right of action*. 3 *Steph. Com.* 390, 391. [ABATEMENT, 5; DISSEISIN; INTRUSION.]

DETACHIARE. To seize or take into custody another person's goods by attachment, or other course of law. *Cowel.*

DETAINER. The forcible detention of a man's person or property. *See* 3 *Bl.* 179; 3 *Steph. Com.* 384, 387, 423. [FORCIBLE DETAINER.]

DETERMINABLE FREEHOLDS. Freeholds which are terminable on a given contingency, specified in the deed creating them. 2 *Bl.* 121; 1 *Steph. Com.* 255, 256.

DETERMINATION often signifies the putting an end to; the termination.

DETERMINATION OF WILL. An act of the will whereby an estate at will is *determined*, or put an end to. This need not be by express notice, but it may be effected by any act of ownership done without the consent of the tenant at will. 2 *Bl.* 146; 1 *Steph. Com.* 290.

Or it may be done by the tenant at will himself declaring that he will no longer hold possession of the premises, and quitting them accordingly. *Fawcett, L. & T.* 263.

DETERMINE is often used in legal documents as signifying "to terminate," or "to come to an end."

DETINUE. The form of action whereby a plaintiff seeks to recover a chattel personal unlawfully detained. It differs from *trover*, inasmuch as in *trover* the object is to obtain *damages* for a wrongful conversion of the property to the defendant's use; but in *detinue* the object is to recover the *chattel itself*. And by s. 78 of the Common Law Procedure Act, 1854, the Court may, upon the application of the plaintiff, order execution to issue for the return of the chattel detained. *Cowel;* 3 *Bl.* 153; 3 *Steph. Com.* 363, 364, 582, 583.

DETINUE OF GOODS IN FRANK-MARRIAGE. A writ formerly available to a wife after a divorce, for the recovery of the goods given with her in marriage. *Toml.* [FRANK-MARRIAGE.]

DEUTEROGAMY. The marrying of a wife after the death of a former wife.

DEVASTAVERUNT BONA TESTATORIS (they have wasted the goods of the testator) is where executors have paid legacies of a testator before his debts have been satisfied, or have otherwise mismanaged his estate. *T. L.; Cowel.* [DEVASTAVIT.]

DEVASTAVIT. The waste or misapplication of the assets of a deceased person committed by an executor. 2 *Bl.* 508; 2 *Steph. Com.* 201.

DEVENERUNT. A writ formerly directed to the escheator, when any of the king's tenants, being a tenant *in capite* (*i.e.*, holding the land *immediately* of the king), died, and when his son and heir, within age, and in the king's custody, also died, commanding the escheator to inquire what lands or tenements by the death of the tenant came to the king. *T. L.; Cowel.* [ESCHEATOR.]

DEVIATION. A departure from a plan conceived and agreed upon. The word is used principally in reference to policies of marine insurance, as to which it is held, that the slightest *deviation* from the voyage marked out in the policy, except under circumstances of absolute necessity, will render the insurance ineffectual. 2 *Steph. Com.* 130. Delay in commencing and prosecuting the voyage, for purposes foreign to the adventure, is also called *deviation*. *Crump, Mar. Ins. s.* 236.

DEVISAVIT VEL NON. An issue or inquiry whether a man had in fact made a devise (*i.e.*, will of lands) or not, directed by the Court of Chancery upon a bill being brought by the party claiming as devisee to have the will established. *Haynes, Eq.*

DEVISE (Lat. *Divisa*). A bequest by a man of his lands and goods by his last will and testament in writing. *T. L.; Cowel.* At present the term "devise" is principally used with reference to landed property, and "bequeath" and "bequest" with reference to personalty.

DEVISEE. A person to whom a devise is made. [DEVISE.]

DEVISOR. A testator who makes a devise. [DEVISE.]

DEVOIRES OF CALAIS, mentioned stat. 2 Ric. 2, stat. 1, c. 3, passed in 1378, were the customs due to the king for merchandise brought to or carried out of Calais while our "staple" was there. *Cowel.* [STAPLE.]

DEWAN. [DIWAN.]

DEWANNY. Relating to civil, as opposed to criminal, jurisdiction. *Wilson's Gloss. Ind.* [DIWAN.]

DICKER OF LEATHER. A quantity consisting of ten hides. *Cowel.*

DICTORES. Arbitrators.

DICTUM. 1. Arbitrament. 2. A saying or opinion of a judge.

"DIE WITHOUT ISSUE." [DYING WITHOUT ISSUE.]

DIEM CLAUSIT EXTREMUM (he has closed the last day of his life).

1. An ancient writ that lay for the heir of him that held land of the king, either by knight-service or socage, and died. The writ was directed to the escheator of the county, to inquire of what estate the party died seised. *Cowel.*

2. The name of a special writ of *extent*, issued in the event of the death of a Crown debtor, by which the sheriff is commanded to seize his chattels, debts, and land into the hands of the Crown. 3 *Steph. Com.* 667, 668. [EXTENT.]

DIES DATUS. A day given; that is, a respite given to a tenant or defendant by the court. *Cowel.*

DIES FASTI ET NEFASTI. *Dies fasti* were the days in heathen Rome in which it was lawful to conduct litigation. *Dies nefasti* were days in which it was not lawful. *Ovid, Fasti, I.* 47, 48; 3 *Bl.* 275, 276; 3 *Steph. Com.* 482, 483.

DIES JURIDICUS. An ordinary day in court, as opposed to Sundays and other holidays, upon which the courts do not sit.

DIES MARCHIÆ. The day which used to be appointed annually to be held on the *marches* or borders, for the adjustment of differences between English and Scotch. *Toml.*

DIES NON JURIDICUS. A day on which legal proceedings cannot be carried on, as Sundays, &c. [DIES JURIDICUS.]

DIET. 1. A name sometimes given to a general assembly on the continent of Europe. 1 *Bl.* 147.

2. A day. [DIETS OF COMPEARANCE.]

DIETA RATIONABILIS. A reasonable day's journey. *Cowel.*

DIETS OF COMPEARANCE, in Scotland, are the days within which parties in civil and criminal prosecutions are cited to appear. *Bell.*

DIEU ET MON DROIT ("God and my right"). The motto of the royal arms, introduced by Richard I., indicating that the king holds his dominions of none but God. *Toml.*

DIGEST. 1. The Digest of the Emperor Justinian (otherwise called the Pandects) was a collection of extracts from the most eminent Roman jurists. In A.D. 530 Justinian authorized Tribonian, with the aid of sixteen commissioners, to prepare such a collection, and allowed ten years for the work. It was, however, completed in three years, and published under the title of Digest or Pandects, on the 16th of December, 533, and declared to have the force of law from the 30th of that month. 1 *Bl.* 81; 1 *Steph. Com.* 63; *Lord Mackenzie's Studies in Roman Law, p.* 22; *Sandars' Justinian, Introd. s.* 30.

2. A Digest of Cases is a compilation of the head-notes or main points of decided cases, arranged in alphabetical order, according to the branches or subjects of law which they respectively illustrate.

DILAPIDATION. The name for ecclesiastical waste committed by the incumbent of a living; which is either voluntary, by pulling down; or permissive, by suffering the chancel, parsonage-house, and other buildings thereunto belonging, to decay. 3 *Bl.* 91, 92; 3 *Steph. Com.* 313, 408.

DILATORY PLEA is a plea by a defendant in an action, founded on some matter of fact not connected with the merits of the case, but such as may exist without impeaching the right of action itself. A dilatory plea is either—

1. A plea *to the jurisdiction*, showing that, by reason of some matter therein stated, the case is not within the jurisdiction of the court.

2. A plea *of suspension*, showing some matter of temporary incapacity to proceed with the suit.

3. A plea *in abatement*, showing some matter for *abating* the action. [ABATEMENT, 6.]

The effect of a dilatory plea, if established, is, that it defeats the particular action, leaving the plaintiff at liberty to commence another in a better form.

A dilatory plea is opposed to a peremptory plea, otherwise called a *plea in bar*, which is founded on some matter tending to impeach the right of action. 3 *Bl.* 301, 302; 3 *Steph. Com.* 502, 503.

DILIGENCE, besides its ordinary meaning, has a special meaning in the law of Scotland, in which it signifies the warrants issued by the courts for the attendance of witnesses, or the production of writings; also the process whereby persons or effects are attached or seized on execution, or in security for debt. *Bell.*

DILLIGROUT. Pottage formerly made for the king's table at his coronation day; and there was a tenure in serjeanty, by which lands were held of the king by the service of finding of this pottage at that solemnity. *Toml.*

DIMINUTION is when the plaintiff or defendant in a writ of error alleges to the court, that part of the record remains in the inferior court not certified, and prays that it be certified by *certiorari*. *T. L.*; 4 *Bl.* 390.; *Lush's Pr.* 670. [ALLEGING DIMINUTION.]

DIMISSORY LETTERS. Letters sent by one bishop to another, requesting him to ordain a candidate for holy orders, who has a title in the diocese of the former bishop, but is anxious to be ordained by the latter. *Toml.*

DIOCESAN COURTS. The consistory courts of the bishops for the trial of ecclesiastical causes arising within their respective dioceses. 3 *Bl.* 64; 3 *Steph. Com.* 305, 306. [CONSISTORY COURTS.]

DIOCESE or **DIOCESS.** The circuit of a bishop's jurisdiction. *Cowel.* See also 1 *Bl.* 112; 1 *Steph. Com.* 116.

DIRECT EVIDENCE is evidence directly bearing upon the point at issue, and which, if believed, is conclusive in favour of the party adducing it; and is opposed to *circumstantial* evidence, from which the truth as to the point at issue can be only inferentially deduced.

DIRECTION TO A JURY is where a judge instructs a jury on any point of law, in order that they may apply it to the facts in evidence before them.

DIRECTORY STATUTE. A statute is said to be merely directory when it directs anything to be done or omitted, without invalidating acts or omissions in contravention of it.

DISABILITY is when a man is disabled or made incapable to inherit or take a benefice, which otherwise he might have done. *Cowel.*

At the present day the word is generally used to indicate an incapacity for the full enjoyment of ordinary legal

DISABILITY—*continued.*

rights; thus married women, persons under age, insane persons, and felons convict are under disability.

Sometimes the term is used in a more limited sense, as when it signifies an impediment to marriage; or the restraints placed upon clergymen by reason of their spiritual avocations. 2 *Steph. Com.* 240, 663.

DISABLING STATUTE. A statute which disables or restrains any person or persons from doing that which formerly was lawful or permissible; as the statute 1 Eliz. c. 19, disabling archbishops and bishops from making leases for more than twenty-one years or three lives, or without receiving the usual rent. 2 *Bl.* 320; 1 *Steph. Com.* 71; 2 *Steph. Com.* 735.

DISAFFORESTED. Exempted from the forest laws.

DISAGREEMENT. A word sometimes used to signify the *disclaimer* of an estate. [DISCLAIMER, 2.]

DISALT signifieth as much as *to disable. Cowel.*

DISBAR. To deprive a barrister of his privileges and status as such.

DISBENCH. To deprive a bencher of his privileges. [BENCHERS.]

DISCEIT. [DECEIT.]

DISCHARGE. A word used in various senses:—

1. Of the discharge of a bankrupt under s. 48 of the Bankruptcy Act, 1869, by which he is freed of all debts and liabilities proveable under the bankruptcy, with certain specified exceptions. 2 *Steph. Com.* 161, 162; *Robson, Bkcy.*

2. Of the discharge of a surety, whereby he is released from his liability as surety. 2 *Steph. Com.* 107.

3. Of the release of a prisoner from confinement.

4. Of the payment of a debt, whereby the debtor is freed from further liability.

5. Of the release of lands, or money in the funds, from an incumbrance, by payment of the amount to the incumbrancer, or otherwise by consent of the incumbrancer.

6. Of an order of a court of justice dismissing a jury on the grounds that they have performed their duties, or are unable to agree in a case before them.

7. Of the reversal of an order of a court of justice; thus we say, such an order was "discharged on appeal," &c.

DISCHARGED PRISONERS AID ACT. The stat. 25 & 26 Vict. c. 44, passed in 1862, for enabling justices at quarter sessions to give certificates to Discharged Prisoners' Aid Societies, and to revoke or suspend the same; and for enabling the visiting justices of a prison, at the time that a prisoner is discharged, to pay any sum not exceeding two pounds to the treasurer of such society, on the undertaking by the latter that the sum shall be applied for the benefit of such prisoner. *Cox & Saunders' Cr. Law.* 240—242.

DISCLAIMER is a plea containing an express denial or refusal. *Cowel.* It is used:—

1. Of an answer of a person made defendant to a bill in Chancery in respect of some interest he is supposed to claim, whereby he disclaims all interest in the matters in question. Of course, a defendant will not be allowed by disclaiming to avoid giving to the plaintiff any discovery or relief which may be justly due to him. *Hunt. Eq.*

2. Of any act whereby a person refuses to accept an estate which is attempted to be conveyed to him; as, for instance, where land is conveyed to an intended trustee without his consent, and he refuses to accept it. This is called the disclaimer of an estate. 1 *Steph. Com.* 479, 480.

3. Of the refusal by the trustee in a bankruptcy to accept a burdensome lease or other onerous property of the bankrupt. *Robson, Bkcy.; Fawcett, L. & T.* 257; *Rule* 28 *of Bankruptcy Rules*, 1871.

4. Of disclaimer of tenure; that was where a tenant, who held of any lord, neglected to render him the due services, and, upon an action brought to recover them, disclaimed to hold of the lord: which disclaimer of tenure in any court of record was a forfeiture of the lands to the lord. 2 *Bl.* 275, 276; 1 *Steph. Com.* 465, 466.

DISCLAMATION. The Scotch term for disclaimer of tenure. *Bell.* [DISCLAIMER, 4.]

DISCONTINUANCE OF ACTION is when a plaintiff leaves a chasm in the proceedings of his cause, as by not continuing the process regularly from day to day, and from time to time, as he ought to do. 3 *Bl.* 296; see also 3 *Steph. Com.* 568, *n.; Kerr's Act. Law;* 36 & 37 *Vict. c.* 66, *Sched. r.* 46.

DISCONTINUANCE OF AN ESTATE, otherwise called discontinuance of possession, is defined in Bacon's Abridgment as "such an alienation of possession, whereby he who has a right to the inheritance cannot *enter*" (without bringing an action), "but is driven to his *action*;" as where a tenant in tail made a feoffment in fee simple, or for the life of the feoffee, or in tail; all which were beyond his power to make, for that by the common law extended no further than to make a lease for his own life. In such case the possession by the feoffee after the death of the feoffor was termed a "discontinuance;" the ancient legal estate being gone, or at least suspended, and for a while *discontinued*.

In such case the heir in tail, remainderman or reversioner was deprived of his *right of entry*, and driven to his *action* to recover the land. 3 *Bl.* 171; 3 *Steph. Com.* 388, 389.

But from the 15th century to the year 1833, a tenant in tail could ordinarily bar *entirely* all future interests in the land by a *common recovery* [RECOVERY], and, since the year 1833, by a disentailing deed. [DISENTAILING DEED.] Discontinuances, therefore, prior to their express abolition, had long become obsolete and unmeaning; and they are now abolished by stat. 3 & 4 Will. 4, c. 27, passed in 1833, and 8 & 9 Vict. c. 106, s. 4, passed in 1845. 1 *Steph. Com.* 510, *n.*

DISCOUNT. 1. An allowance made to bankers or others for advancing money upon bills before they become due.

2. An allowance frequently made at the settlement of accounts, by way of deduction from the amount payable. *Chambers' Bookkeeping.*

DISCOVERT. A word applied to a woman who is a widow or unmarried, as not being under the disabilities of *coverture*. [COVERTURE.]

DISCOVERY is a word generally applied to answers given by one party in an action at law or suit in equity to interrogatories filed by the other.

A *bill of discovery* is a bill filed in equity for the purpose of discovery in aid of legal proceedings elsewhere. It is not so often resorted to now as formerly, in consequence of the greater facility for discovery now given in actions at common law. 3 *Bl.* 381, 382, 437; 3 *Steph. Com.* 598; *Hunt. Eq.*; *Haynes, Eq.*

The word is also used in reference to the disclosure by a bankrupt of his property for the benefit of his creditors. 2 *Bl.* 483, 488; 2 *Steph. Com.* 158; *Robson, Bkcy.*

DISCUSSION is used in Scotland for—

1. The process against the principal debtor for whom another is surety.

2. The ranking of the proper order in which heirs are liable to satisfy the debts of the deceased. *Bell.*

DISENTAILING DEED. A deed executed by a tenant in tail under stat. 3 & 4 Will. 4, c. 74, passed in 1833, for the abolition of fines and recoveries; by which, if duly enrolled in the Court of Chancery within six months of its execution, the tenant in tail is enabled, by s. 15 of the Act, to alienate the land for an estate in fee simple or any less estate, and thereby to destroy the entail. 1 *Steph. Com.* 250, 575.

DISFRANCHISE. To take away from one his privilege or freedom. *Cowel.*

At the present day it is used to signify the depriving an individual of his right of voting, or a constituency of their right of returning a member to Parliament. 2 *Steph. Com.* 334, *n.*, 381; *May's Parl. Pract.*

DISGAVEL. To abolish the custom of gavelkind as to any lands or tenements where it has previously existed. This can only be done by act of parliament. [GAVELKIND.]

DISHERISON. The disinheriting of any person or persons. *Cowel.*

DISHONOUR is where the drawee of a bill of exchange refuses to accept it, or, having accepted it, fails to pay it according to the tenor of his acceptance. 2 *Steph. Com.* 119, *n.*; *Byles on Bills.*

DISINHERISON. [DISHERISON.]

DISMES, DECIMÆ. Tithes; also the tenths of all spiritual livings formerly payable to the Pope, and afterwards to the Crown. *Cowel;* 1 *Bl.* 284, 285; 2 *Bl.* 24—32; 2 *Steph. Com.* 531—534, 722—733. [QUEEN ANNE'S BOUNTY.]

DISMISSAL OF BILL IN EQUITY signifies a refusal by the Court to make a decree as prayed by a plaintiff's bill. This may be (1) *on the merits of the case*, or (2) *for want of prosecution*, that is to say, of due diligence on the part of the plaintiff or his advisers in taking the steps required by the practice of the Court. The dismissal on the merits may be partial or entire, according to circumstances. *Hunt. Eq.*

DISPARAGEMENT. A word used to signify *inequality* or unsuitableness in marriage. *Cowel;* 2 *Bl.* 70, 71; 1 *Steph. Com.* 193—195.

DISPAUPER. To prohibit a man who has once been admitted to sue *in formâ pauperis*, that is, as a pauper, from suing any longer as such. *Hunt. Eq.* [FORMA PAUPERIS.]

DISSEISEE. A person disseised or put out of his freehold. [DISSEISIN.]

DISSEISIN is a wrongful putting out of him that is seised of the freehold; that is, a wrongful disturbance and ouster of one in freehold possession of land. The various forms of the writ of entry *sur disseisin*, devised to remedy this species of injury, having been long superseded by other remedies, were all abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36. *T. L.; Cowel;* 2 *Bl.* 165; 3 *Bl.* 169, 170; 1 *Steph. Com.* 313, 314, 509, 510; 3 *Steph. Com.* 386. [ENTRY, WRIT OF; OUSTER.]

DISSEISOR. A person who puts another out of his freehold. [DISSEISIN.]

DISSENTERS. Persons who do not conform to the Established Church. 4 *Bl.* 53, 54. The word is usually confined to Protestant seceders from the Established Church, and their descendants. 2 *Steph. Com.* 706.

DISSOLUTION OF PARLIAMENT is where a final period is put to the existence of a parliament by the Sovereign's will, expressed either in person or by representation, or by lapse of time. Parliaments were formerly dissolved by the death of the Sovereign, but this doctrine is now abolished. 1 *Bl.* 189; 2 *Steph. Com.* 392—394; *May's Parl. Pract.*

DISSOLVING AN INJUNCTION is tantamount to discharging or reversing it. [INJUNCTION.]

DISTRAIN. To execute a distress. 3 *Bl.* 6, 7; 3 *Steph. Com.* 245. [DISTRESS.]

DISTRAINT. A distress. [DISTRESS.]

DISTRESS. The taking of a personal chattel out of the possession of a wrongdoer into the custody of the party injured, to procure satisfaction for the wrong committed. 3 *Bl.* 6, 231; 3 *Steph. Com.* 245. The word is most frequently (though not at all exclusively) used with reference to the taking by a landlord of goods for the non-payment of rent. *Fawcett, L. & T.* 131.

DISTRESS INFINITE. A distress that has no bounds with regard to its quantity, and may be repeated from time to time, until the stubbornness of the wrongdoer is overcome. 3 *Bl.* 231; 3 *Steph. Com.* 253, n. (*s*).

DISTRIBUTION. A word used specially for the division of the personal estate of an intestate among the parties entitled thereto as next of kin. This is regulated by the Statute of Distributions, 22 & 23 Car. 2, c. 10, amended by stat. 29 Car. 2, c. 3. 2 *Bl.* 515; 2 *Steph. Com.* 208, 212.

DISTRINGAS (that you distrain). 1. A writ formerly issuing against the goods and chattels of a defendant who did not appear. 3 *Bl.* 280, 281; 3 *Steph. Com.* 495, n.

2. A writ after judgment for the plaintiff in the action of *detinue*, to compel the defendant, by repeated distresses of his chattels, to give up the goods detained. 3 *Bl.* 413; 3 *Steph. Com.* 582; *Kerr's Act. Law; C. L. Proc. Act*, 1854, *s.* 78. [DETINUE.]

3. The name, in the Court of King's Bench, of an old writ commanding the sheriff to bring in the bodies of jurors who do not appear, or to distrain their lands and goods. 2 *Bl.* 354. This writ is now abolished. *Lush's Pr.* 589.

4. The process in equity against a body corporate, refusing to obey the summons and direction of the Court. 3 *Bl.* 445.

5. An order of the Court of Chancery, obtained in favour of a party claiming to be interested in any stock in the Bank of England, by which a notice is served on the bank, desiring them not to permit a transfer of any given stock, or not to pay any dividend on it, as the case may be. *Hunt. Eq.*

DISTRINGAS NUPER VICECOMITEM (that you distrain the late sheriff). A writ which may be issued when a sheriff, having levied execution by *fieri facias*, and being unable to sell the goods so levied, goes out of office. The writ is directed to his successor, commanding him to *distrain* the late sheriff, to compel him to sell the goods. *Smith's Act. Law, ch.* 10.

DISTURBANCE. A form of real injury done to some incorporeal hereditament, by hindering or disquieting the owners in their regular and lawful enjoyment of it. Blackstone enumerates five sorts of this injury:—1. Disturbance of *franchises*. 2. Disturbance of *common*.

DISTURBANCE—*continued.*

3. Disturbance of *ways*. 4. Disturbance of *tenure*. 5. Disturbance of *patronage*. 3 *Bl.* 236—253; 3 *Steph. Com.* 410—420.

DISTURBER. A bishop is so styled who refuses or neglects to examine and admit a patron's clerk (*i. e.*, a clergyman presented by a patron to a living) without good reason assigned, or notice given. 2 *Bl.* 278; 2 *Steph. Com.* 719.

DIVERSITE DES COURTES. A treatise, supposed to have been written early in the sixteenth century, giving a catalogue of the matters of conscience then cognizable by subpœna in Chancery. No regular judicial system at that time prevailed in the Court of Chancery, but the suitor found a desultory and uncertain remedy, according to the opinion of the Chancellor. 3 *Steph. Com.* 327.

DIVERSITY OF PERSON is where a prisoner pleads in bar of execution that he is not the same as the person convicted. 4 *Bl.* 396; 4 *Steph. Com.* 368.

DIVESTING OF AN ESTATE is where an estate, vested in a man and his heirs, &c., ceases to be so. This may be—

1. By conveyance.
2. By forfeiture.
3. By the terms of the instrument under which the estate is held.
4. By the order of a court of justice; including those cases where property is divested by an order of adjudication in bankruptcy.

DIVIDEND. 1. A word used in the Statute of Rutland, 10 Edw. 1, to signify one part of an indenture. *T. L.; Cowel.*

2. The periodical income arising from stocks, shares, &c.

3. The proportion of a bankrupt's estate available to his creditors,

DIVINE RIGHT, or DIVINE RIGHT OF KINGS, is the name generally given to the patriarchal theory of government, of which Sir Robert Filmer, who wrote in the seventeenth century, is the most distinguished exponent. According to that theory, as expounded by him, absolute monarchy is the only legitimate form of government; and the monarch and his legitimate heirs, being by *divine right* entitled to the sovereignty, cannot forfeit that right by any misconduct, however gross, or any period of dispossession, however long. But where the knowledge of the right heir is lost, then the usurper, being in possession by the permission of God, is to be taken and reputed by the subjects to be the true heir, and to be obeyed by them as their father. And, if a man be so wicked as to usurp, and not willing to forego his usurpation, he is bound to protect by government, or else he increaseth and multiplieth his sin. Moreover, an usurper must be obeyed not only in things *lawful*, but also in things *indifferent*, but not in things *unlawful*. Still, it would (according to the theory we are considering) be a mistake to suppose that there is as much obedience due to an usurped power, as to a lawful. For some things are indifferent for a lawful superior, which are not indifferent, but unlawful, for an usurper to enjoin. Thus it is unlawful for an usurper to resist his lawful sovereign, or to command his subjects to do so. But, in case of laws made by an usurper for the benefit of his subjects, it is to be presumed that the lawful superior, if he had not been hindered, would have commanded the same or the like laws. See "*Directions for Obedience to Governours in Dangerous or Doubtful Times*," *pp.* 153—164 *in the edition of Filmer's works published in* 1680.

DIVINE SERVICE. A tenure by which the tenants were obliged to do some special divine services in certain; as to sing so many masses, to distribute such a sum in alms, and the like. 2 *Bl.* 102; 1 *Steph. Com.* 227.

Tenure by *divine service* differed from tenure in *frankalmoign* in this: that in case of the tenure by *divine service*, the lord of whom the lands were holden might distrain for its non-performance, whereas in case of *frankalmoign* the lord has no remedy by distraint for neglect of the service, but merely a right of complaint to the visitor to correct it.

DIVISA. A division of goods by last will and testament. Hence the word *devise*. [DEVISE.]

DIVORCE. A separation of man and wife. This is of three kinds:—

1. A *mensâ et thoro;* which is where the marriage is just and lawful *ab initio*, but for some supervenient cause it has become improper or impossible for the parties to live together. This kind of divorce is now generally called a *judicial separation*. Its effect is to place the parties in the position of single persons, except that neither party can lawfully marry again in the lifetime of the other.

2. Divorce *à vinculo* for some cause subsequent to the marriage. This, by the law of England, may take place for adultery, combined, if the adultery be

DIVORCE—*continued.*

that of the husband, with some other circumstance of aggravation; as a wife cannot obtain a dissolution of the marriage for the simple adultery of the husband. The effect of this kind of divorce is to dissolve the marriage, and allow the parties to marry again; but it does not bastardise the issue. Previously to the Divorce Act, 1857 (20 & 21 Vict. c. 85), this kind of divorce was obtainable by private act of parliament; it is now granted by the Divorce Court. But divorces may still be granted by act of parliament in the case of British subjects not within the jurisdiction of the Divorce Court, or any other court with the like jurisdiction within the British Empire. *May's Parl. Pract.*

3. Divorce *à vinculo* for some cause of impediment existing prior to the marriage. This is a declaration that the marriage is a nullity, as having been absolutely unlawful from the beginning. This kind of divorce not only enables the parties to contract marriage at their pleasure, but bastardises the issue, if any. 1 *Bl.* 440—442; 2 *Steph. Com.* 277—282.

DIVORCE ACT means either a private Act of Parliament for dissolving a marriage, or the Public General Divorce Act of 1857, by which the Divorce Court was constituted. [DIVORCE.]

DIVORCE COURT, or **THE COURT FOR DIVORCE AND MATRIMONIAL CAUSES**, is the Court erected by the Divorce Act, 1857. To this Court is transferred the matrimonial jurisdiction of the old ecclesiastical courts, together with power to grant divorces *à vinculo* in cases of adultery. [COURT FOR DIVORCE AND MATRIMONIAL CAUSES; DIVORCE.]

DIWAN (otherwise *Dewan*, *Deewan*, *Divan*) signifies a royal court, a council of state, a tribunal of revenue or justice. Also, a minister or chief officer of state. *Wilson's Gloss. Ind.*

DIYAT. The price of blood; a fine for murder or other offence against the person. *Wilson's Gloss. Ind.*

DO UT DES. I give that you may give; as when I give money or goods on a contract that I shall be repaid money or goods for them again. This was one of the four classes into which "valuable considerations" were divided by the Roman lawyers. 2 *Bl.* 445; 2 *Steph. Com.* 59, *n.* [CONSIDERATION; DO UT FACIAS; FACIO UT DES; FACIO UT FACIAS.]

DO UT FACIAS. I give that you may do as when I agree with a servant to give him wages for work done by him. 2 *Bl.* 445; 2 *Steph. Com.* 59, *n.* [See preceding Title.]

DOCK MASTERS. Officers invested with powers within the docks, and a certain distance therefrom, to direct the mooring and removing of ships, so as to prevent obstruction to the dock entrances.

DOCK WARRANT. A document given to the owner of goods imported and warehoused in the docks, as a recognition of his title to the goods, on the bills of lading and other proofs of ownership being produced. Like a bill of lading, it passes by indorsement and delivery, and transfers the absolute right to the goods described in it. Dock warrants are drawn on paper, having the watermark of the dock company upon them, and are negotiated from hand to hand, or pledged with bankers and others for loans as mercantile securities, representing the value of the goods described in them. *Pulling on the Customs of London.* See also *Levi's Int. Comm. Law*, 505.

DOCKET or **DOCQUET** is defined by *Cowel* as being a brief in writing, or a small piece of paper or parchment containing the effect of a larger writing. Also it is used to signify a register of judgments. *See* 3 *Bl.* 397.

The name is also given to the copy of a decree in Chancery, made out and left with the Record and Writ Clerk, preparatory to enrolment. *Hunt. Eq.* [ENROLMENT.]

DOCQUET OF DECREE. [DOCKET.]

DOCTOR AND STUDENT. A book containing certain dialogues between a doctor of divinity and a student at common law, wherein are contained questions and cases. The author is said to be one Saint German; and the book was written in the time of Henry VIII. *Cowel;* 1 *Steph. Com.* 51.

DOCTORS' COMMONS. A place near St. Paul's Churchyard, where the principal spiritual courts used to be held until the year 1857. 3 *Bl.* 65; 3 *Steph. Com.* 306, *n.*

DOCUMENT OF TITLE TO GOODS includes any bill of lading, dock warrant, order for the delivery of any goods, bought and sold note, or other document used in the ordinary course of business as proof of possession or control of goods. *Stat.* 24 & 25 *Vict. c.* 96, *s.* 1; *Cox & Saunders' Cr. Law*, 22.

DOCUMENT OF TITLE TO LANDS. Any deed, map, paper or parchment, being or containing evidence, in whole or in part, of a person's title to lands. *Stat.* 24 & 25 *Vict. c.* 96, *s.* 1; *Cox & Saunders' Or. Law*, 22, 23; 4 *Steph. Com.* 122, n.

DOE, JOHN. Generally the name of the fictitious plaintiff in the old action of ejectment. 3 *Steph. Com.* 618. [EJECTMENT.]

DOG-DRAW. An apprehension of an offender against venison in the forest, where any man hath stricken or wounded a wild beast, and is found with a hound or other *dog drawing* after him to recover the same. *Cowel.*

DOLE. A Saxon word signifying as much as *pars* or *portio* in Latin. It hath of old been attributed to a meadow, because divers persons had shares in it. We still retain the word to signify a share, as to deal a *dole*. *Cowel.*

DOLI CAPAX (capable of mischief). An expression used to indicate that in any given case a child between the ages of seven and fourteen has, contrary to the ordinary presumption in such cases, sufficient understanding to discern between good and evil, so as to be criminally responsible for his actions. This is otherwise expressed by the maxim, *Malitia supplet ætatem* (malice supplies the want of age). 4 *Bl.* 21—24; 4 *Steph. Com.* 23—25.

DOM-BOC. [DOME-BOOK.]

DOM. PROC. An abbreviation for *Domus Procerum*, the House of Lords.

DOME or DOOM. A judgment, sentence or decree. We have several words that end in *dom*, as kingdom, earldom, &c., so that it may seem to signify the jurisdiction of a lord or a king. *Cowel.*

DOME-BOOK (Lat. *Liber judicialis*). Probably a book of statutes proper to the English Saxons, wherein perhaps the laws of former Saxon kings were contained. *Cowel.*

This book is said to have been compiled by Alfred, and to have been extant so late as the reign of Edward IV., but it is now lost. 1 *Bl.* 64, 65; 1 *Steph. Com.* 41.

DOMESDAY-BOOK (Lat. *Liber Judiciarius*). An ancient record made in the reign of William the Conqueror, containing a survey of the lands in England. It was begun by five justices, assigned for that purpose in each county in the year 1081, and was finished in 1086. *Cowel.*

DOMESMEN. Judges or men appointed to doom, and determine suits or controversies. Hence falling of domes (otherwise called *falsing of dooms*) is the Scotch phrase for reversing of judgment, or annulling of decrees. *Cowel.*

DOMICELLUS. An old appellation given as an addition to the king's natural sons in France. John of Gaunt's natural sons are called *domicelli* in the charter of legitimation. *Domicellus* also signifies a private gentleman; also a better sort of servant. *Cowel.*

DOMICILE. The place in which a man has his fixed and permanent home, and to which, whenever he is absent, he has the intention of returning. Upon domicile depend questions of personal status and the devolution of moveable property. Domicile is also in general the test of national character for the purpose of war. Thus in 1802 it was held by the House of Lords that a British-born subject, resident in Portugal, might be allowed the benefit of the Portuguese character, so far as to render his trade with Holland, then at war with England, not impeachable as an illegal trading with the enemy. *Story's Conflict of Laws, ch.* 3; *Kent's Comm. ed. Abdy, pp.* 217—219; *Twiss, Part II. ch.* 8; *Jarman on Wills, ch.* 1; 2 *Steph. Com.* 189; *Westlake's Private International Law.*

DOMINA. A title given to honorable women, who anciently in their own right of inheritance held a barony. *Cowel.*

DOMINANT TENEMENT. A tenement in favour of which a service or "servitude" is constituted. Thus an estate, the owner of which has, by virtue of his ownership, a right of way over another man's land, is called the *dominant tenement* in respect thereof; and the land over which the right of way exists is called the *servient tenement*. These terms are derived from the Roman civil law.

DOMINICALS. A payment in certain places of 4*s.* 8*d.* a year, supposed by some to be identical with Sacrament Pennies, which were offerings of one penny each, anciently made by communicants for receiving the Sacrament on Sundays and principal festivals. See *Ayliffe's Parergon*, 393.

DOMINICUM. A demesne. [DEMESNE.]

DOMINIUM. A term in the Roman law, used to signify *ownership of a thing*, as opposed (1) to a mere life interest or usufruct; (2) to an equitable or "prætorian" right; (3) to a merely possessory right; (4) to a right *against a person*, such as a covenantee has against a covenantor.

DOMINUS. This word prefixed to a man's name usually denoted him a knight or a clergyman; sometimes the lord of a manor. *Cowel.*

DOMITÆ NATURÆ (of a tame disposition). An expression applied to animals of a nature tame and domestic, as horses, kine, sheep, poultry, and the like. In these a man may have as absolute a property as in any inanimate thing. 2 *Bl.* 391, 392; 2 *Steph. Com.* 4, 5.

DOMO REPARANDA (for repairing a house). An ancient writ that lay for a man against his neighbour, by the fall of whose house he anticipated damage to his own. The writ directed the neighbour to put his house in a proper state of repair. *Reg. Orig.* 153.

DOMUS CONVERSORUM. A house of converted Jews, built by Henry III. But King Edward III., who expelled the Jews from this kingdom, made the house a place for the custody of the rolls and records of the Chancery; and now the Master of the Rolls sits there as judge. *Cowel.* [MASTER OF THE ROLLS; ROLLS.]

DOMUS PROCERUM. The House of Lords.

DONATIO MORTIS CAUSA (a gift by reason of death) is a gift of personal property made by one who apprehends that he is in peril of death, and evidenced by a manual delivery by him, or by another person in his presence and by his direction, to the donee or to some one else for the donee, of the means of obtaining possession of the same, or of the writings whereby the ownership thereof was created, and conditioned to take effect absolutely in the event of his not recovering from his existing disorder, and not revoking the gift before his death.

A *donatio mortis causâ* differs from a legacy mainly in its being wholly independent of the donor's last will and testament, and it therefore requires no assent on the part of his executor or administrator to give full effect to it. *Sm. Man. Eq.*; see also 2 *Bl.* 514; 2 *Steph. Com.* 48.

DONATIVE, ADVOWSON. [ADVOWSON.]

DON, GRANT ET RENDER. [FINE, 1.]

DONEE. [DONOR.]

DONIS, DE. [DE DONIS.]

DONOR is he who makes a gift to another; and he to whom the gift is made is called the *donee*. *Cowel.*

DORMANT PARTNER. One who takes no part in the partnership affairs, nor is known to the world as a partner, but who receives the profits of the partnership. *Sm. Merc. Law*; see also *Lindley on Partnership*, 249.

DOTE, or, more fully, **RECTO DE DOTE**, was a writ of right of dower, which lay for a widow who had received part of her dower, but was deprived of the residue, lying in the same town, by the wrong of the same tenant. *Cowel*; 3 *Bl.* 182, 183; 3 *Steph. Com.* 397, 605, *n.* For this writ, by s. 26 of the C. L. P. Act, 1860, a personal action is now substituted. *Cowel.* [DOTE UNDE NIHIL HABET.]

DOTE ASSIGNANDA. A writ that lay for the widow of a tenant who held of the king *in capite* (*i. e.*, without the intervention of any mesne lord), for the assignment of her dower. In order to obtain this writ she had to make oath that she would not marry without the king's leave. *Cowel.* [DOWER, 2.]

DOTE UNDE NIHIL HABET, or, more fully, **RECTO DE DOTE UNDE NIHIL HABET.** A writ which lay for a widow to whom no dower had been assigned. *Cowel*; 3 *Bl.* 182, 183. An ordinary action commenced by writ of summons is now substituted for this writ. 23 & 24 *Vict. c.* 126, *ss.* 26, 27; 3 *Steph. Com.* 605—607; *Kerr's Act. Law*, 95. [DOWER, 2.]

DOTIS ADMENSURATIONE. An old writ for admeasurement of dower, against a widow who (it was alleged) held more lands than her proper share.

DOUBLE AVAIL OF MARRIAGE. [VALOR MARITAGII.]

DOUBLE COMPLAINT. [DUPLEX QUERELA.]

DOUBLE COSTS. Twice the ordinary amount of costs, given in various cases by act of parliament. All such provisions as were enacted for this purpose before the year 1842 are repealed by stat. 5 & 6 Vict. c. 97. 3 *Steph. Com.* 574, *n.*, 617; *Kerr's Act. Law.*

DOUBLE ENTRY. A system of mercantile bookkeeping, in which the entries in the day-book, &c. are posted *twice* into the ledger; first, to a *personal* account, that is, to the account of the *person* with whom the dealing to which any given entry refers has taken place; secondly, to an impersonal account, as "goods." Thus, if a person sells goods of the value of 10*l.* to A. B. on credit, this transaction will be posted in the ledger first to A. B.'s account, in which it will appear on the Dr. side of A. B.'s account, that is, A. B. will be *debited* with the same. This 10*l.* will be added together with the value of other goods sold on credit during the month, amounting, let us suppose, altogether to 100*l.* This 100*l.* will, at the end of the month, be posted to the *credit* of the goods account. *Chambers' Bookkeeping, pp.* 85—87; *Coombs' Solicitors' Bookkeeping.*

DOUBLE FINE. A fine *sur don, grant, et render* was so called, because it comprehended the fine *sur cognizance de droit come ceo, &c.*, and the fine *sur concessit.* 2 *Bl.* 353; 1 *Steph. Com.* 563, 564. [FINE, 1.]

DOUBLE INSURANCE is where a person, being insured by one policy, effects another with some other insurer or insurers, the risk and interest being the same in both. 2 *Steph. Com.* 130; *Crump, Mar. Ins. s.* 353.

DOUBLE PLEA is that wherein the defendant or tenant in any action pleads a plea in which two matters are comprehended, and each one by itself is a sufficient bar or answer to the action. Such double pleading, otherwise called duplicity in pleading, must be avoided; the rule being that every plea must be confined to one single point. *T. L.; Cowel;* 3 *Bl.* 308, 311.

Double pleading must not be confounded with pleading several pleas, which a defendant may do by leave of the court. *Lush's Pr.* 458, 459.

As to the form of a plea under the Judicature Act, see the 18th and 19th rules in the Schedule to the Act.

DOUBLE POSSIBILITY (*Potentia remota*). A possibility upon a possibility; as where a remainder in land is limited to a son John or Richard of a man that hath no son of that name; the supposed "double" possibility being, 1st, that the man would have a son; 2nd, that the son would be called John or Richard, as the case might be. Such a remainder was formerly held illegal, but this doctrine is now quite exploded. 2 *Bl.* 170; 1 *Steph. Com.* 328, 329.

DOUBLE QUARREL. [DUPLEX QUERELA.]

DOUBLE RENT is payable by a tenant who continues in possession after the time for which he has given notice to quit, until the time of his quitting possession. *Stat.* 11 *Geo.* 2, *c.* 19, *s.* 18; *Fawcett, L. & T.* 304, 305.

DOUBLE VALUE. Double the yearly value of lands payable by a tenant who wilfully "holds over" (*i. e.*, continues in possession) after the expiration of his term, and after notice by the landlord requiring him to leave. *Fawcett, L. & T.* 302, 303. For *double value of marriage*, see VALOR MARITAGII.

DOUBLE VOUCHER was where a common recovery was effected by first conveying an estate of freehold to an indifferent person, against whom the *præcipe* was brought, who then "vouched" the tenant in tail, and he the common vouchee. 2 *Bl.* 359; 1 *Steph. Com.* 569, 570. [RECOVERY; VOUCHING TO WARRANTY.]

DOWAGER. A queen dowager is the widow of a king. 1 *Bl.* 224; 2 *Steph. Com.* 449. So, a duchess dowager, countess dowager, &c. is the widow of a duke, earl, &c.

DOWER. 1. By the Roman law *dower* is that which a wife brings to her husband in marriage. It is sometimes spoken of as *dowry.*

2. By the law of England, *dower* is a portion which a widow hath of the lands of her husband. This extends by the common law to the third part of the lands and tenements whereof the husband was solely seised for an estate of inheritance during the marriage; and may be enjoyed for the life of the widow. But, in order to entitle a widow to dower out of the land, the husband's estate or interest therein must be such that their common issue might have inherited it. If, therefore, a man have lands to himself and the heirs of his body by his wife A., a second wife B. would not be entitled to dower out of such lands. Now, by the Dower Act of 1833, the dower of women married on or after the 1st of January, 1834, is placed entirely in the power of their husbands. *T. L. Cowel;* 2 *Bl.* 129; 1 *Steph. Com.* 266—279.

DOWRESS. A widow entitled to dower; otherwise called a "tenant in dower."

DOWRY. That which the wife brings her husband in marriage. [DOWER, 1.] Not to be confounded with the *dower* of the English law. [DOWER, 2.]

DRAFT signifies a cheque or bill of exchange, or other negotiable instrument; also the rough copy of a legal document before it has been engrossed.

DRANA. A drain or watercourse.

DRAWBACK. The repayment of duties or taxes previously charged on commodities, from which they are relieved on exportation. *Hamel on the Customs.*

DRAW-LATCHES were thieves and robbers. *Cowel.*

DRAWEE. A person on whom a bill of exchange is *drawn*, as one who may be expected to "accept" it. [BILL OF EXCHANGE.]

DRAWER. A person who draws a bill of exchange.

DREIT-DREIT. [DROIT-DROIT.]

DRIFT OF THE FOREST (Lat. *Agitatio animalium in forestâ*). An exact view or examination what cattle are in the forest, that it may be known whether it be over-charged or not, and whose the beasts be. *Cowel.*

DRINKHAM or **DRINKLEAN.** A contribution of tenants towards a *potatio* or ale, provided to entertain the lord or his steward. *Cowel.*

DROPLAND or **DRYFLAND.** An ancient yearly payment made by some to their landlords, for driving their cattle through the manor to fairs and markets. *Cowel.*

DROIT. A French word, answering to the Latin *jus*, and signifying either (1) a right; or (2) law, as used in such phrases as "the law of nations," &c.

DROIT D'AUBAINE. [ALBINATUS JUS.]

DROIT-DROIT. A double right, that is, the right of possession and the right of property. *Cowel;* 2 *Bl.* 199. These two rights were, by the theory of our ancient law, distinct; and the above phrase was used to indicate the concurrence of both in one person, which concurrence was necessary to constitute a complete title to land.

DROITS OF ADMIRALTY. A word applied to ships of the enemy taken by a subject in time of war without commission from the Crown. Any such prize would, by the effect of the prerogative, become an admiralty *droit*, or a right of the admiralty. 2 *Steph. Com.* 494.

DROITURAL ACTIONS include the "writ of right," and all actions in the nature of a writ of right, as opposed to *possessory* actions. [ACTIONS ANCESTRAL, POSSESSORY, AND DROITURAL; WRIT OF RIGHT.]

DRY EXCHANGE (Lat. *Cambium siccum*) seemeth to be but a subtle term invented to disguise a foul usury, in which something is pretended to pass on both sides, whereas in truth nothing passes but on one side. *T. L.; Cowel.*

DUBITANTE (doubting). A word used in legal reports to signify that a judge cannot make up his mind as to the decision he should give.

DUCES TECUM (bring with thee). A writ commanding a person to appear at a certain day in court, and to *bring with him* some writings, evidences, or other things, which the court would view. *T. L.; Cowel;* 3 *Steph. Com.* 531.

DUCES TECUM LICET LANGUIDUS. A writ formerly directed to a sheriff, upon a return (*i. e.*, upon his having made a statement endorsed on a previous writ) that he could not bring his prisoner without danger of death, commanding him to bring him nevertheless. Now quite obsolete. *Toml.*

DUCHESS OF KINGSTON'S CASE. This was the case of the trial of Elizabeth, calling herself Dowager Duchess of Kingston, for bigamy, before the House of Peers in Westminster Hall, in full parliament assembled, on the 15th, 16th, 19th, 20th and 22nd days of April, 1776, for bigamy, in that, on the 8th of March, 1769, being then the wife of Augustus John Hervey, she married the Duke of Kingston. Augustus John Hervey having succeeded to the Earldom of Bristol, the accused was tried by the House of Lords. She contended that the alleged first marriage was void, having been so declared in the Spiritual Court. In answer, however, to the Lords, the judges declared it to be their opinion—1. That the sentence of the Spiritual Court was no conclusive evidence for the defendant upon the indictment. 2. That in any case the counsel for the Crown might avoid its effect, by proving the same to have been obtained by fraud or collusion.

The Duchess was convicted, but, this being a "clergyable" offence, the punishment in the case of an ordinary person would for the first offence of the kind be to be burned in the hand. [BENEFIT

DUCHESS OF KINGSTON'S CASE—*contd.*

OF CLERGY.] She, however, was not only allowed "clergy," but also the privilege of peerage, in being discharged without punishment; but with a caution from the Lord High Steward, that another offence of the same kind would be capital. *Howell's State Trials*, 551, *Vol. XX. p.* 356; *Smith's Leading Cases, Vol. II.*

DUCHY COURT OF LANCASTER. A special jurisdiction held before the chancellor of the duchy or his deputy concerning equitable interests in lands holden of the king in right of the Duchy of Lancaster. 3 *Bl.* 78; 3 *Steph. Com.* 347, *n.* [CHANCELLOR, 2.]

DUCKING STOOL. [CASTIGATORY FOR SCOLDS.]

DUEL is where two persons engage in a fight with intent each to murder the other. 4 *Bl.* 145, 199; 4 *Steph. Com.* 252. [See also the next Title.]

DUEL, TRIAL BY. The same as trial by battel. 4 *Bl.* 346; 4 *Steph. Com.* 4, *n.* [WAGER OF BATTEL.]

DUKE. 1. An ancient elective officer among the Germans, having an independent power over the military state. 1 *Bl.* 409; 2 *Steph. Com.* 583.

2. The first title of nobility next to the royal family. No subject was honoured with this title till the time of Edward III., who, in the eleventh year of his reign, created his son, Edward the Black Prince, Duke of Cornwall. 1 *Bl.* 397; 2 *Steph. Com.* 602.

DUM BENE SE GESSERIT (so long as he shall behave himself well). Words used to signify that the tenure of a judgeship or other office is to be held during good behaviour, and not at the pleasure of the Crown or any subject.

DUM FUIT INFRA ÆTATEM (whilst he was within age). A writ that lay for him who, having, before he came of full age, made a conveyance of his lands, desired to recover them again from him to whom he conveyed them. *T. L.; Cowel.*

Abolished by stat. 3 & 4 Will. 4, c. 27, s. 36.

DUM FUIT IN PRISONA. A writ similar to the preceding, for enabling a man to recover lands which he had conveyed away under duress of imprisonment. Abolished by stat. 3 & 4 Will. 4, c. 27, s. 36.

DUM FUIT NON COMPOS MENTIS. A writ that lay for a man who had aliened (*i. e.*, conveyed away) his lands while in an unsound state of mind. *Cowel.* The author of *Termes de la Ley*, however, says that the writ lay only for *the heir* of such lunatic person, for that a man should not be allowed to disable himself. The point is now of no importance, as the writ, having been long obsolete, was abolished by stat. 3 & 4 Will. 4, c. 27, s. 36.

DUM SOLA (while single). An expression used to indicate the period of a woman being unmarried or a widow, and therefore not labouring under the disabilities of "coverture." [COVERTURE.]

DUMPOR'S CASE, decided in 1603, is the leading case on the subject of conditions by tenants not to alien their interest without their landlord's licence. In that case the President and Scholars of Corpus Christi College, Oxford, made a lease to B., with a proviso that if B. or his assigns should alien or convey away the premises to any one without the special licence of the college, his lessors, the latter should be at liberty to re-enter. They afterwards, by deed, gave him licence to alien or demise to any person whatever, which he accordingly did, and the person to whom the lease was assigned bequeathed it to his son, whose representative *made a further assignment*. The question was whether this further assignment entitled the college to re-enter, and it was decided that it did not; that the condition had been put an end to by the first alienation by licence, and therefore was binding no longer.

The doctrine of *Dumpor's case* has now been superseded by Lord St. Leonards' Act of 1859, stat. 22 & 23 Vict. c. 35, s. 1, by which every such licence to alien is to extend only to the permission actually given, unless otherwise specified in such licence. *Wms. R. P.; Fawcett, L. & T.* 243.

DUODECIMA MANU was when a man was defended by the oath of twelve persons, in the proceeding called *wager of law*. 3 *Bl.* 343. [WAGER OF LAW.]

DUPLEX QUERELA (double complaint or quarrel). A complaint in the nature of an appeal from the ordinary to his next immediate superior, as from a bishop to an archbishop. 3 *Bl.* 247; 3 *Steph. Com.* 417. This complaint is available to a clergyman who, having been presented to a living, is refused institution by the ordinary.

DUPLICATE. 1. Second letters patent granted by the Lord Chancellor in a case wherein he had formerly done the same. *T. L.; Cowel.*

2. Any copy or transcript of a writing. *Cowel.*

DUPLICITY IN PLEADING. [DOUBLE PLEA.]

DURANTE ABSENTIA. [ADMINISTRATOR.]

DURANTE LITE, or PENDENTE LITE. During the continuance of a suit. 2 *Bl.* 503; 2 *Steph. Com.* 197. [ADMINISTRATOR.]

DURANTE MINORE ÆTATE. During minority. 2 *Bl.* 503, 504; 2 *Steph. Com.* 196. [ADMINISTRATOR.]

DURANTE VIDUITATE (during widowhood). Words used with reference to an estate granted to a widow until she marries again. 1 *Steph. Com.* 255, 260; *Wms. R. P.*

DURBAR, in India, is a court, audience, or levee. *Wilson's Gloss. Ind.*

DURESS (Lat. *Durities*). A constraint. Of this there are two kinds.

1. Actual imprisonment, where a man actually loses his liberty.

2. Duress *per minas* (by threats), where the hardship is only threatened and impending. 1 *Bl.* 130, 131, 136; 1 *Steph. Com.* 140, 141, 147.

DURHAM. Formerly one of the counties palatine, in which the Bishop of Durham had *jura regalia* as fully as the king in his palace. 1 *Bl.* 118. [COUNTY PALATINE.] But the palatinate jurisdiction of the Bishop of Durham is taken away by stat. 6 & 7 Will. 4, c. 19, and vested as a franchise or royalty in the Crown. And the jurisdiction of the Court of Pleas of Durham, the relic of the palatinate jurisdiction, is transferred by the Judicature Act, 1873, to the Supreme Court of Judicature, from the time that that Act comes into operation. 1 *Steph. Com.* 129—131. [SUPREME COURT OF JUDICATURE.]

DUTCHY COURT OF LANCASTER. [DUCHY COURT OF LANCASTER.]

DYER. A learned lawyer, and Lord Chief Justice of the Common Pleas in Queen Elizabeth's time, who wrote a book of great account, called his "Commentaries," or "Reports." *Cowel; 1 Steph. Com.* 50.

Sir James Dyer was born at Roundhill, in Somersetshire, about the year 1512. He was educated at Broadgate's Hall, Oxford, on the site of which Pembroke College was afterwards founded, and went from thence, first to New Inn, and then to the Middle Temple. He was called to the bar about the year 1537, and in 1552 was made serjeant-at-law. In March, 1553, he was returned as member for Cambridgeshire, and was elected speaker of the last parliament of Edward's reign. Shortly afterwards he became recorder of Cambridge. In May, 1557, he was constituted a judge of the Common Pleas, of which court he became Chief Justice on January 22, 1559. In this office he continued till his death, which took place on March 24, 1582. *Life of Sir James Dyer, prefixed to Vaillant's Edition of his Reports,* 1794; *Foss' Judges of England.*

"DYING WITHOUT ISSUE." These words, in a will executed since the 1st of Jan., 1838, are held, under sect. 26 of the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), to refer only to the case of a person dying and leaving no issue behind him *at the date of his death.* Prior to that time the words were held to refer to the case of death and *subsequent failure of issue* at an indefinite time afterwards, however remote; by which interpretation many dispositions were held void for remoteness, and testators' intentions defeated in many ways. 1 *Steph. Com.* 609—612; *Wms. R. P.*

DYVOUR (Lat. *Debitor*). An old Scotch term for a bankrupt.

E CONVERSO. Conversely, contrariwise.

EALDER or EALDING. An elder. [ADELING.]

EALDERMAN or EALDORMAN, among the Saxons, was as much as earl among the Danes. It is as much as an elder or statesman, called by the Romans *senator. Cowel.* [ALDERMAN.]

EALHORDA. The privilege of assizing and selling beer. It is mentioned in a charter of King Henry II. to the abbot of Glastonbury. *Toml.*

EARL. An ancient title of nobility, equivalent to *ealdorman* among the Saxons. Earls were also called *schiremen,* because they had each the civil government of a several division or shire. The word is now become a mere title of honour. 1 *Bl.* 398; 2 *Steph. Com.* 603. [COUNT, 1; COUSIN.]

EARL MARSHAL. The officer who, jointly with the Lord High Constable, presided over the Court of Chivalry. 3 *Bl.* 68; 4 *Bl.* 268; 3 *Steph. Com.* 335, *n.* [COURT OF CHIVALRY.]

EARLDOM. The *status* of an earl; but originally the jurisdiction of an earl. [DOME.]

EARMARK. A mark for the purpose of identifying anything which is a subject of property.

EARNEST. The evidence of a contract of sale; money paid as part of a larger sum, or goods delivered as part of a larger quantity; or anything given as security to bind a bargain. *Statute of Frauds* (29 *Car.* 2, *c.* 3), *s.* 17; 2 *Bl.* 447, 448; 2 *Steph. Com.* 69, *n.*

EASEMENT. A right enjoyed by a man over his neighbour's property; such as a right of way, or a right of passage for water; called in the Roman law a *servitude*. Generally (and, according to some authorities, necessarily) it belongs to a man as being the owner of some specific house or land, which is then called the *dominant tenement*. 1 *Steph. Com.* 648; *Gale on Easements*. [DOMINANT TENEMENT; SERVITUDE.]

EAST INDIA COMPANY. A body originally incorporated by the name of "The United Company of Merchants of England trading to the East Indies," but afterwards known by the shorter name of the East India Company. Though first instituted for purposes purely commercial, they gradually acquired immense territorial dominions, by which they became effectively (though subject to the undoubted supremacy of the British Crown) the sovereigns of India. Their exclusive right of trading to India was abolished, in 1833, by the stat. 3 & 4 Will. 4, c. 85, and they were debarred from engaging, in the future, in commercial transactions. In 1858, by stat. 21 & 22 Vict. c. 106, the political powers and rights of the East India Company were transferred to the Crown; and by stat. 36 & 37 Vict. c. 17, passed in 1873, the company was dissolved as from the 1st of June, 1874. 1 *Steph. Com.* 110—114.

EASTER DUES AND OFFERINGS are payments made by parishioners to their clergy, in pursuance of s. 10 of stat. 2 & 3 Edw. 6, c. 13 (being an Act for the payment of tithes), by which it is provided "that all and every person and persons, which by the laws and customs of this realm ought to make and pay their offerings, shall yearly from henceforth well and truly content and pay his or their offerings to the parson, vicar, proprietor, or their deputies or farmers of the parish or parishes where it shall fortune or happen him or them to dwell or abide; and that at such four offering days, as at any time heretofore within the space of four years last past" (A.D. 1545—1549) "hath been used and accustomed for the payment of the same, and, in default thereof, to pay for their said offerings at *Easter* then next following."

No such provision appears in the Prayer Book of 1548-9, which was sanctioned by a previous Act of the same session (2 & 3 Edw. 6, c. 1). But in the Prayer Book of 1552 we find the same rubric on the matter at the end of the Communion office as is to be found in our present Book of Common Prayer:—"And yearly at Easter, every parishioner shall reckon with his parson, vicar, or curate, or his or their deputy or deputies; and pay to them or him all ecclesiastical duties, accustomably due, then and at that time to be paid."

The origin of these offerings, which, as above stated, are now payable at Easter, is involved in some obscurity. It is by some supposed they are a composition for *personal tithes*, which were never due of common right, but only by special custom. And it was distinctly laid down in 1733, in the case of *The King* v. *Reeves* (2 *Eagle & Young's Tithe Cases*, 55), that offerings are due by custom only; and that where the custom is doubtful, the spiritual court can have no jurisdiction. If, however, there is no dispute about the custom, Easter offerings may be sued for in the spiritual court. See *Cripps' Law of the Church and Clergy, Bk. II. ch.* 3; *Phillimore's Eccl. Law*, 1596—7. [CIRCUMSPECTE AGATIS; DOMINICALS.]

EASTER TERM. A law term beginning on the 15th of April, and continuing ordinarily till the 8th of May. If, however, the days intervening between the Thursday before and the Wednesday after Easter Day should fall in Easter term, the term may be prolonged so late as the 13th of May. This is by stat. 11 Geo. 4 & 1 Will. 4, c. 70, passed in 1830. Before that period, Easter term depended exclusively upon the moveable feast of Easter. From the coming into operation of the Judicature Act, 1873, that is, from Nov. 2nd, 1875, the division

EASTER TERM—*continued.*

of the legal year into terms is abolished so far as concerns the administration of justice. 3 *Steph. Com.* 482—486; *Lush's Pr.* 349.

EASTERLING. [STERLING.]

EAT INDE SINE DIE. A form of words indicating that a defendant may be dismissed from an action, and "go without day," that is, without any future day appointed for his re-appearance. *Toml.*

EAVES-DROPPERS are such as listen under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales. 4 *Bl.* 168; 4 *Steph. Com.* 276.

EBEREMURDER (Lat. *Apertum murdrum*). Open murder; a crime, by the laws of Henry I., not to be expiated by any money payment. *Cowel.* [ABEREMURDER.]

ECCLESIA. A church or place set apart for the service of God. Sometimes it means a parsonage. *Cowel.*

ECCLESIASTICAL COMMISSIONERS. A body of commissioners appointed to consider the state of the several dioceses, with reference to the amount of their revenues, and the more equal distribution of episcopal duties; also the best means of providing for the cure of souls in parishes. The first commissioners for this purpose were Royal Commissioners, appointed in 1835; and the statute incorporating the Ecclesiastical Commissioners is stat. 6 & 7 Will 4, c. 77, passed in 1836. It has been amended by various subsequent statutes. The Ecclesiastical Commissioners now comprise the bishops and the chief justices, and other persons of distinction. 2 *Steph. Com.* 748—754.

ECCLESIASTICAL CORPORATION. A corporation of which the members are entirely spiritual persons, such as bishops, parsons, deans and chapters, archdeacons, &c. 1 *Bl.* 470; 3 *Steph. Com.* 5, 6. The visitor of an ecclesiastical corporation is the ordinary. 1 *Bl.* 480; 3 *Steph. Com.* 25.

ECCLESIASTICAL COURTS are the Archdeacon's Court, the Consistory Court, the Court of Peculiars, and the Court of Arches. These are the ecclesiastical courts proper; but there is also the Court of Final Appeal, which used to be the Court of Delegates, but is now the Judicial Committee of the Privy Council. This appellate jurisdiction may, after the Judicature Act (36 & 37 Vict. c. 66) has come into operation, be transferred by Order in Council to the Court of Appeal established under that Act. In appeals from the ecclesiastical courts the Court of Appeal is to be assisted by certain of the archbishops and bishops as assessors. 3 *Steph. Com.* 305—309. [JUDICIAL COMMITTEE; SUPREME COURT OF JUDICATURE.]

ECCLESIASTICAL LEASING ACT, 1858. The statute 21 & 22 Vict. c. 57, enabling the Ecclesiastical Commissioners to sanction leases made by ecclesiastical corporations. 2 *Steph. Com.* 738.

EDICTAL CITATION, in Scotch law, is a citation against a "foreigner" (that is, a person not a Scotchman), who is not within Scotland, but who has a landed estate in Scotland; or against a native of Scotland who is out of Scotland. It was formerly published at the market cross of Edinburgh, and the pier and shore of Leith. *Bell.* But now, by the stat. 6 Geo. 4, c. 120, s. 51, passed in 1825, all citations against persons "forth of" (*i.e.*, outside of) Scotland must be given at the Record Office of the Court of Session, as required by the Act. See also stat. 1 & 2 Vict. c. 118, ss. 20—22.

EFFECTS. Goods and chattels; a man's property.

EFFECTUAL ADJUDICATION, in the law of Scotland, is described as "an adjudication which has been completed as a feudal right in the person of the adjudger," and as corresponding to a "completed *elegit*" in English law. *Paterson.* [ADJUDICATION; ELEGIT.]

Thus A., a creditor of B., obtains a decree of a court of justice, making an estate of B. security for the payment of the debt. This does not prevent B. from at once discharging the incumbrance and redeeming his land by payment of the debt. But when the legal time for payment has expired [EXPIRY OF THE LEGAL], and payment has not been made, A. may take proceedings to have it declared that B. has forfeited his right of redemption; and, if B. still fails to pay, the declaration sought for will be made; and, on the completion of certain legal formalities, the "adjudication" will become "effectual."

EFFEERERS. Persons formerly appointed to sit and assess fines in court leet. *Toml.* [AFFEERERS.]

EFFEIRING, in the language of the Scotch law, signifies *corresponding to*, or *relating to*. *Wm. Bell; Paterson.*

EFFRACTORES. Burglars that break open houses to steal. *Cowel.*

EGYPTIANS. Wandering impostors and jugglers, using no craft nor feat of merchandise, pretending to tell men's and women's fortunes, and by craft and subtlety defrauding the people of their money. Such persons, remaining one month within this kingdom, were formerly liable to capital punishment. *Stat.* 22 *Hen.* 8, *c.* 10; 4 *Bl.* 165, 166; 4 *Steph. Com.* 288, *n.* They are now generally called gypsies.

EIGNE (Fr. *Aisné* or *Aîné*). The eldest. [BASTARD EIGNE.]

EIK TO A REVERSION. 1. A writing whereby a mortgagor of land in Scotland makes the land a security for a second or further advance of money by the mortgagee. *Erskine.*

2. The additional loan so advanced. *Bell.*

EIK TO A TESTAMENT, in Scotch law, is an addition or supplement to the inventory made up by an executor of the goods of the deceased. *Bell; Paterson.*

EINECIA. From the French *Aisné* or *Aîné*, first-born; and signifies, in the common law, *eldership*. *Jus einecie* is the right of primogeniture. *T. L.; Cowel.*

EIRE (Lat. *Iter*). A journey. [EYRE.]

EJECIT INFRA TERMINUM. "He ejected him before the end of his term." [QUARE EJECIT INFRA TERMINUM.]

EJECTIONE CUSTODIÆ. A writ which lay against him that cast out the guardian from any land during the minority of the heir. *Cowel.*

EJECTIONE FIRMÆ. A writ which lay for a lessee for a term of years, that was cast out before his time expired. *Cowel.* This action was brought against the wrong-doer, whether he were the lessor of the land or not. The lessee had originally no remedy against the ejector but in *damages;* but, when the courts of equity began to oblige the ejector to make a *specific restitution of the land* to the party injured, the courts of law often adopted the same method of doing complete justice, and introduced a judgment to recover the "term," and a writ of possession thereupon. This method seems to have been settled in the reign of Edward IV. Hence Blackstone calls this *a mixed action*, somewhat between real and personal: for therein are two things recovered, as well restitution of the "term of years," as damages for the ouster or wrong. 3 *Bl.* 199–201; 3 *Steph. Com.* 393. [ACTIONS MIXED; ACTIONS REAL AND PERSONAL; EJECTMENT].

EJECTMENT. An action to try the title to land. This action arose out of the *ejectione firmæ*, and was probably suggested by the decision of the courts entitling the plaintiff in such action to an award of restitution of the "term" (*i. e.*, of his lease for years). The old regular form of bringing the action was as follows:—The claimant, whom we will call Smith, made a formal entry on the premises, and there, being in possession, delivered a lease to some person (Doe) as lessee, and left *him* in possession, and there he (Doe) stayed, till the prior tenant Brown, or some other person (Roe), turned him out. For this injury, Doe, the lessee, was entitled to his action of ejectment against the tenant, Brown or this *casual ejector* Roe, whichever it was that ousted him, to recover back his term and damages. But where the action was brought against Roe, the *casual ejector*, the court would not suffer the *tenant* Brown to lose his possession without an opportunity to defend it; so that, in order to recover the land, it was necessary to make the tenant Brown a defendant, if he wished it. And, in order to maintain the action, the plaintiff must make out four points—*title, lease, entry*, and *ouster;* that is—

1. A good title in the lessor (*i. e.*, Smith, the real claimant).
2. A good lease in the lessee (*i. e.*, Doe, the nominal plaintiff).
3. Entry by Doe, the lessee.
4. Ouster by Roe, the defendant.

Then the plaintiff should have judgment to recover his term and damages.

The method of trying titles to land which we have just described was based on a series of facts which, though merely colourable, were yet real facts; but in the method we are about to describe, which was invented by Lord Chief Justice Rolle in the 17th century, the declaration in the action was not even a statement of facts, but a mere string of fictions, complaining at the suit of a fictitious plaintiff, for example John Doe, against a

EJECTMENT—*continued.*

fictitious defendant, for example Richard Roe, that, a lease for a term of years having been made to Doe by the claimant, and Doe having entered thereupon, the defendant Roe ousted him, for which Doe claimed damages. And subjoined was a *notice to appear*, addressed to the tenant in possession, informing him that Roe was sued as a *casual ejector* only, and would make no defence, and advising him (the tenant in possession) to defend his own title; otherwise he, Roe, would suffer judgment to be had against him, and the tenant would be turned out of possession. In the next term the real claimant, called the *lessor of the plaintiff*, moved the court in the name of Doe, the fictitious plaintiff, for a *judgment against the casual ejector;* upon which motion, supported by affidavit of due service of the declaration, the court made a rule as of course for such judgment, unless the tenant in possession should appear and plead to issue, within the time therein mentioned. But the tenant in possession was not allowed so to appear, without having first signed, by his attorney, a *consent rule*, binding him to confess, at the trial of the cause:—

1. The lease made by the lessor of the fictitious plaintiff.

2. The entry of the fictitious plaintiff.

3. The ouster by himself, the tenant in possession.

Having done this, the tenant was allowed by the court to enter an appearance in his own name, and to plead not guilty. After this, the issue was made up and sent down to trial, as in an action on the demise of A. B., the lessor of the plaintiff, against C. D., the tenant in possession.

Under these circumstances, the *lease, entry* and *ouster* being admitted by the tenant in possession, the only question remaining to be tried was the *title* of the "lessor of the plaintiff." Thus the action of ejectment, which in its origin was one for the disturbance of the possession of a lessee, came ultimately to be the recognized method of trying titles to land. 3 *Bl.* 201—206; 3 *Steph. Com.* 392—394, 617—620.

These absurdities were abolished by the Common Law Procedure Act, 1852, which, by ss. 168—170, directs that a writ, in a prescribed form, is to be addressed, on the part of the claimant, to the person or persons in possession, by name, and generally "to all persons entitled to defend the possession" of the premises therein described; commanding such of them as deny the claimant's title to appear in court and defend the possession of the property. Not only the person to whom the writ is directed, but any other person (on filing an affidavit that he or his tenant is in possession, and obtaining the leave of the court or a judge), is allowed to appear and defend. 3 *Steph. Com.* 620—622; *Lush's Pr.* 273.

According to the rules and regulations under the Judicature Act, 1875 (stat. 38 & 39 Vict. c. 77), the plaintiff must indorse the writ of summons with a statement that he claims to recover possession of a house or farm, &c., describing it (Appendix (A.), Part II. sect. iv.). If the possession be vacant, service may, by Ord. IX. r. 8, be effected by posting the writ upon the door of the dwelling-house, or some conspicuous part of the property.

ELDER BRETHREN. The masters of the Trinity House, by whom the affairs of the corporation are managed. The list of the Elder Brethren is given in p. 123 of the Post Office London Directory, 1875. They include H. R. H. the Prince of Wales, Earl Russell, Lord Hampton, Earl Granville, the Duke of Richmond, Mr. Disraeli, Mr. Gladstone, Sir Stafford Northcote, Mr. Milner Gibson, Captain Farrers, Vice-Admiral Collinson, &c. [TRINITY HOUSE.]

ELECTION is when a man is left to his own free will to take or do one thing or another which he pleases. *Cowel.* But it is more frequently applied to the choosing between two rights by a person who derives one of them under an instrument in which an intention appears (or is implied by a court of law or equity) that he should not enjoy both. *Sm. Man. Eq.; Haynes' Eq.; Chute's Eq.*

The word is also commonly applied to the choosing of officers or representatives; especially the choosing, by a constituency, of some person or persons to represent it in parliament.

ELECTION COMMITTEES. Committees of the House of Commons formerly appointed for the purpose of determining the validity of elections in cases where a petition had been presented to the House, impugning the validity of an election on the ground of corrupt practices, or for any other cause. By the Parliamentary Elections Act, 1868 (stat. 31 & 32 Vict. c. 125), this jurisdiction is now exercised by a common law judge, without a jury, on petition to the Court of Common Pleas. *May's Parl. Pract.; 2 Steph. Com.* 378—380.

ELECTION JUDGE. A judge sitting under the Parliamentary Elections Act, 1868, to try an election petition. [ELECTION COMMITTEES.]

ELECTION PETITION. A petition complaining of an undue return of a member to serve in parliament. Such petitions were, before the year 1868, presented to the House of Commons; they are now presented to the Court of Common Pleas. *May's Parl. Pract.; 2 Steph. Com.* 378—380. [ELECTION COMMITTEES.]

ELEEMOSYNÆ. The possessions belonging to churches. *Cowel.*

ELEEMOSYNARY CORPORATION. A corporation constituted for the perpetual distribution of the free alms or bounty of the founder, to such persons as he has directed. Of this kind are hospitals and colleges. 1 *Bl.* 471; 3 *Steph. Com.* 7, 8.

ELEGIT. A species of execution, given by the Statute of Westminster the Second, 13 Edw. 1, c. 18. Before that statute, a man could only have the *profits* of lands of a debtor in satisfaction of his judgment, but not the *possession* of the lands themselves. The statute granted this writ (called an elegit because it is in the *choice* of a judgment-creditor whether he will sue out this writ or a *fieri facias*), by which the judgment-debtor's goods and chattels are appraised and delivered to the creditor in satisfaction of his debt. If they should prove insufficient, then one half of the debtor's lands of freehold tenure was further to be delivered over to the judgment-creditor, to hold until the debt was levied, or the debtor's interest therein had expired. But by stat. 1 & 2 Vict. c. 110, s. 11, it was provided that, under an *elegit*, the sheriff should deliver execution of *all* the debtor's lands, including those of copyhold or customary tenure.

The creditor, while in the enjoyment of an estate under a writ of *elegit*, is called *tenant by elegit;* and his estate is called an estate held by *elegit. T. L.; Cowel;* 2 *Bl.* 152, 161; 3 *Bl.* 418, 419; 1 *Steph. Com.* 297, 310—312; 3 *Steph. Com.* 586, 587; *Kerr's Act. Law; Hunt. Eq.; Stat.* 38 & 39 *Vict. c.* 77, *Sched. Ord. XLIII. r.* 1.

ELEMENTARY EDUCATION ACTS. 1. The stat. 33 & 34 Vict. c. 75, passed in 1870, to provide for elementary education in England and Wales.

2. The stat. 36 & 37 Vict. c. 86, passed in 1873, for the purpose of making certain alterations in the Act of 1870, above mentioned.

ELISORS. Two officers appointed to name a jury, in case neither the sheriff nor the coroners are indifferent and unexceptionable persons for the performance of such a duty. 3 *Bl.* 354, 355; 3 *Steph. Com.* 523, *n.*

ELOIGN or **ELOINE** (Fr. *Eloigner*). To remove or send away. *Cowel.* Thus, if goods liable to distress be carried out of a county, or concealed, the sheriff might "return" (*i. e.*, state by endorsement on the writ) that the goods are eloigned, *elongata*, carried to a distance, to places to him unknown. 3 *Bl.* 149; 3 *Steph. Com.* 423, *n.*

ELOIGNMENT. Withdrawal.

ELONGATUS. Withdrawn; of a man withdrawn from the sheriff's jurisdiction.

EMANCIPATION. A word which, in the Roman law, originally signified selling out of one's possession by the form of *mancipation.* By a law of the Twelve Tables, a father was not allowed to sell his son more than three times; and if a son was manumitted after being three times sold by his father, he became free. Afterwards, a threefold sale became a matter of form for giving freedom to a son; and hence the modern use of the word *emancipation.*

EMBARGO ON SHIPS. A prohibition issued by the Crown upon ships, forbidding them to go out of any port. 1 *Bl.* 270, 271; 2 *Steph. Com.* 507.

The term "embargo" is borrowed from the Spanish law procedure, and signifies *arrest* or *sequestration;* and it is applied to the seizure or detention of persons or property which happen to be within the territory of the nation at the time of seizure. The seizure of ships and cargoes under the authority of municipal law is spoken of as a *civil* embargo. An *international* embargo, on the other hand, is an act not of civil procedure, but of hostile detention. It may be made for the same object as *reprisals* are made upon the high seas, namely, for the satisfaction of a debt or the redress of an injury; and it may also be made by way of prelude to war. *Twiss' Law of Nations, Part II. s.* 12.

EMBEZZLEMENT. The appropriation by a clerk or servant of the property of his master. It differs from *larceny* properly so called, inasmuch as embezzlement is committed in respect of property which is not, at the time, in the actual or legal possession of the owner. 4 *Steph. Com.* 129, 130. [LARCENY.]

EMBLEMENTS. The profits of a crop which has been sown. The general rule as to emblements sown by an outgoing tenant, whose estate ends before harvest time, is, that the outgoing tenant or his representatives shall have the crop if the termination of the estate has arisen from the act of God or the will of the landlord, but not if the termination of the estate is due to effluxion of time, or any act of forfeiture committed by the tenant. *T. L.; Cowel;* 2 *Bl.* 122, 145, 403, 404; 1 *Steph. Com.* 258, 288, 289; *Fawcett, L. & T.* 298.

EMBRACEOR. A person guilty of embracery. *T. L.* [EMBRACERY.]

EMBRACERY. An offence consisting in the attempt to influence a jury corruptly to one side by promises, persuasions, threats, entreaties, money, entertainments, and the like. 4 *Bl.* 140; 4 *Steph. Com.* 226. Even to pre-instruct a jury is embracery. *T. L.; Cowel.*

EMENDALS. An old word used in the accounts of the Inner Temple, where so much in *emendals* at the foot of an account signifies so much in bank or stock of the house for the supply of all emergent occasions; but Spelman says it is what is contributed for the reparation of losses. *Cowel.*

EMINENT DOMAIN (Lat. *Dominium eminens*) is the right which every state or sovereign power has to use the property of its citizens for the common welfare. This right is the true foundation of the right of taxation. *Bowyer's Commentaries on Universal Public Law, p.* 227.

EMINENT RIGHT (Lat. *Jus eminens*). The right of a state over the persons and property of its citizens. This right, so far as it concerns property, is called "Eminent Domain." [See preceding Title.]

EMPANEL. [IMPANELLING A JURY.]

EMPARLANCE. [IMPARLANCE.]

EMPHYTEUSIS may be described as a perpetual lease. It was a right known in the Roman law, by which the perpetual use of land was given to a person for the payment of rent. *Bell; Maine's Ancient Law;* 1 *Steph. Com.* 176, *n.* See 3 *Bl.* 232.

EMPLEAD. [IMPLEAD.]

EN AUTER DROIT, or EN AUTRE DROIT, in another person's right; as, for instance, an executor holds property and brings actions in right of those entitled to his testator's estate.

ENABLING STATUTE. A statute enabling persons or corporations to do that which, before it was passed, they could not do. The phrase is used especially of the stat. 32 Hen. 8, c. 28, by which persons holding land in fee simple in right of their churches may make leases for three lives or twenty-one years, so as to bind their successors, provided they observe the several requisites and formalities prescribed by the statute. 2 *Bl.* 319; 2 *Steph. Com.* 734, 735.

ENDORSEE. [INDORSEMENT.]

ENDORSEMENT. [INDORSEMENT.]

ENDOWED GRAMMAR SCHOOLS. Schools having an endowment, in which Latin and Greek or either of such languages are taught; not, however, including the schools called *public schools.* Various acts have been passed of recent years with reference to these endowed grammar schools, called the Endowed Schools Acts. [See next Title.]

ENDOWED SCHOOLS ACTS. 1. The stat. 3 & 4 Vict. c. 77, passed in 1840, for improving the condition of the endowed schools; by which courts of equity were empowered to make decrees for extending the system of education in such schools to other branches of literature and science.

2. The stat. 23 Vict. c. 11, passed in 1860, by which the trustees or governors of any endowed school (subject to a variety of exceptions particularized in the Act) were enabled to make orders for the admission of children not belonging to the church or sect, according to whose doctrines or formularies religious instruction was to be afforded under the endowment.

3. The stat. 31 & 32 Vict. c. 32, passed in 1868, for annexing conditions to the appointment of officers in certain schools.

4. The stat. 32 & 33 Vict. c. 56, called "The Endowed Schools Act, 1869," by which her Majesty is empowered to appoint a paid board of commissioners, not exceeding three in number, for preparing draft schemes of educational endowment.

5. The stat. 36 & 37 Vict. c. 87, called "The Endowed Schools Act, 1873," an Act for amending the last-mentioned Act in some particulars. 3 *Steph. Com.* 99—102.

6. The stat. 37 & 38 Vict. c. 87, called

ENDOWED SCHOOLS ACTS—*continued.*

"The Endowed Schools Act, 1874," by which the powers of the Endowed Schools Commissioners are transferred to the Charity Commissioners; also provision is made for the increase in the number of the Charity Commissioners. [CHARITY COMMISSIONERS.]

7. Stat. 38 & 39 Vict. c. 29, passed in 1875, for continuing the Act of 1868.

ENDOWMENT signifies—

1. The giving or assigning dower to a woman. *Cowel*; 2 *Bl.* 135; 1 *Steph. Com.* 268. [DOWER.]

2. The setting or severing of a sufficient portion for a vicar towards his perpetual maintenance. *Cowel;* 1 *Bl.* 387; 2 *Steph. Com.* 712, 726.

3. Also any permanent provision for the maintenance of schools is called an *endowment.* 3 *Steph. Com.* 99—102.

4. And the word is now generally used of a permanent provision for any public object.

ENEMY GOODS, ENEMY SHIP. A maxim which would imply that goods of an enemy carried on board a neutral ship render the ship liable to confiscation as enemy's property. Such a doctrine was contended for by France in the 16th and 17th centuries, but never received general acceptance. *Twiss' Law of Nations, Part II. s.* 83.

ENEMY SHIP, ENEMY GOODS. A maxim which would imply that the fact of goods being in an enemy's ship renders them liable to confiscation as enemy's goods. This doctrine was sanctioned by various treaties between the years 1640 and 1780, but it has never been regarded as part of the general law of nations. It was repudiated at the Declaration of Paris of 1856, by which it is declared that neutral goods, other than contraband of war, are exempt from capture in enemy's ships. *Twiss' Law of Nations, Part II. ss.* 83, 86. [DECLARATION OF PARIS.]

ENFEOFF. To invest another with a freehold estate by the process of feoffment. [FEOFFMENT.]

ENFRANCHISE. To make free, to incorporate a man into a society or body politic. *Cowel.* [ENFRANCHISEMENT.]

ENFRANCHISEMENT signifies the incorporating of a man into any society or body politic. For example, he that by charter is made denizen of England is said to be *enfranchised;* and so is he that is made a citizen of London or other city, or burgess of any town corporate; so, a villein was *enfranchised*, when he was made free by his lord. *Cowel;* 2 *Bl.* 94; 1 *Steph. Com.* 217.

Enfranchisement is a word which is now used principally in three different senses:—

1. Of the manumission of slaves by their masters, or by an act of the supreme legislature within whose jurisdiction they are. 1 *Steph. Com.* 109.

2. Of giving to a borough or other constituency a right to return a member or members to parliament.

3. Of the conversion of copyhold into freehold, giving the lord of the manor a compensation in money, secured if necessary by a mortgage, in lieu of his manorial rights. 1 *Steph. Com.* 632, 645.

ENGLESCHERIE. The name given in the times of Canute and of William the Conqueror to the presentment of the fact that a person slain was an Englishman. This fact, if established, excused the neighbourhood from the fine they would have been liable to, had a Dane or a Norman been slain. *T. L.; Cowel;* 4 *Bl.* 195; 4 *Steph. Com.* 67.

ENGROSSING. 1. The getting into one's possession, or buying up, in gross or wholesale, large quantities of corn, or other dead victuals, with intent to sell them again. The total engrossing of any commodity, with intent to sell it at an unreasonable price, was an offence at common law. But this is abolished by stat. 7 & 8 Vict. c. 24, passed in 1844. 4 *Bl.* 158, 159; 4 *Steph. Com.* 266.

2. The fair copying by a clerk of a deed or other legal instrument.

ENLARGE. To *enlarge* frequently means to put off or extend the time for doing anything. Thus, enlarging a rule signifies extending the time for doing that which by a rule of court is required to be done. See *Lush's Pr.* 941, 942. [See also the following Title.]

ENLARGING AN ESTATE (Fr. *Enlarger l'estate*) is where a man's *estate* (*i. e.*, interest) in land is increased; as, for instance, where there is an estate in A. for life, with remainder to B. and his heirs, and B. releases his estate to A., A.'s estate is said to be *enlarged* into a fee simple. 2 *Bl.* 324; 1 *Steph. Com.* 518—520.

ENQUEST. An inquisition by jurors. [INQUEST.]

ENQUIRY, WRIT OF. [WRIT OF INQUIRY.]

ENROLMENT is the registering, recording, or entering of any lawful act in the *rolls*

ENROLMENT—*continued.*

of the Chancery. *Cowel.* Thus, for instance, bargains and sales of freeholds were, under the Statute of Enrolment (27 Hen. 8, c. 16, passed in 1536), required to be enrolled; so, by the Statute of Mortmain, 9 Geo. 2, c. 36, are conveyances to corporations; and so are disentailing deeds by the Act for the Abolition of Fines and Recoveries (3 & 4 Will. 4, c. 74). We also speak of the enrolment of decrees in Chancery, which may be done by a party who desires to appeal therefrom to the House of Lords, as there can be no further hearing in Chancery by way of appeal from an enrolled decree, except the enrolment be vacated by the Lord Chancellor, which will be done under special circumstances of fraud or irregularity, on the application of any party interested. *Hunt. Eq.*

ENROLMENTS, STATUTE OF. [ENROLMENT.]

ENTAIL, in legal treatises, is used to signify an estate tail, especially with reference to the restraint which such an estate imposes upon its owner, or, in other words, the points wherein such an estate differs from an estate in fee simple. [DISENTAILING DEED; ESTATE, I.; FINE, 1; RECOVERY.] And this is often its popular sense; but sometimes it is, in popular language, used differently, so as to signify a succession of life estates, as when it is said that "an entail ends with A. B.," meaning that A. B. is the first person who is entitled to bar or cut off the entail, being in law the first tenant in tail.

ENTERING APPEARANCE. This is a form by which a defendant submits to the jurisdiction of the court. In a chancery suit, the defendant or his solicitor leaves with the clerk of records and writs a slip of paper with words indicating that he enters an appearance at the suit of the plaintiff; the name and address of the solicitor being added. If the defendant fails to enter an appearance, the plaintiff may enter an appearance for him. *Hunt. Eq.*

The form of entering an appearance in an action at common law is almost precisely similar to that adopted in equity. See *Lush's Pr.* 391; *Kerr's Act. Law.*

The memorandum of appearance required under the Judicature Act, 1875, is substantially in the same form as the above. Appended to it is a statement that the defendant does, or does not, require a statement of complaint to be filed and delivered. *Stat.* 38 & 39 *Vict. c.* 77, *Sched. Ord. XII. and Appendix A. Part I. Form No.* 6.

ENTERING BILLS SHORT. This is when a banker, having received an undue bill from a customer, does not carry the amount to the credit of the latter, but notes down the receipt of the bill in the customer's account, with the amount and the time when due. Whether, however, any given bill is to be regarded as "a short bill" (that is, not to be treated as cash) must depend not so much upon whether it has been "entered short" as upon the surrounding circumstances, and the general mode of dealing between the parties. *Ex parte Sargeant*, 1 *Rose*, 153, 154; *Grant on Bankers.*

ENTERING CAUSE FOR TRIAL. This is done by a plaintiff in an action, who has given notice of trial, depositing with the proper officer of the court the *nisi prius* record, with the panel of jurors annexed. 3 *Steph. Com.* 518. See *Lush's Pr.* 548; *Stat.* 38 & 39 *Vict. c.* 77, *Sched. Ord. XXXVI. r.* 17. [NISI PRIUS RECORD.]

ENTERING JUDGMENT in an action takes place by transcribing the proceedings on a parchment roll, and depositing this roll, and filing it as a record in the office of the court. This is in practice performed, whenever it takes place, by the successful party, or his solicitor. 3 *Steph. Com.* 566; *Kerr's Act. Law*, 399. See *Stat.* 38 & 39 *Vict. c.* 77, *Sched. Ord. XLI.*

ENTERING SHORT. [ENTERING BILLS SHORT.]

ENTERPLEADER. [INTERPLEADER.]

ENTIRE TENANCY signifies a sole possession in one man, in contradistinction to a several tenancy, which implies a tenancy jointly or in common with others. *Cowel.*

ENTIRETY. Denotes the whole as contradistinguished from a moiety, &c. *Cowel.*

ENTRY signifies—

1. Putting down a mercantile transaction in a book of account.

2. The taking possession of lands or tenements. *Cowel.* [See the following Titles.]

ENTRY AD COMMUNEM LEGEM. [COMMUNEM LEGEM.]

ENTRY AD TERMINUM QUI PRÆTERIIT. [AD TERMINUM QUI PRÆTERIT.]

ENTRY CAUSA MATRIMONII PRÆLOCUTI. [CAUSA MATRIMONII PRÆLOCUTI.]

ENTRY, FORCIBLE. [FORCIBLE ENTRY.]

ENTRY IN CASU CONSIMILI. [CASU CONSIMILI.]

ENTRY IN CASU PROVISO. [CASU PROVISO.]

ENTRY, RIGHT OF. A right to enter and take possession of lands or tenements without bringing an action to recover the same; a remedy allowed in various cases by common or statute law, or the deed by which an estate (*i. e.*, a person's interest in land) is marked out and limited. See 3 *Bl.* 5, 174—184; 3 *Steph. Com.* 510.

ENTRY SINE ASSENSU CAPITULI was a writ of entry which lay where an abbot, prior, etc. aliened lands or tenements of the right of his church, without the assent of the convent or chapter, and died. Then the successor had this writ against the alienee, to recover the lands. *Cowel.* [ENTRY, WRIT OF.]

This, being a real action, is abolished by stat. 3 & 4 Will. 4, c. 27, s. 36, passed in 1833.

ENTRY SUR DISSEISIN EN LE QUIBUS. [DE QUIBUS SUR DISSEISIN.]

ENTRY, WRIT OF. A writ by which a party claiming the right of possession to lands disproved the title of the tenant or possessor, by showing the unlawful means by which he entered or continued possession, by *intrusion*, or *disseisin*, or the like. If a writ of entry was brought against the party that did the WRONG, it charged the tenant himself with the injury. But if such wrong-doer had made any alienation of the land, or if it had descended to his heir, that circumstance it was necessary to allege in the writ. One such alienation or descent made the first degree, called the *per*, because the form was "*non habuit ingressum nisi* per *Gulielmum*" (he had not entry except *through* William), &c. A second alienation or descent made the *per* and *cui*, because the form was "*non habuit ingressum nisi* per *Ricardum*, cui *Gulielmus illud dimisit*" (he had not entry except *through* Richard, *to whom* William demised it), &c. If more than two degrees were passed, the party complaining was barred of his *writ of entry*, and driven to his *writ of right*, a long and final remedy, to punish his neglect in not sooner putting in his claim. But the statute of Marlbridge, 52 Hen. 3, c. 29 (passed in 1267-8), extended the writ of entry beyond these degrees. In such case it was called a writ of entry in the *post*, because the words were "*non habuit ingressum nisi post intrusionem quam Gulielmus in illud fecit*" (he had not entry except *after* the intrusion which William made upon it).

A writ of entry was called a writ of entry *sur disseisin, sur intrusion, sur alienation*, &c., according to the circumstances of the case. 3 *Bl.* 180—182; 3 *Steph. Com.* 391—394.

Writs of entry, having been long superseded in practice by the action of ejectment [EJECTMENT], were abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

ENURE. To take effect, operate, result, or be available. *T. L.; Cowel.* When we say that a transaction enures to the benefit of A. B., we mean that A. B. gets the benefit of it.

EO NOMINE. In that name; on that account.

EPISCOPAL AND CAPITULAR ESTATES ACT, 1851. The statute 14 & 15 Vict. c. 104, also called the Capitular and Episcopal Estates Act. 2 *Steph. Com.* 738.

EPISCOPALIA. Synodals and other customary payments from the clergy to their bishop or diocesan, which dues were formerly collected by the rural deans, and by them transmitted to the bishop. *Cowel.*

Provision is now made by stat. 23 & 24 Vict. c. 124, s. 2, passed in 1860, for the payment of these emoluments to the Ecclesiastical Commissioners. [ECCLESIASTICAL COMMISSIONERS.]

EQUES AURATUS (gilded knight) is taken to signify a knight, and termed *auratus*, because anciently none but knights might beautify and gild their armour, or other habiliments of war. *Cowel.*

EQUITABLE ASSETS. Assets of a deceased person, which cannot be made available to a creditor of the deceased but through the medium of a court of equity. [ASSETS.]

EQUITABLE DEFENCE. A defence to an action at common law on *equitable* grounds; that is, on grounds which, prior to the passing of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), would have been cognizable only in a Court of Equity. *Stat.* 17 & 18 *Vict. c.* 125, *ss.* 83—85; *Lush's Pr.* 463; *Kerr's Act. Law.*

EQUITABLE ESTATE. An estate in land not fully recognized as such except in a Court of *Equity*. 1 *Steph. Com.* 230, 308, 309, 356; *Wms. R. P.*

It must not be supposed, however, that courts of law *never* take any cog-

EQUITABLE ESTATE—*continued.*

nizance of equitable rights. Thus, for instance, a trustee defrauding the parties "equitably" entitled under the trust, may be criminally prosecuted in a court of law. *Stat.* 24 & 25 *Vict. c.* 96, *s.* 80; 4 *Steph. Com.* 133; *Cox & Saunders' Cr. Law*, 72. And for elections and other collateral purposes, the equitable estate may be recognized in a court of law.

EQUITABLE MORTGAGE. A mortgage recognized in a Court of Equity only. An equitable mortgage may be effected either by a written instrument, or by a deposit of title-deeds with or without writing. 3 *Steph. Com.* 305, *n.*; *Sm. Man. Eq.*

EQUITABLE WASTE. Waste hitherto cognizable only in a Court of Equity, as by a tenant for life pulling down a mansion-house, or felling timber standing for ornament, or doing other permanent injury to the inheritance. This kind of waste is forbidden, even to a tenant for life who holds *without impeachment of waste;* and this doctrine is recognized in the Judicature Act, 36 & 37 Vict. c. 66, s. 25, sub-s. 3, which came into operation in November, 1875. 3 *Steph. Com.* 406, 407; *Wms. R. P.; Haynes' Eq.; Chute's Eq.*

EQUITY is described by *Cowel* as being of two sorts, and these of contrary effects; for the one doth abridge and take from the letter of the law, the other doth enlarge and add thereto. And the instance of the first kind he gives is that of a person acquitted of a capital crime on the ground of insanity or infancy. The instance he gives of the latter is that of the application of a statute to *administrators*, which in its terms applies to *executors* only. [ADMINISTRATOR; EQUITY OF A STATUTE; EXECUTOR.]

But these usages of the term are comparatively rare at the present day. Perhaps we may define equity as that portion of English jurisprudence which, at least from the reign of Henry VIII. to the year 1841, was administered exclusively by the Court of Chancery and the Court of Exchequer, and since then by the Court of Chancery only; concurrently in some cases with local courts having a like jurisdiction, especially since 1865, when a so-called "equitable jurisdiction" was conferred upon the county courts.

The distinction (says Mr. Haynes) between equity in the technical sense and law, is truly matter of *history*, and not matter of *substance*. The short sum of the matter is this,—that the Court of Chancery recognizes certain rights and applies certain remedies, which the courts of law might have equally recognized and applied, but did not. *Haynes' Eq., Lect. I.*

Similarly, Mr. Chute speaks of equity as *a portion of law accidentally severed from the common law;* a separation arising from the reign of Richard II., when poor suitors took courage to appeal to the prerogative jurisdiction of the chancellor, as the representative of the king, for that redress which they could not get at common law. But the state of things, in which the conscience of the chancellor determined the administration of the equity system, has long passed away, and equity is in fact a part of law, deciding in its own sphere according to precedents and fixed rules. *Chute's Eq., Chap. I.* See also 3 *Bl.* 426—455; 3 *Steph. Com.* 446—465; *Goldsmith's Eq.* [SUPREME COURT OF JUDICATURE.]

EQUITY COURTS. The Court of Chancery in its various branches; also the courts which administer the system which, among the superior courts, is peculiar to the Court of Chancery. 3 *Bl.* 436—439; 3 *Steph. Com.* 446—465. [EQUITY.]

EQUITY DRAFTSMAN. A barrister who draws pleadings in equity.

EQUITY OF REDEMPTION. The right, cognizable in a court of equity, which a mortgagor has, on payment of the mortgage debt, with interest and costs, to *redeem* the mortgaged estate, even after the right of redemption is gone at law. 2 *Bl.* 158, 159; 1 *Steph. Com.* 306; *Sm. Man. Eq.; Goldsmith's Eq.* 130.

EQUITY OF A STATUTE. The sound interpretation of a statute, the words of which may be too general, too special, or otherwise inaccurate and defective. 3 *Bl.* 430, 431; 3 *Steph. Com.* 447, 448.

EQUITY SIDE OF THE EXCHEQUER. An expression applied to the Court of Exchequer sitting as a court of equity. The equitable jurisdiction of the Exchequer was abolished in the year 1841, by stat. 5 Vict. c. 5. 3 *Steph. Com.* 339. [COURT OF EXCHEQUER.]

EQUITY TO A SETTLEMENT is the right which a wife has in equity to have a portion of her equitable property settled upon herself and her children. This right was originally granted to the wife when the husband sued in a court of equity for the purpose of reducing the property into his possession, on the

EQUITY TO A SETTLEMENT—*continued.*

principle that he who seeks equity must do equity. It has, however, now for at least a century been settled that this equity may be asserted actively by the wife. *Lady Elibank* v. *Montolieu*, 1 *Wh. & T. L. C., Eq.; Smith's Man. Eq.* The amount to be settled on the wife and children is in the discretion of the Court, and varies according to circumstances.

ERIACH, in the Irish Brehon law, was a recompense given by a murderer to the friends of the deceased. 4 *Bl.* 313.

ERRANT (Lat. *Itinerans*, journeying) is a word attributed to justices that go on circuit, and to bailiffs travelling from place to place to execute process. *T. L.; Cowel.*

ERRATICUM. A waif or stray, a wandering beast. *Cowel.*

ERROR signifieth especially an error in pleading, or in the process; and the writ which is brought for remedy of this oversight is called a writ of error, or, in Latin, *breve de errore corrigendo* (a writ for correcting an error). A writ of error is that properly which lieth to redress false judgment given in any court of record. *T. L.; Cowel.* [FALSE JUDGMENT, WRIT OF.]

Bringing *error* is an appeal against the judgment, grounded either on the suggestion of some *fact* which renders the judgment erroneous, as, for instance, that the unsuccessful party was an infant, and appeared by attorney (whereas he ought to appear by his next friend or guardian); or on some error of *law* apparent on the face of the proceedings. Error in law is brought by delivering to one of the masters of the court a memorandum in writing, entitled in the court and cause, and signed by the party or his attorney, alleging that there is error in law in the record and proceedings. "Error" lies from any of the three courts at Westminster to the judges, or judges and barons, as the case may be, of the other two courts. The court composed of such judges is called the Court of Error in the Exchequer Chamber. From thence the writ of error may be taken to the House of Lords. *Lush's Pr.* 657; *Kerr's Act. Law.* See also 3 *Bl.* 406—411.

By rule 49 in the Schedule to the Supreme Court of Judicature Act, 1873, 36 & 37 Vict. c. 66, proceedings in error (*i. e.*, the technical proceedings above described) are abolished as from the commencement of the Act (Nov. 2nd, 1875). 3 *Steph. Com.* 580. See also *Stat.* 38 & 39 *Vict. c.* 77, *Sched. Ord. LVIII. r.* 1.

Writ of error lies also in criminal cases for notorious mistakes in the judgment or other parts of the record. These writs of error to reverse judgments in case of misdemeanors are not allowed of course, but on sufficient probable cause shown to the Attorney-General, whose decision on the matter is final. Writs of error to reverse judgment in felonies are allowed only *ex gratiâ*, and not without express warrant under the sign manual, or at least by the consent of the Attorney-General. 4 *Bl.* 391, 392; 4 *Steph. Com.* 464, 465.

ESCAMBIO. A licence granted to one for the making over a bill of exchange to another over sea. For by the stat. 5 Ric. 2, st. 1, c. 2, no merchant ought to exchange or return money beyond sea without the king's licence. *Cowel.*

This statutory provision is now repealed. *Stats.* 59 *Geo.* 3, *c.* 49, *s.* 11; 26 & 27 *Vict. c.* 125.

ESCAPE. A violent or privy evasion out of some lawful restraint. There are two kinds of escape: *voluntary*, which happens when a prisoner escapes with the consent of the keeper, sheriff, or other person who has him in charge; and *negligent*, where the escape is against the will of the sheriff or other such officer. *T. L.; Cowel;* 3 *Bl.* 415; 4 *Bl.* 129, 130; 4 *Steph. Com.* 227, 228. [PRISON-BREACH.]

ESCAPE-WARRANT. A warrant addressed to all sheriffs, &c. throughout England, to retake an escaped prisoner who is in prison for debt, and to commit him to gaol when taken, there to remain till the debt is satisfied. *Toml.* Imprisonment for debt is for the most part abolished by sect. 4 of the Debtors Act, 1869 (32 & 33 Vict. c. 62).

ESCHEAT. An obstruction of the course of descent, by which land naturally results back by a kind of reversion to the original grantor or lord of the fee.

Escheats are divided by Blackstone into escheats *propter defectum sanguinis*, and escheats *propter delictum tenentis*; the one sort, if a tenant dies without heirs; and the other, if his blood be attainted. This latter form differs from a forfeiture of goods and chattels in that a forfeiture always went to the Crown, but an escheat to the im

ESCHEAT—*continued.*

mediate lord (who might or might not be the king). 2 *Bl.* 251—254.

Now, by s. 1 of the Felony Act, 1870 (33 & 34 Vict. c. 23), no confession, verdict, inquest, conviction or judgment of or for any treason, or felony, or *felo de se*, shall cause any forfeiture or escheat.

So that escheat *propter delictum tenentis* is now abolished. 3 *Steph. Com.* 660; 4 *Steph. Com.* 10.

ESCHEATOR. An officer, formerly existing in every county, appointed by the Lord Treasurer. His duty was to observe the *escheats* due to the king in the county whereof he was escheator, and to certify the same into the Chancery or the Exchequer. *Cowel.*

ESCROW (Lat. *Scriptum*). A scroll or writing sealed and delivered to a person not a party thereto, to be held by him till some condition or conditions be performed by the party intended to be benefited thereby; and, on the fulfilment of those conditions, to be delivered to such party, and to take effect as a deed to all intents and purposes. 2 *Bl.* 307; 1 *Steph. Com.* 495.

ESCUAGE (Lat. *Scutagium*) in law signifieth a kind of knight's-service, called *service of the shield*, whereby the tenant was bound to follow his lord into the Scotch or Welsh wars at his own charge. But the above form of *escuage*, which was *uncertain* in its burdens, was changed in process of time into an *escuage certain*, whereby a yearly rent was paid in lieu of all services; which latter was *escuage* merely in name. But knight's service, with other military tenures, was abolished by stat. 12 Car. 2, c. 24, passed in the year 1660. *Cowel;* 2 *Bl.* 74, 75; 4 *Bl.* 422, 423; 1 *Steph. Com.* 201, 202; *Wms. R. P.* [KNIGHT-SERVICE.]

ESLISORS. The same as *elisors*. [ELISORS.]

ESNECY. A prerogative given to the eldest coparcener, to choose first after an inheritance is divided. *Cowel.* [COPARCENARY; EINECIA.]

ESPLEES (Lat. *Expletia*) seem to be the full profits that the ground or land yieldeth; as, the hay of the meadows, the feed of the pasture, the corn of the arable land; the rents, service, and such like issues. *T. L.; Cowel.*

ESQUIRE or **ESQUIER** (Lat. *Armiger;* Fr. *Escuier*, a word derived from the Latin *scutiger*, shield-bearer) was originally such a one as attended a knight in time of war, and did carry his shield. *Cowel.*

There are several sorts of esquires:—

1. The eldest sons of knights, and their eldest sons in perpetual succession.

2. The eldest sons of younger peers, and their eldest sons in like perpetual succession.

3. Esquires created by the king's letters patent, or other investiture, and their eldest sons.

4. Esquires by virtue of their offices; as justices of the peace, and others who bear any office of trust under the Crown, and are named "esquires" by the Crown in their commission or appointment.

5. Barristers-at-law.

6. Esquires of Knights of the Bath, each of whom constitutes three at his installation.

7. All foreign peers. 1 *Bl.* 406; 2 *Steph. Com.* 615—617.

ESSE. [IN ESSE.]

ESSENDI QUIETUM DE TOLONIO. [DE ESSENDO QUIETUM DE TOLONIO.]

ESSOIGN, ESSOIN, ESSOINE, or **ESSOIGNE,** (Lat. *Exoneratio*), signifieth in the common law the allegation of an *excuse* for him that is summoned or sought for to appear. *Cowel;* 3 *Bl.* 277. Thus *casting an essoign* means alleging an excuse for failing to appear. 3 *Steph. Com.* 605, 606, *n.* (*c*).

ESSOIN DAY OF TERM. The first day of term, on which the court sat to take *essoigns*, or excuses, for such as did not appear according to the summons of the writ. 3 *Bl.* 277, 278.

ESTATE. An interest in land. *Cowel.*

Estates may be variously classified:—

I. According to the *quantity* of interest. The primary division of estates is into such as are *freehold* and such as are *not freehold.*

The principal freehold estates are:—

1. Estates in fee simple.
2. Estates in fee tail, otherwise called estates tail.
3. Estates for life.

An *estate in fee simple* is that which a man hath to hold to him and his heirs. It is the most extensive estate of inheritance that a man can possess; it is the entire property in the land, and to it is attached the right of alienation to the full extent of the interest which is vested in the tenant himself, or for any smaller estate. For the limited form of this estate, called a "fee simple conditional," see CONDITIONAL FEE.

An *estate in fee tail* is that which a man hath to hold to him and the heirs

ESTATE—*continued.*

of his body, or to him and particular heirs of his body. By the statute *De Donis conditionalibus* (13 Edw. 1, st. 1, c. 1, passed in 1285), an estate so limited devolved, at the death of the donee, on his issue; and, on the failure of issue, reverted to the donor and his heirs. In the construction of this statute the judges held that the donee had an estate which they called a *fee tail*. This estate thus assumed the form of a perpetual entail until the reign of Edw. IV., when, in a celebrated case called *Taltarum's case*, it was held by the judges that an estate tail might be *barred* by the collusive and fictitious proceeding called a *common recovery* [RECOVERY], and thus turned into an estate in fee simple. And, in the reign of Hen. VIII., the process called a *fine* was made effectual to enable a tenant in tail to bar his issue, but not the remainderman or reversioner. [FINE, 1.] Fines and recoveries were abolished by stat. 3 & 4 Will. 4, c. 74, passed in 1833, and now an estate tail may in general be barred by a simple disentailing deed to be inrolled in Chancery within six months, in cases where it could, previously to the Act, have been barred by fine or recovery.

But estates tail of which the reversion is in the Crown cannot be barred so far as regards the reversion; and estates tail created by act of parliament cannot in general be barred. So, a tenant in tail after possibility of issue extinct cannot bar his estate. [TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINCT.]

An *estate for life* is in general an estate to one for his own life. But an estate during widowhood is also reckoned among estates for life.

In addition to these three kinds of estate we may notice the following kinds, which are less than freehold,—

4. An estate for years.
5. An estate at will.
6. An estate at sufferance.

An *estate for years* is often spoken of as "a term of years." The instrument by which it is created is called a *lease* or *demise*, and the estate itself is called a *leasehold interest*. It is generally made subject to covenants and conditions.

An *estate at will* is where lands and tenements are let by one man to another to have and to hold at the will of the lessor, and the tenant by force of this lease obtains possession.

An *estate at sufferance* is where one comes into possession under a lawful demise, and, after such demise is ended, wrongfully continues the possession.

Besides these several divisions of estates there is another species, called an *estate upon condition*; which is an estate whose existence depends upon the happening or not happening of some event. Under these are included,—

7. Estates held upon condition *implied*.
8. Estates held upon condition *expressed*.

Under these last may be included,—

9. Estates held in mortgage. [MORTGAGE.]
10. Estates by statute merchant or statute staple. [STATUTE MERCHANT; STATUTE STAPLE.]
11. Estates held by elegit. [ELEGIT.]

II. Estates may also be divided with regard to the *time* at which the quantity of interest is to be enjoyed. Thus, an estate may be,—

1. An estate in possession.
2. An estate in expectancy.

An estate in *possession* implies a right of present possession, involving a right of entry; that is, the right of entering upon and taking possession of the land withheld, where that can be done without breach of the peace. [POSSESSION.]

An estate in *expectancy* is of two kinds—an estate in *reversion* and an estate in *remainder*; the distinction between the two being as follows:—

1. When a person grants an estate for life, or other estate of limited interest to another, such estate is called a *particular estate*; and the residue remaining in the grantor is called his *reversion*.
2. When a person grants an estate for life, or other *particular estate*, to one man, and the residue to another, the interest of the latter is called a *remainder*, though it is often popularly spoken of as a *reversion*.

III. Estates may further be divided, with respect to the number and connection of their owners, into,—

1. Estates in severalty. [SEVERALTY.]
2. Estates in joint-tenancy. [JOINT-TENANCY.]
3. Estates in coparcenary. [COPARCENARY.]
4. Estates in common. [COMMON, TENANCY IN.] 2 *Bl.* 103—194; 1 *Steph. Com.* 229—355, 583; *Wms. R. P.*

ESTATES OF THE REALM are, according to *Blackstone* and *Hallam*,—

1. The lords spiritual.
2. The lords temporal, who sit together in one House of Parliament.
3. The commons, who sit by themselves in the other.

Some writers, however, have argued, from the want of a separate assembly and separate negative of the prelates, that the lords spiritual and temporal are now in reality only one estate; which is unquestionably true in every effectual sense, though the ancient distinction between them still nominally continues. 1 *Bl.* 153, 157; 2 *Steph. Com.* 326—331.

ESTERLING. [STERLING.]

ESTOP, TO. [ESTOPPEL.]

ESTOPPEL. An impediment or bar arising from a man's own conduct; whereby he is prohibited from averring or proving anything in contradiction to what he has either expressly avowed, or has by his conduct led others to believe to be the case.

Estoppels are most frequently mentioned with reference to statements in deeds to which a man has put his hand and seal. Such statements are generally conclusive, as between the parties thereto, of the facts therein stated. The doctrine of estoppel is not, however, allowed to cover a fraudulent or illegal contract. *Cowel;* 2 *Bl.* 295; 1 *Steph. Com.* 481, 482; 2 *Steph. Com.* 109; *Fawcett, L. & T.* 42.

ESTOVERIIS HABENDIS, WRIT DE. [ESTOVERS.]

ESTOVERS (*Estoverium*) signifieth nourishment or maintenance (*Cowel*); or wood for fuel, which a tenant for life is entitled to out of the estate. 1 *Steph. Com.* 253, 287, 288. [COMMON, IV.] Also, the alimony allowed by the Ecclesiastical Court to a wife was sometimes called her *estovers;* for which, if the husband refused payment, the wife had, at common law, a writ *de estoveriis habendis*, to recover them. 1 *Bl.* 441; 2 *Steph. Com.* 278, *n.*

ESTRAYS are such valuable animals as are found wandering in any manor or lordship, and no man knoweth the owner of them, in which case the law gives them to the king as the general owner and lord paramount of the soil; and they now most commonly belong to the lord of the manor, by special grant from the Crown. *T. L.; Cowel;* 1 *Bl.* 297, 298; 2 *Steph. Com.* 548.

ESTREAT (Lat. *Extractum*). 1. A true copy, or duplicate, of an original writing. *T. L.; Cowel.*

2. The *estreat of a recognizance* means the *extracting*, or taking out from among the other records, of a recognizance or obligation which has become forfeited, and sending it up to the Court of Exchequer, there to be enforced; or, in some cases, directing it to be levied by the sheriff, and returned by the clerk of the peace to the Lords of the Treasury. 4 *Bl.* 252, 253; 2 *Steph. Com.* 143, *n.* (*y*); *Oke's Mag. Syn.*

ESTREATED RECOGNIZANCE. [ESTREAT, 2.]

ESTREPE (Fr. *Estropier*, to maim). To commit waste. [ESTREPEMENT.]

ESTREPEMENT signifies waste or spoil made by a tenant for life upon any lands or woods, to the prejudice of the reversioner. For this there was a *writ of estrepement*, which lay to inhibit the tenant from making waste during a suit, or from making waste after judgment and before execution. The object of a writ of estrepement being attainable by a motion for an injunction in Chancery, the writ became obsolete. And as it was in aid of a *real action*, it is implicitly abolished by stat. 3 & 4 Will. 4, c. 27, s. 36. *T. L.; Cowel;* 3 *Bl.* 225, 226; 3 *Steph. Com.* 408, *n.*; *Haynes' Eq. Lect. IX.* [ACTIONS REAL AND PERSONAL.]

ET HOC PARATUS EST VERIFICARE ("and this he is prepared to verify"). Words formerly used at the conclusion of a common law pleading containing new affirmative matter. 3 *Bl.* 309.

ETHELING or **ATHELING.** A Saxon word signifying *noble. Cowel.*

EVES-DROPPERS. [EAVES-DROPPERS].

EVICTION. A recovery of land by form of law. *Toml.* It is also often used popularly as meaning a short notice to quit.

EVIDENCE. That which, in a court of justice, makes clear, or ascertains the truth of, the very fact or point in issue, either on the one side or on the other. *T. L.; Cowel;* 3 *Bl.* 367.

Any matter, lawfully deposed to on oath or affirmation, which contributes

EVIDENCE—*continued.*

(however slightly) to the elucidation of any question at issue in a court of justice, is said to be *evidence*. [CIRCUMSTANTIAL EVIDENCE; DIRECT EVIDENCE.]

Evidence is either *written* or *parol*; *written evidence* consists of records, deeds, affidavits, or other writings; *parol* or *oral evidence* consists of witnesses personally appearing in court, and in general sworn to the truth of what they depose. 3 *Steph. Com.* 531.

EVIDENCE AMENDMENT ACTS. 1. The stat. 6 & 7 Vict. c. 85, passed in 1843, allowing persons to be admitted as witnesses, notwithstanding interest in the question before the court. 2. The stat. 14 & 15 Vict c. 99, passed in 1851, making the *parties* in a civil cause competent and compellable witnesses. 3. The stat. 16 & 17 Vict. c. 83, passed in 1853, placing the wives and husbands of the parties (subject to certain qualifications) in the same position as the parties themselves. 4. The Evidence Further Amendment Act, 1869 (32 & 32 Vict. c. 68), by which the parties to any action for breach of promise of marriage, or to any proceeding instituted in consequence of adultery (excepted from the operation of the previous Acts) are made competent to give evidence therein. 3 *Steph. Com.* 534.

EX ABUNDANTI CAUTELA. From excessive caution.

EX ÆQUO ET BONO. According to equity and good conscience.

EX ASSENSU PATRIS. [ASSENSU PATRIS.]

EX CAPITE LECTI. [REDUCTION EX CAPITE LECTI.]

EX CONTRACTU. Actions *ex contractu* are actions arising out of breaches of contract, express or implied. 3 *Bl.* 117; 3 *Steph. Com.* 363.

EX DEBITO JUSTITIÆ. As a matter of right; in opposition to a matter for the favour or discretion of the court. Thus the improper rejection of evidence in an action is ground for a new trial as a matter of right, or *ex debito justitiæ*.

EX DELICTO, or EX MALEFICIO. Actions *ex delicto*, or *ex maleficio*, are actions founded on some wrong other than a breach of contract, express or implied.

EX GRATIA. As a matter of favour.

EX GRAVI QUERELA. A writ that lay for one to whom lands or tenements were devised by will, when the heir of the testator detained them from him. *Cowel.*

EX MERO MOTU. Words used in the king's charters and letters patent, to signify that he grants them of his own mere motion, without petition or suggestion from any other. *T. L.; Cowel.* [EX PROPRIO MOTU.]

EX OFFICIO. By virtue of an office. Any prerogative or jurisdiction which a person in office has, by virtue of that office, he is said to exercise *ex officio*. [See next Title.]

EX OFFICIO INFORMATION. 1. A criminal information filed by the Attorney-General *ex officio* on behalf of the Crown in the Court of Queen's Bench. This kind of information is filed for offences more immediately affecting the Government, and is to be distinguished from that class of informations in which the Crown is the nominal prosecutor at the suggestion of some private informer. 4 *Bl.* 308; 4 *Steph. Com.* 372—378.

2. The expression is also applied, though not very frequently, to informations filed by the Attorney-General in the Court of Chancery to have a charity properly established. 3 *Bl.* 427. See 3 *Steph. Com.* 72. [INFORMATION.]

EX PARTE. 1. Of the one part, one-sided. Thus, an *ex parte* statement is a statement of one side only. So, an injunction granted *ex parte* is an injunction granted after hearing one side only.

2. The phrase "*ex parte*" preceding a name in the heading of a reported case, indicates that the party whose name follows is the party on whose application the case is heard.

EX POST FACTO signifies something done so as to affect another thing that was committed before. Thus, a lease granted by tenant for life to endure beyond his life may be confirmed *ex post facto* by the reversioner or remainderman. An *ex post facto* law is a law visiting a *past* act with penal consequences.

EX PROPRIO MOTU. Of his own mere motion, spontaneously; as when a judge, without application from any party, orders a witness to be prosecuted for perjury, or commits him for trial. [EX MERO MOTU.]

EX PROVISIONE VIRI. Words used with reference to lands settled on a wife in tail by her husband, or on her and her husband by any of his ancestors. By

EX PROVISIONE VIRI—*continued.*

stat. 11 Hen. 7, c. 20, the wife could not, after her husband's death, suffer a recovery of such lands except with the consent of those in remainder or reversion. Now, however, under the Fines and Recoveries Abolition Act, she may execute a disentailing deed of such lands. 3 *Steph. Com.* 573, 583, *n.*; *Wms. R. P.* [DISENTAILING DEED; RECOVERY.]

EXACTION. A wrong done by an officer, or one pretending to have authority, in taking a reward or fee for that which the law allows not. *T. L.; Cowel.* [EXTORTION.]

EXAMINATION. 1. The interrogation of witnesses. The *examination-in-chief* of a witness is the interrogation of a witness, in the first instance, by the counsel of the party producing him. His examination by the opposing counsel is called his *cross-examination;* and his further examination by his own side, on points arising out of the cross-examination, is called his *re-examination.* See 3 *Bl.* 373.

2. The examination of a bankrupt is the interrogation of a bankrupt, by a court having jurisdiction in bankruptcy, as to the state of his property. 2 *Bl.* 481; 2 *Steph. Com.* 158; *Robson, Bkcy.*

3. The examination of a prisoner is the inquiry into the charge made against him by a police magistrate or justice of the peace, preparatory to his being committed for trial, in case there should appear to be a *primâ facie* case against him. 4 *Bl.* 351; 4 *Steph. Com.* 354.

4. The examinations of an articled clerk, for the purpose of testing his fitness to become an attorney and solicitor, are three in number: the "preliminary examination," at the commencement of his clerkship; the "intermediate examination," in the middle of it; and the "final examination," at the end of it.

EXAMINATION IN INITIALIBUS. The preliminary examination of a witness in Scotland, on matters affecting his competency, &c., answering to the "*voir dire*" of the English law. [VOIR DIRE.]

EXAMINERS IN CHANCERY. Two officers that examine upon oath witnesses produced on either side in Chancery suits, or the parties themselves. *T. L.; Cowel.* Sometimes some private person, usually a barrister, is appointed by the court as special examiner to take depositions. *Hunt. Eq.*

EXANNUAL ROLL. A roll into which the fines which could not be levied and the bad debts were formerly transcribed in the sheriffs' accounts in the exchequer. *Sir M. Hale on Sheriffs' Accounts* (*ed.* 1683), *p.* 67.

EXCAMBION. The exchange of one piece of land for another. *Bell.*

EXCEPTIO REI JUDICATÆ. An exception or defence to a suit or action on the ground that the same question has been already settled in a prior judicial proceeding.

EXCEPTION signifies—

1. An objection. Thus, for instance, an exception to a defendant's answer in Chancery is an objection taken to it for some cause allowed by the practice of the court, as insufficiency, or scandal and impertinence. 3 *Bl.* 448; 3 *Steph. Com.* 598; *Hunt. Eq.*

2. A saving clause in a deed, preventing certain things passing which would otherwise pass thereby. *Toml.*

3. In the Roman law, and in the Scotch law, the word means a defence. *Bell.*

EXCEPTION, DAY OF. The day (following the essoin day of term) on which the plaintiff might have entered an exception and obtained a *ne recipiatur* to prevent the defendant's essoign (or excuse) being received. *Toml.* [ESSOIGN; ESSOIN DAY OF TERM.]

EXCEPTIONS, BILL OF. [BILL OF EXCEPTIONS.]

EXCHANGE. 1. The place appointed for the exchange of bullion, gold, silver, plate, &c., with the king's coin. *Cowel.*

2. An exchange of land is a mutual grant of equal interest in lands or tenements, the one in consideration of the other; and is used peculiarly in our common law for that compensation which the *warrantor* must make to the *warrantee*, value for value, if the land warranted be recovered from the warrantee. *T. L.; Cowel;* 2 *Bl.* 323; 1 *Steph. Com.* 263, 515, 656.

EXCHANGE, BILL OF. [BILL OF EXCHANGE.]

EXCHEQUER. The department of State having the management of the royal revenue. It consists of two divisions, the first being the office of the receipt of the Exchequer, for collection of the royal revenue; the second being a court for the administration of justice. 2 *Steph. Com.* 528. [COURT OF EXCHEQUER.]

EXCHEQUER BILLS AND BONDS. Instruments issued by the Exchequer, under the authority, for the most part, of acts of parliament passed for the purpose; and containing an engagement, on the part of the Government, for the repayment of the principal sums advanced, with interest in the meantime. 2 *Steph. Com.* 574.

EXCHEQUER CHAMBER. [COURT OF EXCHEQUER CHAMBER.]

EXCHEQUER OF PLEAS. The Court of Exchequer sitting otherwise than as a court of revenue. See 3 *Steph. Com.* 339, 340. [COURT OF EXCHEQUER.]

EXCISE was a name formerly confined to the imposition upon beer, ale, cider and other commodities, being charged sometimes upon the consumption of the commodity, but more frequently upon the retail sale of it. *Cowel;* 1 *Bl.* 318; 2 *Steph. Com.* 565.

Under recent acts of parliament, however, many other imposts have been classed under excise. Such is the case with regard to the licence which must be taken out by every one who keeps a dog, uses a gun, or deals in game. 2 *Steph. Com.* 567.

EXCLUSAGIUM. A payment due to the lord for the benefit of a sluice. *Toml.*

EXCLUSION BILL. A bill which passed the House of Commons during the reign of Charles II., for the purpose of setting aside the King's brother and presumptive heir, the Duke of York, afterwards James II., from the succession. This bill, having passed the House of Commons, was rejected by the Lords; the King having declared beforehand that he would never consent to it. 1 *Bl.* 210, 211; 2 *Steph. Com.* 435, 436; *Macaulay's History of England.*

EXCOMMENGEMENT is, in law-French, the same with excommunication in English. *Cowel.*

EXCOMMUNICATION. A spiritual censure for offences falling under ecclesiastical cognizance. It is described in the books as twofold: 1. The *lesser* excommunication, which is an ecclesiastical censure, excluding the party from the sacraments: 2. The *greater*, which excludes him from the company of all Christians. Formerly, too, an excommunicated man was under various civil disabilities. He could not serve upon juries, or be a witness in any court; neither could he bring an action to recover lands or money due to him. These penalties are abolished by stat. 53 Geo. 3, c. 127. 3 *Bl.* 101; 3 *Steph. Com.* 315, 316; *T. L.; Cowel.* [CONTUMACE CAPIENDO; EXCOMMUNICATO CAPIENDO.]

EXCOMMUNICATO CAPIENDO. When a person was excommunicated for contempt of an order of the Ecclesiastical Court, the bishop was allowed to certify the contempt to the Sovereign in Chancery, who thereupon issued a writ called a *significavit* or *de excommunicato capiendo*, directing the sheriff of the county to take the offender and imprison him in the county gaol until he was reconciled to the Church. But by stat. 53 Geo. 3, c. 127, passed in 1813, it was provided that no person excommunicated should incur by the sentence any incapacity or penalty beyond six months' imprisonment, to be inflicted at the discretion of the court, and that such sentence should be signified to the Sovereign in Chancery, and enforced by a writ *de excommunicato capiendo.* 3 *Steph. Com.* 316, 317.

EXCOMMUNICATO DELIBERANDO. A writ to deliver and release one who, after being imprisoned on a writ *de excommunicato capiendo*, is reconciled to the Church. *Cowel;* 3 *Bl.* 102.

EXCOMMUNICATO RECAPIENDO or **RECIPIENDO.** A writ for the retaking of excommunicated persons unlawfully released. [EXCOMMUNICATO CAPIENDO; EXCOMMUNICATO DELIBERANDO.]

EXCUSABLE HOMICIDE. A kind of homicide involving some error or omission so trivial that the law excuses it from the guilt of felony. Excusable homicide is of two sorts:

1. Where one kills another *per infortunium, i. e.*, by misadventure, in doing a lawful act; or

2. *Se defendendo*, in defending one's self.

4 *Bl.* 182; 4 *Steph. Com.* 52, 53.

EXEAT. Leave to depart. [NE EXEAT REGNO.]

EXECUTE. 1. To carry into force an order made in a judicial proceeding.

2. To give legal effect to a deed or other writing by signature or otherwise.

EXECUTED and **EXECUTORY.** These words are used in law in a sense very nearly equivalent to *past* (or *present*) and *future* respectively. Thus,

1. A contract may be either *executed*,

EXECUTED and EXECUTORY—*continued.*

as if A. and B. agree to exchange horses, and they do it immediately; here the possession and the right are transferred together; or *executory*, as if they agree to exchange next week; here the *right* only vests, and their reciprocal *property* in each other's horse is not in *possession* but in *action;* for a contract executed, which differs nothing from a grant, conveys a *chose in possession;* a contract executory conveys only a *chose in action.* 2 *Bl.* 443; 2 *Steph. Com.* 58. [CHOSE.]

2. So, a *consideration* for a promise may be *executed* or *executory*, according as the consideration precedes the promise or not: and its character in this respect is determined by the relation which it bears in point of time to the promise, as being prior or subsequent. [CONSIDERATION.]

3. A *use* is also executed or executory. Thus, on a conveyance to A. to the use of B., the use in B. is said to be *executed* by the Statute of Uses. But a use in land, limited *in futuro*, on a condition independent of any preceding estate or interest in the land, is an *executory* use, because it is not *executed* by the Statute of Uses till the fulfilment of the condition on which it is to take effect. Such a use is also called a *springing* use. 2 *Bl.* 332 - 334; 1 *Steph. Com.* 544, 545. [EXECUTORY INTEREST; SPRINGING USE; USE.]

4. So, a *devise* (*i. e.*, a disposition of land by will), by which a future estate is allowed to be limited contrary to the rules of the old common law, is called an *executory devise.* 2 *Bl.* 173, 334; 1 *Steph. Com.* 611, 612. [EXECUTORY INTEREST.]

5. Also, an estate in possession, whereby a present interest passes to the tenant, is sometimes called an *executed* estate, as opposed to the *executory* class of estates depending on some *subsequent* circumstances or contingency. 2 *Bl.* 168.

6. A trust may also be *executed* or *executory*. An *executed* trust is one where the trust estate is completely defined in the first instance, no future instrument of conveyance being contemplated. An *executory* trust is a trust where the party, whose benefit is designed, is to take through the medium of a future instrument of conveyance to be executed for the purpose. 1 *Steph. Com.* 374. The importance of the distinction lies in this, that an *executed* trust is construed strictly according to the technical meaning of the terms used; an *executory* trust is construed according to the apparent meaning of the author of the trust, as gathered from the instrument by which it is created.

This is one of the most technical and difficult distinctions in English law. It might at first be supposed that an executed trust was a trust fully administered by the final distribution, on the part of the trustee, of the trust property among the parties entitled thereto; and that an executory trust was a trust not yet fully administered. As Lord St. Leonards says in the case of the *Earl of Egerton* v. *Brownlow*, 4 *House of Lords Cases*, 210:—"All trusts are in a sense executory, because a trust cannot be executed except by conveyance, and therefore there is always something to be done. *But that is not the sense which a court of equity puts upon the term executory trust.*" And his lordship goes on to distinguish the two in this way:—An *executory* trust is where the author of the trust has left it to the court to make out from *general expressions* what his intention is. An executed trust is where "you have nothing to do but to take the limitations he has given you, and convert them into legal estates." Or, perhaps, we may express it in this way:—An *executory* trust is one of which the author indicates, either by the vagueness and generality of the words he has used, or by his intention expressed in the instrument creating the trust, that some further conveyance should be executed for expressing the trusts in proper legal form. Whereas, an *executed* trust is a trust itself expressed in proper legal form. An executory trust thus bears to an executed trust the same relation which the heads of a settlement bear to the settlement itself. This use of the term "executed" may, perhaps, be illustrated by such expressions as "the execution of a will," "execution of a deed."

EXECUTION. 1. The putting in force the sentence of the law in a judicial proceeding. 3 *Bl.* 412; 4 *Bl.* 403; 3 *Steph. Com.* 581—583; 4 *Steph. Com.* 478. [For the various writs of execution, see under their several Titles.]

2. The signing of a deed or will, or other written instrument, in such manner as to make it (so far as regards form) legally valid.

EXECUTIONE FACIENDA IN WITHERNAMIUM (for doing execution in withernam). [WITHERNAM.]

EXECUTIONE JUDICII. An ancient writ directed to the judge of an inferior court of record, or to the sheriff or bailiff of an inferior court not of record, to do execution upon a judgment therein, or to return some reasonable cause wherefore he delays the execution. *F. N. B.* 20.

EXECUTIVE. That branch of Government which is entrusted with enforcing the laws. The supreme executive power in this kingdom is vested in the King or Queen for the time being. 1 *Bl.* 147, 190; 1 *Steph. Com.* 31; 2 *Steph. Com.* 318, 395.

EXECUTOR. One to whom another, by his last will and testament, commits the execution of the directions and dispositions thereof. His duties are:—

1. To bury the deceased in a manner suitable to the estate which he leaves behind him.

2. To prove the will of the deceased.

3. To make an inventory of the goods and chattels of the deceased, and to collect the goods so inventoried; and, for this purpose, if necessary, to take proceedings against debtors to his testator's estate.

4. To pay, *first*, the debts of his testator, and *then* the legacies bequeathed by his will; and to distribute the residue, in default of any residuary disposition, among the next of kin of the testator.

An executor is the legal personal representative of his testator, and the testator's rights and liabilities devolve for the most part upon him. A person appointed executor is not on that account bound to accept the office. 2 *Bl.* 503, 508—513; 2 *Steph. Com.* 190, 200—205; *Wms. P. P.*; *Sir E. V. Williams on Executors.*

EXECUTOR DE SON TORT. One who, without any just authority, intermeddles with the goods of a deceased person, as if he had been duly appointed executor. An *executor de son tort* is liable to the trouble of an executorship without its profits and advantages. He cannot bring an action himself in right of the deceased, but actions may be brought against him. *Cowel*; 2 *Bl.* 507; 2 *Steph. Com.* 199.

EXECUTORY INTEREST. In one sense, any future estate in land is an executory estate or interest. [EXECUTED and EXECUTORY.] But the term "executory interest" is especially applied to such an interest in real estate as is "limited" to commence at a future time, upon some contingency not depending on the determination of a prior estate. As, if land be limited by deed to A. and his heirs to the use of B. and his heirs until C. shall return from Rome, and then to the use of D. and his heirs; D.'s interest is called an *executory interest*. *Wms. R. P.* [EXECUTED and EXECUTORY, 3, 4, 5.]

EXECUTRIX. Feminine of executor.

EXEMPLI GRATIA. For the sake of example.

EXEMPLIFICATION. A copy or transcript. *T. L.*; *Cowel.*

EXEQUATUR. A rescript or order given by the foreign department of a State to which a consul is accredited, authorizing the functionaries of the home department to recognize the official character of the consul. [CONSUL.] It may be revoked at any time at the discretion of the government wherein he is established. *Twiss' Law of Nations.*

EXHIBIT is when any writing is in a Chancery suit *exhibited* to be proved by witnesses, and the examiner writes on the back that it was showed to such a one at the time of his examination; the original is thenceforth called an exhibit. *Cowel*; *Hunt. Eq.*

Exhibits, which are in use in common law as well as Chancery, are marked by the letters of the alphabet, for convenience of reference in affidavits and other evidence. *Kerr's Act. Law.* See also *Lush's Pr.* 872, 873, 884, 885.

EXHIBITION, in the law of Scotland, signifies the production of deeds; and an *action of exhibition* is an action for compelling production of the same. *Bell*; *Paterson.*

EXIGENT, or **EXIGI FACIAS.** A writ that lay where the defendant in a personal action could not be found, charging him to appear on pain of outlawry. It lay also in an indictment of felony, where the party indicted could not be found. *T. L.*; *Cowel*; *Smith's Act. Law.*

EXIGENTER. An officer in the Courts of King's Bench and Common Pleas, whose duty it was to make out *exigents*. *T. L.*; *Cowel.* Abolished by stat. 7 Will. 4 & 1 Vict. c. 30. [EXIGENT.]

EXIGI FACIAS. [EXIGENT.]

EXITUS. Issue, child or children, offspring. The word is also used for the rents or profits of land. *Cowel*; *Toml.*

EXOINE. [ESSOIGN.]

EXONERATION generally signifies relieving part of the estate of a deceased person, charged with a debt, by the payment of the debt out of another part thereof. This may be by law, or by the special direction of the deceased in his will. For instance, prior to the Act called Locke King's Act (17 & 18 Vict. c. 113), passed in 1854, the heir of a deceased mortgagor, or person claiming the mortgaged estate under the will of the deceased, was entitled to be repaid, or *exonerated*, out of the personal estate of the deceased.

EXONERETUR (let him be discharged). An entry formerly made on the bailpiece upon render of a defendant to prison in discharge of his bail. [BAILPIECE.]

This entry, by s. 7 of the General Rules of Hilary Term, 1 Will. 4, is now no longer necessary. *Toml.*

EXPECTANCY, ESTATES IN, are interests in land which are limited or appointed to take effect in possession at some future time. [ESTATE.]

EXPEDING LETTERS (Fr. *Expédier*, to despatch). In the phraseology of Scotch law, to "expede letters" means to make out principal copies of writs and judgments, and prepare them for formal completion. *Wm. Bell.*

EXPEDITATION, in the forest laws, signifies mutilation of the great dogs' feet, for the preservation of the king's game. Every one keeping great dogs not expeditated was liable to a penalty of three shillings and fourpence, to be paid to the king. *T. L.; Cowel.*

This *expeditation* took place in two ways, (1) by cutting out the three claws of a fore-foot, or (2) by cutting out the ball of the foot. The law applied to every man's dog who lived near the forest, and to the dogs of the foresters themselves. It was to be done once in every three years. *Du Cange.*

EXPENDITORS. Disbursers of taxes raised for the repairs of sewers. *Cowel; Toml.*

EXPENSÆ LITIS. The costs of a suit or action, allowed generally to the successful party. [COSTS.]

EXPENSIS MILITUM LEVANDIS. An old writ directed to the sheriff for levying the allowance for the knights of Parliament. *Cowel.*

EXPENSIS MILITUM NON LEVANDIS AB HOMINIBUS DE ANTIQUO DOMINICO NEC A NATIVIS. An old writ to prohibit the sheriff from levying any allowance for knights of the shire upon such as held lands in ancient demesne. *T. L.; Cowel.* [ANCIENT DEMESNE.]

EXPERT. A skilled witness called to give evidence on the art or mystery with which he is especially conversant.

EXPIRY OF THE LEGAL, in the law of Scotland, is the expiration of the time allowed to a debtor for redeeming an "adjudication" (*i. e.*, a judgment debt which by the decree of a court of justice has been made an incumbrance on land). An "action of declarator of expiry" (a proceeding in the nature of a bill of foreclosure) is still necessary for the "adjudger" (*i. e.*, the creditor) before the debtor's right of redemption is gone. *Bell; Paterson.* [EFFECTUAL ADJUDICATION.]

EXPLEES (*Expletiæ*). Rents or profits of land, otherwise called *esplees*. *Cowel.*

EXPRESS COLOUR. [COLOUR.]

EXPRESS CONTRACT OR CONVENTION. A contract or convention expressed in words, or by signs which custom or usage has made equivalent to words. *Austin, Jur. Lect. VI.*

EXPRESS MALICE. Express and implied malice are thus distinguished by Blackstone: "Express malice is when one, with a sedate deliberate mind and formed design, doth kill another; which formed design is evidenced by external circumstances discovering that inward intention; as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. This takes place in the case of deliberate duelling." Implied malice is "where a man wilfully poisons another. In such a deliberate act the law presumes malice, though no particular enmity can be proved. And if a man kills another suddenly, without any, or without a considerable provocation, the law implies malice." 4 *Bl.* 198—200; 4 *Steph. Com.* 70—72. It would seem, therefore, that in Blackstone's opinion, express and implied malice differ in the nature of the evidence adduced to support the existence of malice. And this is the proper distinction between the words "express" and "implied," whatever difficulty there may be in connecting the idea of malice

EXPRESS MALICE—*continued.*
with the definition of murder. [IMPLIED; MALICE; MURDER.]

EXPRESS TRUST. A trust which is clearly expressed by the authors thereof, or may fairly be collected from a written document. *Sm. Man. Eq.*

EXTEND. To valne the lands or tenements of a judgment debtor, or one whose recognizance is forfeited, so that by the yearly rent the creditor may in time be paid his debt. *T. L.; Cowel.* [EXTENT.]

EXTENDI FACIAS is a writ ordinarily called a writ of extent. *T. L.; Cowel.* [EXTENT.]

EXTENT. A writ or commission to the sheriff for the *valuing* of lands and tenements and goods and chattels of a judgment-debtor.

Extents are of several kinds, as follows:

1. A process of execution under the laws relating to statutes staple and statutes merchant, by which the lands and goods of a person whose recognizance had been forfeited, or whose debt had been acknowledged on statute staple or statute merchant, might be appraised and delivered to the creditor. 3 *Bl.* 419, 423; 1 *Steph. Com.* 309; 3 *Steph. Com.* 663.

2. An *extent in chief*, which is a writ issuing out of the Court of Exchequer, for the recovery of debts of record due to the Crown; by which the sheriff is directed to cause the lands, goods and chattels of the debtor to be appraised at their full valne, and to be seized into the hands of the sovereign.

3. An *extent in aid*, issued at the suit or instance of a *crown debtor* against a person indebted to the Crown debtor himself.

4. A special writ of extent directing the sheriff to seize the lands and goods of a *deceased* crown debtor. This writ is called *diem clausit extremum.* 3 *Bl.* 420; 3 *Steph. Com.* 662—668.

5. An ancient valuation put upon lands in Scotland, for the purpose of proportioning the shares of the public taxes, as well as for fixing the "casualties of superiority." *Bell.* [CASUALTIES OF SUPERIORITY.]

EXTINGUISHMENT, in our law, signifies an effect of consolidation. Thus, if a man purchase lands out of which he has a rent, then the property and the rent are consolidated, and the rent is said to be extinguished. So, if a lessee or tenant for life purchases the reversion, his estate for years or life is *extinguished*, being merged in the reversion. So, an extinguishment of copyhold is effected when the freehold and copyhold interest are united in the same person; as in the tenant by enfranchisement, or in the lord by escheat, forfeiture, descent, or surrender to his use. Similarly, an extinguishment of right of way is effected by the purchase, on the part of the owner of the right of way, of the land wherein the way lies. *T. L.; Cowel; 2 Bl.* 325; 1 *Steph. Com.* 221, *n.*, 520, 638, 675, *n.*, 692.

Also, a parol contract is said to be *extinguished* by a contract *under seal* between the same parties to the same effect. 2 *Steph. Com.* 58.

EXTIRPATIONE. An old writ that lay against him who, after a verdict found against him for land, maliciously overthrew any house upon it. *Reg. Jud.* 13, 58; *T. L.; Cowel.*

EXTORTION. An unlawful or violent wringing of money or money's worth from any man. *Cowel.* The word is used especially as follows:—

1. In reference to demanding money or other property by threats and menaces of various kinds. This offence is severely punishable. *Stat.* 24 *&* 25 *Vict. c.* 96, *ss.* 45, 46; 4 *Steph. Com.* 128, 129; *Cox & Saunders' Cr. Law*, 50.

2. In reference to the unlawful taking by an officer, under colour of his office, of money not due to him, or more than is due. 4 *Bl.* 141; 4 *Steph. Com.* 247.

EXTRACT, in Scotch law, signifies either (1) A certified copy by the clerk of a court of the proceedings in an action carried on before that court, and of the judgment pronounced; in which case it contains an order for execution to follow on it, in terms of the decree which has been pronounced; or (2) An authenticated copy of some deed or other writing which has been registered in some public or judicial record. *Bell; Paterson.* [EXTRACTA CURIÆ, 2.]

EXTRACTA CURIÆ. 1. The issue or profits of holding a court, arising from the customary fees, &c. *Cowel.*

2. Extracts of writings or records of the proceedings in a court. *Toml.* [ESTREAT; EXTRACT.]

EXTRACTOR, in Scotland, is the official person by whom the extract of a decree or other judicial proceeding is prepared

EXTRACTOR—*continued.*

and authenticated. *Bell; Paterson.* [EXTRACT.]

EXTRADITION. The surrender of a person by one State to another. The word is generally applied to the surrender of a person charged with an offence to the State having jurisdiction to try the same. The Acts by which this subject is at present regulated are the Extradition Act, 1870 (33 & 34 Vict. c. 52), and the Extradition Act, 1873 (36 & 37 Vict. c. 60). The former Act empowers her Majesty to enter into arrangements with foreign States for the mutual surrender of fugitive criminals in the cases therein specified. The Act of 1873 is supplementary, and enlarges the scope of the former Act. 4 *Steph. Com.* 348, *n.*

EXTRAJUDICIAL. Any act done or word spoken by a judge, outside the authority and jurisdiction which for the time being he is exercising, is called *extrajudicial.*

EXTRAORDINARY JURISDICTION OF THE COURT OF CHANCERY. [CHANCERY.]

EXTRAORDINARY RESOLUTION. [RESOLUTION.]

EXTRAPAROCHIAL PLACES. Places not united to, or forming part of, any parish. 1 *Bl.* 114; 1 *Steph. Com.* 119.

EXTRAVAGANTES. Twenty constitutions or decrees of Pope John XXII. were called *Extravagantes Joannis.* To these have been added some decrees of later popes, in five books, called *Extravagantes Communes.* 1 *Bl.* 82; 1 *Steph. Com.* 65.

EY (Lat. *Insula*). An island. *Cowel.*

EYET (Lat. *Insuletta*). A small island or islet. *Cowel.*

EYRE. The justices in eyre, or justices *in itinere*, were regularly established by the parliament of Northampton, A.D. 1176, with a delegated power from the king's court or *aula regia*, being looked upon as members thereof; and they afterwards made their circuit round the kingdom once in seven years for trying causes. They were afterwards directed by *Magna Charta*, c. 12, to be sent into every county once a year to take or receive the verdict of jurors or "recognitors" in certain actions, then called *recognitions* or *assizes*, the most difficult of which they were directed to adjourn into the Court of Common Pleas, to be there determined. [ASSIZE, WRIT OF.] The itinerant justices were sometimes mere justices of assize, or of dower, or of gaol delivery, and the like; but they sometimes had a more general commission, being constituted *justitiarii ad omnia placita.* These were superseded by the justices of assize and *nisi prius*, established in 1280 by the Statute of Westminster the Second. 3 *Bl.* 58, 59; 4 *Bl.* 422, 423; 3 *Steph. Com.* 349, 350. [ASSIZE, COURTS OF.]

F. N. B. An abbreviation for "Fitzherbert's Natura Brevium." [FITZHERBERT.]

FABRIC LANDS. Lands given to the rebuilding, repair, or maintenance of the fabrics of cathedrals or other churches. *Cowel.*

FAC SIMILE PROBATE. This is where the probate copy of a will is a *fac simile* of the original will. It is allowed in cases where the construction of the will may be affected by the appearance of the original paper. *Wms. Exors.* 331.

FACIO UT DES. I do that you may give; as when I agree to perform anything for a price. This is one of the considerations for contracts mentioned in the Roman law. 2 *Bl.* 445; 2 *Steph. Com.* 59, *n.* [DO UT DES; DO UT FACIAS.]

FACIO UT FACIAS. I do that you may do; as when I agree with a man to do his work for him, if he will do mine for me. 2 *Bl.* 444; 2 *Steph. Com.* 59, *n.* [See preceding Title.]

FACTOR. An agent remunerated by a commission, who is entrusted with the possession of goods to sell in his own name, as apparent owner. 2 *Steph. Com.* 77, 78.

FACTORAGE, also called "commission," is an allowance given to factors by a merchant who employs them. *Encycl. Brit.*

FACTORY. I. A place where a considerable number of *factors* reside, in order to negotiate for their masters or employers. *Encycl. Brit.*

II. Under various Acts of Parliament, a factory is defined as follows:—

1. By sect. 73 of the Factory Act, 1844 (7 Vict. c. 15), a factory is defined to mean all buildings and premises wherein, or within the close or curtilage of which, steam, water, or any other mechanical power is used to move or work any

FACTORY—*continued.*

machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of, cotton, wool, hair, silk, flax, hemp, jute, or tow, either separately or mixed together, or mixed with any other material, or any fabric made thereof; and any room situated within the outward gate or boundary of any factory, wherein children or young persons are employed in any process incident to the manufacture carried on in the factory, is to be taken to be a part of the factory, although it may not contain any machinery.

2. By sect. 1 of the Rope Works Act, 1846, certain ropeworks are not to be deemed "factories" within the meaning of the above Act.

3. By the Lace Works Act, 1861 (24 & 25 Vict. c. 117), the provisions of the Factories Acts are extended, with certain qualifications, to lace factories, which are defined by sect. 4 of the Act to mean factories in which machines for the manufacture of lace are moved by steam or water power.

4. By sect. 6 of the Factory Act, 1864 (27 & 28 Vict. c. 48), and the schedules thereto, a factory is defined so as to include any place in which persons work for hire:

(1) In making or assisting in making, finishing or assisting in finishing, earthenware of any description, except bricks and tiles, not being ornamental tiles.

(2) In making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood.

(3) In making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps.

(4) In making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges.

(5) In printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power, in the employment of paper staining.

(6) In fustian cutting.

5. By sect. 3 of the Factory Acts Extension Act, 1867 (30 & 31 Vict. c. 103), a factory is defined so as to include—

(1) Any blast furnace, or other furnace or premises, in or upon which the process of smelting, or otherwise obtaining metal from ore, is carried on.

(2) Any copper mill.

(3) Any premises in which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel.

(4) Iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on.

(5) Premises in which mechanical power is used for moving machinery employed in the manufacture of machinery, or of any article of metal, or of any article made wholly or partly of india-rubber or gutta-percha.

(6) Premises for the manufacture of paper, glass, or tobacco, or for letter-press printing or book-binding.

(7) Premises, whether adjoining or separate, being in the same occupation, and in the same city, town, parish, or place, and constituting one trade establishment, in which fifty or more persons are employed in any manufacturing process.

6. By sect. 19 of the Factory Act, 1874, it is directed that that Act shall apply to factories as defined by the Factory Acts, 1833 to 1856, and also to a lace factory, as defined by the Lace Factory Act, 1861 (24 & 25 Vict. c. 117).

By comparing this with sect. 18 and the schedule to the Act, it will be seen that a factory, under the Act of 1874, includes a factory as defined by the Act of 1844, amended by the Rope Works Act of 1846, and also a "lace factory," as defined by the Act of 1861.

[The various Acts relating to factories will be found enumerated in the following Title.]

FACTORY ACTS. 1. Stat. 42 Geo. 3, c. 73, passed in 1802, and partially repealed by stat. 35 & 36 Vict. c. 63, being the Statute Law Revision Act (No. 1), 1872.

2. Stat. 3 & 4 Will. 4, c. 103, passed in 1833, and for the most part repealed by the Factory Acts of 1844, 1850, and 1874.

3. Stat. 4 & 5 Will. 4, c. 1, an

FACTORY ACTS—*continued.*

explanatory Act amending the above, repealed by the Factory Act of 1874.

4. Stat. 7 Vict. c. 15, passed in 1844, and partially repealed by the Factory Acts of 1850, 1871, and 1874.

5. Stat. 10 & 11 Vict. c. 29, passed in 1847, partially repealed by the Factory Act of 1850, and wholly repealed by the Factory Act of 1874.

6. Stat. 13 & 14 Vict. c. 54, passed in 1850, repealed as to some of its sections by the Factory Act, 1874, "so far as those sections relate to factories to which this Act applies," and, as to the rest, entirely.

7. Stat. 16 & 17 Vict. c. 104, passed in 1853, and repealed by the Act of 1874, "so far as it relates to factories to which this Act applies."

8. Stat. 19 & 20 Vict. c. 38, passed in 1856, for amending in some points the Act of 1844.

9. Stat. 24 & 25 Vict. c. 117, being the Lace Works Act, 1861.

10. Stat. 27 & 28 Vict. c. 48, being the Factory Acts Extension Act of 1864.

11. Stat. 30 & 31 Vict. c. 103, being the Factory Acts Extension Act of 1867.

12. Stat. 33 & 34 Vict. c. 62, being the Factories and Workshops Act of 1870.

13. Stat. 34 & 35 Vict. c. 104, being the Factories and Workshops Act of 1871.

14. Stat. 37 & 38 Vict. c. 44, being the Factory Act of 1874.

In connection with this subject we may mention besides—

15. Stat. 8 & 9 Vict. c. 29, being the Print Works Act, 1845.

16. Stat. 9 & 10 Vict. c. 40, being the Rope Works Act, 1846.

17. Stat. 10 & 11 Vict. c. 70, passed in 1847, with reference to the school attendance of children engaged in print works.

18. Stat. 23 & 24 Vict. c. 78, passed in 1860, to extend the Factory Acts to Bleaching and Dyeing Works.

19. Stat. 25 Vict. c. 8, passed in 1862, in reference to the same subject.

20. Stat. 26 & 27 Vict. c. 38, the Bleaching and Dyeing Works Act of 1863.

21. Stat. 27 & 28 Vict. c. 98, passed in 1864, for extending the operation of the Act of 1860 (No. 18 above mentioned).

22. Stat. 30 & 31 Vict. c. 146, being the Workshop Regulation Act, 1867.

FACTUM. An act or deed.

FACULTIES, COURT OF. [FACULTY.]

FACULTY. A privilege or special dispensation, granted to a man by favour and indulgence to do that which by the common law he could not do. And for the granting of these there is an especial court under the Archbishop of Canterbury, called the Court of the Faculties, and a chief officer thereof, called the Master of the Faculties (Lat. *Magister ad Facultates*), whose power to grant as aforesaid was given by stat. 25 Hen. 8, c. 21, passed in 1534. *Cowel; Phillimore's Eccl. Law*, 1201.

In Scotch law, "faculty" means a power which any person is at liberty to exercise. *Bell.*

FACULTY OF ADVOCATES. The college of advocates in Scotland, *i. e.*, the barristers entitled to practise in the Supreme Court.

FÆSTING MEN are variously interpreted to mean:—

1. Vassals.
2. Persons of wealth.
3. Frankpledges, suretics, or bondsmen, who by Saxon custom were *fast* bound to answer for one another's peaceable behaviour. *Cowel.* [FRANK PLEDGE.]

FAILING OF RECORD is where a defendant, having pleaded any matter of record, fails to prove it, or brings in such a one as is no bar to the action. *T. L.; Cowel.*

FAINT ACTION or **FEIGNED ACTION.** An action in which the words of the writ are true, yet for certain causes the party bringing it hath no title to recover thereby. Whereas in a *false action* the words of the writ are false. *Cowel.*

FAINT PLEADER or **FAINT PLEADING.** A false, covinous, or collusory manner of pleading, to the deceit of a third party. *Cowel.*

FAIR. A solemn or greater sort of market granted to any town by privilege, for the more speedy and commodious provision of such things as the subject needeth. *Cowel.*

FAIT. A deed.

FAITOURS. A word used in the repealed statute 7 Rich. 2, c. 5, for evil doers, idle livers and vagabonds. *T. L.; Cowel.*

FAKIR. Any poor or indigent person; one who possesses only a little property. The most general application of the word is to the Mohammedan religious mendicants who wander about the country and subsist upon alms. *Wilson's Gloss. Ind.*

FALCATURA. One day's mowing of grass; a customary service to a lord from his inferior tenants. *Toml.*

FALDAGE. A privilege which anciently several lords reserved to themselves, of setting up folds for sheep within their manors, the better to manure them. *T. L.; Cowel.*

FALDFEY or **FALDAGE FEE.** A fee or rent paid by some customary tenants for liberty to fold their sheep upon their own land. *Toml.*

FALK LAND or **FOLKE LAND.** [FOLK LAND.]

FALSA DEMONSTRATIO NON NOCET. "A false demonstration does not injure." [FALSE DEMONSTRATION.]

FALSE ACTION. [FAINT ACTION.]

FALSE DEMONSTRATION. An erroneous description of a person or thing in a written instrument. The import of the maxim, that "a false demonstration does not injure," is this,—that where there is an adequate naming or definition, with a convenient certainty, of any person or thing in a written instrument, a subsequent erroneous addition will not vitiate it. *Broom's Legal Maxims, pp.* 629—645; *Jarman on Wills, ch.* 24; *Fawcett, L. & T.* 74.

FALSE IMPRISONMENT is a trespass committed against a man by imprisoning him without lawful cause. Every confinement of the person is an imprisonment, whether it be in a common prison, or in the stocks, or even by forcibly detaining one in the public streets. False imprisonment is usually made the subject of a civil action, but it is also indictable at the suit of the Crown. *T. L.; Cowel; 3 Bl.* 127; 4 *Bl.* 218; 3 *Steph. Com.* 384, 385; 4 *Steph. Com.* 97; *Kerr's Act. Law.*

FALSE JUDGMENT, WRIT OF. A writ which lay to amend errors in the proceedings of an inferior court, *not being a court of record. T. L.; Cowel;* 3 *Bl.* 34, 407; 3 *Steph. Com.* 280, 578.

FALSE PERSONATION. The offence of personating another for the purpose of fraud. This is a misdemeanour at common law, and is made highly penal in many cases under various statutes. 4 *Steph. Com.* 146. The most recent Act on the subject is the stat. 37 & 38 Vict. c. 36, passed in 1874, by which it is made felony, punishable with penal servitude for life, to personate any person, or the heir, executor, &c. of any person, with intent to claim succession to real or personal property, or falsely to claim relationship to any family.

FALSE PLEA. [SHAM PLEA.]

FALSE PRETENCE. Any false statement whereby a person, knowing it to be false, obtains from another, for himself or for his own benefit, any chattel, money, or valuable security, with intent to cheat or defraud any person. *Stat.* 24 & 25 *Vict. c.* 96, *s.* 88; 4 *Steph. Com.* 146, 147; *Cox & Saunders' Cr. Law,* 75—78.

For the distinction between false pretence and larceny by a trick, see LARCENY.

FALSE PROOF OF DEBT. A fictitious proof of debt in bankruptcy. *Robson, Bkcy.*

A debtor who knows or believes that a false debt has been proved against him, and fails within one month to inform the trustee thereof, renders himself liable to two years' imprisonment with hard labour; and a creditor making a false claim is liable to one year's imprisonment with hard labour. *Stat.* 32 & 33 *Vict. c.* 62, *s.* 11, *subs.* 7, *and s.* 14; 2 *Steph. Com.* 159; *Cox & Saunders' Cr. Law,* 408, 412; *Robson, Bkcy.*

FALSIFY signifies, 1. To prove a thing to be false. *Cowel; Hunt. Eq.;* 4 *Bl.* 390; 4 *Steph. Com.* 463.

2. To tamper with any document, whether of record or not, by interlineation, obliteration, or otherwise. *Stat.* 24 & 25 *Vict. c.* 98, *s.* 28; 4 *Steph. Com.* 223; *Cox & Saunders' Cr. Law,* 158.

3. To represent facts falsely, as for instance to state a pedigree falsely. *Stat.* 22 & 23 *Vict. c.* 35, *s.* 24; 4 *Steph. Com.* 147, 148.

FALSING OF DOOMS is the old Scotch term for an appeal: *doom* being the sentence of a court, so that the *falsing of dooms* is proving the injustice of that sentence. *Bell.*

FALSO JUDICIO. A writ of false judgment. [FALSE JUDGMENT, WRIT OF.]

FALSO RETORNO BREVIUM. A writ which lay against the sheriff for a false return to a writ. *T. L.; Cowel.* [RETURN.]

FAMILIA signifies all the servants belonging to a particular master; but in another sense it is taken for a portion of land sufficient to maintain one family. Sometimes it is taken for a *hide* of land, which is also called a *manse;* sometimes for *carucata,* or *plough-land,* containing as much as one plough and oxen can till in one year. *Cowel; Toml.*

FANATICKS. The name used in stat. 13 Car. 2, c. 6, as a general name for dissenters.

FARAZI. Exaltation; the name of a sect of Mohammedan reformers. *Wilson's Gloss. Ind.*

FARDEL OF LAND (*Fardella terræ*) is, according to some authors, the fourth part of a yard-land; yet Noy, in his Compleat Lawyer, page 57, will have two fardels make a *nook*, and four *nooks* make a yard-land. *Cowel.*

FARDINGDEAL. The fourth part of an acre. *T. L.; Cowel.*

FARINAGIUM. Toll of meal or flour. *Toml.*

FARM, FERM, or FEORME (Fr. *Ferme*) is said by Blackstone to be an old Saxon word signifying *provisions;* and he says that it came to be used of rent or render, because anciently the greater part of rents were reserved in provisions, till the use of money became more frequent. So that a farmer, *firmarius*, was one who held his lands upon payment of a rent or *feorme;* though at present, by a gradual departure from the original sense, the word farm is brought to signify the very estate so held upon farm or rent. "To farm let" are usual, though not necessary, words of operation in a lease. *T. L.; Cowel;* 2 *Bl.* 318; 1 *Steph. Com.* 514; *Fawcett, L. & T.* 75. [FERME.]

FARUNDEL OF LAND. The fourth part of an acre; otherwise called *fardingdeal. T. L.; Cowel.*

FARYNDON INN. The old name for Serjeants' Inn. 3 *Steph. Com.* 272, *n.* [INNS OF CHANCERY.]

FAUTORS. Favourers, supporters, or abettors. *Cowel.*

FAVOUR, CHALLENGE TO, is where a party objects to a juror only on some *probable circumstances* of suspicion, as acquaintance and the like. A *challenge to the favour* is opposed to a *principal challenge*, where the cause assigned carries with it *primâ facie* marks of suspicion. The allowance of a *challenge to the favour* is matter of judgment and discretion only, and is left, in the first instance, to the determination of two persons called *triors.* 3 *Bl.* 363; 3 *Steph. Com.* 522, 526.

FEAL. Faithful. [FEALTY.]

FEAL AND DIVOT. A right in Scotland similar to the *common of turbary* in England. *Bell; Toml.* [COMMON, III.]

FEALTY. Faith, fidelity. It signifieth in our common law an oath, taken at the admittance of every tenant, to be true to the lord of whom he holdeth his land. In the usual oath of fealty there was frequently an exception of the faith due to a superior lord; but when the acknowledgment was made to the superior himself, who was vassal to no man, it was no longer called the oath of fealty, but the oath of allegiance.

The term *fealty* is applied not only to the oath, but to the actual tie which binds the vassal to his lord. *T. L.; Cowel;* 1 *Bl.* 367; 2 *Bl.* 45; 1 *Steph. Com.* 177, 626; 2 *Steph. Com.* 399—401.

The oath of fealty is in practice never exacted. *Wms. R. P.*

FEDERAL GOVERNMENT. A government formed by the aggregation of several States, previously independent, in such a manner that the sovereignty over each of the States resides thenceforth in the aggregate of the whole, while each of the States, though losing its individual sovereignty, retains nevertheless important political powers within its own territory, and shares the sovereignty of the entire federation with the other States, and (in general) with a new legislative or executive body having a limited jurisdiction over the entire area of the federation, and called "the general government." If the individual States retain severally their sovereign character, the federation is called a *permanent confederacy of supreme governments.* At what point this sovereign character is to be held to be lost, cannot be discussed here. See *Austin on Jurisprudence, Lecture VI.; De Tocqueville's Democracy in America; Edinburgh Review for Jan.* 1846, *on European and American State Confederacies; Freeman's History of Federal Government.*

FEE. 1. The true meaning of this word is the same with that of *feud* or *fief.* In the northern languages it signified a conditional stipend or reward. These feuds, fiefs or fees were large districts or parcels of land allotted by the conquering general to the superior officers of the army, and by them dealt out again in smaller parcels to the inferior officers and deserving soldiers. The condition annexed to them was that the possessor should do service faithfully, both at home and in the wars, to him by whom they were given. A fee or feud is therefore defined by Sir Henry Spelman as being the right which the vassal or tenant hath in land, to use

FEE—*continued.*

the same and take the profits thereof to him and his heirs, rendering to the lord his due services.

2. Hence the word *fee* is used to signify an estate of inheritance, being the highest and most extensive interest which a man can have in a feud; and when the term is used simply, without any adjunct, or has the adjunct of *simple* annexed to it, it is used in contradistinction to a fee conditional at the common law, or a fee tail under the *Statute de Donis*, importing an absolute inheritance descendible to heirs general, and liable to alienation at the pleasure of the owner, whether by will or deed, to the full extent of his interest, or for a smaller estate. *T. L.; Cowel;* 2 *Bl.* 104—108; 1 *Steph. Com.* 232—239; *Wms. R. P.* [CONDITIONAL FEE; DE DONIS; ESTATE.]

FEE CONDITIONAL. [CONDITIONAL FEE.]

FEE FARM is when a tenant holds of his lord in fee simple, paying to him the value of half or other proportion of the land by the year. *T. L.; Cowel;* 2 *Bl.* 43.

FEE FARM RENT is where an estate in fee is granted subject to a rent in fee of at least one-fourth of the value of the land at the time of its reservation. 2 *Bl.* 43; 1 *Steph. Com.* 676, 677.

FEE SIMPLE. An estate limited to a man and his heirs; the most absolute interest which a subject can possess in land. [ESTATE; FEE, 2.]

FEE SIMPLE CONDITIONAL. [CONDITIONAL FEE.]

FEE TAIL. An estate limited to a man and the heirs of his body, generally called an *estate tail.* 2 *Bl.* 112; 1 *Steph. Com.* 243. [ESTATE.]

FEIGNED ACTION. [FAINT ACTION; FEIGNED ISSUE.]

FEIGNED ISSUE. An issue formerly directed out of the Court of Chancery, in which a series of pleadings was arranged between the parties, in the same form as if an action had been commenced at common law upon a *bet* or *wager* involving the fact in dispute; and the issue joined thereon was referred to a jury. But feigned issues were disused since the passing, in 1845, of the stat. 8 & 9 Vict. c. 109, s. 19, which made it lawful for any court, either of law or equity, to refer any question of fact to a jury in a direct form. And by Lord Cairns' Act, 21 & 22 Vict. c. 27, ss. 3—6, provision was made for trial by jury in the Court of Chancery. 3 *Bl.* 452; 3 *Steph. Com.* 601.

FELE or FEAL HOMAGERS. Faithful subjects, from the Saxon *fai*, faith. *Toml.*

FELO DE SE. He that commits felony by murdering himself. The goods of a *felo de se* were forfeited to the Crown, until the passing of the Felony Act, 1870 (33 & 34 Vict. c. 23). *T. L.; Cowel;* 2 *Bl.* 499; 4 *Bl.* 189; 2 *Steph. Com.* 640; 4 *Steph. Com.* 60, 459.

FELON. A person who commits felony. [FELONY.]

FELON CONVICT. [CONVICT.]

FELONICE CEPIT ET ASPORTAVIT (he feloniously took and carried away). Words in an indictment for larceny. [LARCENY.]

FELONY, in the general acceptation of our English law, comprises every species of crime which at common law occasioned a forfeiture of lands and goods. Treason, therefore, was a species of felony. At the time when Blackstone wrote, an act of parliament making an offence felony without benefit of clergy, meant that the offender, if convicted, was to suffer death, and incur a forfeiture of his lands and goods. But, as capital punishment never entered into the true idea of felony, so it has now long ceased to have any necessary connection with it in practice. And by sect. 1 of the Felony Act, 1870, forfeiture for treason and felony is abolished; so that the essence of the distinction between felony and misdemeanour is lost, though such other differences between the two classes of offences, whether in procedure or otherwise, as existed before that Act, exist still. *T. L.; Cowel;* 4 *Bl.* 94—98; 4 *Steph. Com.* 7—10.

FELONY ACT, 1870. The stat. 33 & 34 Vict. c. 23, abolishing forfeitures for felony, and sanctioning the appointment of *interim curators* and *administrators* of the property of felons, and providing for other matters in connection therewith. 4 *Steph. Com.* 10, 459; *Cox & Saunders' Cr. Law*, 433. [FELONY.]

FEME (Fr. *Femme*). A woman.

FEME COVERT (Lat. *Fœmina viro cooperta*). A married woman; opposed to *feme sole*, which means a single woman. *T. L.; Cowel;* 1 *Bl.* 442; 2 *Bl.* 292, 497; 2 *Steph. Com.* 268—272.

FEME SOLE. A single woman, including those who have been married, but whose marriage has been dissolved by death or divorce, and (for most purposes) those women who are judicially separated from their husbands. *Stat.* 20 & 21 *Vict. c.* 85, *s.* 25; 2 *Steph. Com.* 280.

FENCE-MONTH. A forest word, signifying the space of thirty-one days in the year, that is to say, fifteen days before Midsummer, and fifteen days after, in which time it was forbidden for any man to hunt in the forest, or to go into it to disturb the beasts. The reason was, because the female deer did then fawn. Therefore it was called *fence-month*, or *defence-month*, because the deer were to be *defended* from scare or fear. *T. L.; Cowel.*

FENGELD. A tax or imposition for the repelling of enemies. *Cowel.*

FEOD, FEUD, FIEF or **FEE.** [FEE, 1.]

FEODAL or **FEUDAL.** Of or belonging to a feud or fee. *Cowel.* [FEE.] "Feodal actions" is the name given in the Mirror to real actions. 3 *Bl.* 118. [ACTIONS REAL AND PERSONAL; FEUDAL SYSTEM.]

FEODAL SYSTEM. [FEUDAL SYSTEM.]

FEODALITY. Fealty.

FEODUM. Same as feod or feud. [FEE; FEUDUM.]

FEODUM ANTIQUUM, NOVUM, &c. [FEUDUM ANTIQUUM, NOVUM, &c.]

FEOFFEE. A person to whom a feoffment is made. [FEOFFMENT.]

FEOFFEE TO USES. A person to whom a feoffment of lands is made to the use of some other person. Prior to the Statute of Uses, 27 Hen. 8, c. 10, passed in 1536, the feoffee to uses had the *legal estate* in the lands so conveyed by feoffment; the claim of the person to whose *use* they were conveyed being enforceable by the Court of Chancery. But since, by that statute, uses are turned into legal estates, the feoffee to uses has no longer even a legal estate in the land; he has only what is called a *scintilla juris*. 1 *Steph. Com.* 360, 361; *Wms. R. P.* [FEOFFMENT; LEGAL ESTATE; SCINTILLA JURIS; USES.]

FEOFFMENT (Lat. *Feoffamentum*) is properly *donatio feudi*, the gift of the fee; and it may (says Blackstone) be defined as the gift of any corporeal hereditament to another. [CORPOREAL PROPERTY.]

But in practice we never use the word in this extensive sense; for by a *feoffment* is always meant the feudal mode of transferring estates called *feoffment with livery of seisin*. This "livery of seisin" is the pure feudal investiture. It is either "in deed" or "in law."

Livery *in deed* is thus performed. The *feoffor* or his attorney goes to the land or house with the *feoffee* or his attorney; and there, in the presence of witnesses, declares the contents of the feoffment. And then the feoffor doth deliver to the feoffee a clod or turf, or twig or bough there growing, with words to this effect: "I deliver these to you in the name of seisin of all the lands and tenements contained in this deed." But if it be of a house, the feoffor must take the ring or latch of the door (the house being empty), and deliver it to the feoffee in the same form.

Livery *in law* is made not *on* the land, but *in sight of it* only; the feoffor saying to the feoffee, "I give you yonder land, enter and take possession." Here, if the feoffee enters during the life of the feoffor, it is a good livery, but not otherwise, unless he dares not enter, through fear of his life or bodily harm; and then his *continual claim*, made yearly in due form of law, as near as possible to the lands, will suffice without an entry. [CONTINUAL CLAIM.] This livery in law cannot be given or received by attorney, but only by the parties themselves. *T. L.; Cowel;* 2 *Bl.* 310—316.

Feoffments, having long been disused, were practically abolished by stat. 8 & 9 Vict. c. 106, ss. 2, 3, passed in 1845. For, by s. 2 of that Act, all corporeal hereditaments are, as regards the conveyance of the immediate freehold, to be deemed to lie *in grant* as well as *in livery*. That is to say, they may be conveyed by deed of grant without anything else. And, by s. 3, a feoffment other than a feoffment made under a custom by an infant (*i. e.*, made under some special local custom by a minor) is void at law, unless evidenced by deed. Thus a deed is necessary in any case, so that a feoffment is quite useless. 1 *Steph. Com.* 503—512; *Wms. R. P.*

FEOFFOR. A person who makes a *feoffment*. [FEOFFMENT.]

FEORME. The same as farm. [FARM.] 2 *Bl.* 317, 318; 1 *Steph. Com.* 514.

FERÆ NATURÆ. Of a wild disposition; an expression applied to animals which are generally found at liberty, though it may happen that they are sometimes tamed and confined by the art and industry of man. 2 *Bl.* 390—395; 4 *Bl.* 235, 236; 2 *Steph. Com.* 4—9; 4 *Steph. Com.* 116.

FERDELLA TERRÆ. Ten acres. *T. L.; Cowel.* It is thus apparently synonymous with *ferlingata terræ.*

FERLING (*Ferlingus*). The fourth part of a penny. *Cowel.* Also used as synonymous with *ferlingata terræ. T. L.*

FERLINGATA TERRÆ. The fourth part of a yard-land. Ten *acres* (it is said) make one *ferling;* four *ferlings* one *virgate* (or *yard-land*); four *virgates* one *hide;* and five *hides* a knight's fee. *T. L.; Cowel.* [KNIGHT'S FEE.]

FERMARY (from the Saxon *Feorme*, provisions) signifies an hospital. *Toml.*

FERME (Fr.) A farm. *Cowel* conjectures that both the French and the English words came from the Latin *firmus.* [FARM.]

FERMIER. A farmer.

FERMISONA. The winter season for killing deer. *Cowel; Toml.*

FERRY. A liberty by prescription, or by the king's grant, to have a boat for passage upon a great stream for carriage of horses and men for reasonable toll. *T. L.* This right, where it exists, involves a right of action on the part of the owner of the ferry against those who set up a new one so near as to diminish his custom. On the other hand, the existence of the right implies also a duty, on the part of the grantee, to keep up a boat over the stream, if not otherwise fordable, for the convenience of the public: and neglect of this duty will render him liable to a criminal prosecution. 1 *Steph. Com.* 663—665.

FESTINGMEN. [FÆSTINGMEN.]

FEU or **FEW.** The prevailing tenure of land in Scotland, where the vassal, in place of military service, makes a return in grain or in money. It is in the nature of a perpetual lease.

Feu-holding is one of the ancient holdings of the law of Scotland. It was formerly deemed an ignoble holding, in which, instead of military service (which was required under "ward-holding"), agricultural labour or services were exacted. *Bell.* [FEE. 1.]

FEUD. The same as fee. [FEE.]

Also it signifies implacable hatred, not to be satisfied but with the death of the enemy; and especially a combination of the kindred of a murdered man to avenge his death upon the slayer and all his race. *T. L.*

FEUD BOTE. A recompence for engaging in a feud or faction fight, and the contingent damages, it having been the custom in ancient times for all the kindred to engage in the kinsman's quarrel. *Cowel.* [FEUD.]

FEUDAL. Of or belonging to a fee. [FEE. See also the following Titles.]

FEUDAL ACTION. The same as *real action.* [ACTIONS REAL AND PERSONAL.]

FEUDAL SYSTEM. The system of military tenures, according to which allotments of land were made by the Conqueror to the superior officers of his army, and by them to the inferior officers and deserving soldiers, on the condition that the possessor should do service faithfully, both at home and in the wars, to him by whom they were given; for which purpose he took the oath of fealty: and in case of the breach of this condition and oath, by not performing the stipulated service, or by deserting the lord in battle, the lands were again to revert to him who granted them. At first the lord was the sole judge whether the vassal performed his services faithfully; and the feuds were in consequence held at the will of the lord. Afterwards they became certain for one or more years; after that, they were granted for the life of the feudatory (*i. e.*, the grantee). Afterwards they became extended to his sons, thence to his heirs, so as to admit his male descendants *in infinitum;* thence they became confined to the eldest son; the feudatory, or holder of the feud, not being able to alienate it in his lifetime, or to devise it by will. The feudatories, being under frequent incapacities of cultivating and manuring their own lands, soon found it necessary to commit part of them to inferior tenants, exacting *returns* in service, corn, cattle, or money; which returns were the original of *rents.* This innovation was an inroad into the previously purely military character of feuds. The guise of a military character

FEUDAL SYSTEM—*continued.*

however, continued until the abolition of military tenures in the year 1660, by stat. 12 Car. 2, c. 24. 2 *Bl.* 44—77; 1 *Steph. Com.* 172—228.

FEUDARY was an officer in the Court of Wards, appointed by the master of that court by virtue of the stat. 32 Hen. 8, c. 46, to be present with the escheator in every county at the "finding of offices" [OFFICE FOUND], and to give in evidence for the king as well for the value as the tenure; also to survey the lands of the ward after office found, and to return the true value into the court. This office was abolished by stat. 12 Car. 2, c. 24 (the Act for the abolition of military tenures), passed in 1660. *T. L.; Cowel.*

FEUDATORY. He that holdeth lands by feudal service. *T. L.;* 2 *Bl.* 53. [FEE; FEUDAL SYSTEM.]

FEUDUM ANTIQUUM. An ancient feud; that is, a feud which has descended to a man from his ancestors. 2 *Bl.* 212; 1 *Steph. Com.* 394.

FEUDUM LAICUM. A lay fee, as opposed to such a tenure as frankalmoign, in which the service is of a spiritual nature. 2 *Bl.* 101.

FEUDUM MILITIS, or FEUDUM MILITARE. A knight's fee. [KNIGHT'S FEE.]

FEUDUM NOVUM. A feud newly acquired by a man, and not descended upon him from his ancestors. 2 *Bl.* 212; 2 *Steph. Com.* 393, 394. [See next Title.]

FEUDUM NOVUM UT ANTIQUUM. A *feudum novum*, or newly-acquired fee, granted to a man to hold *ut feudum antiquum;* that is, with all the qualities annexed to a feud derived from one's ancestors, so as to admit the succession of *collateral relations* of the purchaser, even *in infinitum*, because they might have derived their blood from the first *imaginary* purchaser. 2 *Bl.* 212; 1 *Steph. Com.* 394, 395.

FI. FA. [FIERI FACIAS.]

FIAR, in opposition to *life-renter*, is, in Scotland, the person in whom the property in any thing (whether land or money) is vested, burdened with the right of life rent. *Bell.* Or, as we should say, a reversioner who is for the present kept out of posession by the life estate of a tenant for life.

FIAT. A short order or warrant of a judge for making out and allowing certain processes; or an indorsement by the Lord Chancellor or Attorney-General, on behalf of the Crown, upon a petition for warrant to bring a writ of error, or for any purpose for which the consent of the Crown is necessary. *Toml.* Proceedings in bankruptcy used also, at one time, to commence by what was called a *fiat* in bankruptcy, which was a power under the Lord Chancellor's signature, authorizing proceedings to be taken in bankruptcy. 2 *Steph. Com.* 153, *n.*

FICTION OF LAW (Lat. *Fictio juris*) is defined as a supposition of law that a thing is true, without inquiring whether it be so or not, that it may have the effect of truth so far as is consistent with justice. 3 *Bl.* 43, 107; *Bell.*

The late Mr. Best, in his "Presumptions" (p. 24), speaks of a fiction as something false *but not impossible*, and distinguishes between fictions and *præsumptiones juris et de jure* (*i. e.*, presumptions which the law will not allow to be questioned) as follows:—According to him, *præsumptiones juris et de jure* are arbitrary inferences, which may or may not be true; whilst, in the case of fictions, the falsehood of the fact assumed is understood and avowed. Of the former he gives an instance in the presumption that children under seven years are incapable of felonious purposes. [DOLI CAPAX.] Of the latter he gives an instance in the assumption that a contract which was really made at sea was made at the Royal Exchange.

But it is not clear what Mr. Best means when he speaks of a fiction *not being impossible.* All fictions are, in the most obvious sense, impossible. The fiction, whatever it is, is assumed to be true, and it is impossible that the same assumption can be both false and true. Probably he means that the matter in which the fiction consists must be *capable of being conceived of as being true.* But we know no rational ground for such a limitation of the use of the word.

According to the late Mr. John Austin, fictions commonly consist in feigning that something, which obviously is, *is not;* or that something which obviously is not, *is.* Mr. Austin adduces, by way of example, the fiction that husband and wife are one in law.

Fictions of law are imputed by Mr. Austin to the sheer imbecility, or active and sportive fancies, of their grave and venerable authors, rather than to any

FICTION OF LAW—*continued.*

deliberate design, good or evil. *Austin, Jur., Lect. XXXVI.*

The phrase "implied by law" is frequently used to cover a legal fiction. For instance, when it is said that a contract or request is "implied by law," it is frequently meant that no such contract or request has ever been made, but that, for certain legal purposes, it must be held to have been made. But the phrase is applied equally to the most rational and obvious inferences of fact. [IMPLIED.]

FIDEJUSSORES. Sponsors, sureties; a word derived from the Roman law. 4 *Bl.* 252; 4 *Steph. Com.* 291. Blackstone uses the word with especial reference to those whose recognizances are taken in the Admiralty Courts. 3 *Bl.* 108.

FIDUCIARY ESTATE. The estate or interest of a trustee in lands or money, as opposed to the beneficial interest or enjoyment thereof.

FIEF. [FEE, 1.]

FIEF D'HAUBERT. The Norman phrase for tenure by knight-service. 2 *Bl.* 62; 1 *Steph. Com.* 188, *n.* [HAWBERK; KNIGHT-SERVICE.]

FIELD-ALE is said to be the drinking of ale by bailiffs in the *field*, at the expense of the hundred. It has long since been prohibited. *Toml.* This custom is also called "filctale," "filkdale," "fillenale," "scotale," and "southale;" and the etymology suggested by the above definition is questionable. Sir Edward Coke, adopting the word "fillenale," describes it as "an ale-feast, whereat they were *filled* with ale." 4 *Inst.* 307, *n.* The irregular extortion of money by bailiffs and other officers for the drinking of ale, and similar purposes, is prohibited by the Charter of the Forest, 9 Hen. 3, stat. 2, c. 7, passed in 1225, and by 25 Edw. 3, stat. 5, c. 7, passed in 1350. And the practice in question is mentioned by Bracton, who wrote about 1250, as one of the matters to be inquired into by the justices in eyre. *De Legibus Angliæ, lib.* 3, *fol.* 117.

FIERDING COURTS were local courts under the ancient Gothic constitutions. They were so called, because *four* were instituted within every superior district or hundred. 3 *Bl.* 34.

FIERI FACIAS. A writ of execution for him that hath recovered in an action of debt or damages, addressed to the sheriff, to command him to levy the debt or damages from the goods of the party against whom judgment is recovered. It is opposed to a *levari facias*, which affects the *profits* of a man's lands as well as his goods; to an *elegit*, which affects lands and goods; and to a *capias ad satisfaciendum*, which is directed against the person. *T. L.; Cowel;* 3 *Bl.* 417; 3 *Steph. Com.* 583—585; *Lush's Pr.* 595; *Kerr's Act. Law; Hunt. Eq.; Judicature Act*, 1875 (*Stat.* 38 & 39 *Vict. c.* 77), *Sched. Ord. XLIII. r.* 1. [See next Title.]

FIERI FACIAS DE BONIS ECCLESIASTICIS. A writ of execution issued when a judgment debtor is a clerk in holy orders, and the sheriff returns (*i. e.*, endorses on the writ), that the debtor has no lay fee within his county. This writ is directed to the bishop of the diocese, whose duty thereupon is to appoint sequestrators to take the tithes and other profits of the benefice towards the satisfaction of the execution-creditor's demand. *Smith's Act. Law; Stat.* 38 & 39 *Vict. c.* 77, *Sched. Ord. XLIII. r.* 2.

FIERI FECI. A return to the writ of *fieri facias*, denoting that the sheriff or other officer to whom it is directed has levied the sum named in the writ, either wholly or as to that part to which the return is applicable. *Smith's Act. Law; Lush's Pr.* 609. [RETURN.]

FIFTEENTH. A tribute or imposition of money anciently laid upon a city or town, amounting to a fifteenth part of that which the city or town had been valued at of old. These "fifteenths" were granted to the Crown from time to time by Parliament. *T. L.; Cowel;* 1 *Bl.* 309; 2 *Steph. Com.* 3, 555.

FIGHTWITE. A Saxon word, signifying a mulct of 120 shillings for making a quarrel to the disturbance of the peace. *Cowel.*

FILACER. An officer in the Common Pleas, so called because he *filed* those writs whereon he made process. There were fourteen of such officers. *Cowel.* There were also officers of the same name in the Courts of King's Bench and Exchequer. These offices were all abolished in 1837 by stat. 7 Will. 4 & 1 Vict. c. 30.

FILCTALE. [FIELD-ALE.]

FILING BILL IN EQUITY signifies placing a copy of the bill on the files of the Court. This is done by one of the clerks of records and writs. [CLERK OF RECORDS AND WRITS.] The filing of the bill is the commencement of the formal proceedings in a Chancery suit. *Hunt. Eq.* Bills in equity will henceforth be superseded, under the Judicature Act, 1875, by the "general indorsements" in Appendix (A.), Part II. sect. 1, or such similarly concise forms as the nature of any given case may require. *Ord. III. r.* 3.

FILIUS MULIERATUS. The same as *mulier puisné.* 2 *Bl.* 248; 1 *Steph. Com.* 439. [MULIER PUISNE.]

FILIUS NULLIUS. FILIUS POPULI. "Son of no man." "Son of the people." Expressions used of a bastard. 1 *Bl.* 458; 2 *Bl.* 247; 1 *Steph. Com.* 438; 2 *Steph. Com.* 299.

FILKDALE or **FILLENALE.** [FIELDALE.]

FILUM AQUÆ MEDIUM. The thread or middle part of a stream which divides the jurisdictions or properties. *Toml.*

FINAL EXAMINATION. The examination which every articled clerk has to undergo at the end of his service prior to being admitted to practise as an attorney and solicitor. This examination includes papers in the following subjects:—(1) Common Law [COMMON LAW, 4]; (2) Conveyancing, and the Law of Property; (3) Equity; (4) Bankruptcy; (5) Criminal Law, and Proceedings before Magistrates. The last two subjects are not necessary, except in the case of candidates for honours. See 3 *Steph. Com.* 216.

FINAL JUDGMENT is a judgment awarded at the *end* of an action, as opposed to an *interlocutory judgment.* 3 *Steph. Com.* 569, 571; *Kerr's Act. Law.* [INTERLOCUTORY JUDGMENT.]

FINAL PROCESS. The expression used to denote execution on final judgment. 3 *Steph. Com.* 489. [FINAL JUDGMENT; PROCESS.]

FINDING OF A JURY. The verdict of a petty jury. But the expression may also be applied to the presentment of a grand jury: thus we say that a true bill was *found* against such a party. 4 *Steph. Com.* 367.

FINE. 1. Fine of lands and tenements.

This is sometimes called a *feoffment of record;* though it might with more accuracy be called an *acknowledgment of a feoffment on record.* [FEOFFMENT.] It may be described to be an amicable composition or agreement of a suit, either actual or fictitious, by leave of the king or his justices, whereby lands in question became, or were acknowledged to be, the right of one of the parties. In its original it was founded on an actual suit commenced at law for recovery of possession of lands. It was called a *fine,* because it put an *end,* not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter. Fines are of equal antiquity with the rudiments of the law itself. But the mode of levying them (*modus levandi fines*) was regulated by stat. 18 Edw. 1, passed in 1290. That mode was as follows:—The party to whom the land was to be conveyed or assured commenced an action against the other by suing out a writ or *præcipe,* called a *writ of covenant;* the supposed foundation of which agreement or covenant was, that the one should convey the lands to the other; on the breach of which agreement the action was brought. On this there was due to the king, by ancient prerogative, a *primer fine,* amounting to one-tenth of the annual value of the land.

The second step was the *licentia concordandi,* or *leave to agree;* for in old times a suit commenced could not be abandoned without leave, lest the lord (or king) should be deprived of his perquisites for deciding the same. The leave was granted, but on payment of another fine called the *king's silver,* otherwise the *post fine,* amounting to three-twentieths of the annual value of the land.

The third step was the *concord or agreement itself,* by which the lands were acknowledged to belong to the complainant. The party making this acknowledgment was called the *cognizor,* and was said to *levy the fine.* The party to whom the acknowledgment was made was called the *cognizee,* and to him the fine was said to be levied. The acknowledgment was made either openly in the Court of Common Pleas or before one of the judges of that court, or before two or more commissioners in the county appointed by a writ of *dedimus potestatem;* which judges and commissioners were required to see that the cognizors were of full age, sound memory, and out

FINE—*continued.*

of prison. If a married woman were among the cognizors, she was privately examined whether she did it willingly and freely, or by the compulsion of her husband.

The fourth step was the *note* of the fine, being an abstract of the writ of covenant and the concord. This was enrolled of record in the proper office.

The fifth part was the *foot* of the fine or conclusion of it, which included the whole matter, reciting the parties, day, year, and place, and before whom it was acknowledged or levied. Of this there were indentures made or engrossed and delivered to the cognizor and the cognizee. By subsequent statutes, in order to make fines more public, they were required to be openly read and *proclaimed* in court, during which time all pleas were to cease.

Fines thus levied were of four kinds:

(1.) A fine "*sur cognizance de droit come ceo que il ad de son done*," or, "a fine upon acknowledgment of the right of the cognizee as that which he hath of the gift of the cognizor." This was the best and surest kind of fine, being equivalent to a feoffment of record.

(2.) A fine "*sur cognizance de droit tantum*," or "upon acknowledgment of the *right* merely." This was commonly used to pass a reversionary interest in the cognizor.

(3.) A fine "*sur concessit*," in which the cognizor, though he acknowledged no precedent right, yet granted to the cognizee an estate *de novo* for life or years, by way of supposed composition.

(4.) A fine "*sur don, grant et render*," which was a double fine, comprehending the fine "*sur cognizance de droit come ceo*," &c., and the fine "*sur concessit*." This fine might be used to create particular limitations of the estate; as by it the cognizee, after the right was acknowledged to be in him, granted back again, or rendered to the cognizor, or perhaps to a stranger, some other estate in the premises.

A fine (unlike an ordinary action) was, by the common law, conclusive not only upon the parties thereto, but also upon all persons who, not being under any disability, neglected to put in a *claim* within a year and a day. At the time of passing the statute of 18 Edw. 1, above mentioned, there were four methods of *claiming*, so as to avoid being concluded by a fine: 1. By action. 2. By entering such claim on the record at the *foot* of the fine. 3. By entry on the lands. 4. By *continual claim*. [CONTINUAL CLAIM.]

This doctrine of barring the right by non-claim was abolished by stat. 34 Edw. 3, c. 16, by which "it was accorded that the plea of non-claim of fines, which from henceforth should be levied, should not be taken or holden for any bar in time to come." The mischief and uncertainty generated by this latitude were remedied by stat. 4 Hen. 7, which barred the right of all strangers not under disability, unless they made claim, by *action* or lawful *entry*, within *five years* after proclamation made.

Doubts having arisen whether, under this statute, a tenant in tail could bar his issue by levying a fine, the stat. 32 Hen. 8, c. 36, was passed in 1541, declaring that a fine levied by a tenant in tail should be a bar to him and his heirs claiming by force of such entail; unless the fine be levied by a woman, after the death of her husband, of lands which were, by the gift of him or his ancestors, assigned to her in tail for her jointure; or unless it were of lands entailed by act of parliament or letters patent, whereof the reversion belonged to the Crown.

A fine, then, was a solemn conveyance on record from the cognizor to the cognizee; and the persons bound by it were *parties*, *privies*, and *strangers*.

The *parties* were the cognizors and cognizees.

The *privies* to a fine were such as were any way related to the parties who levied the fine, and claimed under them by any right of blood or other right of representation. Such were the heirs general of the cognizor; the issue in tail since the statute of Henry VIII.; the purchasers, devisees, and all others who must make title through the persons who levied the fine.

Strangers to a fine were all other persons in the world, except parties and privies. Strangers were, as we have seen, allowed five years to prosecute their rights.

In order to make a fine of any avail, it was necessary that the parties should have some *freehold* interest or estate in the lands affected by it. And a tenant for life, by levying a fine, incurred the risk of an immediate forfeiture of his estate to the remainderman or reversioner. But such forfeiture must be claimed in proper time; for if no claim were put in for five years after the death of the tenant for life, the estate was for ever barred by the fine.

Fines were abolished by stat. 3 & 4

FINE—*continued.*

Will. 4, c. 74, called the Fines and Recoveries Abolition Act, passed in the year 1833. *T. L.; Cowel;* 2 *Bl.* 348—357; 1 *Steph. Com.* 249, 250, 559—568; *Hallam's Const. Hist. ch.* 1.

2. Fine on alienation.

This was a sum of money paid in ancient times to the lord by a tenant whenever he had occasion to make over his land to another; and so, even to the present day, fines are payable by the custom of most manors, to the lord, upon every descent or alienation of a copyhold tenement. 2 *Bl.* 71, 89, 98; 1 *Steph. Com.* 178, 222, 628.

3. Fine for endowment.

This was a fine anciently payable to the lord by the widow of a tenant, without which she could not be endowed of her husband's lands. It was abolished under Henry I., and afterwards by *Magna Charta.* 2 *Bl.* 135.

4. A sum of money payable by a lessee on a renewal of the lease.

5. A pecuniary mulct inflicted by way of penalty for an offence. 4 *Bl.* 377—380; 4 *Steph. Com.* 444—447.

FINE ADNULLANDO LEVATO DE TENEMENTO QUOD FUIT DE ANTIQUO DOMINICO. An old writ for the disannulling of a fine, levied of lands held in ancient demesne to the prejudice of the lord. *Cowel.* [FINE, 1.]

FINE CAPIENDO PRO TERRIS. A writ that lay for one who, upon conviction by a jury, having his lands and goods taken into the king's hands and his body committed to prison, obtained favour for a sum of money, &c., to be remitted his imprisonment, and his lands and goods to be redelivered unto him. *Cowel.*

FINE FORCE signifies an unavoidable constraint. To do a thing *de fine force* is to do it under constraint. *Cowel.*

FINES AND RECOVERIES ABOLITION ACT is the stat. 3 & 4 Will. 4, c. 74, passed in 1833. [FINE, 1; RECOVERY.]

FINES FOR ALIENATION. [FINE, 2.]

FINES IN COPYHOLD. [FINE, 2.]

FINES LE ROY. Fines payable to the king, including fines for original writs. *Toml.* [ORIGINAL WRIT.]

FIRE AND SWORD, LETTERS OF, were letters anciently issued from the Privy Council of Scotland, directed to the sheriff of a county, authorizing him to call for the assistance of the county to dispossess a tenant retaining possession contrary to the order of a judge. *Bell; Toml.*

FIREBOTE, otherwise called house-bote, signifies a sufficient allowance of wood to burn in a house. *T. L.; Cowel;* 2 *Bl.* 35; 1 *Steph. Com.* 256, 287, 288.

FIRE INSURANCE POLICY. [FIRE POLICY.]

FIRE ORDEAL. An ancient form of ordeal confined to persons of high rank. [ORDEAL.]

FIRE POLICY. A policy of assurance which engages that, in consideration of a single or periodical payment of premium (as the case may be) to an insurance company, the company will pay to the assured such loss as may occur by fire to his property therein described, within the period or periods therein specified, to an amount not exceeding a particular sum fixed for that purpose by the policy. 2 *Steph. Com.* 135.

FIRMA. Victuals or provisions; a farm; also rent. *Cowel; Toml.* [FARM.]

FIRMA ALBA. [ALBA FIRMA.]

FIRMA NOCTIS. A customary tribute formerly paid towards the entertainment of the king for one night. *Cowel.*

FIRST-CLASS CERTIFICATE. [CERTIFICATE OF CONFORMITY.]

FIRST-CLASS MISDEMEANANT. By s. 67 of the Prisons Act, 1865 (28 & 29 Vict. c. 126) it is provided that, in every prison to which that Act applies (*i.e.*, the county, city and borough prisons of England and Wales) prisoners convicted of misdemeanor, and not sentenced to hard labour, shall be divided into two divisions, one of which shall be called the *first division;* and whenever any person convicted of misdemeanor is sentenced to imprisonment, without hard labour, it shall be lawful for the court or judge, before whom such person has been tried, to order, if such court or judge think fit, that such person shall be treated as a *misdemeanant of the first division;* and a misdemeanant of the first division is not to be deemed a "criminal prisoner" within the meaning of the Act.

A misdemeanant of the first division, referred to in the above section, is usually called a "first-class misdemeanant," and, as above stated, he is not treated as a "criminal prisoner," that is, by s. 4, a prisoner charged with, or convicted of, any crime.

FIRST FRUITS. The first year's whole profits of every spiritual living in one year, given in ancient times to the Pope throughout all Christendom. These payments were restrained by various acts of parliament, but they were made notwithstanding, until in the year 1535 they were annexed to the Crown by stat. 26 Hen. 8, c. 3. In the year 1703 they were restored to the Church by Queen Anne, under the name of Queen Anne's Bounty. *Stat.* 2 *&* 3 *Ann. c.* 11; 1 *Bl.* 284, 285; 2 *Bl.* 67; 4 *Bl.* 107; 1 *Steph. Com.* 199; 2 *Steph. Com.* 531, 532, 673. [QUEEN ANNE'S BOUNTY.]

FIRST IMPRESSION. A case *of first impression* (Lat. *primæ impressionis*) is a case for which there is no precedent applicable in all respects. See *Austin, Jur. Lect. XXV. ad fin.*

FISH ROYAL. Whale and sturgeon, which, when thrown ashore, or caught near the coast, are the property of the king, on account of their superior excellence. As regards the whale, it is said by our old writers, that the head belongs to the king, and the tail to the queen. 1 *Bl.* 223, 290; 2 *Steph. Com.* 448, 540.

FISHERY is a word often used to denote a right of fishing. This right is of three kinds. 1. A free fishery. 2. A several fishery. 3. A common of piscary. A *free fishery* is an exclusive right of fishing in a public river. A *free fishery* differs from a *several* fishery, because he that has a *several* fishery must be owner of the soil, which in a free fishery is not requisite. It differs also from a *common of piscary* in that a *free fishery* is an exclusive right, and a *common of piscary* is not so. These three species of fishery (says Blackstone) are often confounded in our law-books. 2 *Bl.* 39, 40; 1 *Steph. Com.* 670—672.

FISHINGS. The word used in Scotland for rights of fishing.

FISK, in the law of Scotland, is the Crown's revenue; and especially the Crown's right to the moveable estate of a person "denounced rebel." *Bell.* [REBELLION.]

FITZHERBERT. Sir Anthony Fitzherbert, of Norbury, in Derbyshire, was born in the latter part of the fifteenth century. He was the author of a work called "The Grand Abridgment," containing an abstract of the Year-Books till his time, the first edition of which was published in 1514; also of a publication called *Natura Brevium* (generally referred to as "F. N. B."), which is a comment upon the writs existing in his time, and issuing out of the king's courts. He was called to the degree of serjeant in 1510; in 1516 he was made one of the king's serjeants, and received the honour of knighthood; and about Easter, 1522, he was made a judge of the Court of Common Pleas. His signature is the last but one of the seventeen subscribers to the articles of impeachment against Cardinal Wolsey, and he was one of the commissioners appointed on the trials both of Sir Thomas More and Bishop Fisher.

Sir Anthony Fitzherbert died, as appears by his epitaph in the church at Norbury, on May 27th, 1538. *Cowel;* 1 *Bl.* 72; 3 *Bl.* 183, 184; 1 *Steph. Com.* 51; *Foss' Judges of England.*

FIVE MILE ACT is a name given—1. To the stat. 35 Eliz. c. 2, passed in 1593, being "An Act for restraining Popish Recusants to certain Places of Abode." By this Act it is provided, that every natural-born subject or denizen of the Queen's Majesty's realms and dominions, being a popish recusant, and convicted for not repairing to some church, chapel or usual place of common prayer, to hear divine service there, shall within forty days (if not restrained by imprisonment, sickness, or otherwise) repair to his usual place of dwelling and abode, and not at any time after pass or remove above *five miles* from thence, upon pain of forfeiting to the Queen's Majesty all his goods, lands, tenements and hereditaments, and the rents thereof during his life. This statute was repealed in 1844 by stat. 7 & 8 Vict. c. 102.

2. To the stat. 17 Car. 2, c. 2, passed in 1665, by s. 3 of which it is provided that preachers in conventicles contrary to law, under colour or pretence of religion, shall not, after March 24th, 1665, unless in passing upon the road, come within *five miles* of any city or town corporate, or borough that sends burgesses to parliament, or within any parish, town or place wherein they have been parsons, vicars or lecturers, or have taken upon them to preach; unless they take the oath, mentioned in s. 2 of the Act, not to take up arms against the king, or endeavour any alteration of government in Church or State; upon pain of forfeiting 40*l.* of lawful English money. This statute was repealed in 1812 by stat. 52 Geo. 3, c. 155, s. 1.

FIXTURES. Things of an accessory character, annexed to houses or lands; including not only such things as grates in a house, or steam engines in a colliery, but also windows and palings. To be a fixture, a thing must not constitute part of the principal subject, as in the case of the walls or floors of a house; but, on the other hand, it must be in actual union or connexion with it, and not merely brought into contact with it, as in the case of a picture suspended on hooks against a wall. 2 *Steph. Com.* 217—220; *Robson, Bkcy.; Fawcett, L. & T.* 138, 139, 292—297; *Browne on the Law of Fixtures.*

FLAGRANTE DELICTO. An expression applied to the apprehension of a man red-handed in the act of committing a crime.

FLASH CHEQUE. [CHEQUE.]

FLEDWITE or **FLIGHTWITE.** A discharge or freedom from amerciaments, where one, having been an outlawed fugitive, cometh to the peace of our lord the king of his own accord. *T. L.; Cowel.*

FLEET PRISON was a famous prison in London, so called from a river or ditch that was formerly there, and on the site whereof it stood. *Cowel; Toml.* It was used especially for debtors and bankrupts, and for persons charged with contempt of the Courts of Chancery, Exchequer and Common Pleas. By stat. 5 & 6 Vict. c. 22, passed in 1842, the Fleet Prison was abolished, and persons who before the passing of that Act had been sent there, were, after the passing thereof, to be confined in the prison of the Marshalsea of the Court of Queen's Bench, which was thenceforth to be called the Queen's Prison.

The Fleet Prison was pulled down in 1845. *Haydn's Dict. Dates.*

FLETA. A feigned name of a learned lawyer, who lived in the times of Edward II. and Edward III. He wrote a book of the common law of England, as it existed in his time. The work is entitled "Fleta, seu Commentarius Juris Anglicani," and is divided into six books. The first book treats of the Rights of Persons and Pleas of the Crown; the second of Courts and Officers; the third of Methods of acquiring Titles to Things; the fourth and fifth of Writs of Assize and Entry; and the sixth of the Writ of Right. He is supposed to have been confined in the Fleet Prison. *Cowel;* 1 *Bl.* 72; 4 *Bl.* 427; 1 *Steph. Com.* 51; 4 *Steph. Com.* 503.

FLIGHT. An escape from justice on the part of a man accused of treason or felony. In former times, if, in their verdict, the jury found that the party *fled for it*, whether he were found guilty or acquitted of the principal charge, he forfeited all his goods and chattels. 4 *Bl.* 387.

FLOTAGES. Such things as swim on the top of the sea or great rivers. *Cowel.*

FLOTSAM signifies any goods that by shipwreck be lost, and lie *floating* or swimming upon the top of the water. These, with other wreck, belong to the Crown, if no owner appears to claim them. If, however, any owner appears, he is entitled to recover the possession. *Cowel;* 1 *Bl.* 292, 293; 3 *Bl.* 106; 2 *Steph. Com.* 542, 543; 3 *Steph. Com.* 342, 543. [WRECK.]

FOCAGE. The same as *house-bote* or *fire-bote*, i. e. firewood. *Toml.* Also used as signifying *chimney-money*. [CHIMNEY-MONEY.]

FOCAL or **FOCALE.** A right of taking firewood. *Cowel; Toml.*

FŒNUS NAUTICUM. The extraordinary rate of interest, proportioned to the risk, demanded by a person lending money on a ship, or on *bottomry* as it is termed. The agreement for such a rate of interest is also called *fœnus nauticum.* 2 *Bl.* 458; 2 *Steph. Com.* 93. [BOTTOMRY.]

FŒSA. Grass, herbage. *Cowel; Toml.*

FOLCLAND. [FOLKLAND.]

FOLCMOTE. [FOLKMOTE.]

FOLDAGE. [FALDAGE.]

FOLGERS (*Folgarii*). Menial servants or followers. *Cowel.*

FOLIO signifies generally seventy-two words of a legal document. *Wms. R. P. Part I. ch.* 9. But for some purposes ninety words are reckoned to the folio. *Hunt. Eq.*

FOLKLAND, in the times of the Saxons, was land held in villenage, being distributed among the common *folk*, or people, at the pleasure of the lord of the manor, and resumed at his discretion. Not being held by any assurance in writing, it was opposed to *book* land, or *charter* land, which was held by deed. 2 *Bl.* 90; 1 *Steph. Com.* 215.

FOLKMOTE. A word which, in its meaning, included two kinds of courts; the old county court, and the sheriff's tourn. Some think that it was a common council of all the inhabitants of a city, town, or borough, convened by sound of bell to the mote-hall or house. *T. L.; Cowel; Toml.*

According to Mr. Serjeant Pulling, the two courts in each county, from the time of the Saxons, were the *folkmote* for criminal causes (afterwards called the sheriff's tourn or leet), and the *sciremote* for civil suits. *Pulling on the Customs of London*, 170.

FOOTGELD. An amerciament or fine for not cutting out balls of great dogs' feet in the forest. *T. L.; Cowel.* [EXPEDITATION.]

FOOT OF A FINE. The conclusion of a fine. [FINE, I.]

FORBARRE or **FORBAR** is for ever to deprive. *Stat.* 9 *Rich.* 2, *c.* 2, and 6 *Hen.* 6, *c.* 4; *Cowel.*

FORCE generally means unlawful violence. *Cowel.*

FORCE AND ARMS (Lat. *Vi et armis*). Words sometimes inserted in indictments, and in declarations for trespass, but now no longer necessary. 3 *Steph. Com.* 364; 4 *Steph. Com.* 372.

FORCIBLE DETAINER. A forcible holding possession of any lands or tenements, whereby the lawful entry of justices, or others having a right to enter, is barred or hindered. *Cowel;* 4 *Bl.* 148; 4 *Steph. Com.* 256, 257.

A forcible detainer, though made after a peaceable entry, is, by stat. 8 Hen. 6, c. 9, s. 2, passed in 1429, subjected to the provision of stat. 15 Rich. 2, c. 2, relating to forcible entry. [FORCIBLE ENTRY.]

FORCIBLE ENTRY. The violent entering and taking possession of lands or tenements with menaces, force, and arms, or with a multitude of people, and not in an easy and peaceable manner. This was formerly allowable to every person disseised, or turned out of possession, unless his entry were taken away or barred by law. But now by stat. 5 Rich. 2, stat. 1, c. 7 (in Ruffhead's ed. c. 8), passed in 1381, any party guilty of this offence, notwithstanding that he have a lawful right of entry, is punishable by imprisonment, but may be ransomed at the king's will; and, by stat. 15 Rich. 2, c. 2, passed in 1391, the justices may go down to the place, and commit the offenders to gaol until they pay fine and ransom to the king. *T. L.; Cowel;* 3 *Bl.* 179; 4 *Bl.* 148; 3 *Steph. Com.* 396, *n.*, 399, *n.*; 4 *Steph. Com.* 256, 257.

FORDOL, from Saxon *fore,* and *dæle,* a part or portion, signifies a head-land. *Cowel.*

FORECHEAPUM. Pre-emption; from the Saxon *fore,* before; and *ceapan,* to buy. *Cowel.*

FORECLOSURE. The forfeiture by a mortgagor of his equity of redemption, by reason of his default in payment of the principal or interest of the mortgage debt within a reasonable time. Foreclosure may be enforced in equity by a proceeding called a *foreclosure suit.* 2 *Bl.* 159; 1 *Steph. Com.* 307; *Sm. Man. Eq.; Wms. R. P.*

It corresponds very nearly with the "effectual adjudication" of the Scotch law. [EFFECTUAL ADJUDICATION.]

FOREGIFT. A payment in advance; a word generally applied to money paid down, in consideration of a lease, by the intended lessee; as opposed to the yearly rent accruing under the lease. A foregift is in fact a species of fine. [FINE, 4.]

FOREGOERS. The king's purveyors; so called from their going *before* to provide for his household. *Cowel.*

FOREHAND RENT OR FINE. The same as a premium or foregift for taking or renewing a lease. *Woodfall, L. & T.* 338. [FOREGIFT.]

FOREIGN. A word used variously. [See the following Titles.]

FOREIGN APPOSER (Lat. *Forinsecarum oppositor*) was an officer in the Exchequer, whose duty it was to examine the sheriffs as to their accounts, and to charge them with monies received. Now, by stat. 3 & 4 Will. 4, c. 99, sheriffs are no longer to account in the Exchequer, but their accounts are to be audited by the Commissioners for auditing the public accounts. *Toml.*

FOREIGN ATTACHMENT. A process by which a debt due to a judgment debtor from a person not a party to the action or suit is made available for satisfying the claim of the judgment creditor.

FOREIGN ATTACHMENT—*continued.*

Such a process has been immemorially used in London, Bristol, and other cities; and a similar proceeding called *attachment of debts* is sanctioned by the Common Law Procedure Act, 1854, s. 60. *Cowel;* 3 *Steph. Com.* 588, 589, *n.* [CUSTOM OF LONDON.]

FOREIGN BILL OF EXCHANGE is a bill *not* drawn in any part of the United Kingdom of Great Britain, the Isle of Man and the Channel Islands, or not made payable in, or drawn upon, any person resident therein. This is by s. 7 of the Mercantile Law Amendment Act, 1856 (stat. 19 & 20 Vict. c. 97), prior to which any bill of exchange drawn out of *England*, or payable out of *England*, was a *foreign* bill of exchange. And that statute has a proviso that nothing in its provisions shall affect any stamp duty payable in respect of a bill or note. 2 *Bl.* 467; 2 *Steph. Com.* 115.

FOREIGN ENLISTMENT ACTS are statutes for preventing British subjects serving foreign States in war. The earliest legislative enactment on the subject was s. 18 of stat. 3 Jac. 1, c. 4, passed in 1605, the penalties of which were repealed by stat. 9 & 10 Vict. c. 59, passed in 1846. There was a Foreign Enlistment Act passed in 1819 (stat. 59 Geo. 3, c. 69), which is now superseded by the Foreign Enlistment Act of 1870 (33 & 34 Vict. c. 90). This Act provides that if any British subject shall, without the licence of her Majesty, within or without her Majesty's dominions, accept any commission in the military or naval service of any foreign State at war with any friendly State (*i.e.*, a State at peace with her Majesty), or shall induce any other person so to do, or shall quit or attempt to quit her Majesty's dominions with the intention of accepting such commission, he shall, in any of the above cases, be punishable by fine or imprisonment to the extent of two years, or both. And any person who, without licence from the Crown, shall build or equip any ship for the service of a foreign State at war with a friendly State, is punishable in like manner. 4 *Steph. Com.* 195, 196.

FOREIGN JURISDICTION ACT, 1843. The stat. 6 & 7 Vict. c. 94, by which it was provided that it should be lawful for her Majesty to exercise any power or jurisdiction that she may have within any country or place *out* of her dominions, in the same and in as ample a manner as if such power or jurisdiction had been obtained by cession or conquest; and that everything done in pursuance of such power or jurisdiction, in any place out of her Majesty's dominions, shall, within her dominions, be deemed to be, to all intents and purposes, as valid as if done according to the local law then in force within such place. 1 *Steph. Com.* 103.

FOREIGN OPPOSER. [FOREIGN APPOSER.]

FOREIGN PLEA. A plea objecting to the judge as incompetent, on the ground that the matter in hand is not within his jurisdiction. *Cowel.*

FOREJUDGER (Lat. *Forisjudicatio*). A judgment whereby a man is deprived of a thing in question. To be forejudged the court is when an officer or attorney of any court is expelled from the same for some offence. *Cowel; Toml.*

FORENSIC MEDICINE. The science of medical jurisprudence, comprising those matters which may be considered as common ground to both medical and legal practitioners; as, for instance, inquiries relating to suspected murder or doubtful sanity. 1 *Steph. Com.* 8.

FORESCHOKE (Lat. *Derelictum*). Forsaken; especially with reference to lands abandoned by the tenant. *T. L.; Cowel.*

FOREST. Waste ground belonging to the king, replenished with all manner of beasts of chase or venery; which are under the king's protection, for his royal recreation and delight. *T. L.; Cowel;* 1 *Bl.* 289. As a legal right, it is defined as the right of keeping, for the purpose of hunting, the wild beasts and fowls of forest, chase, park, and warren, in a territory or precinct of woody ground or pasture set apart for the purpose. 1 *Steph. Com.* 665; see also 2 *Bl.* 38.

FOREST CHARTER. [CARTA DE FORESTA.]

FOREST COURTS. The courts instituted for the government of the king's forests in different parts of the kingdom. They were as follows:—

1. The Court of *Attachments, Woodmote*, or *Forty Days' Court*, to be held before the verderors of the forest once in every forty days, to inquire into all

FOREST COURTS—*continued.*

offenders against vert and venison. [ATTACHMENTS, COURT OF.]

2. The Court of *Regard*, or *Survey of Dogs*, to be holden every third year for the lawing or expèditation of mastiffs, to prevent them from running after the deer. [EXPEDITATION.]

3. The Court of *Swein-mote*, to be holden before the verderors, as judges, by the steward of the swein-mote thrice in every year, the *sweins* (or freeholders within the forest) composing the jury.

4. The Court of *Justice Seat*, which was the principal forest court, held before the chief justice in eyre, or his deputy, to hear and determine all trespasses within the forest, and all claims of franchises, liberties and privileges, and all pleas and causes whatsoever therein arising; to try presentments in the inferior courts of the forest, and to give judgment upon conviction of the swein-mote.

The forest courts have, since the Revolution of 1688, fallen into disuse. 3 *Bl.* 71—73; 3 *Steph. Com.* 317, *n.*

FOREST LAW. The old law relating to the forest; under colour of which the most horrid tyrannies and oppressions were exercised, in the confiscation of lands for the purposes of the royal forests. 1 *Steph. Com.* 667. In the beginning of the reign of Charles I. an attempt was made to revive the forest laws, which caused great dissatisfaction. *Hallam's Const. Hist. ch.* 8.

FORESTAGIUM. Duty or tribute payable to the king's foresters. *Cowel.*

FORESTALLING. The buying or contracting for any merchandise or victual coming in the way to market; or dissuading persons from bringing their goods or provisions there; or persuading them to enhance the price when there; any of which practices make the market dearer to the fair trader. This is an offence against public trade at common law, and also by the stat. 5 & 6 Edw. 6, c. 14. *T. L.; Cowel;* 4 *Bl.* 159. The practice of forestalling is now, since the stat. 7 & 8 Vict. c. 24 (passed in 1844), no longer an offence against the law. 4 *Steph. Com.* 266, *n.*

FORESTER. A sworn officer of the forest appointed by the king's letters patent to watch the vert and venison; to walk the forest both early and late, and to bring trespassers to justice. *T. L.; Cowel.*

FORFANG (Lat. *Antecaptio* or *Preventio*). The taking of provision from any one in fairs or markets, before the king's purveyors are served with necessaries for his Majesty. *Cowel.*

FORFEITURE is defined by Blackstone as a punishment annexed by law to some illegal act or negligence, in the owner of lands, tenements, or hereditaments, whereby he loses all his interest therein, and they go to the party injured, as a recompense for the wrong which either he alone, or the public together with himself, hath sustained. 2 *Bl.* 267. Subsequently, in pp. 420, 421 of the same volume, Blackstone refers to the forfeiture of goods and chattels for crime or misdemeanor.

Forfeiture may, we think, be defined generally as the loss of lands or goods by reason of some act in contravention of law, or of some condition in a written document, expressed or implied.

Many of the grounds of forfeiture which formerly existed are now obsolete. And, especially, forfeitures for treason and felony are abolished by s. 1 of the Felony Act, 1870 (33 & 34 Vict. c. 23).

FORFEITURE OF MARRIAGE (Lat. *Forisfactura maritagii*). A writ which lay against him who, holding by knight's service, and being under age and unmarried, refused her whom the lord offered him without disparagement, and married another. *T. L.; Cowel.* [DISPARAGEMENT; VALOR MARITAGII.]

FORFEITURES ABOLITION ACT. A name sometimes given to the Felony Act, 1870 (33 & 34 Vict. c. 23).

FORGAVEL. A quit rent, or a small reserved rent in money. *Toml.*

FORGERY. The fraudulent making or alteration of a writing to the prejudice of any man's right; or of a stamp, to the prejudice of the revenue. *T. L.; Cowel;* 4 *Bl.* 247; 4 *Steph. Com.* 141—145. It is a common mistake to suppose that if a deed is really executed by the parties by whom it purports to be executed, it cannot be a forgery. So far from this being the case, any material alteration of a written instrument, however slight, is a forgery. And in the case of *The Queen* v. *Ritson* (decided in November, 1869, and reported L. R., 1 C. C. R. 200; 39 L. J., M. C. 10; 21 L. T., N. S. 437; and 18 W. R. 73), it was decided, in accordance with the ancient authorities,

FORGERY—*continued.*

that it is forgery to affix a false date to a deed with intent to defraud, such false date being material. The essence of forgery consists in making an instrument to appear to be that which it is not.

FORGERY ACT, 1861. The stat. 24 & 25 Vict. c. 98, being one of the Criminal Law Consolidation Acts.

FORGERY ACT, 1870. The stat. 33 & 34 Vict. c. 58, passed for the punishment of forgers of stock certificates, and for extending to Scotland certain provisions of the Forgery Act of 1861.

FORINSECUM MANERIUM. That part of a manor which lies without a town, and is not included within the liberties thereof. *Cowel.*

FORINSECUM SERVITIUM. The payment of aid, scutage and other extraordinary burdens of military service; as opposed to the *intrinsecum servitium*, which was the ordinary service at the lord's court. *Cowel.*

FORISFAMILIARI. A word applied to a son who accepts part of his father's lands in discharge of any further claim upon him. *Cowel; Bell.*

FORISFAMILIATION. The separation of a child from the father's family. *Bell; Toml.*

FORMA PAUPERIS. In the character of a pauper. A person applying to sue *in formâ pauperis* must swear that he is not worth 5*l.*, except his wearing apparel and the matter in question in the cause in respect of which he is desirous of suing. It is discretionary with the court to grant the indulgence of suing *in formâ pauperis*, and it will not be granted where the action is a vexatious one, or where it appears that there is no cause of action. A plaintiff suing as a pauper is not bound to pay to the defendant costs incurred after being admitted so to sue, unless he omits to proceed to trial pursuant to notice. A *defendant* in a civil action in a court of law is not allowed to defend *in formâ pauperis;* but in equity a party may be admitted to defend as well as to sue *in formâ pauperis. Lush's Pr.* 237—242; *Kerr's Act. Law; Hunt. Eq.*

FORMEDON (Lat. *Breve de forma donationis*) was a writ in the nature of a "writ of right," granted to persons claiming by virtue of any entail under the Statute of Westminster the Second, 13 Edw. 1, c. 1, passed in 1285. [WRIT OF RIGHT.] It was the highest action which tenant in tail could have. It was of three kinds.

1. A *formedon* in the *descender*, which was brought by the heir in tail against the person to whom his ancestor, the tenant in tail, had alienated the land.

2. A *formedon* in the *remainder*, founded not indeed on the express words but on the equity of the above statute, which was brought by the remainderman against a stranger who, on the failure of the issue in tail, had intruded upon the land, and kept the remainderman out of possession.

3. A *formedon* in the *reverter*, brought under the like circumstances by the donor or his heirs, claiming in reversion. *T. L.; Cowel;* 3 *Bl.* 191, 192; 3 *Steph. Com.* 392, *n.*

All these forms of the writ were abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

FORMS OF ACTION. The various classes of personal action, which are trespass, case, trover, detinue, replevin, covenant, debt, assumpsit, scire facias, and revivor; also the actions, nearly obsolete, of *account* and *annuity*, and the modern action of *mandamus.*

It was formerly necessary to mention the form of action in the writ of summons, but, since the passing of the C. L. P. Act, 1852, that is so no longer. 15 & 16 *Vict. c.* 76, *s.* 3; 3 *Steph. Com.* 363; *Smith's Act. Law; Kerr's Act. Law; Haynes' Eq.*

FORNAGIUM. The fee taken by a lord of his tenants, bound to bake in his common oven, for liberty to use their own. *Cowel.*

FORPRISE. An exception or reservation. *Cowel.*

FORSCHOKE. Forsaken. [FORESCHOKE.]

FORSPEAKER. An attorney or advocate in a cause. *Cowel.*

FORSTALLING. [FORESTALLING.]

FORTALICE. A fortress or place of strength, which anciently did not pass by conveyance of the land in which it stood without express grant of the fortalice itself; but now it will pass as part of the ground. *Bell; Toml.*

FORTESCUE was a judge in the reign of Henry VI. He wrote a book in commendation of our common law, in-

FORTESCUE—*continued.*

tituled *De Laudibus Legum Angliæ. Cowel.* He is supposed to have been born at Norreis, the estate of his mother, in the parish of North Huish in Devonshire, about the end of the fourteenth century. He went to Exeter College, Oxford, and thence to Lincoln's Inn. In 1429 he took the degree of serjeant-at-law, and at Easter, 1441, he was named as one of the king's serjeants. In January, 1442, he became Chief Justice of the King's Bench. The reign of Henry VI. practically expired on March 4, 1461, when Edward IV. assumed the throne. Fortescue was present at the battle of Towton on March 29, 1461, when the field was lost with King Henry. In the first parliament of Edward IV. Fortescue was attainted of high treason as one of those engaged in the battle of Towton, and his possessions were forfeited to the king. About this time he was in Scotland, and after this he went to Lorraine, where it is thought he composed his famous treatise *De Laudibus Legum Angliæ.* He was actively negotiating for the return of King Henry, and was present in the battle of Tewkesbury on May 4, 1471, and was there taken prisoner. After that he retracted all he had previously written against Edward's title, and was re-appointed a privy councillor in October, 1473. He was living in February, 1476, but how long he lived afterwards is uncertain. *Foss' Judges of England.*

FORTHCOMING. An action in Scotland by which arrestment is made effectual. The *arrestment* secures the goods or debts (*i. e.*, the debts due to the *debtor*) in the hands of the creditor or holder; the *forthcoming* is an action in which the debt is ordered to be paid, or the effects to be delivered up, to the arresting creditor. *Bell.* [ARRESTMENT; BREAKING OF ARRESTMENT.]

FORTUNA is sometimes used for *treasure trove.* [TREASURE TROVE.]

FORTY DAYS' COURT. [ATTACHMENTS, COURT OF; FOREST COURTS.]

FORUM. A word frequently used to signify the place where jurisdiction is exercised in a given case. Thus, if a person be sued in England on a contract made in France, England, in the given case, is the *forum*, and the law of England is, accordingly, the *lex fori.*

FOSTERING. An ancient custom in Ireland, in which persons put away their children to fosterers. *Fostering* was held to be a stronger alliance than blood, and the foster-children participated in the fortunes of their foster-fathers. *Hallam's Const. Hist. ch.* 18.

FOSTER-LAND. Land given for finding food or victuals for any person or persons, as for monks in a monastery. *Cowel.*

FOSTER-LEAN (Sax). A nuptial gift; the jointure or stipend for the maintenance of a wife. *Toml.*

FOURCH (Lat. *Afforciare*, Fr. *Fourchir*). To delay or prolong an action. *T. L.; Cowel; Toml.*

FOUR SEAS. The seas surrounding England: divided into the western, including the Scotch and Irish; the northern, or North Sea; the eastern, or German Ocean; and the British Channel. *Bouvier.* [BEYOND SEAS.]

FOUTGELD. [FOOTGELD.]

FOX'S ACT. The stat. 32 Geo. 3, c. 60, passed in 1792, and extended to Ireland by stat. 33 Geo. 3, c. 43, by which it was enacted that, in every trial of indictment for libel, the jury might give a general verdict of guilty or not guilty upon the whole issue; and that they should not be required by the court or judge to find a defendant guilty merely on proof of publication, by such defendant, of the paper charged to be a libel, and of the sense ascribed to it in the indictment.

Before this statute, it was held by the judges that, on trials for libel, the province of the jury was to consider two things only:

(1) The fact of publication by the defendant;

(2) The meaning of the words alleged to be libellous, in cases where such meaning was doubtful.

These points being found for the prosecution, it had always been held to be a matter of law to be determined by the court whether, on such facts, the defendant was guilty or not guilty. The object of the statute was to relegate this further question to the province of fact, to be determined by the jury. See 3 *Steph. Com.* 381, *n.*

FRACTITIUM. Arable land. *Toml.*

FRANCHISE. Franchise is defined by Blackstone as a royal privilege, or branch of the king's prerogative, vested in the hands of a subject. 2 *Bl.* 37; 1 *Steph. Com.* 298, 661, 662. Sometimes, also, it signifies a privilege or exemption from ordinary jurisdiction, and sometimes an immunity from tribute. *T. L.; Cowel.* At the present day, the word is most frequently used to denote the right of voting for a member to serve in parliament, which is called the parliamentary franchise; or the right of voting for an alderman or town councillor, which is called the municipal franchise.

FRANK. To *frank* a letter means to send it post-free, so that the person who receives it shall have nothing to pay. This is now done in the ordinary way by prepaying the postage: hence the word *frank*, like the French *affranchir*, when applied to letters sent by post at the present day, signifies the prepayment of the postage. But formerly, when the postage of letters was ordinarily paid by the receiver, the word was applied to the privilege, then enjoyed by members of parliament, of sending letters free of duty. This privilege was first claimed by the House of Commons in 1660, but afterwards dropped, upon a private assurance from the Crown that the privilege should be allowed to the members. And, accordingly, a warrant was constantly issued from the Postmaster-General, directing the allowance thereof to the extent of two ounces in weight, till at length the privilege was expressly confirmed by stat. 4 Geo. 3, c. 24, passed in 1764. 1 *Bl.* 323. It was abolished on the establishment of the penny postage, in 1840, by stat. 3 & 4 Vict. c. 96. 2 *Steph. Com.* 570, *n.* [For other senses of the word, see the following Titles.]

FRANKALMOIGN. Tenure in *frankalmoign*, or free alms, is that whereby a religious corporation holdeth lands of the donor to them and their successors for ever. The service which (prior to the Reformation) they were bound to render for these lands was not certainly defined; but only, in general, to pray for the souls of the donor and his heirs, dead or alive; and therefore they did no fealty, because this divine service was of a higher and more exalted nature. This is the tenure by which almost all the ancient monasteries and religious houses held their lands, and by which many of the parochial clergy and ecclesiastical and eleemosynary foundations hold them to this day, the nature of the service being altered at the Reformation. This tenure is in its nature not feudal, but spiritual. For, if the service be neglected, the law gives no remedy by distress or otherwise to the lord of whom the lands are holden; but merely a complaint to the ordinary or visitor to correct it; wherein it materially differs from *tenure by divine service*, in which the tenants were obliged to do some special divine service in certain, for neglect of which the lord might distrain, without any complaint to the visitor. *T. L.; Cowel;* 2 *Bl.* 101, 102; 1 *Steph. Com.* 226 – 228.

FRANK-BANK. The same as *freebench*. [FREEBENCH.]

FRANK-CHASE (Lat. *Libera chacea*). A liberty of free chase enjoyed by any one, whereby all other persons having ground within that compass are forbidden to cut down wood, &c., even in their own demesnes, to the prejudice of the owner of the "liberty." *Cowel.*

FRANK-FEE is variously defined.

1. As that which is in the hands of the king or lord of any manor, being ancient demesne of the Crown.

2. As that which a man holds by common law to himself and his heirs.

3. As a tenure in which no service is required. This is sometimes called an *improper feud*, because free from all service. *T. L.; Cowel.* See also 2 *Bl.* 368.

FRANK-FERME. The expression by which Britten describes socage tenure. *Cowel; Toml.;* 2 *Bl.* 80. [SOCAGE.]

FRANK-FOLD is where the lord hath the benefit of *folding* his tenant's sheep within his manor for the manuring of his land. *T. L.; Cowel.*

FRANK-LAW (Lat. *Lex libera*) seems to signify the rights, immunities and privileges of an ordinary citizen. For he that for any offence loseth his frank-law may never be impanelled upon any jury or assize, or otherwise used in testifying to the truth; if he have anything to do in the king's court, he must not approach thither in person, but appoint his attorney; and, lastly, his lands, goods and chattels must be seized into the king's hands; his lands spoiled, his trees rooted up, and his body committed to prison. *Cowel.*

All this is now quite obsolete.

FRANK-MARRIAGE or **FREE MARRIAGE.** A tenure in tail special, which arises when a man seised of land in fee simple gives it to another man and his wife, who is the daughter or sister or otherwise of kin to the donor, *in free marriage* (*in liberum maritagium*), by virtue of which words they have an estate in special tail, and hold the land of the donor quit of all manner of services, except fealty, till the fourth degree of consanguinity be past between the issues of the donor and donee. This tenure has now grown out of use. *T. L.; Cowel;* 2 *Bl.* 115; 1 *Steph. Com.* 244, *n.*, 348.

FRANK-PLEDGE. A pledge or surety for free men: for the ancient custom of free men in England, for the preservation of the public peace, was, that every free born man at fourteen years of age (religious persons, clerks, knights and their eldest sons excepted) should find surety for his truth towards the king and his subjects, or else be kept in prison; whereupon a certain number of neighbours became customably bound one for another to see each man of their *pledge* forthcoming at all times, or to answer any transgression committed by any broken away (*i. e.*, to answer for the offence of any who absconded), so that whosoever offended it was forthwith inquired in what *pledge* he was, and then they of that pledge either brought him forth within thirty-one days, or satisfied for his offence. This was called *frank-pledge*, and the circuit thereof *decenna*, because it commonly consisted of ten households, and every particular person, thus mutually bound for himself and his neighbours, was called *decennier*, because he was of one *decenna*, or another. This custom was so kept that the sheriffs at county courts did, from time to time, see the youths comprised in some *decenna*, whereupon this branch of the sheriff's authority was called *view of frank-pledge*. *T. L.; Cowel;* 1 *Bl.* 114; 1 *Steph. Com.* 125.

FRANK-TENEMENT (Lat. *Liberum tenementum*). The same as *freehold;* used in old time in opposition to *villenage*. 2 *Bl.* 104; 1 *Steph. Com.* 187, 231. [FREEHOLD.]

FRATER CONSANGUINEUS, in a narrow sense, indicates a brother by the father's side, as opposed to a brother by the mother's. 2 *Bl.* 232.

FRATER NUTRICIUS. An expression used in ancient deeds for a bastard brother. *Toml.*

FRATER UTERINUS. A brother by the mother's side. 2 *Bl.* 232.

FRAUD. The modes of fraud are infinite, and it has been said that courts of equity have never laid down what shall constitute fraud, or any general rule, beyond which they will not go, on the ground of fraud. Fraud is, however, usually divided into two large classes, actual fraud and constructive fraud.

An actual fraud may be defined to be something said, done or omitted by a person with the design of perpetrating what he must have known to be a positive fraud.

Constructive frauds are acts, statements or omissions which operate as virtual frauds on individuals, or which, if generally permitted, would be prejudicial to the public welfare, and yet may have been unconnected with any selfish or evil design; as, for instance, bonds and agreements entered into as a reward for using influence over another, to induce him to make a will for the benefit of the obligor. For such contracts encourage a spirit of artifice and scheming and tend to deceive and injure others. *Sm. Man. Eq.*

FRAUDS, STATUTE OF. The statute 29 Car. 2, c. 3, passed in 1677, for the prevention of frauds and perjuries. This is attempted to be done by enactments providing that various transactions therein specified shall be in writing, or evidenced by some memorandum in writing, signed by the party who is sought to be made liable thereon; else they shall, for most or all purposes, be deemed invalid. The statute also required *three* witnesses to a will of real property, a provision altered by the Statute of Wills, passed in the year 1837. This statute is one of the most important statutes ever passed by the legislature, especially with reference to mercantile contracts; but it is impossible for us to do more than indicate its general purport. 1 *Bl.* 418; 1 *Steph. Com.* 432; *Chitty on Contracts; Smith on Contracts; Wms. R. P.*

FREE BOROUGH MEN. [FRIBORGH.]

FREE CHAPEL, in the opinion of some, is a chapel founded within a parish, over and above the mother church, to which it was *free* for the parishioner to come or not to come, and endowed with maintenance by the founder, and thereupon called free. Others with more probability say that those only are *free chapels* that are of the king's foundation, and by him

FREE CHAPEL—*continued.*

exempted from the jurisdiction of the ordinary, or are founded by private persons to whom the Crown has thought fit to grant the same privilege. *T. L.; Cowel; 2 Steph. Com.* 746, *n.*

FREE FISHERY. [FISHERY.]

FREE SERVICES were such as were not unbecoming the character of a soldier or a *freeman* to perform; as to serve under his lord in the wars, to pay a sum of money, and the like. 2 *Bl.* 60. [FREEHOLD.]

FREE SHIPS, FREE GOODS. A maxim implying that, in time of war, neutral vessels are to impart a neutral character to the goods of belligerents carried therein, so as to exempt them from capture. This doctrine, except so far as relates to contraband of war, is recognized in the document generally known as the Declaration of Paris, 1856. An essay by the late Mr. Robert Ward on the subject of "Free Ships, Free Goods," which first appeared in 1801, has been republished in 1875, with a preface by Lord Stanley of Alderley. See also *Twiss' Law of Nations, Pt. II. ss.* 81, 86; *Phillimore's Int. Law, Pt. IX. ch.* 10. [DECLARATION OF PARIS.]

FREE WARREN. A franchise or royalty derived from the Crown, empowering the grantors to take and kill beasts and fowls of warren; also for the preservation and custody thereof. Of this, however, by the express provisions of *Magna Charta*, no new franchise can be granted. 2 *Bl.* 417; 1 *Steph. Com.* 670. [MAGNA CHARTA; WARREN.]

FREEBENCH (*Francus bancus*). The right which a widow has in her husband's copyhold lands, corresponding to dower in the case of freeholds. The extent of the right to freebench, and the conditions under which it is to be enjoyed, vary according to the custom of the manor. *T. L.; Cowel;* 1 *Steph. Com.* 627; *Wms. R. P.*

FREEHOLD or **FRANK-TENEMENT** (Lat. *Liberum tenementum*) is that land or tenement which a man holdeth in fee, fee tail, or at the least for term of life. It is said that freehold is of two sorts, freehold *in deed* and freehold *in law*. Freehold *in deed* is the real possession of land or tenements in fee, fee tail, or for life; and freehold *in law* is the right that a man hath to such tenements before entry. It hath likewise been extended to those offices which a man holdeth either in fee or for term of life. A less estate than an estate for life was not deemed worthy of the acceptance of a free man. But an estate which may come to an end by the voluntary act of the tenant in his lifetime may nevertheless be a freehold. Thus an estate during widowhood is regarded as a freehold.

The term freehold is in practice used (1) in opposition to leasehold; (2) in opposition to copyhold.

A leasehold interest, being an estate for a term of years, is but a chattel interest, and in law is less than an estate of freehold, however long the term may be.

A copyhold interest was originally an estate *at the will of the lord of the manor*, as it is still in name though not in fact; and an estate at will is the smallest estate known to the law. And in their origin copyholds were deemed worthy the acceptance only of villeins and slaves. Freehold is even yet spoken of in contradistinction to copyhold, though the word *freehold* in a will, if obviously used in contradistinction to *leasehold*, may sometimes be held to include *copyhold. T. L.; Cowel;* 2 *Bl.* 104; 1 *Steph. Com.* 231; *Wms. R. P.*

We often hear a freehold spoken of as if it were such an estate as a man is *free* to do what he likes with. This is probably owing to the comparative absence in freeholds, of those restrictions and liabilities which, in the case of copyholds, are imposed by custom, and, in the case of leaseholds, by covenants in the lease. But the notion of rights of property in land, without corresponding duties, is abhorrent to the general spirit of our old common law. The distinguishing marks of a freehold were—(1) that it should last for life (unless sooner put an end to by the voluntary act, neglect, or default of the tenant); (2) that the duties or services should be *free*, that is, worthy the acceptance of a free man. To fulfil this latter condition, it was necessary that the services by which the land was held, and by the nonperformance of which it would be forfeited, should be *honourable* (*i.e.*, not servile) in respect of their quality, and *certain* in respect both of their quality and quantity. [COPYHOLD; CUSTOMARY FREEHOLD; PRIVILEGED VILLENAGE; TENURE.]

FREEHOLD, CUSTOMARY. [CUSTOMARY FREEHOLD.]

FREEMAN of a town is defined by law as a person of full age, not an alien, nor having within the preceding twelve months received parochial relief or other alms, and who, on the last day of July in any year, shall have occupied any building within the borough during the whole of the preceding twelve months, and, during such occupation, shall have resided within the borough, or within seven miles thereof, and shall, during such time, have been rated in respect of such premises to all rates for the relief of the poor, and have paid, on or before the 20th July in such year, all such poor and borough rates in respect of the same premises as shall have been payable up to the preceding 5th of January; and shall be duly enrolled in that year as a burgess on the burgess roll. *Stat.* 32 & 33 *Vict. c.* 55, *s.* 1; 3 *Steph. Com.* 34. [See next Title.]

FREEMAN OF LONDON. The freedom of the city of London can be obtained in three different methods: 1. By *patrimony*, that is, as the son of a freeman born after the father has acquired his freedom: 2. By *servitude*, that is, by serving an apprenticeship of seven years to a freeman; and, 3. By *redemption*, that is, by purchase.

The last method includes the case where the freedom of the city is obtained by honorary gift, as a mark of distinction for public services. 2 *Steph. Com.* 360, *n.*; *Pulling on the Customs of London, ch.* 5.

FREIGHT. The sum payable for the hire of a vessel, or for the carriage of goods therein. It may also, in a policy of marine insurance, include the benefit which a shipowner expects to derive from carrying his goods in his own vessel. 2 *Steph. Com.* 140; 3 *Steph. Com.* 435; *Sm. Merc. Law; Crump, Mar. Ins. s.* 254.

FREIGHTER. The hirer of a vessel. 2 *Steph. Com.* 140.

FRENDLESS MAN. An outlaw. [FRIENDLESS MAN.]

FRENDWITE. A mulct or fine exacted of him who harboured his outlawed friend. *Cowel; Toml.*

FRESH DISSEISIN. That disseisin which was so recent that a man might formerly seek to defeat it of himself, without resorting to the king or the law; as where it was not above fifteen days' old. *Cowel; Toml.*

FRESH FINE. A fine of lands, levied within a year past, is so called in the statute of Westminster the Second, 13 Edw. 1, st. 2, c. 45. *Cowel; Toml.* [FINE, 1.]

FRESH FORCE. In certain cases, by the custom or usage of a city or borough, a person disseised or otherwise wronged in respect of freehold lands therein, might have his remedy (without any writ out of the Chancery), by a proceeding called a bill of fresh force, or an assise of fresh force, brought *within forty days* after the wrong committed, or title to him accrued. *F. N. B.* 7 *C.*, 13 *E.; T. L.; Cowel.* [DEFORCEMENT; DISSEISIN.]

FRESH PURSUIT (Lat. *Recens persecutio*). Instant and immediate following with intent to recapture a thing lost, as a bird or beast escaped, or goods stolen, &c. [FRESH SUIT.]

FRESH SUIT (Lat. *Recens insecutio*) is when a man is robbed of a thing, and the party so robbed follows the felon immediately, and apprehends and convicts him of the felony by verdict; then the party shall have his goods again.

And it is *fresh suit*, though the apprehension be half a year or a year after the robbery, provided the party do what lies in him, by diligent inquiry and search, to take him.

Fresh suit is also where a lord comes to distrain for rent or service, and the owner of the beasts drives them into ground not holden of the lord, and the lord follows and takes them. And so in other like cases. *T. L.; Cowel;* 1 *Bl.* 297; 2 *Steph. Com.* 547.

FRET A FAIRE. Expected freight. *Crump, Mar. Ins. s.* 254. [FREIGHT.]

FRET ACQUIS. Freight actually made. *Crump, Mar. Ins. s.* 254.

FRETTUM. Freight. [FREIGHT.]

FRIARS. The name of an order of religious persons, of which there were four principal branches: 1. Minors, Grey Friars, or Franciscans. 2. Augustines. 3. Dominicans, or Black Friars. 4. White Friars, or Carmelites. *Cowel.*

FRIBORGH, FRIBURGH or FRITHBURGH. The same as *frank-pledge;* the one being in the time of the Saxons, and the other since the Conquest. *Cowel; Toml.* [FRANK PLEDGE.]

FRIENDLESS MAN was the old Saxon word for what we call an outlaw: *nam forisfecit amicos suos* (for he has forfeited his friends). *T. L.; Cowel.*

FRIENDLY SOCIETIES ACTS:—

1. Stat. 18 & 19 Vict. c. 63, passed in 1855.

2. Stat. 21 & 22 Vict. c. 101, passed in 1858.

3. Stat. 23 & 24 Vict. cc. 58, 137, passed in 1860.

FRIENDLY SOCIETY. An association for the purpose of affording relief to the members in sickness, and assistance to their widows and children at their deaths. Friendly societies are governed by numerous Acts of Parliament. *Toml.* [See preceding Title.]

FRIENDLY SUIT. A suit brought not in a hostile manner, the object being to settle some point of law, or do some act which cannot safely be done except with the sanction of a court of justice.

FRIPERER. One who scours and dresses up old clothes to sell again. *T. L.; Cowel.* [BROKER.]

FRITHBORGH. *Cowel.* [FRIBORGH.]

FRUMGYLD. An old Saxon word signifying the first payment made to the kindred of a slain person, in recompense of his murder. *T. L.; Cowel.*

FRUMSTOL (Lat. *Sedes primaria*). The chief seat or mansion-house. *Cowel; Toml.*

FUAGE, FOCAGE or FUMAGE. An imposition for fires, laid by the Black Prince upon the subjects of the dukedom of Aquitaine. *Cowel; Toml.* [CHIMNEY-MONEY.]

FUER. To fly; which may be by bodily flight, or by non-appearance when summoned to appear in a court of justice, which is flight in the interpretation of the law. *Cowel; Toml.*

FUGACIA. A chase. *Cowel.*

FUGAM FECIT (he made flight). This was, where it was found by inquisition that a person fled for felony, which involved a forfeiture of his goods and chattels, even if he were acquitted of the felony. *Toml.* [FLIGHT.]

FUGATIO. Flight; also hunting, or the privilege to hunt. *Toml.*

FUGITATION. A sentence passed in Scotland against an accused who absconds, by which all his moveable property falls by escheat to the Crown. *Bell.*

FUGITIVE'S GOODS. The proper goods of him that fled upon a felony, which, after the flight lawfully found, belonged to the king or lord of the manor. *T. L.; Cowel.* [FLIGHT.]

FULL AGE. The age of twenty-one years. 1 *Bl.* 463; 2 *Steph. Com.* 302. [AGE.]

FULL COURT. 1. A court composed of all the judges, members thereof. Thus the Full Court of Appeal in Chancery consists of the Lord Chancellor and Lords Justices sitting together.

2. The Full Court in Divorce and Matrimonial Causes consists of the Judge Ordinary and at least two other members of the court. [COURT FOR DIVORCE AND MATRIMONIAL CAUSES; DIVORCE COURT.]

These arrangements are, nominally at least, to be superseded under the Judicature Acts.

FUMAGE. [CHIMNEY-MONEY; FUAGE.]

FUND, CONSOLIDATED. [CONSOLIDATED FUND.]

FUNGIBLES. Moveable goods which may be estimated by weight, number or measure, as grain or coin. They are opposed to jewels, paintings, &c. *Bell; Toml.*

FURANDI ANIMUS. The intention of stealing; that is, the intention, in one who takes goods, of depriving the right owner permanently and unlawfully of his property therein. It is thus distinguished, (1) from taking under a *bonâ fide* claim, which the person taking is willing to submit to the determination of a court of justice; (2) from taking with the intention of promptly returning the thing taken; (3) from taking in the belief that the lawful owner consents thereto. See 4 *Bl.* 232; 4 *Steph. Com.* 117, 118; *Russell on Crimes, by Greaves, Vol. II. pp.* 146, 147. [LARCENY.]

FURCA ET FOSSA. The gallows and the pit. In ancient privileges it signified a jurisdiction of punishing felons, that is, men by hanging, women by drowning. *Cowel.*

FURCAM ET FLAGELLUM was the meanest of all servile tenures; when the bondman was at the disposal of his lord for life or limb. *Toml.*

FURIOSITY. Madness, by which the judgment is prevented from being applied to the ordinary purposes of life. *Bell.* It is distinguished from fatuity or idiotcy. *Toml.*

FURNAGIUM. [FORNAGIUM.]

FURNIVAL'S INN. A place in Holborn which was formerly an Inn of Chancery. 1 *Steph. Com.* 19, *n.*

FURTHER ASSURANCE. A covenant for further assurance, in a deed of conveyance, means a covenant to make to the purchaser any additional "assurance" which may be necessary to complete his title. [ASSURANCE, 1.]

FURTHER CONSIDERATION. It frequently happens that a decree in Chancery directs accounts and inquiries to be taken before the Chief Clerk. The hearing of any question arising out of such inquiries is called a hearing on *further consideration*. *Hunt. Eq.*

FURTHER DIRECTIONS. When accounts in Chancery were taken before Masters, a hearing after a master had made his report in pursuance of the directions of the decree was called a hearing on *further directions*. This stage of a suit is now called a hearing on *further consideration*. *Hunt. Eq.* [FURTHER CONSIDERATION.]

FUTURE ESTATE. An estate to take effect in possession at a future time. The expression is most frequently applied to contingent remainders and executory interests; but it would seem to be also applicable to vested remainders and reversions. See 1 *Steph. Com.* 313, 321. [CONTINGENT REMAINDER; EXECUTORY INTEREST; VESTED REMAINDER.]

G. O. General Orders. [GENERAL RULES AND ORDERS.]

G. R. General Rules. [GENERAL RULES AND ORDERS.]

GABALET. [GAVELET.]

GABEL or **GABLE** (Lat. *Vectigal*). A rent, duty, service, or custom yielded or done to the king, or any other lord. *T. L.; Cowel.* [GAVEL.]

GABULUS DENARIORUM. Rent paid in money. *Cowel.*

GAFOLD-GYLD. A Saxon word, signifying the payment or rendering of tribute or money. Also it sometimes denotes usury. *Cowel.*

GAFOL-LAND or **GAFUL LAND** (Lat. *Terra censualis*). Land liable to tribute or tax; or rented land. *Cowel.*

GAGE (*Vadium*). A pawn or pledge. *Cowel.* The word was also formerly used of goods taken by a sheriff on a writ of attachment for non-appearance. 3 *Bl.* 280. [ATTACHMENT; see also the following Titles.]

GAGE, ESTATES IN. Estates held in pledge; such pledge being of two kinds: *vivum vadium*, living pledge, or *vifgage* (a phrase now obsolete); and *mortuum vadium*, dead pledge, or *mortgage*. 2 *Bl.* 157; 1 *Steph. Com.* 304. [MORTGAGE; VIVUM VADIUM.]

GAGER DE LEY. Wager of law. *Cowel.* [WAGER OF LAW.]

GAGER DELIVERANCE. To wage deliverance; that is, to give security for the redelivery of cattle or other goods illegally distrained and removed out of the jurisdiction. The ordinary remedy in such cases was by *withernam*, which was a reciprocal distress of the goods of the wrong-doer; but if the latter was sued and appeared, he was allowed to *gage deliverance* instead. *F. N. B.* 74.

GAINAGE (gain or profit) signifieth in our law most properly *the profit that comes by the tillage of land*. Thus in *Magna Charta* it is enacted that a villein shall be amerced, saving his *gainage*, &c. *T. L.; Cowel.*

GAINERY. Tillage or agriculture, or the profit accruing thereby. *Cowel.*

GALE. The payment of a rent or annuity. [GABEL; GAVEL.]

GALE DAY. The day on which rent is payable. *De Moleyns' Practical Guide*, 109.

GAME. A name, according to Blackstone, used to denote animals *ferœ naturæ*. 2 *Bl.* 14, 395, 403, 410; 4 *Bl.* 174, 175; 1 *Steph. Com.* 160, 665; 2 *Steph. Com.*

GAME—*continued.*
9, 19; *Wms. P. P.* [FERÆ NATURÆ.] Otherwise defined as birds of prey got by fowling or hunting. *Toml.*

This word is defined under the Game Acts as including hares, pheasants, partridges, grouse, heath or moor game, black game and bustards; though some of the provisions of these Acts are directed to deer, woodcocks, snipes, quails, landrails, and rabbits. 2 *Steph. Com.* 21. [See the following Title.]

GAME LAWS. (1.) Stat. 22 & 23 Car. 2, c. 25, passed in 1670. This Act, with various other Acts which need not be here more particularly referred to, was repealed in 1831 by stat. 1 & 2 Will. 4, c. 32.

(2.) Stat. 9 Geo. 4, c. 69, passed in 1828, for the prevention of night poaching.

(3.) Stat. 1 & 2 Will. 4, c. 32, above referred to, passed in 1831, to amend the laws relative to game.

(4.) Stat. 7 & 8 Vict. c. 29, passed in 1844, to extend the Act of 1831 to the destruction of game *on the public roads.*

(5.) Stat. 23 & 24 Vict. c. 90, passed in 1860, to repeal the duties on game certificates, and to substitute in lieu thereof duties on excise licences and certificates for the like purposes.

(6.) Stat. 25 & 26 Vict. c. 114, passed in 1862, for the prevention of poaching.

To this catalogue of enactments, we may add—

(7.) Stat. 32 & 33 Vict. c. 17, passed in 1869, for the preservation of sea birds during the breeding season.

(8.) Stat. 35 & 36 Vict. c. 78, passed in 1872, for the protection of certain wild birds during the breeding season.

GAMING. An offence defined by various statutes. In order (says Blackstone) to restrain this pernicious vice among the inferior sort of people, the stat. 33 Hen. 8, c. 9 was made, which prohibits to all but gentlemen the games of tennis, tables, cards, dice, bowls, and other diversions there specified, unless in the time of Christmas, under pecuniary pains and imprisonment. This statute was passed in 1542. So much of it as prohibits bowling, tennis, or other games of mere skill, is now repealed by stat. 8 & 9 Vict. c. 109, s. 1, passed in 1845. But the following games are prohibited under various statutes:—Faro, basset, ace of hearts, hazard, passage, roly poly, and roulette; all games with dice, except backgammon. By various acts of the present reign, provision is made for the punishment of those who keep or frequent common gaming-houses. 4 *Bl.* 171—174; 4 *Steph. Com.* 271—275.

GAOL (Lat. *Caveola*). A cage for birds; hence, metaphorically, a prison. *Cowel.* [See the following Titles.]

GAOL DELIVERY, COMMISSION OF. A commission empowering the judges and others to whom it is directed to try every prisoner who shall be in the gaol when they arrive at the circuit town. 3 *Bl.* 60; 4 *Bl.* 269—271; 3 *Steph. Com.* 352; 4 *Steph. Com.* 315. [ASSIZE, COURTS OF.]

GAOLER. A master or keeper of a prison, whose duty it is to keep safely such persons as are entrusted to him by lawful warrant. *T. L.; Cowel;* 1 *Bl.* 346; 2 *Steph. Com.* 633.

GAOLS ACT. The stat. 28 & 29 Vict. c. 126; also called the Prisons Act, 1865.

GARBLE. To sever the dross and dust from spice, drugs, &c.; to purify and cleanse the good from the bad. *Toml.*

GARBLER OF SPICES. An officer of great antiquity in the City of London, with authority to enter into any shop, warehouse, &c., to view and search drugs and spices, and *garble* and make clean the same, and see that it be done. By stat. 6 Anne, c. 16, passed in 1708, this officer is to be appointed by the Lord Mayor, Aldermen, and Common Council, to garble spices at the request of the owner, but not otherwise. *Cowel; Toml.; Pulling on the Customs of London, p.* 392.

GARD. [GUARD.]

GARDIA. Guardianship. [GUARDIAN.]

GARDIAN. [GUARDIAN.]

GARNESTURA. Victuals, arms, and other implements of war, necessary for the defence of a town or castle. *Toml.*

GARNISH. To warn. *Cowel.*

GARNISHEE. A person who is *garnished* or warned. The word is especially applied in law to a debtor who is *warned* by the order of a court of justice to pay his debt, not to his immediate creditor, but to a creditor of that creditor. The order is called a *garnishee order;* and the process of laying hold of debts due to a judgment-debtor, in order to satisfy the demands of the judgment-creditor, in London, Bristol, and other cities

GARNISHEE—*continued.*
where the practice obtains by special custom, is called *foreign attachment;* in England generally, where it is established by ss. 60 – 67 of the Common Law Procedure Act, 1854, it is called *attachment of debts;* in Scotland it is called *arrestment. Cowel; Bell;* 3 *Steph. Com.* 588, 599; *Lush's Pr.* 620—623; *Kerr's Act. Law,* 446, 447. [ARREST-MENT; ATTACHMENT, FOREIGN; CUSTOM OF LONDON.]

GARNISHMENT. Warning, notice, or instruction; as, a warning or notice given to a person to furnish the court with information material to a case before it; or to interplead with the plaintiff. *T. L.; Cowel.* [INTERPLEADER.] But the term is now generally used in connection with the attachment of debts in the hands of a third party. [See preceding Title.]

GARSUMME. A fine or amerciament. *Cowel.* [GRASSUM.]

GARTER. The honorable ensign of a great and noble society of knights, called knights of the Order of St. George, or of the Garter. This order was first instituted by Edward III. upon good success in a skirmish, wherein the king's garter, it is said, was used as a token. The Order of the Garter is the first dignity after the nobility. *T. L.; Cowel;* 1 *Bl.* 403; 2 *Steph. Com.* 612.

GARTH. A little backside or close in the north of England; also a dam or weir in a river, for the catching of fish, vulgarly called a fishgarth. It seems to be an ancient British word. *T. L.; Cowel.*

GAVEL signifies tribute, toll, custom, annual rent or revenue, of which there were of old several sorts. *T. L.; Cowel.* [GABEL; GALE.]

GAVELET. An ancient and special kind of *cessavit* used in Kent, where the custom of gavelkind prevails, whereby a tenant, withholding the rent and services due to his lord, forfeited his land, if no sufficient distress could be found on the premises. In that case, the lord might seize the land itself in the nature of a distress, and keep it a year and a day; within which time if the tenant came and paid his rent, he was admitted to his tenement to hold it as before; but if not, the lord might enter and enjoy the same. The word *gavelet,* in its original signification, imported *rent;* but, as we have seen, it means also a process for the recovery of the rent. This process is peculiar to Kent and London. To London the writ was given for rent service generally by stat. 10 Edw. II.; but the statute applied only when the lord cannot obtain payment by distress.

The remedy of *gavelet,* as well as that by *cessavit,* has fallen wholly into disuse. *T. L.; Cowel; Toml.* [CESSAVIT.]

GAVELGELD. Payment of tribute or toll. *Toml.*

GAVELKIND. A tenure which obtains by custom in the county of Kent, almost the whole of which is subject to it. It is also to be found in some other parts of the kingdom, and is supposed to have been the general custom of the realm in Saxon times. It is said to be a species of socage tenure, modified by the custom of the country. The principal characteristics of this tenure are these:

1. The tenant is of age sufficient to alien his estate by feoffment at the age of fifteen. [FEOFFMENT.]

2. The estate never escheated in case of an attainder for felony; the maxim being "the father to the bough, the son to the plough." [ATTAINDER; ESCHEAT; FELONY.]

3. The tenant always enjoyed the power of disposing by will of the lands and tenements so held.

4. The lands descend on an intestacy, not to the eldest son, but to all the sons together.

5. The widow is endowed of half the lands of which her husband died seised, and the husband is tenant by curtesy of the half, although he have no issue by his wife; but the estate of the husband and wife ceases by a second marriage. [CURTESY; DOWER.]

T. L.; Cowel; 1 *Bl.* 74, 75; 2 *Bl.* 84, 85; 4 *Bl.* 408; 1 *Steph. Com.* 54, 210, 213; 4 *Steph. Com.* 483.

GAVELMAN. A tenant liable to tribute. *Toml.*

GAVELMED. The duty or service of mowing grass, or cutting a meadow land, required by a lord from his customary tenants. *Toml.*

GAZETTE. The official publication of the Government, also called the *London Gazette.* It is evidence of acts of State, and of everything done by the Queen in her political capacity. Orders of adjudication in bankruptcy are required to be published therein; and the production of a copy of the Gazette, containing a

GAZETTE—*continued.*
copy of the order of adjudication, is conclusive evidence of the fact, and of the date thereof. *Toml.;* 2 *Steph. Com.* 104, 155—161, 507, 731; *Robson, Bkcy.*

GELD, among the Saxons, signified money or tribute; also the compensation for a crime; also a fine or amerciament. *T. L.; Cowel;* 4 *Bl.* 313.

GELDABLE. Liable to pay tax or tribute. *Cowel.*

GEMOTE. A Saxon word, signifying an assembly or court. *T. L.; Cowel.*

GENERAL AGENT. An agent empowered to act *generally* in the affairs of his principal, or at least to act for him *generally* in some particular capacity; as opposed to one authorized to act for him in a particular matter. 2 *Steph. Com.* 66.

GENERAL AVERAGE. [AVERAGE, 2.]

GENERAL DEMURRER. A demurrer not setting forth any special cause of demurrer. 3 *Bl.* 315; 3 *Steph. Com.* 501, *n.* A general demurrer admits all the facts as alleged to be true, and refers the case to the judgment of the court upon the substantial merits. *Lush's Pr.* 783. [DEMURRER; SPECIAL DEMURRER.]

GENERAL INCLOSURE ACT. The stat. 41 Geo. 3, c. 109, passed in 1801, which consolidated a number of regulations relating to inclosures, and made them applicable to every case of local inclosure, so far as the special Inclosure Act authorizing any particular inclosure contained no provision to the contrary. Now superseded by the Inclosure Commission Act of the year 1845 (stat. 8 & 9 Vict. c. 118). 1 *Steph. Com.* 655.

GENERAL ISSUE, PLEA OF, is the plea which traverses, thwarts, and denies *generally* the whole of the declaration, information, or indictment, without offering any special matter whereby to evade it. Such is the plea of *not guilty* in an action of tort or an indictment for a criminal offence; a plea of *never indebted* in an action of debt, &c. Such pleas are called the general issue, because, by importing an absolute and general denial of what is alleged in the declaration, they amount at once to an issue; by which we mean a fact affirmed on one side and denied on the other. *T. L.; Cowel;* 3 *Bl.* 305, 367; 4 *Bl.* 338; 3 *Steph. Com.* 503; 4 *Steph. Com.* 405; *Kerr's Act. Law*, 302. Under the Judicature Acts, the plea of the general issue will not be admissible in ordinary civil actions, except in cases where it is expressly sanctioned by statute. *Order XIX. rules* 16, 20. [NOT GUILTY.]

GENERAL LIEN. The right of a bailee to detain a chattel from its owner until payment be made, not only in respect of that particular article, but of any balance that may be due, on a general account between the bailor and bailee, in the same line of business. 2 *Steph. Com.* 83; *Wms. P. P.* [BAILMENT.]

GENERAL RULES AND ORDERS are rules and orders made by the judges of a court of justice for regulating the procedure therein; or by the judges of two or more courts for regulating the procedure in all such courts. Such rules, made by the judges of the courts of common law at Westminster, are usually referred to as the rules of such a term; or vacation, if the rules be made out of term. Thus we speak of the Rules of Hilary Term, 1853; the Rules of Michaelmas Vacation, 1854, &c. But the rules made by the judges in Chancery are generally referred to as the rules of such a day; thus we speak of the Rules of February 5th, 1861; the Rules of November 11th, 1862, &c.

Every court of justice has, independently of statute, an inherent power to make rules to regulate its own procedure. But this power has practically been much restricted during the last half-century by the acts of parliament regulating the procedure of the superior courts; and the General Rules and Orders of late years have been issued for the most part in pursuance of express statutory provisions. As, for instance, the series of Additional Rules of the 12th August, 1875, framed by the judges under the Judicature Act, 1875, and sanctioned by the Queen in Council.

The rules and orders above mentioned correspond to what, in Scotland, are called Acts of Sederunt. They are called *general* in contradistinction to the rules and orders made specially in particular cases before the court.

GENERAL SHIP. A merchant ship which is open *generally* to the conveyance of goods belonging to different owners; as opposed to a ship *chartered* or *freighted*, that is, a ship which is hired entirely by a single individual. 2 *Steph. Com.* 140; *Wms. P. P.* [CHARTERPARTY.]

GENERAL TAIL. [TAIL GENERAL.]

GENERAL VERDICT. A verdict which, in a civil suit, is absolutely for the plaintiff

GENERAL VERDICT—*continued.*
or for the defendant, or, in a criminal case, is a verdict of guilty or not guilty; opposed in either case to a special verdict, in which the naked facts are stated, and the inference of law left to be determined by the Court. 3 *Bl.* 377, 378; 4 *Bl.* 354; 4 *Steph. Com.* 438.

GENERAL WARRANT. A warrant to apprehend all persons suspected, without naming or describing any person in special. Such a warrant is illegal and void for uncertainty. 4 *Bl.* 291; 4 *Steph. Com.* 344, 345, *n.* (*b*).

GENTLEMAN. Under this name be comprised all above the rank of yeomen. *Cowel.* [YEOMAN.] As for *gentlemen* (says Sir Thomas Smith) they be good cheap in this kingdom; for whosoever studieth in the universities, who professeth the liberal sciences, and (to be short) who can live idly, and without manual labour, and will bear the port, charge, and countenance of a gentleman, he shall be called master, and shall be taken for a gentleman. 1 *Bl.* 406; 2 *Steph. Com.* 617.

GENTLEMAN USHER OF THE BLACK ROD. [BLACK ROD.]

GERSUMA, in ancient charters, is used for a fine or income. *T. L.; Cowel.* [GARSUMME.] It is obviously identical with the Scotch *gressume* or *grassum*, which signifies a fine for the making or renewing of a lease.

GESELL. The same as *vassal.* [VASSAL.]

GESTIO PRO HEREDE (behaviour as heir). An expression used in the Roman law, and the Scotch and other modern systems founded thereon, for that conduct on the part of a person appointed heir to a deceased person, or otherwise entitled to succeed as heir, which indicates an intention to enter upon the inheritance, and to hold himself out as heir to creditors of the deceased; as by receiving the rents due to the deceased; or by taking possession of his title deeds, &c. Such acts will render the heir liable to the debts of his ancestor. *Bell; Toml.*

GESTU ET FAMA. A writ whereby a person's good behaviour was impeached. It is long since obsolete. *Cowel; Toml.*

GEWINEDA (Sax.) in the laws of Ethelred, was the public convention of the people, to decide a cause. *Toml.*

GEWITNESSA. The giving of evidence. *Toml.*

GIFT. A conveyance which passeth either lands or goods. As to things immoveable, when strictly taken, it is said to be applicable only to lands and tenements given in tail. *Toml.* This limitation of the word is, however, quite obsolete. Blackstone distinguishes a *gift* from a *grant* in that a gift is always gratuitous, whereas a grant is made upon some consideration or equivalent. 2 *Bl.* 440; 2 *Steph. Com.* 46, 47. [DONATIO MORTIS CAUSA; GRANT.]

GIFTA AQUÆ. The stream of water to a mill. *Toml.*

GILD. A voluntary association or fraternity. *T. L.; Cowel;* 1 *Bl.* 474; 3 *Steph. Com.* 10, 31. [GUILD.] Also used as synonymous with *geld*, in such compounds as *weregild.* [GELD.]

GILDA MERCATORIA. A mercantile meeting or assembly, by the grant of which from the Crown to any set of men they become an incorporated society. 1 *Bl.* 473; 3 *Steph. Com.* 10.

GIST OF ACTION. The cause for which an action lieth, without which it is not maintainable. *Toml.*

GLADIUS. A sword; and *jus gladii* (right of the sword) means a supreme jurisdiction. Hence, at the creation of an earl, he is *gladio succinctus*, to signify that he had formerly a jurisdiction over the county of which he was made earl. *Toml.* [EARL.]

GLEBE signifies the land of which a rector or vicar is seised in right of the church. *T. L.* We most commonly (says *Cowel*) take it for land belonging to a parish church, besides the tithe. It is, in fact, a portion of land attached to a benefice as part of its endowment. By stat. 5 & 6 Vict. c. 54, passed in 1842, it is provided that the Tithe Commissioners shall have power to ascertain and define the boundaries of the glebe lands of any benefice. 2 *Steph. Com.* 714.

GLISCYWA. An old Saxon word for a fraternity. *Toml.*

GLOMERELLS. Commissaries appointed to determine differences between scholars in a school or university and the townsmen of the place. In the edict of the Bishop of Ely, A.D. 1276, there is mention of the Master of the Glomerells. *Toml.*

GLOUCESTER, STATUTE OF. A statute made at Gloucester in the sixth year of the reign of Edward I., A.D. 1278. This statute provides, by c. 1, that a demandant or plaintiff entitled to recover damages, may recover also the costs of his writ purchased; by c. 4, that a lessor of a tenant in fee farm may have his writ of *cessavit* after two years' failure by the lessee to pay the rent agreed on; by c. 7, that where a dowress shall alienate the land held in dower, the heir may have an *immediate* writ of entry *in casu proviso;* by c. 8, that no suit shall be brought in the superior courts for trespass in taking goods under 40*s.*; by c. 9, that an appeal of murder shall not abate for default of "fresh force;" by c. 13, that no waste shall be made of land, in London or elsewhere, pending a suit with reference to the same; by c. 14, that a citizen of London, disseised of land within the city, and suing for the recovery thereof, shall recover damages as well, &c. [STATUTE.]

GLOVE MONEY. A term applied to extraordinary rewards given to officers of courts. *Toml.*

GLOVE SILVER. Money customarily given to servants to buy them gloves, as an encouragement to their labours. *Toml.*

GOD'S PENNY. Earnest money given to a servant when hired. *Toml.*

GOOD ABEARING (Lat. *Bonus gestus*) signifies an exact carriage or behaviour to the king and his liege people, whereunto men, upon their evil course of life or loose demeanour, were sometimes bound. He that is bound to this is said to be more strictly bound than to the *peace;* because, though the peace be not broken, yet the surety *de bono gestu* might be forfeited by the number of a man's company, or by his or their weapons or harness. *T. L.; Cowel.* [See next Title.]

GOOD BEHAVIOUR. Blackstone speaks of this as synonymous with *good abearing*, and as implying a restraint from acts that be *contra bonos mores*, as well as *contra pacem*, as the haunting of bawdy-houses; also words tending to scandalize the government, and abuse of the officers of justice, especially in the execution of their office. 4 *Bl.* 256; 4 *Steph. Com.* 295, 296. [GOOD ABEARING; SURETY OF THE PEACE.]

GOOD CONSIDERATION. A consideration founded on relationship, or natural love and affection. This is not a *valuable* consideration, and will not "sustain a promise;" that is, that whereas in certain cases a "consideration" is necessary to give legal validity to a promise, so that an action may be brought for breach of the same, a merely "good" consideration will not be sufficient for this purpose. 2 *Steph. Com.* 61. [CONSIDERATION; CONTRACT.]

GOOD JURY. A jury selected from the special jury list by the order of a judge, for the purpose of assessing the damages on a writ of inquiry. 3 *Steph. Com.* 517, *n.; Lush's Pr.* 798. [WRIT OF INQUIRY.]

GOODRIGHT was sometimes the name of the fictitious plaintiff in the old action of ejectment. This fictitious plaintiff was most frequently called John Doe, but sometimes he was called Goodright or Goodtitle. [EJECTMENT.]

GOODS AND CHATTELS, in the fullest sense, include any kind of property which, regard being had either to the subject-matter, or to the quantity of interest therein, is not freehold. 1 *Steph. Com.* 280; *Wms. P. P. Introd.; Wms. R. P. Introd.* But in practice the expression is most frequently limited to things moveable, especially things moveable in possession. 2 *Steph. Com.* 2.

GOODTITLE. [GOODRIGHT.]

GOODWILL. The *goodwill* of a trade or business comprises every advantage which has been acquired by carrying on the business, whether connected with the premises in which the business has been carried on, or with the name of the firm by whom it has been conducted. *Wms. P. P.*

GORCE. 1. A weir. 2. A pool of water for fish. *Toml.*

GOSSIP. A godfather or sponsor at baptism; from God and *syb*, the latter word signifying relationship. *Skinner.*

GOSSIPRED. The spiritual affinity arising from persons becoming godfathers and godmothers to children. In former times in Ireland a juror that was "gossip" to either party might be challenged as not indifferent. [GOSSIP.] See *Hallam's Const. Hist., ch.* 18.

GOVERNMENT. This word is most frequently used to denote the principal executive officer or officers of a State or territory. Thus, when we in England

GOVERNMENT—*continued.*
speak of "the government," we generally understand the ministers of the Crown for the time being. But sometimes the word is used differently, so as to indicate the supreme legislative power in a State, or the legislature in a dependent, or semi-independent territory. The word is also used to indicate the art or science of governing. See *Aust. Jur., Lect. VI.*

GRACE, ACT OF. [ACT OF GRACE.]

GRACE, DAYS OF. [DAYS OF GRACE.]

GRAFFER (Lat. *graffarius;* Fr. *greffier.*) A scrivener, attorney, or notary. *Cowel.*

GRAFFIUM. A writing book or register of deeds and evidences. *Toml.*

GRAINAGE. [GRANAGE.]

GRAMMAR SCHOOLS. [ENDOWED GRAMMAR SCHOOLS.]

GRANAGE. An ancient duty in London, being the twentieth part of salt imported by an alien, and due to the mayor. *T. L.; Pulling on the Customs of London,* 398, *n.*

GRAND ASSISE. A peculiar species of trial by jury, introduced by King Henry II. with consent of parliament, as an alternative open to the tenant or defendant in the action called a *writ of right,* which he might demand in lieu of trial by battel, which up to that time had been the only means of deciding upon writs of right. For the purpose of the Grand Assise, a writ *de magna assisa eligenda* was directed to the sheriff, to return four knights, who were in their turn to elect and choose twelve others to be joined with them; and these sixteen, all together, formed the *Grand Assise,* or *Great Jury,* appointed to try the matter of right. 3 *Bl.* 341, 351; 4 *Bl.* 422; 3 *Steph. Com.* 392, *n.*; 4 *Steph. Com.* 412, *n.* [WAGER OF BATTEL; WRIT OF RIGHT.]

GRAND CAPE (Lat. *Cape magnum*). [CAPE.]

GRAND COUSTUMIER OF NORMANDY. The ducal customs of Normandy, by which the Channel Islands are for the most part governed. 1 *Bl.* 107; 1 *Steph. Com.* 100, 101.

GRAND DAYS are, according to *Cowel,* those days in the terms which are solemnly kept in the Inns of Court and Chancery, viz., in Easter Term, Ascension Day; in Trinity Term, St. John the Baptist's Day; in Michaelmas Term, All Saints Day (and at one time All Souls' Day); and in Hilary Term, the Feast of the Purification of our Lady, commonly called Candlemas Day. These are (says *Cowel*) *dies non juridici*—no days in Court.

All this is now altered; the grand days, which are different for each Inn of Court, are those days in each term in which a more splendid dinner than ordinary is provided in the hall. The grand day for Lincoln's Inn is most frequently, though not at all necessarily, the second Wednesday in term.

GRAND DISTRESS. A more extensive kind of distress than ordinary, extending to all the goods and chattels of the party distrained within the county; it lay in those cases when the tenant or defendant was attached, and appeared not, but made default; and also when the other party made default after appearance. *T. L.; Cowel.*

It was thus more extensive than the writs of *grand* and *petit cape.* [CAPE.]

GRAND JURY is defined by Blackstone as a body of twenty-four good and lawful men which the sheriff of every county is bound to return to every session of the peace, and every commission of *oyer* and *terminer,* and of general gaol-delivery, to inquire, present, do and execute all those things which on the part of our lord the king shall be commanded them. As many as appear upon the panel are sworn upon the grand jury, to the amount of twelve at least, and not more than twenty-three; that twelve may be a majority.

The grand jury are previously instructed in the articles of their inquiry by a charge from the judge who presides upon the bench. They then withdraw, to sit and receive indictments, to hear evidence on behalf of the prosecution, and to inquire, upon their oaths, whether there be sufficient cause to call upon the party accused to answer it. 4 *Bl.* 302, 303; 4 *Steph. Com.* 361—363. [BILL, 3.]

GRAND LARCENY. The name formerly given to the offence of stealing goods above the value of twelve pence. 4 *Bl.* 229; 4 *Steph. Com.* 119, 120. [LARCENY.]

GRAND SERJEANTY. A tenure whereby the tenant was bound, instead of serving the king *generally* in the wars, to do some *special* honorary service to the king in person, as to carry his banner, his sword, or the like; or to be his butler, champion, or other officer at his coronation. It was in most other respects like knight-service. *T. L.; Cowel; 2 Bl.* 73, 74; 1 *Steph. Com.* 200, 201, 210.

GRANGE. A house or farm, not only where corn is laid up, but also where there are stables for horses, stalls for oxen, styes for hogs, and other things necessary for husbandry. *T. L.; Cowel.*

GRANGEARIUS. A person who has the care of a grange. *Toml.* [GRANGE.]

GRANT (Lat. *concessio*). 1. A grant may be defined generally as the transfer of property by an instrument in writing without the delivery of the possession of any subject-matter thereof. This may happen (1) where there is no subject-matter capable of delivery, as in the case of an advowson, patent right, or title of honour; (2) where the subject-matter is not capable of *immediate* delivery, as in the case of a reversion or remainder; (3) where, by reason of the subject-matter of the property being in the custody of another, or for any other cause, it is impracticable or undesirable to transfer the immediate possession. The person making the grant is called the *grantor;* the person to whom it is made, the *grantee.* Where the grantor transfers his whole interest in any subject-matter, the grant is generally called an *assignment.*

A grant has always been the regular method of transferring incorporeal hereditaments, as an advowson, &c., and estates in expectancy, because no "livery," that is, physical delivery, could be made of such estates. For this reason they were said to *lie in grant;* while corporeal hereditaments in possession were said to *lie in livery.* The word "grant" formerly implied a warranty of title, unless followed by a covenant imposing on the grantor a less liability. Now by stat. 8 & 9 Vict. c. 106, s. 4, the word grant is not to imply any covenant, except so far as it may do so by force of any act of parliament. By the same statute it is provided that all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie *in grant* as well as *in livery.* So that the method of conveyance by deed of grant is no longer confined to incorporeal hereditaments and future estates. 1 *Steph. Com.* 510, 511.

According to Blackstone, a *grant* is distinguished from a *gift* as being made upon some consideration or equivalent, whereas a gift is gratuitous. 2 *Bl.* 440, 441; 2 *Steph. Com.* 47. [GIFT.]

But the soundness of this distinction is fairly open to question; and, as we shall see immediately, the word grant is, in Scotland, applied especially to gratuitous deeds.

2. The term *grant,* in Scotland, is used in reference—

(1.) To original dispositions of land (as when a lord makes grants of land among tenants).

(2.) To gratuitous deeds. *Paterson.* In such case, the superior or donor is said to *grant the deed;* an expression totally unknown in English law.

3. The word *grant* is also frequently used in reference to public money devoted by parliament for special purposes. *May's Parl. Pract.*

GRANTING A DEED. [GRANT, 2.]

GRASSUM, in Scotland, is a fine paid for the making or renewing of a lease. *Paterson.*

GRATUITOUS DEED. A deed made without consideration or equivalent. 2 *Steph. Com.* 47.

GRAVA. A little wood or grove. *Cowel.*

GRAVAMEN. 1. When we speak of the *gravamen* of a charge or accusation, we mean that part of it which weighs most heavily against the accused.

2. But the word is applied specially to grievances alleged by the clergy, and made by them a subject of complaint to the archbishop and bishops in Convocation. See *Phillimore's Eccl. Law,* 1944, 1945, 1952.

GRAY'S INN. One of the Inns of Court. [INNS OF COURT.]

GREAT MEN. An expression sometimes understood of the temporal lords, and sometimes of the members of the House of Commons. *Toml.*

GREAT SEAL. A seal by virtue of which a great part of the royal authority is exercised. The office of the Lord Chancellor, or Lord Keeper, is created by the delivery of the Great Seal into his custody. 2 *Bl.* 346; 3 *Bl.* 47; 1 *Steph.*

GREAT SEAL—*continued.*
Com. 619, 620; 3 *Steph. Com.* 321; *Hall. Const. Hist. ch.* 10. By art. 24 of the union between England and Scotland it was provided that there should be one Great Seal for Great Britain, for sealing writs to summon parliaments, for sealing treaties with foreign States, and all public acts of State which concern the United Kingdom..

GREAT TITHES are generally held to include tithes of corn [TITHES], hay and wood, otherwise called *predial* tithes. In *appropriated* livings, they are for the most part reserved to the appropriators. No clear line of demarcation has been drawn between *great* and *small* tithes. 1 *Bl.* 387; 2 *Steph. Com.* 726. [APPROPRIATION; TITHES; VICAR.]

GREEN CLOTH. The royal household; so called from the green cloth on the table. *Cowel.* [BOARD OF GREEN CLOTH.]

GREEN WAX signified originally the wax in which the seal of the Court of Exchequer was affixed to the estreats (*i. e.*, the extracted and authorized copies) of fines and amerciaments which the sheriff was directed to levy. Hence the expression "green wax" is applied to the estreats themselves. *Cowel.*

GRESSUME. [GARSUMME; GERSUMA.]

GRETNA GREEN MARRIAGES. An expression formerly applied to marriages contracted in Scotland by parties who had gone there for the purpose of being married without the delay and formalities required by the law of England. They were usually celebrated at Gretna Green in Dumfriesshire, as being the nearest and most convenient place for the purpose; they have been practically abolished by stat. 19 & 20 Vict. c. 96, passed in 1856, which requires that one at least of the parties contracting it should have, at the date thereof, his or her usual place of residence in Scotland, or should have lived there for twenty-one days preceding such marriage. 2 *Steph. Com.* 259, *n.*

GREVE (Sax. *Gerefa*) signifies count or viscount. *T. L.; Cowel.*

GRITH. Peace. *T. L.*

GRITHBRECH. A breach of the peace. *T. L.; Cowel.*

GROCERS were merchants that *engrossed* all merchandise vendible; but now it is a particular and well-known trade. *Cowel.*

GROSS. A word indicating independent ownership of incorporeal property. A right *in gross* is one which does *not* belong to the party invested with it *as being the owner or occupier of specifically-determined land;* but is annexed to, or inheres in, his person; being quite unconnected with anything corporeal, and existing as a separate subject of transfer; thus we speak of a common *in gross*, an advowson *in gross*, &c. *Austin, Jur.; Wms. R. P.; 2 Bl.* 34; 1 *Steph. Com.* 652.

GROSS ADVENTURE. A loan on bottomry, that is, on mortgage of a ship. [BOTTOMRY.]

GROSS-BOIS, or GROSSE BOIS. Timber-wood. *T. L.; Cowel.*

GROUND ANNUAL. An estate created in land by a vendor, who, instead of selling his land for a gross sum, reserves an annual rent from the purchaser. It is in the nature of a perpetual rent-charge. *Bell; Paterson.*

GROUND ANNUALER. The owner of a rent-charge. *Paterson.*

GROUND RENT. A rent payable on a building lease. It corresponds to what is called in Scotland "feu duty on building feus." *Paterson.*

GROUNDAGE. A tribute paid for the ground on which a ship stands in port. *Cowel; Pulling on the Customs of London, p.* 394.

GRUARII (derived from Fr. *Gruyer*). The principal officers of the forest. *Cowel.*

GUARANTEE, in the strict sense, is where one man contracts as surety on behalf of another an obligation to which the latter is also liable as the proper and primary party. 2 *Steph. Com.* 105, 107; 3 *Steph. Com.* 433.

GUARD. Custody, care, or defence.

GUARDIAN. One who hath the charge or custody of any person or thing; but commonly he who hath the custody and education of such persons as are not of sufficient discretion to manage their own affairs. *T. L.; Cowel; Toml.;* 1 *Bl.* 460 - 463; 2 *Steph. Com.* 302.

I. GUARDIAN OF A CHILD OR CHILDREN. Of this there are several species:—

1. *A Guardian by Nature.* A father is so called in respect of the guardianship which belongs to him over the person of his *heir apparent*, or of his *heiress presumptive.* 2 *Steph. Com.* 308.

GUARDIAN—*continued.*

2. *Guardian for Nurture.* A father is so called in respect of the guardianship of all his children; and, after the father's decease, the mother. This guardianship is said to last only to the age of fourteen years. But though after that age the father or mother may not be properly designated as guardian for nurture, yet the parent is understood to stand substantially in the capacity of guardian to his children so long as they are minors, by having the care and control of their persons during that period. 2 *Steph. Com.* 309.

3. *Guardian in Socage* is one who has the care of the *estate* as well as the *person* of a minor. This species occurs where the legal estate in lands or other hereditaments held in socage descends upon a minor; in which case the guardianship devolves upon his next of blood, to whom the inheritance cannot descend. This guardianship lasts till the age of fourteen years. 1 *Steph. Com.* 207; 2 *Steph. Com.* 309.

4. *Guardian in Chivalry.* If the heir of an estate held by chivalry (or knight service) was under twenty-one, or, being a female, was under fourteen, the lord of whom the land was held was entitled to the wardship of the heir, and was called *guardian in chivalry.* 1 *Steph. Com.* 190. This kind of guardianship entitled the lord to receive the profits of the heir's land without accounting for them. It ceased to exist in 1660, when the military tenures were abolished by stat. 12 Car. 2, c. 24.

5. *Guardian by Statute* is a guardian appointed by virtue of stat. 12 Car. 2, c. 24, passed in 1660, which provides that a father may, by deed or will, dispose of the custody, after his death, of such of his children as should be infants (*i. e.*, under age) and unmarried at his death, or should be born posthumously, to any person he pleases, in such manner as to be effectual against all persons claiming as guardians in socage or otherwise. 2 *Steph. Com.* 310.

6. *Guardian by Election* is one appointed by an infant having lands in socage, when the guardianship in socage has terminated by the infant attaining the age of fourteen. This guardianship is now almost wholly disused. 2 *Steph. Com.* 310, 311.

7. *Guardian by Appointment of the Court of Chancery.* This happens where a father has died without exercising his power of appointing guardians; also where the father's misconduct is such as to make it improper that his children should continue under his control. But the Court will not in general appoint a guardian to an infant not possessed of property. 2 *Steph. Com.* 311, 312; *Haynes' Eq. Lect. IV.*

8. *Guardian ad Litem.* A guardian appointed by a court of justice to represent an infant in an action or suit. 2 *Steph. Com.* 303, 312, 313; 3 *Steph. Com.* 271, *n.*

9. *Guardian by Custom.* A guardian who is such by local custom. In copyholds this belongs of common right to the next of blood, to whom the copyhold cannot descend; and in London to the mayor and aldermen. It is said, however, to have fallen into disuse. 2 *Steph. Com.* 313.

II. GUARDIAN DE L'ESTEMARY. The guardian or warden of the stannaries, or mines in the county of Cornwall. *Toml.* [COURT OF STANNARIES OF CORNWALL AND DEVON.]

III. GUARDIAN OF THE CINQUE PORTS. The warden of the cinque ports. [CINQUE PORTS; WARDEN OF THE CINQUE PORTS.]

IV. GUARDIAN OF THE PEACE. A person entrusted with the keeping of the peace as conservator thereof. *Toml.* [CONSERVATOR OF THE PEACE.]

V. GUARDIANS OF THE POOR. Persons having the management of parish workhouses and unions. The guardians are elected by the owners of property and ratepayers in the parish; and in the case of two or more parishes being consolidated into one union for the relief of the poor, are elected by the owners and ratepayers of the component parishes. 3 *Steph. Com.* 47, 50.

VI. GUARDIAN OF THE SPIRITUALITIES (Lat. *Custos spiritualium*). The person to whom the spiritual jurisdiction of a diocese is committed during the vacancy of a see. *Cowel; Toml.*

VII. GUARDIAN OF THE TEMPORALITIES (Lat. *Custos temporalium*). The person to whose custody a vacant see or abbey was committed by the king. *Cowel, s. v.* "Custos;" *Toml.*

GUEST TAKERS. [AGIST.]

GUIDAGE. A guide's fee; that which is given for safe conduct through a strange territory, or unknown ways. *Cowel.*

GUILD. A voluntary association or fraternity. Prior to the Norman Conquest there existed the germ of municipal corporations in this country; it having

GUILD—*continued.*
been usual for such persons of free condition as were not landowners to settle in the towns, and occupy houses there as tenants to the Crown, or some inferior lord, under the name of *burgesses;* to form themselves, by licence from the Crown, into associations called *gilds* or *guilds;* to be entitled, in their capacity of burgesses, to certain property; and, in the same capacity, to be exempt from certain burthens, and to be subject to certain liabilities. After the Conquest, down to the time of Henry VI., charters were from time to time conceded by the Anglo-Norman kings, by which the boroughs were frequently demised in fee farms to the burgesses. And these persons were also authorized to have a guild-merchant, or *gilda mercatoria;* to have officers, such as mayors, aldermen, bailiffs, and the like, for the government of their towns; to hold courts of their own for the administration of justice; and to enjoy many other liberties and privileges. *T. L.; Cowel;* 1 *Bl.* 473, 474; 3 *Steph. Com.* 31, 32.

GUILD HALL means the place of meeting of a guild. 1 *Bl.* 474, *n.;* 3 *Steph. Com.* 10, *n.* [GUILD.]

GUILD MERCHANT. A mercantile meeting of a guild. 1 *Bl.* 473, 474; 3 *Steph. Com.* 10, *n.*, 32. [GUILD.]

GUILD RENTS. Rents payable to the Crown by any guild or fraternity; or such rents as formerly belonged to religious guilds, and came to the Crown on the dissolution of the monasteries. *Toml.*

GUILTWIT or **GULTWIT.** An amends for trespass or fraud. *Cowel; Toml.*

GULE OF AUGUST. The first of August, being the day of *St. Peter ad Vincula. T. L.; Cowel.*

GWABR MERCHED. A British word signifying a payment or fine made to some lords of manors on the marriage of their tenants' daughters. *Cowel.*

GWALSTOW. A place of execution. *Cowel; Toml.*

HABEAS CORPORA JURATORUM. The name given to a compulsive process issuing out of the Court of Common Pleas for the bringing in of a jury, or of so many of them as refuse to come upon a *venire facias,* upon the trial of a cause brought to issue. *Cowel;* 3 *Bl.* 354; *Smith's Act. Law.* Abolished by s. 104 of the C. L. Proc. Act, 1852. *Lush's Pr.* 539.

The corresponding process in the Court of King's Bench was called a *distringas.* [DISTRINGAS.]

HABEAS CORPUS. This is the most celebrated writ in the English law, being the great remedy which that law has provided for the violation of personal liberty.

The most important species of *habeas corpus* is that of *habeas corpus ad subjiciendum,* which is the remedy used for deliverance from illegal confinement. This is directed to any person who detains another in custody, and commands him to produce the body, with the day and cause of his caption and detention, *ad faciendum, subjiciendum, et recipiendum,*—to do, submit to, and receive whatsoever the judge or court awarding such writ shall direct. This writ existed at common law, though it has been improved by statute. By stat. 25 & 26 Vict. c. 20, passed in 1862, no writ of *habeas corpus* shall issue out of England, by authority of any judge or court therein, into any colony or foreign dominion of the Crown, where her Majesty has a lawfully-established court with power to grant and issue such writ, and with power to ensure its due execution throughout such colony or dominion. It has been held that this statute does not extend to the Isle of Man. *T. L.;* 1 *Steph. Com.* 145, 147; 3 *Steph. Com.* 384, 642—651. See also 1 *Bl.* 135; 3 *Bl.* 131—138; *Hallam's Const. Hist. chaps.* 7, 13.

There are also other kinds of *habeas corpus* mentioned in the books.

1. *Ad respondendum;* which was to bring up a prisoner confined by the process of an inferior court, to charge him with a fresh action in the court above. 3 *Bl.* 129; 3 *Steph. Com.* 643, *n.; Lush's Pr.* 697, 698.

2. *Ad satisfaciendum,* with a similar object when *judgment* in an inferior court has been obtained against the prisoner. 3 *Bl.* 129, 130; 3 *Steph. Com.* 643, *n.; Lush's Pr.* 794, 750.

3. *Ad faciendum et recipiendum* (otherwise called a *habeas corpus cum causâ*). This writ was applied for when, in an action in an inferior court, the defendant had been arrested; and it had for its object to remove the proceedings and bring up the body of the defendant to the court above, "to do and receive what the king's court shall deliver in that be-

HABEAS CORPUS—*continued.*

half" 3 *Bl.* 130; 3 *Steph. Com.* 643, *n.*; *Lush's Pr.* 746.

4. *Ad prosequendum, testificandum, deliberandum*, &c., which was issued for bringing up a prisoner to bear testimony in any court, or to be tried in the proper jurisdiction. 3 *Bl.* 130; 3 *Steph. Com.* 643, *n.*; *Lush's Pr.* 528, 529.

But the present law of arrest for debt has lessened the importance of all these species except the last; and, with regard to the last, the occasions for its use have diminished now that, by various recent enactments, its objects can be attained by order of a Judge or of a Secretary of State. 3 *Steph. Com.* 643, *n.*

HABEAS CORPUS ACTS. The statutes regulating the granting of the writ of *habeas corpus* [HABEAS CORPUS], of which the most celebrated is the Habeas Corpus Act of 1679, stat. 31 Car. 2, c. 2. This act has been amended and supplemented by the stat. 56 Geo. 3, c. 100, passed in 1816. 3 *Steph. Com.* 647—651.

HABENDUM. That clause of a deed which determines the estate or interest granted by the deed. *T. L.; Cowel;* 2 *Bl.* 298; 1 *Steph. Com.* 486, 487.

HABERE FACIAS POSSESSIONEM. A writ of execution to recover possession of a chattel interest in real estate. 3 *Bl.* 412. [CHATTEL INTEREST IN LAND.] It is still a writ of execution in ejectment, to recover possession of the premises for which the action has been brought. 3 *Bl.* 412; *Kerr's Act. Law*, 91, 435. See also 3 *Steph. Com.* 623; *Lush's Pr.* 995.

HABERE FACIAS SEISINAM. A writ of execution that lay to recover possession of the freehold in an action real or mixed. *T. L.; Cowel;* 3 *Bl.* 412. [ACTIONS MIXED; ACTIONS REAL AND PERSONAL.]

HABERE FACIAS VISUM. A writ that lay in divers cases where *view* (*i.e.*, a personal inspection) was to be taken of lands and tenements in question in an action. *T. L.; Cowel.*

HABIT AND REPUTE. These terms are used in the law of Scotland to express whatever is generally understood and believed to have happened. Thus marriage is presumed from cohabitation, or the parties living at bed and board, joined to their being "habit," or held and reputed, as man and wife. *Bell.*

HABITUAL CRIMINALS ACT. The stat. 32 & 33 Vict. c. 99, passed in 1869, for the purpose of giving to the police a greater control over convicted criminals at large; also for the registration of criminals, and for the punishment for assaults on the police, with certain provisions relating to industrial schools and old metal dealers. *Cox & Saunders' Cr. Law*, 418—432. This Act is repealed, and other provisions substituted for it, by the Prevention of Crime Act, 1871 (34 & 35 Vict. c. 112).

HADBOTE was a recompense made for the violation of holy orders, or for violence offered to persons in holy orders. *Cowel.*

HADD. 1. A boundary or limit. 2. A statutory punishment defined by law, and not arbitrary. *Wilson's Gloss. Ind.*

HÆREDA was the name, under the Gothic constitutions, of the hundred court. 3 *Bl.* 35; 3 *Steph. Com.* 281, 282, *n.* (*q*). [HUNDRED COURT.]

HÆREDE ABDUCTO. A writ that lay for a lord who, having the legal wardship of his tenant under age, could not obtain access to him by reason of the ward having been conveyed away by some other person. *Cowel.*

HÆREDE DELIBERANDO ALII QUI HABET CUSTODIAM TERRÆ. An ancient writ, directed to the sheriff, requiring him to command one who had taken away an heir under age to deliver him up to the lawful guardian of his person and estate. *Cowel.*

HÆREDIPETA. The next heir to lands. *Towl.*

HÆREDITAS JACENS. A vacant inheritance; that is, an estate upon which no heir has entered, so that no title has been completed to it. This may happen in systems founded on the Roman law, as, for instance, in the law of Scotland; but by the law of England an *heir* (in the English sense of that word) cannot disclaim the inheritance. That in the English law which most nearly corresponds to the *hæreditas jacens* of the civil law is an estate of a deceased person of which (owing to its insolvency or other cause) there is no one willing to undertake the administration, so as to become the legal personal representative of the deceased. *Bell; Austin, Jur.*

HÆRES FACTUS. An heir appointed by will. This expression is applicable in the Roman law and systems founded on it, but not in the English common law.

HÆRES NATUS. An heir who is such by his birth or descent. This is the only form of heirship recognized in the English law. *Wms. R. P.* [HEIR.]

HÆRETICO COMBURENDO. A writ that lay for burning him who, having once been convicted of heresy by his bishop, afterwards fell again into the same or some other heresy, and was thereupon delivered over to the secular power. This was provided by stat. 2 Hen. 4, c. 15, passed in 1400, though the writ is thought to be as ancient as the common law itself. But, before the Act alluded to, the conviction took place before the archbishop himself in a provincial synod, and the delinquent was delivered over to the king to do as he should please with him. By the Act of Henry IV. the bishop alone might convict without the intervention of a synod; and the sheriff was bound, if required by the bishop, to burn the convicted person without waiting for the consent of the Crown. By stat. 1 Eliz. c. 1, the statutes relating to heresy were repealed, by which the jurisdiction of heresy was left as it stood at the common law. Two Anabaptists were burned for heresy in the seventeenth year of Elizabeth, and two Arians in the ninth year of James I. It was not till 29 Car. 2, c. 9, that is, the year 1677, that the writ was totally abolished. *T. L.; Cowel;* 4 *Bl.* 46—49; 2 *Steph. Com.* 705, *n.;* 4 *Steph. Com.* 204—207, 515.

HAILWORK FOLK. [HALYWERCFOLK.]

HAIMSUCKEN. The crime of beating or assaulting a person in his own house. *Cowel; Bell.* [HOMESOKEN.]

HAKH. Truth; the true God; a just or legal prescriptive right or claim; a perquisite claimable under established usage by village officers, &c. *Wilson's Gloss. Ind.*

HAKHDAR. The holder of a right. [HAKH.]

HALAKAR. The realization of the revenue. *Wilson's Gloss. Ind.*

HALF-BLOOD is defined by Blackstone to be, where the relationship proceeds not from the same *couple* of ancestors, but from a *single* ancestor only. 1 *Bl.* 194, 195; 2 *Bl.* 227—233; 1 *Steph. Com.* 419—425; 2 *Steph. Com.* 418; *Wms. R. P., Pt. I. ch.* 4. It may more accurately be defined as the relationship between two persons who have but one *nearest* common ancestor, and not a pair of *nearest* common ancestors.

In the succession to personal property, the law makes no difference between relationship by the half-blood and that by the whole blood; but in the succession to land the rule is that the kinsman of the half-blood succeeds next after the kinsman in the same degree of the whole blood when the common ancestor is a male, and next after the common ancestor when the common ancestor is a female. *Stat.* 3 *&* 4 *Will.* 4, *c.* 106, *s.* 9. Until the year 1833, when the last-named statute was passed, kinsmen of the half-blood were entirely excluded from the succession to lands by descent.

HALF-SEAL. A seal formerly used in the Chancery for sealing commissions to delegates to hear appeals in ecclesiastical or maritime causes. *T. L.; Cowel.* This court or commission of delegates is now abolished. 3 *Steph. Com.* 307, 308.

HALF-TONGUE. An expression applied to denote a jury *de medietate linguæ.* [DE MEDIETATE LINGUÆ; JURY.]

HALI. A man employed in ploughing. *Wilson's Gloss. Ind.*

HALL (Sax. *Healle*). A chief mansion-house or habitation. *Cowel.*

HALLAMSHIRE. A part of Yorkshire in which the town of Sheffield stands. *Cowel.*

HALLMOTE or **HALIMOTE.** The meeting of tenants of one hall or manor. It is sometimes taken for a convention of citizens in their public hall. *T. L.; Cowel.*

HALYMOTE. A holy or ecclesiastical court. *Cowel.* Also the same as hallmote. [HALLMOTE.]

HALYWERCFOLK, otherwise called *holy-workfolk,* were those who enjoyed lands by the tenure of defending a church or sepulchre; for which pious labours they were free from all feudal and military services. It signified especially those who in the diocese of Durham held lands by defending the corpse of St. Cuthbert. *Toml.*

HAM. A house; also a village or little town. *Cowel.*

HAMBLING or **HAMELING OF DOGS.** The same as expeditation. [EXPEDITATION.]

HAMESECKEN. The ancient word for burglary or housebreaking. *Cowel;* 4 *Bl.* 223; 4 *Steph. Com.* 104. [BURGLARY; HOMESOKEN; HOUSEBREAKING.]

HAMFARE. An assault made upon a house. *Cowel.*

HAMLET. The diminutive of *ham.* [HAM.] According to *Cowel* the word is sometimes used to signify the seat of a freeholder.

HAMSOKEN. Burglary, &c. [HAMESECKEN.]

HANAPER OFFICE. An office in the Court of Chancery on its *common law side* (*i. e.*, within what was formerly called the "ordinary jurisdiction" of the Court: see CHANCERY.) Of the writs issuing out of this "common law side," those having exclusive reference to the affairs of the *subject* were formerly kept in a *hamper* (*in hanaperio*); while those relating to matters in which the Crown was mediately or immediately concerned were kept in a little sack or bag (*in parvâ bagâ*). Hence the *hanaper office* is that office on the common law side of the Court of Chancery which is devoted to business relating to the affairs of the subject. 3 *Bl.* 49; 2 *Steph. Com.* 323, *n.*

HAND-BOROW. A surety, or manual pledge, one of the frankpledges inferior to the headborough. *Cowel.* [FRANKPLEDGE; HEADBOROUGH.]

HAND-GRITH. A word used in the laws of Henry I. to signify peace or protection given by the king, with his own hand. *Toml.*

HAND-HABEND. A thief caught in the very fact, having the stolen goods in his hand. *Toml.*

HAND-SALE. A sale made by shaking of hands (Lat. *venditio per mutuam manuum complexionem*). In process of time the word was used to signify the price or earnest given immediately after the shaking of hands, or instead thereof. 2 *Bl.* 448; 2 *Steph. Com.* 69, *n.*

HANGWITE or **HANKWITE** has by some been interpreted to mean a fine for a man unjustly hanged. *T. L.; Cowel.* Various other conjectures, which we need not here refer to more particularly, have been made as to the meaning of the expression.

HANPER. [HANAPER.]

HANSE (an old Gothic word, or from the German *Hansa*). A society of merchants for the good usage and safe passage of merchandise from one kingdom to another. The Hanse Towns, comprising the cities of Lübeck and Hamburgh and others, were so called from their having in the Middle Ages entered into a confederacy of mutual defence against the pirates of the Baltic. The Hanseatic league became so formidable, that its alliance was courted, and its enmity dreaded, by the greatest monarchs. *Cowel; Toml.*

HANTELODE. An arrest. *Toml.*

HAP or **HAPPE.** To snatch or catch; as to *happe* the possession of a deed-poll. *Cowel.*

HARBINGER was an officer of the king's house. *Toml.*

HARD LABOUR. A punishment most usually inflicted in company with imprisonment, first introduced in 1706, by stat. 5 Ann. c. 6. There are a few cases even now in which it is not lawful to add hard labour to the punishment of imprisonment. Hard labour, under the Prisons Act, 1865, is divided into two classes: one for the employment of males above the age of sixteen, and the other for the employment of males below that age, and of females. 4 *Steph. Com.* 447, 448.

HARIOT. The same as heriot. *T. L.; Cowel.* [HERIOT.]

HARO, HARROW. An outcry after felons and malefactors. The original of the *clamour de haro* comes from the Normans. *Toml.*

HASP AND STAPLE. A mode of entry in Scotland by which, in certain royal burghs, a bailie (or magistrate) declares a person heir on evidence brought before himself; and at the same time infefts him in the subject (that is, delivers the property over to him) by the *hasp and staple* of the door, which is the symbol of possession. *Bell.* [FEOFFMENT; INFEFTMENT.]

HAUR, in the laws of William the Conqueror, signifies hatred. *Toml.*

HAWBERK or **HAWBERT** (Lat. *Lorica*). A shirt of mail; and he who held land in France by finding a coat or shirt of mail, and being ready with it when called, was said to have *hauberticum feudum*, or *fief de haubert. Toml.*

HAYBOTE or **HEDGEBOTE.** Necessary stuff to make and repair hedges, or to make rakes and forks, and such like instruments; or a permission, expressed or implied, to take the same. *T. L.; Cowel;* 2 *Bl.* 35; 1 *Steph. Com.* 256, 257, 288.

HAYWARD or **HAWARD.** One that keepeth the common herd of cattle of a town; one part of his office being to see that they neither break nor crop the hedges of enclosed grounds. *T. L.; Cowel.*

HAZIR-ZAMIN. A bail or surety for the personal attendance of another. *Wilson's Gloss. Ind.*

HEADBOROUGH or **HEADBOROW** signified him that was chief of the frank-pledge, tithing, or decennary, appointed to preside over the rest, being supposed the discreetest man in the borough, town, or tithing. *T. L.; Cowel;* 1 *Bl.* 115; 1 *Steph. Com.* 124. [DECENNARY; FRANK-PLEDGE; TITHING.] The office of headborough was united with that of petty constable, on the institution of the latter office, about the reign of Edward III. 1 *Bl.* 356; 2 *Steph. Com.* 653. [CONSTABLE, 1.]

HEAD PENCE was an exaction of 40*l.* or more, formerly collected by the sheriff of Northumberland from the inhabitants of that county, twice in every seven years; that is, every third and every fourth year, without any account made to the king. Abolished by stat. 23 Hen. 6, c. 6, passed in 1444. *T. L.; Cowel.*

HEAD SILVER. [COMMON FINE; HEAD PENCE.]

HEALFANG or **HALSFANG** (Lat. *Collistrigium*). The pillory. Sometimes it is taken for a pecuniary mulct, as a commutation for standing in the pillory. *Toml.*

HEALGEMOTE. [HALYMOTE.]

HEARSAY EVIDENCE. A statement by a witness of what has been said or declared out of court by a person not party to the suit. Hearsay evidence is in general excluded by our law, but may, in certain cases, be admitted. 3 *Bl.* 368; 3 *Steph. Com.* 543; 4 *Steph. Com.* 429.

HEARTH MONEY. [CHIMNEY MONEY.]

HEBBERMEN. Fishermen or poachers below London Bridge, punishable by stat. 4 Hen. 7, c. 15, passed in 1488.

HECCAGIUM. Rent paid to the lord for liberty to use engines called hecks. *Toml.*

HECK. The name of an engine to take fish in the river Ouse, by York. *Cowel.*

HEDAGIUM. Toll or customary duties paid at a wharf for landing goods, &c., exemption from which was granted by the king to some particular persons and societies. *Toml.*

HEDGEBOTE. [HAYBOTE.]

HEIR, in the common law, is he that succeeds by right of blood to any man's lands and tenements in fee; that is, he upon whom, by right of blood, the law casts the real estate of a deceased person intestate. In the Roman law, it signified the universal successor to a deceased person, appointed either by testament or by the law, both as to moveable and immoveable estate. *Cowel;* 2 *Bl.* 201; 1 *Steph. Com.* 231, 232, 245; *Wms. R. P.* In the English law, the word is inapplicable to personal estate. *Wms. P. P.* [See also the following Titles.]

HEIR APPARENT and **HEIR PRESUMPTIVE.** It is a rule in law, that no one is the heir of a living person (*nemo est hæres viventis*). The heir is called into existence by the death of his ancestor, for no man, in his lifetime, can have an heir.

The *heir apparent* is the person who, if he survive the ancestor, must certainly be his heir, as the eldest son in the lifetime of his father.

The *heir presumptive* is the person who would be the heir in case of the ancestor's immediate decease. Thus, an only daughter, there being no sons, is the heiress presumptive of her father; for if he were now to die, she would at once be his heir; but he may have a son who would supplant her. *Wms. R. P.;* 2 *Bl.* 208; 1 *Steph. Com.* 389.

HEIR AT LAW. The person who succeeds as heir by right of blood, according to the disposition of the law. [HEIR.]

The heir-at-law is also termed, in the language of the Scotch law, the heir of line. *Bell.*

HEIR BY CUSTOM. One upon whom a local custom casts the inheritance of a deceased ancestor.

HEIR BY DESTINATION, in the Scotch law, is one who succeeds another under the express provisions of a deed of grant.

HEIR IN TAIL. The person selected by law to succeed to the estate tail of an ancestor dying intestate.

HEIR OF LINE. [HEIR AT LAW.]

HEIRESS. A female heir. Sometimes the word is used in a more extended sense, as in the expression *stealing an heiress;* an offence which was once capital, and is now punishable by penal servitude for fourteen years. By stat. 24 & 25 Vict. c. 100, s. 53, passed in 1861, where any woman of any age shall have any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate,—or shall be an heiress presumptive, or co-heiress, or presumptive next of kin to any one having such interest,—it shall be felony in any person who shall, from motives of lucre, take away or detain her against her will, with intent to marry or carnally know her; or who shall cause her to be married or carnally known by any other person; or who (with a like intent) shall fraudulently allure, take away, or detain any such woman, who shall be *under the age of twenty-one*, out of the possession and against the will of her father or mother, or other person having the lawful care or charge of her. 4 *Bl.* 208; 4 *Steph. Com.* 84, 85; *Cox & Saunders' Cr. Law*, 220, 221.

HEIRESS-STEALING. [HEIRESS.]

HEIRLOOM signifies, strictly, a *limb* or member of the inheritance. By *heir-looms*, we generally mean implements or ornaments of a household, or other personal chattels, which accrue to the heir with the house itself by custom; or else such chattels as are directed by will or settlement to follow the limitations thereby made of some family mansion or estate. But the last mentioned, though the most usual, is not the strict and proper sense of the term. *T. L.; Cowel;* 2 *Bl.* 427, 428; 2 *Steph. Com.* 222—224; *Wms. P. P.*

HEIRS. A term used in conveyances of estates in which it is intended that the fee-simple should pass: thus, a conveyance to "A. and his heirs," gives A. an estate in fee-simple. The word as thus used is called a word of *limitation* and not of *purchase*, because the heirs of A. take nothing *directly* under the grant, but the word is used to *limit* or *mark out* the estate taken by A.

Similarly, "heirs of the body" is a phrase importing a grant of an estate tail.

"Heirs male of the body" imports a grant of an estate in tail male. [TAIL MALE.]

"Heirs male" is an expression which, in an ordinary deed, will (it is said) confer an estate in fee simple; but in a will, or in a grant of arms by the Crown, the same phrase will confer an estate in tail male. *Wms. R. P.*

HEIRS PORTIONERS. Scotch for coparceners. [COPARCENARY.]

HEIRSHIP MOVEABLES. The moveables which the law of Scotland withholds from the executors or next of kin, and gives to the heir, that he may not succeed to a house and land completely dismantled. They consist of the best of everything; that is, furniture, horses, cows, oxen, farming utensils, &c. *Bell.*

HEJIRA. [HIJRA.]

HENFARE. An amerciament for flight for murder. *Cowel.*

HENGHAM, SIR RALPH, was chief judge of the King's Bench in Edward I.'s reign. For altering a fine set upon a very poor man from 13*s.* 4*d.* to 6*s.* 8*d.* he was, in the year 1289, fined, according to one account, 800 marks, according to another account, 7,000 marks, and was removed from the bench. With the fine inflicted on him it is said that a clock-house and clock were purchased for Westminster Hall. Eleven years afterwards he was made one of the justices in eyre, and the next year he was made chief justice of the Common Pleas, in which office he continued till his death in 1308. 1 *Bl.* 72; 3 *Bl.* 409, *n.*; 4 *Bl.* 427; 4 *Steph. Com.* 503.

HENGHEN. A prison, gaol, or house of correction. *Cowel.*

HENGWITE. [HANGWITE.]

HEORDFESTE. The master of a family; from the Saxon *hearthfæst*, fixed to the house or hearth. *Toml.*

HEORDPENNY or **HEORTHPENING.** The same as Peter's pence. [ALMSFEOH; DENARIUS SANCTI PETRI.]

HERBAGE. The fruit of the earth, produced by nature for the bite and food of cattle. But it is also used for a liberty that a man hath to feed his cattle in another man's ground. *T. L.; Cowel.*

HERBAGIUM ANTERIUS. The first crop of grass or hay, in opposition to *aftermath* or second cutting. *Toml.* [AFTERMATH.]

HEREBANNUM. A fine for not going armed into the field when summoned. According to the law of the Franks, a fine of sixty crowns was exacted in such case. *Toml.*

HEREBOTE. The king's edict commanding his subjects into the field. *Toml.*

HEREDITAMENTS are such things, whether corporeal or incorporeal, as a man may have to himself and his heirs by way of inheritance. *T. L.*; 2 *Bl.* 17—21; 1 *Steph. Com.* 170. The word includes everything which may descend to the heir. [HEIR; HEIRLOOM; CORPOREAL PROPERTY; INCORPOREAL HEREDITAMENTS; REAL AND PERSONAL PROPERTY.]

HEREGELD. A tribute or tax levied for the maintenance of an army. *Cowel.*

HERESY. An offence which consists not in a total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. What in old times used to be adjudged heresy was left to the determination of the ecclesiastical judge; and the statute 2 Hen. 4, c. 15, defines heretics as teachers of erroneous opinions, contrary to the faith and blessed determinations of the holy Church. Various laws have been passed before and after the Reformation explaining wholly or partially what is meant by heresy. [HÆRETICO COMBURENDO.] Heresy is now subject only to ecclesiastical correction, by virtue of stat. 29 Car. 2, c. 9. 4 *Bl.* 44, 45; 4 *Steph. Com.* 203.

HERETIC. [HÆRETICO COMBURENDO; HERESY.]

HERETICO COMBURENDO. [HÆRETICO COMBURENDO.]

HERIOT. The best beast or other chattel of a tenant, seized on his death by the lord. The heriot of a military tenant was his arms and habiliments of war, which belonged to the lord for the purpose of equipping his successor. Heriots from freeholders are rare; but heriots from copyholders remain to this day, in many manors, a badge of the ancient servility of the tenure. But the right of the lord, in this as in other respects, is controlled by the custom of the manor. In some cases the heriot consists merely of a money-payment. *Wms. R. P. Part III. ch.* 1. The above kind of heriot is called *heriot custom;* but there is another kind, called *heriot service,* which is due upon a special reservation in a grant or lease of lands; but this kind of heriot scarcely ever exists except where it forms part of the service by which a particular tenement has been held from time immemorial. 2 *Bl.* 97, 422—424; 1 *Steph. Com.* 221; 3 *Steph. Com.* 257, 258, 628—631.

HERISCHILD. Military service, or knight's fee. *Toml.*

HERITABLE AND MOVEABLE RIGHTS, in the law of Scotland, correspond substantially to real and personal rights in the law of England. Thus, all rights to land, or connected with land, as mills, fishings, teinds, are *heritable.* And whatever moves itself, and is not united to land, is *moveable.* These are the general rules; but, as is the case with the parallel distinction in the law of England, they are subject to exceptions and modifications, similar to those obtaining in the law of England. *Bell.* [REAL AND PERSONAL PROPERTY.]

HERITABLE BOND, in the law of Scotland, is a bond for a sum of money to which is joined, for the creditor's further security, a conveyance of land or of heritage, to be held by the creditor as security for the debt. *Bell.*

HERITABLE JURISDICTIONS were grants of criminal jurisdiction bestowed on great families, with a view to the more easy and expeditious administration of justice. These were abolished after the Scotch rebellion of 1745 by the stat. 20 Geo. 2, c. 50. *Bell; Toml.*

HERITAGE, in the law of Scotland, as a title to land, corresponds with what we call *descent* in the law of England; and is opposed to conquest, corresponding to purchase, *perquisitio.* The practical distinction between heritage and conquest is abolished by stat. 37 & 38 Vict. c. 94, s. 37. The word "heritage" is also used in Scotland to signify an estate of inheritance. [ESTATE, I.]

HERITOR. A landowner in a Scotch parish.

HERSHIP. The crime, in Scotland, of carrying off cattle by force; it is described as "the masterful driving off of cattle from a proprietor's grounds." *Bell; Toml.*

HEUVELBORGH (half-debtor). A surety for debt. *Toml.*

HEYBOTE. [HAYBOTE.]

HEYLOED. A customary load or burden laid upon inferior tenants for mending or repairing heys or hedges. *Toml.*

HIBA. A perfect gift, accompanied by delivery and acceptance. *Wilson's Gloss. Ind.*

HIDAGE. An extraordinary tax paid for every hide of land. It is described by *Bracton* as unconnected with any feudal service. This was a frequent kind of taxing, as well for provision of armour as payments of money, especially in the reign of King Ethelred. *Cowel;* 1 *Bl.* 311; 2 *Steph. Com.* 556, 558. According to *Termes de la Ley*, hidage is to be quit of the hide-tax.

HIDE OF LAND. A certain quantity of land, such as might be plowed with one plough in a year. According to *Beda* it contains as much as will maintain a family. *Crompton* says it contains 100 acres; others say it contains 120 acres. *T. L.; Cowel.*

HIDEGELD, in the laws of Canute, was the price by which a villein or servant redeemed his *hide* or skin from corporal punishment. *Toml.*

The word is also synonymous with *hidage*. [HIDAGE.]

HIDGELD. [HIDEGELD.]

HIERLOOM. [HEIRLOOM.]

HIGH COMMISSION COURT. A court of ecclesiastical jurisdiction, erected and united to the regal power by stat. 1 Eliz. c. 1, passed in 1558-9. It was intended to vindicate the peace of the Church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities. Under the shelter of these very general words, the High Commission Court exercised extraordinary and despotic powers of fine and imprisonment. Nor did it confine its jurisdiction altogether to cases of spiritual cognizance. For these reasons the court was abolished in 1641 by stat. 16 Car. 1, c. 11. James II. afterwards attempted to revive it. 3 *Bl.* 67, 68; 4 *Bl.* 42, 433, 439; 3 *Steph. Com.* 309, *n;* 4 *Steph. Com.* 509.

HIGH CONSTABLES. [CONSTABLE.]

HIGH COURT OF CHANCERY. [CHANCERY.]

HIGH COURT OF JUSTICE. [SUPREME COURT OF JUDICATURE.]

HIGH PEAK MINING CUSTOMS AND MINERAL COURTS ACT, 1851. [BARMOTE COURTS.]

HIGH STEWARD. An expression used—

1. Of the Lord High Steward, who holds a court appointed, *pro hâc vice*, during the recess of parliament, for the trial of a peer indicted for treason or felony, or for misprision of either. 4 *Bl.* 261, 262; 4 *Steph. Com.* 302—307. [COURT OF LORD HIGH STEWARD.]

2. Of the Lord High Steward of the Royal Household. 4 *Bl.* 276, 277; 4 *Steph. Com.* 325. [COURT OF LORD STEWARD OF THE KING'S HOUSEHOLD.]

3. Of the Lord High Steward of the University of Oxford or Cambridge, an officer of the University appointed to preside at the trial of any scholar or privileged person of the University, on any indictment for treason or felony, of which the Vice-Chancellor of the University may have claimed and been allowed cognizance. Before the office of the High Steward is called into action he must have been approved by the Lord High Chancellor of England. 4 *Bl.* 277, 278; 4 *Steph. Com.* 325—328. [UNIVERSITY COURTS.]

HIGH TREASON. [TREASON.]

HIGHWAY. A public road which all the subjects of the realm have a right to use. The term also, for some purposes at least, applies to ways common to the inhabitants of some parish or district only, as in the case of church-paths. A highway may exist in a place which is not a thoroughfare. Highways exist by prescription, by local act of parliament, or by dedication to the public on the part of individuals. 3 *Steph. Com.* 128. See also 1 *Bl.* 357; 2 *Bl.* 35. [DEDICATION OF WAY; PRESCRIPTION.]

HIGHWAY ACTS include the following:—The statutes 5 & 6 Will. 4, c. 50; 4 & 5 Vict. cc. 51, 59, and 8 & 9 Vict. c. 71 (passed in 1835, 1841 and 1845 respectively), by which some highways are regulated. Other highways are regulated under the provisions of the statutes 25 & 26 Vict. c. 61; 26 & 27 Vict. c. 61, and 27 & 28 Vict. c. 101 (passed in 1862, 1863 and 1864 respectively). The general plan of the first set of these Acts is to place highways under the care of *surveyors* to be elected by the several parishes in vestry assembled. The second set of these Acts enables the justices of any county, in session assembled, to form it, or any part of it, into a highway district, governed by a *highway board*, which is to consist of officers called *waywardens*. 3 *Steph. Com.* 132—137.

HIIS TESTIBUS (these being witnesses). Words anciently added in deeds after the "*In cujus rei testimonium*" (in witness whereof). The witnesses were called, the deed read, and then their names entered. This clause of *hiis testibus* continued till the reign of Henry VIII. *Cowel.*

HIJRA. Departure from one's country; separation from friends or lovers. Hence it gives name to the departure of Mohammed from Mecca to Medina, which constituted the commencement of the Mohammedan era. This event took place on the night of Thursday the 15th of July, A.D. 622. *Wilson's Gloss. Ind.*

HILARY TERM. One of the law terms which, by stat. 11 Geo. 4 & 1 Will. 4, c. 70, passed in 1830, begins on the 11th of January, and ends on the 31st of January. 3 *Steph. Com.* 484; *Kerr's Act. Law.* [TERM.] The Hilary Term is superseded under the Judicature Act, 1875, by the Hilary Sittings, which commence on the 11th of January and end on the Wednesday before Easter. *Order LXI. rule* 1.

HINDENI HOMINES. A society of men in the Saxon times. *Toml.*

HINE or **HIND.** A servant, or one of the family, but more properly a servant at husbandry; and he that oversees the rest is called the *master hine. Cowel; Toml.*

HINE FARE (from the Saxon *hine*, a servant, and *fare*, a giving a passage). Loss or departure of a servant from his master. *Toml.*

HINEGELD. A ransom for an offence committed by a servant. *Cowel.*

HIRCISCUNDA. The division of an inheritance among the heirs. *Cowel.* Compare the Latin *actio familiæ erciscundæ.*

HIRING is a contract which differs from borrowing only in this, that hiring is always for a price, stipend, or additional recompense; whereas borrowing is merely gratuitous. They are both contracts whereby the possession of goods, with a transient property therein, is transferred for a particular time or use, on condition to restore the goods so hired or borrowed as soon as the time is expired or use performed. 2 *Bl.* 453. See also 2 *Steph. Com.* 81, *n.*

HISSA. A lot or portion; a share of revenue or rent. *Wilson's Gloss. Ind.*

HLASOCNER (from the Saxon). The benefit of the law. *Toml.*

HLOTH (Sax.). An unlawful company. *Toml.*

HLOTHBOTE (Sax.). A mulct set on him who is in a riot. *Toml.*

HLOTHE. [HLOTH.]

HOASTMEN. An ancient guild or fraternity in Newcastle-upon-Tyne, who were concerned in selling and shipping coal. *Toml.*

HOCK-DAY or **HOKE-DAY**, otherwise called Hock-Tuesday or Hock-tide, was the second Tuesday after Easter week. *Cowel.* [HOCK-TUESDAY MONEY.]

HOCK-TUESDAY MONEY was a duty given to the landlord, that his tenants and bondmen might solemnize the day on which the English mastered the Danes, being the second Tuesday after Easter week. *Cowel.*

HOGENHINE. [AGENHINE.]

HOKE-DAY. [HOCK-DAY.]

HOLDING OVER is where a man, having come into possession of land under a lawful title, continues possession after the title has expired; as if a man takes a lease for a year, and after the year is expired continues to hold the premises without any fresh lease from the owner of the estate. 2 *Bl.* 150, 151; 3 *Bl.* 210, 211; 1 *Steph. Com.* 293—296; 4 *Steph. Com.* 624, *n.*; *Fawcett, L. & T.* 54.

HOLDING PLEAS. Assuming jurisdiction over matters in dispute.

HOLDING UP HAND. A prisoner brought to the bar on a charge of treason or felony should regularly be called upon to hold up his hand. It is not, however, an indispensable ceremony, for as it is calculated merely for the purpose of identifying the person, any other acknowledgment will answer the purpose as well. 4 *Bl.* 323; 4 *Steph. Com.* 390.

HOLIDAYS EXTENSION ACT, 1875 (stat. 38 Vict. c. 13.) [BANK HOLIDAYS ACT.]

HOLOGRAPH DEED, in the Scotch law, is a deed written entirely by the "granter's" own hand [GRANT, 2]; which, on account of the difficulty with which the forgery of such a document can be accomplished, is held by the Scotch law valid without witnesses. *Bell; Toml.* So, a holograph will is a will written in the testator's own hand.

HOLY ORDERS. The orders of bishops (including archbishops), priests and deacons. 2 *Steph. Com.* 660.

HOMAGE. A ceremony performed by a vassal or tenant upon investiture, in which, openly and humbly kneeling, being ungirt, uncovered, and holding up his hands both together between those of his lord, who sat before him, he professed that "he did become his *man*, from that day forth, of life and limb and earthly honour;" and then he received a kiss from his lord. The ceremony was denominated *homagium* or *manhood* by the feudists, from the stated form of words, *devenio vester homo*. *T. L.; Cowel;* 2 *Bl.* 53, 54; 1 *Steph. Com.* 177; *Wms. R. P.*

Homage Auncestrel was where a man and his ancestors had immemorially holden land of another and his ancestors by the service of homage. *T. L.; Cowel;* 2 *Bl.* 300.

The word *homage* is also used to signify the tenants of a manor present at the lord's court, and a jury consisting of such tenants is called a *homage jury*. 2 *Bl.* 90, 91, 366; 1 *Steph. Com.* 636; *Toml.*

When sovereign princes did homage to each other, for land held under their respective sovereignties, a distinction was always made between *simple* homage, which was only an acknowledgment of tenure, and *liege* homage, which included fealty and the services consequent upon it. 1 *Bl.* 367; 2 *Steph. Com.* 400.

HOMAGE JURY. [HOMAGE.]

HOMAGER. One that does, or is bound to do, homage to another; as the Bishop of Sodor, in the Isle of Man, was formerly said to be *homager* to the Earl of Derby, to whom the isle then belonged. *Cowel.*

HOMAGIO RESPECTUANDO was a writ directed to the escheator, commanding him to deliver seisin of lands to the heir of full age, notwithstanding his *homage* not done, which ought to be performed before the heir have livery (*i. e.*, have his lands delivered over to him), except there fall out some reasonable cause to hinder it. *T. L.; Cowel.*

HOMAGIUM REDDERE. To renounce homage; which took place when the vassal made a solemn declaration of disowning and defying his lord, for which there was a set form and method prescribed by the feudal laws. *Toml.*

HOMESOKEN, HAIMSECKEN, or HAMSECKEN, is defined variously as follows:—

1. The privilege or freedom which every man hath in his house.

2. The invasion of such freedom by housebreaking or burglary.

3. The immunity from amerciament for entering into houses violently and without licence.

4. A power granted by the king to some person for the punishment of the offence of housebreaking.

T. L.; Cowel; 4 *Bl.* 223; 4 *Steph. Com.* 134; *Bell.*

HOMICIDAL MONOMANIA. An irresistible mania for committing homicide. The question how far a man charged with homicide is responsible for his actions is a question of fact for the jury, and hardly admits of precise legal definition. The presumption, of course, is, that a person charged with murder or other crime *is* responsible for his actions; and therefore the burden of proving the mania lies upon the accused. [MACNAGHTEN'S CASE.]

HOMICIDE. The killing of a human being. It is divided by *Cowel* into *voluntary* homicide, and *casual* homicide, according as the killing is deliberate or not. It is usually, however, divided into three kinds—*justifiable, excusable,* and *felonious.*

1. *Justifiable homicide* is of divers kinds:—
   1. The putting a man to death pursuant to a legal sentence.
   2. The killing, by an officer of justice, of a person who assaults or resists him, and cannot otherwise be taken.
   3. The killing of persons for the dispersion of riots or rebellious assemblies, or the prevention of atrocious crimes, such as murder and rape.

2. *Excusable homicide* is of two sorts: either—
   1. *Per infortunium,* by misadventure.
   2. *Se defendendo,* in self-defence.

This kind of self-defence is to be distinguished from that included under the head of justifiable homicide, to hinder the perpetration of a capital crime, by the fact that, in the case now supposed, the person killing has himself to blame (though ever so slightly) for the circumstances which have led to the killing.

3. *Felonious homicide.* This again is divided into two kinds, *manslaughter* and *murder,* which will be found discussed under their respective titles. *T. L.; Cowel;* 4 *Bl.* 176—204; 4 *Steph. Com.* 46—78.

HOMINE CAPTO IN WITHERNAMIUM. A writ that lay to take him, that had taken any bondman or bondwoman out of the country, so that he or she could not be "replevied" according to law. *T. L.; Cowel.* [REPLEVIN; WITHERNAM.]

HOMINE REPLEGIANDO. A writ that lay to "replevy" a man out of prison (in the same manner that chattels taken in distress may be "replevied"), upon security being given to the sheriff that the man should be forthcoming to answer any charge against him. *T. L.; Cowel; 3 Bl.* 129. See also 3 *Steph. Com.* 420—422, and note (*x*). [REPLEVIN.]

HOMINES. Feudatory tenants who claimed a privilege of having their causes and persons tried only in the court of their lords. *Toml.*

HOMIPLAGIUM. A word used in the laws of Henry I. for the maiming of a man. *Toml.*

HOMOLOGATION, in the Scotch law, is the ratification of a deed by a person upon whom it would not otherwise be binding. *Bell.*

HOND-HABEND. Manifest theft; also the right which a lord had of determining the offence in his court. *Cowel; Toml.* [HAND-HABEND.]

HONORARIUM. A gratuity given to a barrister for his professional services. 3 *Steph. Com.* 275, 276.

HONORARY FEUDS. Titles of nobility, which were not of a divisible nature, but could be inherited only by the eldest son; whereas, originally, the *military* feuds descended to all the sons alike. 2 *Bl.* 56, 215; 1 *Steph. Com.* 179. [FEUDAL SYSTEM.]

HONORARY SERVICES were such as were incident to grand-serjeanty. They were commonly annexed to some *honour. Cowel.* [HONOUR.]

HONORIS RESPECTUM, CHALLENGE PROPTER. [CHALLENGE.]

HONOUR, besides its general signification, is a word used more especially—

1. For the nobler sort of seigniories, whereupon other inferior lordships and manors do depend. It seems that originally none were "honours" but such as belonged to the king, though afterwards given in fee to noblemen. *T. L.; Cowel; 2 Bl.* 91; 1 *Steph. Com.* 215.

2. The word is also used in reference to the acceptance *for honour* of a bill of exchange. [ACCEPTANCE SUPRA PROTEST.]

HONOUR COURTS are courts held within *honours. Toml.* [HONOUR, 1.]

HONTFONGENETHEF or **HONFANGENETHEF.** A thief taken with *hond-habend*, that is, having the thing stolen in his hand. *Toml.*

HORN WITH HORN, or **HORN UNDER HORN,** are phrases signifying the promiscuous feeding of bulls and cows. This was properly where the inhabitants of several parishes let their common lands run upon the same open spacious common, that lay within the bounds of the several parishes. *Toml.*

HORNGELD or **HORNEGELD.** A tax within a forest to be paid for horned beasts; also to be quit thereof, which was a privilege granted by the king unto such as he thought good. *T. L.; Cowel.*

HORNING, LETTERS OF. [LETTERS OF HORNING.]

HORS DE SON FEE was an exception to avoid an action brought for rent, or for customs and services, by him that pretended to be the lord; for if the defendant could prove that the land was without the compass of the lord's fee, the action failed. *T. L.; Cowel.*

HOSTELER, HOSTELLARIUS, means an innkeeper. But we now usually give the name of hostler, or ostler, to those who look to the guest's horses in the stable of an inn. *Cowel.*

HOSTELLAGIUM. A right reserved by a lord to have lodging and entertainment in the houses of his tenants. *Toml.*

HOTCHPOT literally signifies a pudding mixed with divers ingredients; but, by a metaphor, it signifieth a commixture or putting together of lands of several tenures, for the equal division of them. The word is frequently applied in reference to settlements which give a power to a parent of appointing a fund among his or her children, wherein it is provided that no child, taking a share of the fund under any appointment, shall be entitled to any share in the unappointed part without bringing his or her share into "hotchpot," and accounting for the same accordingly. The effect of such a clause would be to prevent a child who

HOTCHPOT—*continued.*

takes under an appointment from claiming his full share in the unappointed part, in addition to his appointed share. *T. L.; Cowel;* 2 *Bl.* 191, 517; 1 *Steph. Com.* 348, 349; 2 *Steph. Com.* 211; *Wms. P. P.*

HOUSAGE. A fee paid for housing goods by a carrier. *Toml.*

HOUSE OF COMMONS. The lower house of parliament, consisting of the representatives of the nation at large, exclusive of the peerage. 2 *Steph. Com.* 333, 335; *May's Parl. Pract. Bk. I. ch.* 1. Compare 1 *Bl.* 158, 159.

HOUSE OF CORRECTION. A species of prison, originally designed for the penal confinement, after conviction, of paupers refusing to work, and other persons falling under the legal description of vagrants. By stat. 5 & 6 Will. 4, c. 38, sects. 3, 4, passed in 1835, it was enacted that prisoners might be committed, for safe custody, to any house of correction situate near the place where assizes or sessions were to be held; and that offenders sentenced in these courts might be committed, in execution of their sentence, to any house of correction for the county. These provisions were extended by stat. 14 & 15 Vict. c. 55, sects. 20, 21. And by sect. 56 of the Prisons Act of 1865 (28 & 29 Vict. c. 126) it is provided that, subject as therein mentioned, every prison to which that Act applies shall be deemed to be a gaol and house of correction. 3 *Steph. Com.* 121, 122.

HOUSE OF KEYS. [KEYS.]

HOUSE OF LORDS. The upper house of the legislature, consisting of the lords spiritual and the lords temporal. The lords spiritual consist of the archbishops of Canterbury and York; of the bishops of London, Durham, and Winchester; and of twenty-one other bishops. The lords temporal sit, for the most part, in their own right; but a certain number of them are elected, under the Acts of Union with Scotland and Ireland, to represent in the House of Lords the body of the Scottish and Irish nobility respectively. The Scottish representative peers are sixteen in number, and are elected for one parliament only. The Irish representative peers are twenty-eight, and are elected for life. The aggregate number of the lords temporal is indefinite, and may be increased at will by the Crown. 1 *Bl.* 155—158; 2 *Steph. Com.* 328—332; *May's Parl. Pract.*

HOUSEBOLD and HAYBOLD seem to signify housebote and hedgebote. [HAYBOTE; HOUSEBOTE.]

HOUSEBOTE signifies estovers, or an allowance of necessary timber out of the lord's wood, for the repair and support of a house or tenement. This belongs, of common right, to a lessee for years or for life. *T. L.; Cowel;* 2 *Bl.* 35; 1 *Steph. Com.* 256, 287, 288.

HOUSEBREAKING is the offence of breaking and entering a house with the intention of committing a felony therein; or, after committing a felony therein, breaking out of the same. It differs from burglary in that burglary is committed by night. 4 *Bl.* 223; 4 *Steph. Com.* 111, 112; *Cox & Saunders' Cr. Law,* 54. [BURGLARY.]

HUDEGELD. [HIDEGELD.]

HUE AND CRY (Lat. *Hutesium et clamor*) is the old common law process of pursuing, with horn and with voice, all felons, and such as have dangerously wounded another. It is said that *hue* is the complaint of the party robbed, or of any in the company of one robbed or murdered, and that *cry* is the pursuit of the felon upon the highway upon that complaint. If a man wantonly and maliciously raises a hue and cry without cause he is liable to fine and imprisonment, and also to an action at the suit of the party injured. *T. L.; Cowel;* 4 *Bl.* 293, 294; 4 *Steph. Com.* 351, 352.

HUISSIER. An usher. [USHER.]

HUKM. Order, command. *Wilson's Gloss. Ind.*

HUKM-NAMA. A written award or judgment. [HUKM.]

HUNDI. A bill of exchange. *Wilson's Gloss. Ind.*

HUNDRED is part of a county or shire, so called because at first it contained ten tithings, composed each of ten families; or else because the king found therein a hundred able men for his wars. The hundred was originally governed by a high constable or bailiff; and formerly there was regularly held in it the hundred court for the trial of causes, though now fallen into disuse. *T. L.; Cowel;* 1 *Bl.* 115, 116; 1 *Steph. Com.* 123, 126. [CONSTABLE, 1; HUNDRED COURT.]

HUNDRED COURT. A larger Court Baron, being held for all the inhabitants of a particular hundred instead of a manor. The free suitors are here also the judges, and the steward the registrar, as in the case of the Court Baron. Causes might be removed from it, and its decisions reviewed by a writ of false judgment. [FALSE JUDGMENT, WRIT OF.] It had been long obsolete when its jurisdiction was practically abolished by sect. 28 of the County Courts Act, 1867, by which it was enacted that no action which can be brought in a county court shall thenceforth be maintainable in any hundred or other inferior court not being a court of record. 3 *Bl.* 34; 4 *Bl.* 411; 3 *Steph. Com.* 281; 4 *Steph. Com.* 486.

HUNDRED LAGH. The Hundred Court. *T. L.; Cowel.* [HUNDRED COURT.]

HUNDRED PENNY. Money formerly collected by the sheriff from the hundreds of his county for the expenses of his office. *Cowel; Toml.*

HUNDRED SETENA. The inhabitants of a hundred. *Cowel.*

HUNDREDERS or **HUNDREDORS** were men empanelled, or fit to be empanelled, as jurors upon a controversy, dwelling in the hundred where the land in question lay, or the cause of action arose, or accusation was tried. It was formerly necessary that there should be a competent number of hundreders on every panel. *T. L.; Cowel;* 3 *Bl.* 359; 4 *Bl.* 352; 3 *Steph. Com.* 522; 4 *Steph. Com.* 362. The word *hundredor* also signifies him that hath the jurisdiction of a hundred and holdeth the hundred court; also the bailiff of an hundred. *T. L.; Cowel.*

HUSBAND AND WIFE. The law of husband and wife is treated at large in Roper's, Bright's, and Macqueen's treatises on the subject. It is also discussed in the 15th chapter of Blackstone's first book (1 *Bl.* 433—445); and in Stephen's Commentaries, Bk. III. Ch. II. (2 *Steph. Com.* 238—282.)

HUSBAND OF A SHIP. [SHIP'S HUSBAND.]

HUSBRECE. Housebreaking or burglary. *Toml.* [BURGLARY; HOUSEBREAKING.]

HUSFASTNE is he that holdeth house and land. *T. L.; Cowel.*

HUSGABLE. House rent, or house tax. *Toml.*

HUSTINGS. A *house* of *things* or causes, from *hus*, house, and *thing*, cause. [COURT OF HUSTINGS.]

HUTESIUM ET CLAMOR. Hue and cry. [HUE AND CRY.]

HYPOTHECA, HYPOTHEC or **HYPOTHEK.** A security for a debt which remains in the possession of the debtor; differing thus from a *pledge*, which is handed over to the creditor:—

1. Thus, a mortgage of land, where the mortgagee does not take possession, is in the nature of a *hypotheca*. 2 *Bl.* 159.

2. So, to mortgage a ship for necessaries is called *hypothecation*. 2 *Bl.* 457, 458; 2 *Steph. Com.* 92.

3. In Scotland the term *hypothec* is used to signify the landlord's right which, independently of any stipulation, he has over the crop and stocking of his tenant. It gives a security to the landlord over the crop of each year for the rent of that year, and over the cattle and stocking on the farm for the current year's rent; which last continues for three months after the last conventional term for the payment of the rent. *Bell.* [TERM, 3.]

4. The word is also improperly used for a law agent's right over the title deeds of his employer. *Bell.* This is what in England we call a *lien*, or right of retention.

I. O. U. (I owe you) is a written acknowledgment of a debt. It operates merely as evidence of a debt due by virtue of some antecedent contract. *Byles on Bills, ch. IV.*

IDENTITATE NOMINIS. A writ that lay for him who upon a *capias* or an *exigent* was taken and committed to prison for another man of the same name. *T. L.; Cowel.* [CAPIAS AD SATISFACIENDUM; EXIGENT.]

IDENTITY OF PERSON. A phrase applied especially to those cases in which the issue before the jury is, whether a man be the same person with one previously convicted or attainted. 4 *Bl.* 396; 4 *Steph. Com.* 468.

IDEOT. [IDIOT.]

IDEOTA INQUIRENDO. [IDIOTA INQUIRENDO.]

IDIOT. A natural fool, or one who, from his birth, is *non compos mentis;* to be distinguished from a *lunatic*, who is one that hath had understanding, but by disease, grief, or other cause, has lost the use of his reason. *T. L.; Cowel;* 1 *Bl.* 303, 304; 2 *Steph. Com.* 62, 508—514. [LUNATIC.]

IDIOTA INQUIRENDO. A writ in the old common law to inquire whether a man be an idiot or not, which was tried by a jury of twelve men; and if they found him *purus idiota*, the profits of his lands and the custody of his person might be granted by the sovereign to any subject who had interest enough to obtain them. This writ is now obsolete, the part of the royal prerogative which relates to idiots being merged in that relating to lunatics. *T. L.; Cowel;* 1 *Bl.* 303, 304; 2 *Steph. Com.* 509, 510.

IGNIS JUDICIUM. The ordeal of fire. [ORDEAL.]

IGNORAMUS. A word formerly written by the grand jury on the back of a bill preferred to them, when they considered the evidence too defective or too weak to support an indictment. Now, in such cases, they indorse in English "no bill," "no true bill," or "not found," and the bill is thus said to be "thrown out." *Cowel;* 4 *Bl.* 305; 4 *Steph. Com.* 367. [BILL, 3; INDICTMENT.]

IGNORE means properly to be ignorant of. The word is used especially with reference to the throwing out of a bill of indictment by a grand jury. [IGNORAMUS.]

IKBAL. Acceptance (of a bond, &c.). *Wilson's Gloss. Ind.*

IKBAL DAWA. Confession of judgment. *Wilson's Gloss. Ind.*

IKRAH. Compulsion; especially constraint exercised by one person over another to do an illegal act, or to act contrary to his inclination. *Wilson's Gloss. Ind.* [DURESS]

IKRAR. Agreement, assent or ratification. *Wilson's Gloss. Ind.*

IKRAR NAMA. A deed of assent and acknowledgment. *Wilson's Gloss. Ind.*

ILLEGITIMACY. The *status* of a child born of parents not legally married at the time of birth.

ILLEVIABLE. That which cannot be levied. *Cowel.*

ILLUSORY APPOINTMENT was where a person, having power to appoint any real or personal property among a limited class of persons, appointed to any one of them a merely nominal share (as one shilling) of the property subject to the power of appointment. Thus, if a father had power to appoint 1,000*l.* among two children, and he appointed a shilling to one and the rest to the other, the appointment would be held illusory and void. This doctrine was abolished by stat. 11 Geo. 4 & 1 Will. 4, c. 46, passed in the year 1830. *Wms. P. P.* But the entire exclusion of any object of a power not in terms exclusive was illegal, notwithstanding that Act, until the year 1874. Now, by the stat. 37 & 38 Vict. c. 37, passed in that year, it is provided that under a power to appoint among certain persons, appointments may be made excluding one or more of the objects of the power.

IMBARGO. A stop or stay put upon ships by public authority. *Cowel.* [EMBARGO ON SHIPS.]

IMBASING OF MONEY is mixing the species with an alloy below the standard of sterling, which the king by his prerogative may do. *Toml.*

IMBEZZLE. To waste, scatter, or consume, for one's own purposes. *Cowel.* [EMBEZZLEMENT.]

IMBRACERY. [EMBRACERY.]

IMPANELLING A JURY signifies the writing and entering into a parchment schedule, by the sheriff, of the names of a jury. *Toml.* [PANEL, 1.]

IMPARL. To confer with. 1 *Steph. Com.* 569; *Wms. R. P.* [IMPARLANCE.]

IMPARLANCE (Lat. *Licentia loquendi*) was a licence formerly given to a defendant for a respite until some further day to put in his answer, to see if he could end the matter amicably without further suit, by talking with the plaintiff. *Cowel;* 3 *Bl.* 299, 301.

IMPARSONEE. A parson inducted and in possession of a benefice. *Cowel;* 1 *Bl.* 391; 2 *Steph. Com.* 677, *n.*

IMPEACHMENT. A prosecution of an offender before the House of Lords by the Commons of Great Britain in parliament. The articles of impeachment are a kind of indictment found by the House of Commons, and afterwards tried by the House of Lords.

It has always been settled law that a peer could be impeached for any crime.

As regards commoners, however, Blackstone lays it down that a commoner cannot be impeached before the lords for any capital offence, but only for high misdemeanors. 4 *Bl.* 260; 4 *Steph. Com.* 299, 300, and note (*e*). The contrary doctrine, however, was laid down when Chief Justice Scroggs, a commoner, was impeached of high treason. And when, on the 26th of June, 1689, Sir Adam Blair and four other commoners were impeached of high treason, the lords resolved that the impeachment should proceed. And this is the clear opinion of Sir Erskine May, *Parl. Prac. ch.* 23.

This form of prosecution has rarely been called into action in modern times.

IMPEACHMENT OF WASTE. A restraint from committing waste upon lands and tenements. *Cowel.* The phrase is intended to denote the ordinary legal liability incurred by a tenant for life or other limited interest, in committing waste on the property. [WASTE; WITHOUT IMPEACHMENT OF WASTE.]

IMPECHIARE. To impeach, accuse, or prosecute for felony or treason. *Cowel.*

IMPEDIATUS. Expeditated and disabled from doing mischief (of a dog). *Cowel.* [EXPEDITATION.]

IMPERTINENCE. Irrelevancy in pleading or evidence, by the allegation of matters not pertinent to the question at issue.

IMPETRATION. An obtaining by request or prayer. It is a word used in our old statutes for the obtaining, from the Court of Rome, of benefices and church offices in England, which by law belonged to the disposition of the king and other lay patrons of this realm. *Cowel.*

IMPLEAD. To sue, arrest, or prosecute by course of law. *Cowel.*

IMPLEMENTS. Things necessary for a trade, or for the furniture of a household. *Cowel.*

IMPLICATION. A legal inference of something not directly declared. 3 *Bl.* 381.

IMPLIED. This term could only be properly used to signify "established by indirect or circumstantial evidence," or, which comes to the same thing, "presumed under certain circumstances to exist, in the absence of evidence to the contrary," especially with reference to inward intentions or motives as inferred from overt acts.

Thus, Mr. Josiah Smith, in his "Manual of Equity," Tit. II. ch. 5, defines an *implied trust* as "a trust which is founded in an unexpressed but presumable intention;" and afterwards, in ch. 6, after remarking that implied trusts and constructive trusts are frequently confounded together, observes that a *constructive* trust is one raised by construction of a Court of Equity without reference to the presumable intention of any party: and that in this it differs both from an *express* and from an *implied* trust.

But the general use of this word "implied" by our legal text-writers is far more indiscriminate. Thus, Blackstone defines implied contracts to be "such as reason and justice dictate, and which therefore the law presumes that every man undertakes to perform." 2 *Bl.* 443. And Mr. Serjeant Stephen says that there is a numerous class of contracts which are *implied*, that is, resting on a mere construction of law, and that in general it will be implied that a man actually promises to fulfil that which he ought to fulfil. 2 *Steph. Com.* 57. Here Mr. Serjeant Stephen, in his generally excellent work, has fallen into a confusion analogous to that pointed out by Mr. Josiah Smith in the passage above referred to. And by most of our legal text-writers the phrase "implied contract" is applied indiscriminately to all those events which in law are treated as contracts, whether they arise from a presumed mutual consent or not, provided only they be not express contracts.

Thus the phrase is used to signify *sometimes* a genuine consensual contract not expressed in words, or in signs which usage has rendered equivalent to words; *sometimes* an event to which, though not a genuine consensual contract, the law annexes most or all of the incidents of a genuine contract as against any person or persons.

The implied but genuine contract is frequently spoken of as a *tacit* contract. It may be defined, in opposition to an express contract, as "a contract not expressed in words, or in signs which usage has rendered equivalent to words." As, if I order a coat from a tailor, without

IMPLIED—*continued.*

saying anything as to the price or quality. He, in undertaking the order, tacitly promises me that the coat shall be reasonably fit for wear. I tacitly promise him to pay a reasonable price for it. In implied contracts of this class there is no agreement as to precise terms and conditions, but there *is* an agreement, though of a vague and general character.

The implied contract which is such by fiction of law is frequently called a *quasi*-contract. Thus a person saves my goods on board a ship which is being wrecked, and claims from me "salvage-money" for doing so. This claim is said to arise "*quasi* ex contractu" (*as if* from a contract). It is totally independent of any consent on the part of the owner to pay for the saving of his goods. In implied contracts of this class there is no agreement at all; the supposed agreement being a pure fiction of law, adopted for the purposes of what is called "substantial justice." See *Austin's Fragments.*

The expression "implied request" is used in a manner analogous to "implied contract." A request is said to be "implied by law" sometimes when it has been in fact made, though not in express words: sometimes when it has never been made at all, but, by a fiction of law, is supposed or imagined to have been made.

IMPLIED COLOUR. [COLOUR.]

IMPLIED CONTRACT. [IMPLIED.]

IMPLIED MALICE. [EXPRESS MALICE; MALICE.]

IMPLIED REQUEST, IMPLIED TRUST. [IMPLIED.]

IMPOUND. To place in a pound goods or cattle distrained. 3 *Bl.* 12, 13; 3 *Steph. Com.* 255. *Kerr's Act. Law.* [POUND.]

Also, to retain in the custody of the law: which is ordered when a forged or otherwise suspicious document is produced at a trial, so that the document may be produced in case criminal proceedings should be subsequently taken.

IMPRESSMENT. The arresting and retaining mariners for the king's service. 1 *Bl.* 420; 3 *Steph. Com.* 594.

IMPRISONMENT. [FALSE IMPRISONMENT.]

IMPROBATION, in Scotch law, is the act by which falsehood and forgery is proved. In some cases forgery is alleged merely to insure the production of a deed: and an action for this purpose is called an action of *reduction improbation. Bell.*

IMPROPER FEUD. A feud held otherwise than by military service. 2 *Bl.* 57, 58; 1 *Steph. Com.* 180, 181.

IMPROPRIATION. Before the Reformation numerous advowsons and benefices were attached to religious houses, who applied but a small part of the incomes to the officiating priests, and appropriated the rest to their own fraternity. The appropriators were, therefore, in the first instance, persons spiritual. These appropriations were, it seems, spoken of as *impropriations.* But the word impropriation is restricted by Sir Henry Spelman and subsequent writers, so as to denote the appropriation by *laymen* of these properties, on receiving grants of the same from the Crown after the dissolution of the monasteries; and the laymen so appropriating them were called *lay impropriators.* 1 *Bl.* 386; 2 *Steph. Com.* 678, 679. [ADVOWSON; APPROPRIATION.]

IMPROVEMENT OF LAND ACTS are various acts of parliament passed in recent years to enable tenants for life to expend money in improving their estates, and to charge the expenses upon the inheritance.

IN ACTION. [CHOSE.]

IN ALIENO SOLO. In another's ground.

IN ARTICULO MORTIS. In a dying state.

IN AUTER DROIT. In another's right. 2 *Bl.* 177. As where an executor sues for a debt in right of his testator. *Tomi.*

IN BANCO. [BANC.]

IN CAPITE. Tenants who held their land *immediately* of the king were said to hold it *in capite* or *in chief.*

All the land in the country is held originally of the Crown. The immediate tenants of the Crown under the feudal system frequently granted out portions of their lands to inferior persons, and those inferior persons became tenants to them, as they were of the king; and it was in contradistinction to such inferior tenants that those who held immediately of the king were called tenants *in capite.* 1 *Steph. Com.* 185, 186. [FEUDAL SYSTEM; SUBINFEUDATION.]

IN CASU CONSIMILI. [CASU CONSIMILI.]

IN CASU PROVISO. [CASU PROVISO.]

IN CHIEF. A phrase used variously. [CHIEF, TENANTS IN; EXAMINATION, I; IN CAPITE.]

IN COMMENDAM. [COMMENDAM.]

IN ESSE. In being, as opposed to a thing *in posse*, which may be, but is not. Thus a child, before he is born, is said to be *in posse*; but after he is born, and for many purposes after he is conceived, he is said to be *in esse*, or in actual being. *Cowel; Toml.*

IN EXTENSO. In full; a copy of a document made *verbatim*.

IN EXTREMIS. On the point of death.

IN GROSS is that which belongs to the person of a lord or other owner, and not to any manor, lands, &c. *Cowel.* The phrase, applied to an incorporeal interest in land, signifies that the incorporeal interest in question is not appendant or appurtenant to any corporeal thing, but is enjoyed by its owner as an independent subject of property. [APPENDANT; APPURTENANCES; GROSS.]

IN LIMINE. On the threshold. An objection *in limine* is a preliminary objection.

IN PERSONAM. A proceeding *in personam* is one in which relief is sought against, or punishment sought to be inflicted upon, a specific person.

IN RE. In the matter of. These words used at the beginning of a lawyer's letter indicate the subject of the letter. And, in headings to legal reports, they are applied especially (though by no means exclusively) to estates or companies which are being wound up, or to the owners of such estates.

IN REM. A proceeding *in rem* is one in which relief is not sought against, or punishment sought to be inflicted upon, any person. Actions *in rem* are generally instituted to try claims to some property or title or status; as, for instance, where it is sought to condemn a ship in the Court of Admiralty, or to recover land in an action of ejectment, &c.

IN THE CAUSE. The costs of an interlocutory proceeding are directed to be *costs in the cause* when it is intended that they shall be payable in the same manner and by the same parties as the general costs of the action or suit. *Hunt. Eq.*

IN TRANSITU. In passage from one place to another. Generally it is used of goods in their passage from the vendor to the purchaser. [STOPPAGE IN TRANSITU.]

IN VENTRE SA MERE. In his mother's womb.

INAAM. A gift or benefaction; especially a grant of land-rent from a superior to an inferior. *Wilson's Gloss. Ind.*

INCIDENT. A thing appertaining to or following upon another as more principal, and passing by a general grant thereof. *Cowel;* 1 *Steph. Com.* 315, *n.*

Thus, rent may be made incident to a reversion; and, when so incident, it passes by a general grant of the reversion. Formerly the rent so incident was destroyed when the reversion was destroyed by surrender or merger: but this doctrine, so far as regards cases of surrender or merger, is abolished by stat. 8 & 9 Vict. c. 106, s. 9. 1 *Steph. Com.* 315—319, and note (*t*); *Wms. R. P.*

INCIPITUR. An entry made by the successful party in an action, of the initial words in which the judgment *would* be recorded, in those numerous cases in which no formal entry of the judgment is made upon the record. 3 *Steph. Com.* 566, *n.*; *Kerr's Act. Law.*

INCLOSURE. 1. The extinction of commonable rights in fields and waste lands. 1 *Steph. Com.* 655.

2. Land inclosed.

INCLOSURE COMMISSION ACT, 1845. The stat. 8 & 9 Vict. c. 118, by which a Board of Commissioners, called the Inclosure Commissioners for England and Wales, was established, and empowered, on the application of persons interested to the amount of one-third of the value of land subject to be inclosed, and provided the consent of persons interested to the amount of two-thirds of the land, and of the lord of the manor (in case the land be waste of a manor), be ultimately obtained, to inquire into the case, and to report to parliament as to the expediency of making the inclosure. 1 *Steph. Com.* 655—657.

INCLOSURE COMMISSIONERS. [INCLOSURE COMMISSION ACT.]

INCORPORATED LAW SOCIETY. A society of attorneys and solicitors, whose function it is to carry out the acts of parliament and orders of court with reference to the examinations of articled clerks; to keep an alphabetical roll of attorneys and solicitors; to issue certificates to persons duly admitted and enrolled; also to exercise a general control over the conduct of solicitors in practice, and to bring cases of misconduct before the judges. See 3 *Steph. Com.* 217.

INCORPOREAL CHATTELS are personal rights and interests which are not of a tangible nature,—such as personal annuities, stocks and shares, patents and copyrights. 2 *Steph. Com.* 9; *Wms. P. P. Part III.*

INCORPOREAL HEREDITAMENT is any possession or subject of property which is capable of being transmitted to heirs, and is not the object of the bodily senses. It is in general a right annexed to, or issuing out of, or exercisable within, a corporeal hereditament; as a right of common of pasture, or a right of way over land. 2 *Bl.* 20; 1 *Steph. Com.* 647; *Wms. R. P.*

INCORPOREAL PROPERTY. [CORPOREAL PROPERTY; INCORPOREAL CHATTELS; INCORPOREAL HEREDITAMENT.]

INCREASE, COSTS OF. Costs awarded to the plaintiff in an action by the officer of the court over and above the sum of 40*s.*, entered upon the *postea* as the nominal award of the jury. *Lush's Pr.* 894. [POSTEA.]

INCUMBENT. A name given to every beneficed parochial clergyman, on the supposition that he resides on his benefice or cure, because he doth or ought to bend his whole study to discharge his cure. If an incumbent absents himself for a period exceeding three months, either accounted together or at several times, in any one year, he forfeits a certain portion, increasing with the length of absence, of the annual value of the benefice at which he so fails to reside. But this rule is subject to a variety of exceptions. *T. L.; Cowel;* 1 *Bl.* 392; 2 *Steph. Com.* 689—691.

INCUMBER. To charge with an incumbrance. [INCUMBRANCE.]

INCUMBRANCE. A charge or mortgage upon real or personal estate.

INCUMBRANCER. A person entitled to enforce a charge or mortgage upon real or personal estate.

INDEBITATUS ASSUMPSIT. An action alleging that defendant being indebted to the plaintiff, undertook or promised to pay, but failed, whereupon the plaintiff claimed damages for the non-performance by the defendant of his undertaking. 3 *Bl.* 155. [ASSUMPSIT.]

INDECIMABLE. Exempt from tithes. *Cowel.* [TITHES.]

INDEFENSUS. One that is impleaded, and refuseth to answer. *Cowel.* [IMPLEAD.]

INDEFINITE PAYMENT is where a debtor owes several debts to the same creditor, and makes a payment without specifying to which of the debts the payment is to be applied. *Toml.*

INDEMNITY. 1. A pension formerly paid to a bishop for discharging or indemnifying churches from the payment of procurations. *Toml.* [PROCURATIONS.]

2. Pardon or oblivion for offences. [INDEMNITY ACT.]

3. Compensation for wrong done, or trouble, expense, or loss incurred.

INDEMNITY ACT. An Act of Parliament formerly passed every year to relieve from forfeiture persons who had accepted office without taking certain oaths then required by law. 2 *Steph. Com.* 622, *n.* Also any act for pardon or oblivion of past offences against the law.

INDENTURE. A deed made by more parties than one; so called because there ought regularly to be as many copies of it as there are parties; and formerly each was cut or indented like the teeth of a saw, or in a waving line, to tally or correspond with the other. Now, by stat. 8 & 9 Vict. c. 106, s. 5, passed in 1845, a deed purporting to be an indenture is to have the effect of an indenture, though not actually indented. *Cowel;* 2 *Bl.* 295, 296; 1 *Steph. Com.* 481—483; *Wms. R. P.* [DEED.]

INDENTURES OF A FINE. These were indentures made and engrossed at the chirographer's office, and delivered to the cognizor and the cognizee, usually beginning thus: "*Hæc est finalis concordia*" (this is the final agreement), and then reciting the whole proceedings at length. 2 *Bl.* 351; 1 *Stephen's Comm.* 562. [CHIROGRAPHER OF FINES; FINE, 1.]

INDICAVIT. A writ or prohibition that lies for a patron of a church, when the clergyman presented by him to a benefice is made defendant in an action of tithes commenced in the ecclesiastical court by another clergyman, where the tithes in question extend to the fourth part of the benefice; for in this case the suit belongs to the "king's court" (*i. e.*, the common law court) by the stat. Westm. 2, c. 5. *Cowel.*

The person sued may also avail himself of this writ. *Toml.*

INDICTEE. A person indicted. *Toml.*

INDICTMENT. A written accusation that one or more persons have committed a certain felony or misdemeanor, such accusation being preferred to, and (being found true) presented to the court upon oath by, a grand jury. The finding of an indictment is only in the nature of an *inquiry* or *accusation*, which is afterwards to be tried and determined; and the grand jury are only to inquire whether there be sufficient cause to call upon the party to answer it. Hence the grand jury only hears evidence on behalf of the prosecution. *T. L.; Cowel;* 4 *Bl.* 302, 303; 4 *Steph. Com.* 361, 362. [BILL, 3.]

INDICTOR. He that indicteth another man for any offence. *Toml.*

INDIRECT EVIDENCE. The same as circumstantial evidence. [CIRCUMSTANTIAL EVIDENCE; EVIDENCE.]

INDORSEE. [INDORSEMENT.]

INDORSEMENT. A writing on the back of a document. *T. L.; Cowel.* Thus we speak of an indorsement on a deed, on a bill of exchange, on a writ, &c.

An *indorsement in blank* is where a person, to whom a bill or note is payable, writes his name on the back simply. The effect of such an indorsement is that the right to sue upon the bill will be transferred to any person to whom the bill is delivered.

A *special* indorsement is an indorsement directing payment of the bill to a specified person or his order; such person is thereupon called the *indorsee*. In this case the bill or note, in order to become transferable, must be again indorsed by the indorsee. 3 *Steph. Com.* 116; *Wms. P. P.*

For a special indorsement on a writ of summons in an action, see SPECIAL INDORSEMENT.

INDORSER. A person who indorses any document. [INDORSEMENT.]

INDOWMENT. [ENDOWMENT.]

INDUCEMENT. 1. The motive or incitement to any act.

2. Inducement, in pleading, is matter brought forward by way of explanatory introduction to the main allegations of the pleading. *Toml.; Stephen, Plead.* Sometimes the term is used to include only such averments in a pleading as are not material.

INDUCIÆ LEGALES, in a Scotch action, are the days between the citation of the defender and the day of his appearance in the action. *Bell; Toml.*

INDUCTION. A ceremony performed, after a clergyman has been instituted to a benefice, by a mandate from the bishop to the archdeacon. It is done by giving the clergyman corporal possession of the church, as by holding the ring of the door, tolling a bell, or the like; and is a form required by law, so that all the parishioners may have due notice and sufficient certainty of their new minister, to whom their tithes are to be paid. This is the investiture of the temporal part of the benefice, as *institution* is of the spiritual. *T. L.; Cowel;* 1 *Bl.* 391; 2 *Steph. Com.* 686, 687.

INDUSTRIAM, PER. *Per industriam* is a phrase applied to the reclaiming animals *feræ naturæ*, and making them tame by art, industry, and education; or else by confining them that they cannot escape and use their natural liberty. 2 *Steph. Com.* 5.

INFANGTHEFE or **INFANGTHEOF** signifieth a privilege or liberty granted unto lords of certain manors to judge any thief taken within their fee. *Cowel.*

INFANT, in law, is a person under the age of twenty-one years; an age at which persons are considered competent for all that the law requires them to do, and which is therefore designated as *full age*. This age is gained on the day preceding the twenty-first anniversary of a person's birth. 2 *Steph. Com.* 302, 303. [AGE; see also the following Titles.]

INFANTS' RELIEF ACT, 1874. The stat. 37 & 38 Vict. c. 62, for making such contracts by infants (*i. e.*, persons under age), as at the time of the passing of the Act were merely voidable, to be henceforth absolutely void and incapable of ratification by the party on his attaining his full age.

INFANTS' SETTLEMENT ACT. The stat. 18 & 19 Vict. c. 43, passed in 1855, for enabling persons under age to make settlements on their marriage, with the concurrence of the Court of Chancery. Any such person, if a male, must be at least twenty years of age; and, if a female, of seventeen years. 2 *Steph. Com.* 305, 306; *Hunt. Eq.*

INFEFTMENT. The Scotch term for *feoffment*, or delivery of feudal possession. Prior to the year 1845 this was effected by the symbolical delivery of earth or stone, or other appropriate emblems. Since then it is effected, under stat. 8 & 9 Vict. c. 35, s. 1, by what is called an "instrument of sasine." [FEOFFMENT; INSTRUMENT OF SASINE; INVESTITURE.]

INFEODATION OF TITHES. The granting of tithes to mere laymen; prohibited by a decree of the council of Lateran, A.D. 1179. 2 *Bl.* 27; 2 *Steph. Com.* 725.

INFERIOR COURTS. The courts which are subject to and controlled by the superior courts at Westminster. Mr. Serjeant Stephen, in his "Commentaries," Book V. ch. 4, enumerates the following nine classes of inferior courts; of some of which, however, the jurisdiction is obsolete:—

1. The Courts Baron.
2. The Hundred Courts.
3. The Sheriffs' County Courts, which are the old County Courts.
4. The modern County Courts, established in 1846, by stat. 9 & 10 Vict. c. 95.
5. The Courts which in many cities and boroughs are held by prescription, charter, or act of parliament.
6. The Courts of the Commissioners of Sewers.
7. The Stannary Courts.
8. The University Courts.
9. The Ecclesiastical Courts.

INFEUDATION OF TITHES. [INFEODATION OF TITHES.]

IN FORMA PAUPERIS. [FORMA PAUPERIS.]

INFORMATION. A proceeding on behalf of the Crown against a subject otherwise than by indictment.

Informations are of various kinds:—

1. An information in Chancery, which differs from a bill only by the fact that it is instituted in the name of the Attorney-General on behalf of the Crown, or of those who partake of its prerogative, or whose rights are under its particular protection; whereas a bill is filed on behalf of a subject merely. It often happens, however, that the proceeding by way of information is prosecuted in the name of the Attorney-General by some private person interested in the maintenance of the public right which it is intended to enforce. Such private person is then called the *relator*, and is responsible for the conduct of the suit and for the costs. *Hunt. Eq.*; 3 *Bl.* 427; 3 *Steph. Com.* 72, 596, *n.* This species of information is henceforth to be superseded by action in the High Court of Justice. *Stat.* 38 & 39 *Vict. c.* 77, 1*st Sched. Order I, rule* 1.

2. An information in the Exchequer on behalf of the Crown, to recover money due to the Crown, or to recover damages for an intrusion upon Crown property. 3 *Bl.* 261; 3 *Steph. Com.* 669, 670. [INTRUSION, 2.]

3. An information in the Queen's Bench in the nature of a *quo warranto*, for the purpose of trying the right to a franchise. 4 *Bl.* 312, 441; 3 *Steph. Com.* 639, 640.

4. An information on a penal statute, which gives the informer a share in the penalty. 3 *Bl.* 161; 3 *Steph. Com.* 479.

5. A criminal information in the Queen's Bench. This may be by the Attorney-General *ex officio*, or by a private prosecutor in the name of the Crown. But in the latter case the information cannot be filed but by the express direction of the Court itself. 4 *Bl.* 308—312; 4 *Steph. Com.* 374—378.

6. A charge laid before a justice or justices of the peace, with a view to a summary conviction. 4 *Steph. Com.* 335, 336, 373, 374.

Of these six classes, the first two are civil in their nature, and differ from ordinary suits and actions by the fact of their being instituted on behalf of the Crown. The third class is in its origin a criminal proceeding, but even in Blackstone's time it had assumed the character of a civil proceeding for the purpose of trying a right. The fourth class is partly a civil, partly a criminal proceeding. In its form it partakes more of the civil character: but its object is a penal one, and not the redress of any private wrong. The last two classes of informations are purely criminal in their nature.

7. In Scotland an information is a written pleading ordered by the Lord

INFORMATION—*continued.*

Ordinary when he takes a cause to report to the Inner House. It serves to explain to the judges the nature of the case which the Lord Ordinary is to report. *Bell.* [INNER HOUSE; LORD ORDINARY.]

INFORMATION IN REM. An information *in rem* is a proceeding in the Exchequer, claiming property on behalf of the Crown. See 3 *Bl.* 262; 3 *Steph. Com.* 669, 670. [INFORMATION, 2.]

INFORMATUS NON SUM (I am not instructed). A formal answer made by an attorney that is commanded by the Court to say what he thinketh good in defence of his client, and, being not instructed, says he is not *informed*, by which he is deemed to leave his client undefended, and so judgment passeth for the adverse party. *Cowel.*

INFORMER. Any one who informs or prosecutes in any of the courts of law those that offend against any law or penal statute. *Cowel.* Especially of one who informs for the purpose of sharing in the money to be paid by way of penalty on conviction. [COMMON INFORMER; INFORMATION, 4.]

INFORTUNIUM. Misadventure or mischance. [HOMICIDE.]

INFRINGEMENT. A violation of another's right; a word used principally with reference to the violation of another's patent or copyright.

INGRESSU. A writ of entry, whereby a man sought entry into lands or tenements. This writ was of various forms, according to circumstances. *Cowel.* [ENTRY, WRIT OF.] The various writs of entry were abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

INGRESSUS. The "relief" which an heir of full age paid to the head lord for entering upon the fee. *Toml.* [RELIEF.]

INGROSSING. [ENGROSSING.]

INHERITANCE. A perpetuity in lands or tenements to a man and his heirs. Littleton hath these words: This word inheritance is not only understood where a man hath inheritance of lands and tenements by descent of heritage, but also every fee simple or fee tail that a man hath by his purchase, may be said to be by inheritance, for that his heirs may inherit after him. *T. L.; Cowel.*

At the present day, inheritance as above defined would be called *an estate of inheritance* (2 *Bl.* 103—119; 1 *Steph. Com.* 231—233); the word inheritance (used simply) being mostly confined to the title to lands and tenements by *descent.* [DESCENT; ESTATE, 1.]

INHERITANCE ACT, 1833. The stat. 3 & 4 Will. 4, c. 106, by which the present law of inheritance is regulated. 1 *Steph. Com.* 388—434; *Wms. R. P. Part I. ch.* 4.

INHIBITION signifies a writ to *inhibit* or forbid a judge from farther proceeding in a cause depending before him.

Inhibition is most commonly a writ issuing out of a higher Court Christian to a lower and inferior, upon an appeal; and *prohibition* out of the King's Court to a Court Christian, or to an inferior temporal court. *T. L.; Cowel.* See also 3 *Bl.* 112—114; 3 *Steph. Com.* 635—638; *Kerr's Act. Law.* [PROHIBITION.]

Inhibition, in the Scotch law, is a process by which a creditor restrains his debtor from contracting any debt or "granting any deed" to the prejudice of the complaining creditor. *Bell.*

INITIALIA TESTIMONII, in Scotland, are the leading points put to a witness before his making oath, as to his having no interest in the suit, &c. [EXAMINATION IN INITIALIBUS; VOIR DIRE.]

INITIATE TENANT BY CURTESY. A husband becomes *initiate tenant by curtesy* in his wife's estate of inheritance upon the birth of issue capable of inheriting the same. The husband's estate by curtesy is not said to be *consummate* till the death of the wife. 2 *Bl.* 127, 128; 1 *Steph. Com.* 265, 266. [CURTESY.]

INJUNCTION. A writ issuing out of Chancery in the nature of a prohibition, by which the party enjoined or prohibited is commanded not to do, or to cease from doing, some act; so that injunctions are in general applicable only where it is sought to preserve matters *in statu quo;* although occasionally what are called *mandatory injunctions* are issued, by which a person is commanded to *cease* to allow things to remain *in statu quo,* although he can obey this command only by being active in bringing about an alteration. Thus, even in mandatory injunctions, the form of prohibition is retained. *Hunt. Eq. Pt. II. ch.* 5, *s.* 2; *Haynes' Eq. Lect. IX.; Chute's Eq. ch.* 8; *Kerr on Injunctions.* See also 4 *Bl.* 433. And in general the subject of a mandatory injunction is the undoing that which has been done, as the pulling down a wall which has been built.

Injunctions are either *common* or *special.* A common injunction has been

INJUNCTION—*continued.*

defined as one issued upon default in not answering a bill, to restrain a defendant from proceeding at law touching the matter of the bill, till he shall have purged his contempt. The common injunction may also be granted where the defendant obtains further time to answer. The common injunction used to be a matter of course; but now, by 15 & 16 Vict. c. 86, s. 5, in order to entitle the plaintiff thereto, a *primâ facie* case must be made by the bill, and supported by affidavit. Now, by the Judicature Act of 1873, s. 24, sub-sect. 5, no cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction. And, by s. 25, subsect. 8, an injunction may be granted by an interlocutory order of the Court in all cases in which it shall appear just or convenient. Injunctions upon other occasions, or involving other directions, are called special injunctions. In certain cases, also, a writ of injunction might be obtained at common law against the repetition of an injury, under s. 79 of the C. L. Proc. Act, 1854. Injunctions are also granted in various cases by the Court of Bankruptcy under s. 18 of the Bankruptcy Act, 1869.

INJURIA. An actionable wrong.

INJURY. A violation of another's right; or a violation of legal duty to the prejudice of another.

INLAGARY or **INLAGATION.** A restitution of one outlawed to the king's protection, and to the benefit or estate of a subject. *T. L.; Cowel.*

INLAGH. A man who is under the protection of the law, and not outlawed. *T. L.; Cowel.*

INLAND. The demesne reserved for the use of the lord, and not let out to tenants. *Cowel.* [DEMESNE.]

INLAND BILL OF EXCHANGE. By stat. 19 & 20 Vict. c. 97, passed in 1856, an inland bill of exchange is a bill drawn in any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney and Sark, and the islands adjacent to any of them, being part of the dominions of her Majesty, and made payable in, or drawn upon any person resident in, any part of the said United Kingdom or islands. Before this enactment, an inland bill was a bill drawn by a person resident in England upon another person resident in England. And the above statute provides, that nothing therein shall alter any stamp duty which, but for that enactment, would be payable in respect of such bill or note. *2 Bl.* 467; *2 Steph. Com.* 115, 116, *and note (o)*; *Byles on Bills.*

INLANTAL, INLANTALE. Belonging to inland or demesne. *Toml.* [DEMESNE; INLAND.]

INLEASED. Entangled or ensnared. *Cowel.*

INLEGIARE. Where a delinquent, having been outlawed, has satisfied the law and is again reinstated under legal protection, he is said *se inlegiare. Toml.* [INLAGARY.]

INN. An inn is defined to be a house, the owner of which holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a condition in which they are fit to be received. An innkeeper may be indicted for refusing to serve a customer, or for refusing to receive a sick traveller. Every inn is licensed by justices of the peace for the sale by retail of intoxicating liquors, the word "inn" in the Licensing Act, 1828, including inns, alehouses and victualling-houses. The word "alehouse" must not be confused with the modern term "beerhouse," in which beer and wine only are sold. [LICENSING ACTS.]

INNAMIUM. A pledge. [NAMIUM.]

INNER HOUSE is the name given to the chambers in which the First and Second divisions of the Court of Session in Scotland hold their sittings. It is applied also to the Courts themselves, and used in contradistinction to the Outer House, or hall in which the lords ordinary sit to hear motions and causes. The Inner House corresponds very nearly to the sittings *in banc* of the judges at Westminster. *Bell; Paterson.* [BANC.]

INNER TEMPLE. One of the Inns of Court. [INNS OF COURT.]

INNINGS. Lands recovered from the sea in Romney Marsh by draining. When they are rendered profitable, they are termed *gainage* lands. *Toml.*

INNOCENT CONVEYANCE. A conveyance which could not operate by wrong. Thus, a lease and release, and a bargain and sale, and a covenant to stand seised, were called *innocent conveyances*, be-

INNOCENT CONVEYANCE—*continued.*

cause they could not, like a feoffment, have a tortious operation. 1 *Steph. Com.* 550, 551; *Wms. R. P.* [TORTIOUS OPERATION.]

INNONIA. An inclosure. *Toml.* [INCLOSURE.]

INNOTESCIMUS. Letters patent so called, being always of a charter or feoffment, or other instrument not of record; so called from the words of the conclusion, *innotescimus per præsentes. T. L.; Cowel.*

INNOXIARE. To purge one of a fault and declare him innocent. *Toml.*

INNS OF CHANCERY are Clifford's Inn, Clement's Inn, New Inn, Staple Inn, and Barnard's Inn. Besides these, there were formerly Furnival's Inn, the Strand Inn, Lyon's Inn, and Thavies' Inn. There is also Serjeants' Inn, which consists of serjeants only. The Inns of Chancery and the Inns of Court were originally two sorts of collegiate houses in the same juridical university, the Inns of Chancery being those in which the younger students of the law were usually placed, who, as they grew to ripeness, were admitted into the greater Inns of the same study, called the Inns of Court. The Inns of Chancery have now sunk into insignificance, and an admission to them is no longer of any avail to a student in his progress to the bar. 1 *Steph. Com.* 18, 19, *and n.* (*q*). [INNS OF COURT.]

INNS OF COURT are Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn. They enjoy the exclusive privilege of conferring the rank or degree of barrister-at-law, the possession of which constitutes an indispensable qualification for practising as an advocate or counsel in the superior courts. The Inns of Court are governed by officers called "benchers," to whom application is made by students desirous to be called to the bar. The benchers have also authority to deprive a bencher or a barrister of his *status*, which proceedings are called respectively "disbenching" and "disbarring." An appeal from decisions of the benchers lies to the judges in their capacity of visitors. 1 *Steph. Com.* 19, *and notes.*

INNUENDO (from *innuo*, to beck or nod with the head) is a word the office of which is only to declare and ascertain the person or thing which was named or left doubtful before; as to say, he (*innuendo*, the plaintiff) is a thief, where there was mention before of another person. The word *innuendo* is most frequently applied to signify, in a proceeding for libel, the averment of a particular meaning in a passage *primâ facie* innocent, which, if proved, would establish its libellous character. *Cowel;* 3 *Bl.* 26; 3 *Steph. Com.* 382, *n.*

INOFFICIOUS TESTAMENT. A will made without proper regard to the claims of kindred. This, according to the Roman law, could be challenged by the children, through the process called *querela inofficiosi testamenti*, on the ground that the testator must have lost the use of his reason. 1 *Bl.* 447, 448; 2 *Bl.* 502, 503; 2 *Steph. Com.* 589. Even a brother or sister could set aside such a testament if the person actually instituted heir was *turpis*, or infamous.

The old writ *de rationabili parte bonorum*, in the English law, resembled in some respects the *querela inofficiosi testamenti;* but there is nothing which corresponds to it in the English law at the present day.

INQUEST. An inquisition or inquiry.

1. The inquest of office is an inquiry made by the king's officer, his sheriff, coroner, or escheator, either *virtute officii*, or by writ to them sent for that purpose, or by commissioners specially appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels. This is done by a jury of no determinate number, being either twelve, or less, or more. *T. L.; Cowel;* 3 *Bl.* 258—260; 3 *Steph. Com.* 659—662.

2. A coroner's inquest is an inquiry into the manner of the death of anyone who has been slain, or has died suddenly, or in prison. It is held before a jury, who must consist of twelve at least. 1 *Bl.* 348, 349; 2 *Steph. Com.* 637—641.

3. The word *inquest* is often used with reference to the jury or other body, to whom the trial of a question, civil or criminal, is committed. *Bell.* And Blackstone speaks of the House of Commons, in preparing an impeachment, as the most solemn grand inquest of the whole kingdom. 4 *Bl.* 259; 4 *Steph. Com.* 299.

INQUIRY, COURT OF. 1. A court occasionally directed by the Crown to inquire into the conduct of officers, with a view to further proceedings by court-martial or otherwise. Great doubts have been entertained as to the legality of such a

INQUIRY, COURT OF—*continued.*

proceeding. 1 *Bl.* 418, *note by Coleridge*; 2 *Steph. Crm.* 590, *n.*

2. Also, a court for hearing the complaints of private soldiers. [COURT OF ENQUIRY.]

INQUIRY, WRIT OF. [WRIT OF INQUIRY.]

INQUISITION. [INQUEST.]

INQUISITORS are sheriffs, coroners, or the like, who have power to inquire in certain cases. *Cowel.*

INROLMENT (Lat. *Irrotulatio*). The registering, recording, or entering of any lawful act or deed in the Chancery or elsewhere. *T. L.*; *Cowel.*

In some cases deeds are required to be enrolled in Chancery, in order that they may have validity.

An inrolment of a decree in Chancery is necessary for the purpose of enabling a party to appeal therefrom to the House of Lords. *Hunt. Eq.* [ENROLMENT.]

(Appeals to the House of Lords are, by the Judicature Acts, abolished as from the 1st of November, 1876. *Stats.* 36 & 37 *Vict. c.* 66, *s.* 20, *and* 38 & 39 *Vict. c.* 77, *s.* 2.)

INSANITY. [LUNATIC.]

INSENSIBLE. Meaningless, unintelligible.

INSIDIATIO VIARUM. Lying in wait for one in the highway; a crime which, at the common law, was felony without benefit of clergy. 4 *Bl.* 374. [BENEFIT OF CLERGY.]

INSIMUL COMPUTASSENT. A clause formerly in use in an action on an account stated, by which it was alleged that the plaintiff and defendant had settled their accounts together, and that the defendant engaged to pay the plaintiff the balance, but had since neglected to do it. 3 *Bl.* 164. [ACCOUNT STATED.]

INSIMUL TENUIT. A species of the writ of *formedon*, that lay for a coparcener, or co-heir in gavelkind, against a stranger. *Cowel.* [FORMEDON.]

INSOLVENCY. Inability to pay debts.

Prior to the year 1861, there was a distinction between bankruptcy and insolvency; an insolvent debtor being a person, *not a trader*, who was unable to meet his liabilities. And the term "insolvency" was frequently applied to the means of getting rid of pecuniary engagements, afforded by acts of parliament passed for the relief of insolvent debtors. The principal statute on this subject was the stat. 1 & 2 Vict. c. 110, passed in 1838, which enabled any person in custody for any debt, damages, costs, &c., to apply by petition to the Court for the Relief of Insolvent Debtors for his discharge from custody. By stat. 10 & 11 Vict. c. 102, s. 36, passed in 1847, any creditor at whose suit the prisoner was committed might petition the court for his share of the relief, which consisted in the real and personal estate and effects of the prisoner being vested in the provisional assignee for the benefit of his creditors. A vesting order was made accordingly, after which the insolvent was required to make a schedule of his property and debts, and to execute a warrant of attorney authorizing the entering up of a judgment against him in the name of the assignee or assignees for the amount of his unsatisfied debts, for the satisfaction of which his subsequent property was liable. He was thereupon entitled to his discharge, either immediately or at the end of six months. And in cases of flagrant misconduct the discharge might be postponed for three years.

There were also various other Acts relating to insolvent debtors, which need not here be noticed.

All the Acts relating to insolvent debtors were repealed by the Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), which also abolished the Insolvent Debtors Court. This Act has now been repealed, and its place has been supplied by the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71).

The distinction between bankruptcy and insolvency has not been restored; but, for certain purposes mentioned in the last-named Act, a trader stands in a different footing from a non-trader. See *Wms. P. P., Pt. II. c.* 5; *Robson, Bkcy.* [ACT OF BANKRUPTCY; BANKRUPT.]

INSOLVENCY FUND. A fund, consisting of monies and securities, which, at the time of the passing of the Bankruptcy Act, 1861, stood, in the Bank of England, to the credit of the Commissioners of the Insolvent Debtors Court, and was, by the 26th section of that Act, directed to be carried by the Bank to the account of the Accountant in Bankruptcy. Provision has now been made for its transfer to the Commissioners for the Reduction of the National Debt. *Robson, Bkcy.*

INSOLVENT DEBTOR. [INSOLVENCY.]

INSOLVENT DEBTORS COURT. [INSOLVENCY.]

INSPECTION. A mode of trial formerly in use for the greater expedition of a cause, in which the point at issue was one capable of being easily settled by the use of the bodily senses. As, when it

INSPECTION—*continued.*

was a question of non-age of a given party, it might be obvious, upon inspection of the party, whether he were of age or not. And so, if the question were, whether a man was an idiot or not; and in other cases. And if, upon inspection, it appeared that the verdict of a jury in the same matter was erroneous, such verdict, and the proceedings thereon, became utterly void and of no effect. 3 *Bl.* 332; 3 *Steph. Com.* 513, *n.*

INSPECTION, COMMITTEE OF. [COMMITTEE OF INSPECTION.]

INSPECTION OF DOCUMENTS. An expression sometimes used with reference to the right of a person to inspect and take copies of documents of a public nature in which he is interested. *Toml.*

But it is more frequently used in connection with the right of a party in an action or suit to inspect and take copies of documents material to his case, which may be in the possession of the opposite party. This may be done by a plaintiff in a Chancery suit; also by a defendant, when he has sufficiently answered the plaintiff's interrogatories. For this purpose the party desiring to inspect documents in his adversary's possession takes out a summons requiring his opponent to state what documents he has in his possession, and to make an affidavit in a prescribed form for that purpose. *Hunt. Eq., Pt. II. ch.* 2, *s.* 2.

Leave to inspect documents will also, in certain cases, be given by a judge at chambers in an action at common law. See stat. 14 & 15 *Vict. c.* 99, *s.* 6.

Provisions are also made for the inspection of documents under the Judicature Act, 1875, by Order XXXI. rules 11—22, in the First Schedule to that Act.

INSPECTORSHIP DEED. A deed by which inspectors are appointed to watch a debtor's affairs on behalf of the creditors; the creditors undertaking not to sue the debtor, and the debtor agreeing to pay the creditors a composition of so much in the pound. *Wms. P. P., Pt. II. ch.* 3.

INSPEXIMUS. A word sometimes used to designate letters patent, because they used to begin, after the king's title, with the word *inspeximus*. *T. L.; Cowel.*

INSTALMENT. 1. The ceremony by which possession is given of an ecclesiastical dignity. 2 *Bl.* 312; 1 *Steph. Com.* 506.

2. The payment by a debtor of a sum of money less than the whole sum due, in partial liquidation thereof.

INSTANCE COURT OF ADMIRALTY is the court in which the judge of the Admiralty sits by virtue of a commission from the Great Seal which enumerates the objects of his jurisdiction, but which has no jurisdiction in matter of prize. The *Prize Court* is a court presided over by the same judge, but by a different commission, which issues in every war under the Great Seal to the Lord High Admiral. 3 *Bl.* 108, *note by Coleridge.* [ADMIRALTY, THE HIGH COURT OF.]

INSTANTER. Immediately, without delay. 4 *Bl.* 396.

INSTAR DENTIUM. Like the teeth of a saw; in allusion to the manner in which indentures were formerly cut or indented. [INDENTURE.]

INSTITUTE, in Scotch law, is the person "to whom an estate is first given in a destination" (*i. e.*, to whom a present estate is given otherwise than by way of substitution). Thus, where a person "dispones" his lands to A., whom failing to B., &c., A. is the *institute*, and B. and all who follow him are *heirs* or *substitutes.*

INSTITUTES. 1. Justinian's Institutes. [CORPUS JURIS CIVILIS; JUSTINIAN.]

2. Sir Edward Coke's Institutes. This work was published by Sir Edward Coke in the year 1628. They have little of the institutional method to warrant such a title. The first volume is an extensive comment upon a treatise of tenures, compiled by Judge Littleton in the reign of Edward IV. The second volume is a comment upon many old Acts of Parliament, without any systematic order; the third, a more methodical treatise of the pleas of the Crown; and the fourth an account of the several species of courts. 1 *Bl.* 72, 73; 1 *Steph. Com.* 52. [COKE, SIR EDWARD.]

INSTITUTION. The ceremony by which a clergyman presented to a living is invested with the spiritual part of his benefice. Before institution, the clergyman must renew the declaration of assent to the Book of Common Prayer, as required by stat. 28 & 29 Vict. c. 122; he must also subscribe the declaration against simony, and must take the oath of allegiance to the Queen before the archbishop or bishop, or their commissary, and he must also take the oath of canonical obedience to the bishop. *T. L.; Cowel;* 1 *Bl.* 390; 1 *Steph. Com.* 686.

INSTRUMENT. A deed, will, or other document in writing. *Toml.*

INSTRUMENT OF SASINE. An instrument in Scotland by which the delivery of "sasine" (*i. e.*, seisin, or the feudal possession of land) is attested. The form of this instrument is given in Schedule B to stat. 8 & 9 Vict. c. 35, passed in 1845. It is subscribed by a notary in the presence of witnesses, and is executed in pursuance of a "precept of sasine," whereby the "granter of the deed" desires "any notary public to whom these presents may be presented" to give sasine to the intended grantee or grantees.

The same Act, while dispensing with the formalities of "infeftment," provides, by s. 2, that instruments of sasine shall be entered and recorded in the registers of sasines. [INFEFTMENT.]

INSUCKEN MULTURES. Multures payable by those who are bound by their tenure to have their corn ground at a particular mill. [MULTURES.]

INSUFFICIENCY is where a defendant's answer in Chancery does not fairly answer the interrogatories of the plaintiff. Where this is the case, the plaintiff may *except* to it for insufficiency. *Hunt. Eq.*

Under the Judicature Act, 1875, by Order XXXI. rules 6, 9, 10, interrogatories are to be answered by affidavit; and if the party interrogated answers insufficiently, the party interrogating may apply to the court or a judge, by motion or summons, for an order requiring him to answer further.

INSURANCE, or **ASSURANCE**, is a contract by which one party, in consideration of a premium, engages to indemnify another against a contingent loss. The party who pays the premium, and is to have the advantage of the security, is called the *insured* or *assured;* the party giving the security is termed the *underwriter* or *insurer*, and the instrument is called a policy of insurance.

Insurances are mainly of three kinds:

1. Marine insurances, which are insurances of ship, goods, and freight, against the perils of the sea, and other dangers therein mentioned.

2. Fire insurances, which are insurances of a house or other property against loss by fire. [FIRE POLICY.]

3. Life insurances, which are engagements to pay to the representatives of the assured, within a limited period from the date of his death, a specified sum of money, or to pay any such sum to the assured or his representatives, within a limited period of the death of some other person, specified in the policy of assurance. In the former case the assured is said to insure his own life; in the latter case he is said to insure the life of the person specified in the policy of assurance, who must be a person in whose life the assured has an interest. It may be added that, by s. 10 of the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), a wife may effect a policy of insurance on her own or her husband's life for her separate use. 2 *Bl.* 458—461; 2 *Steph. Com.* 127—140; *Wms. P. P., Pt. II. ch.* 6; *Crump, Mar. Ins.*

INTAKERS. A sort of thieves in the northern parts of England; so called, because they did take in and receive such booties of cattle, and other things, as their confederates, the "outpartners," brought in to them from the borders of Scotland. *Cowel.*

INTENDMENT. The understanding, intention, and true meaning of any document. Thus, intendment of law is the intention and true meaning of law. *Cowel.* [INTENTION, 1.]

INTENTION.

1. In reference to the construction of wills and other documents.

The *intention* of a document is the sense and meaning of it as gathered from the words used therein. Parol evidence is not ordinarily admissible to explain it; the main exceptions to the rule being in the case of a latent ambiguity [AMBIGUITY], and in the case of a word or expression having acquired by local custom a sense different from the ordinary sense. See *Broom's Legal Maxims, chaps.* 8, 10.

2. In reference to civil and criminal responsibility.

Where a person contemplates any result as not unlikely to follow from a deliberate act of his own, he may be said to *intend* that result, whether he desire it or not. Thus, if a man should, for a wager, discharge a gun among a multitude of people, and any should be killed, he would be deemed guilty of *intending* the death of such person; for every man is presumed to *intend* the natural consequence of his own actions. See 4 *Bl.* 200; *Aust. Jur., Lect. XIX.*

Intention is often confounded with *motive*, as when we speak of a man's "good intentions."

INTER ALIA. Amongst other things.

INTER CANEM ET LUPUM (between the dog and the wolf). Words formerly used to indicate that a crime was committed in the twilight. *Cowel.*

INTERCOMMONING is where the commons of two manors lie together, and the inhabitants of both have, time out of mind, depastured their cattle promiscuously in each. *T. L.; Cowel.*

INTERDICT, in the Scotch law, is an order for stopping unlawful proceedings. It may be resorted to as a remedy against all encroachments on property or possession. *Bell.*

INTERDICTION. 1. An ecclesiastical censure prohibiting the administration of divine service. *T. L.; Cowel.*

2. Interdiction, in the law of Scotland, is a restraint provided by those who, from their mental weakness, are liable to imposition. This interdiction may be *voluntary*, in which case it is executed in the form of a bond, whereby the "granter" obliges himself to do no deed which may affect his estate, without the consent of certain persons therein named, technically called his *interdictors*. Or the interdiction may be *judicial*, that is, imposed by the Court of Session, generally at the instance of a near kinsman. *Bell; Paterson.*

INTERESSE TERMINI. The right of entry on lands demised which the demise gives to the lessee, before he has entered upon the lands. The *interesse termini* is so far in the nature of an estate that, even before entry, the lessee may grant his interest over to another, though, on the other hand, the lessee is not in a condition to maintain an action of trespass for an injury to the land, before he has entered thereon. 2 *Bl.* 144; 1 *Steph. Com.* 287; *Wms. R. P., Pt. IV. ch.* 1; *Fawcett, L. & T.* 107.

INTEREST. 1. A right or title to, or estate in, any real or personal property.

2. The income of a fund invested; or the annual profit or recompense on a loan of money.

INTERIM CURATOR. A person appointed by justices of the peace to take care of the property of a felon convict until the appointment by the Crown of an administrator or administrators for the same purpose. *Stat.* 33 & 34 *Vict. c.* 23, *ss.* 21—26; 4 *Steph. Com.* 462; *Cox & Saunders' Cr. Law*, 442—445.

INTERIM ORDER. An order to take effect provisionally, or until further directions. The expression is used especially with reference to orders given pending an appeal.

INTERLINEATION. Writing between the lines in a deed, will, or other document. An interlineation in a deed is presumed, in the absence of proof to the contrary, to have been made at or before the time of execution. In a will, the presumption is the other way. 1 *Steph. Com.* 497, *n.*

INTERLOCUTOR properly means a judgment or judicial order pronounced in the course of a suit, which does not finally determine the cause. But, in Scotch practice, the term is extended to the judgments of the Court of Session or the Lord Ordinary which exhaust the point at issue, and which, if not appealed against, will have the effect of finally deciding the cause. *Bell.*

INTERLOCUTORY. Intermediate, with especial reference to a suit or action. [See the following Titles.]

INTERLOCUTORY DECREE or **ORDER** is a decree or order which does not conclude a cause. *Cowel;* 3 *Bl.* 101, 452; 3 *Steph. Com.* 315, 601.

INTERLOCUTORY INJUNCTION is an injunction granted for the purpose of keeping matters *in statu quo* until a decision is given on the merits of the case. [INJUNCTION.]

INTERLOCUTORY JUDGMENT is a judgment in an action at law, given upon some defence, proceeding, or default, which is only intermediate, and does not finally determine or complete the action. The phrase is most frequently applied to those judgments whereby the *right* of the plaintiff to recover in the action is established, but the *quantum* of damages sustained by him is not ascertained. This happens when the defendant suffers judgment to go against him by *confession*, or for *default of plea*, in any action brought for recovery of damages. 3 *Steph. Com.* 569; *Kerr's Act. Law; Judicature Act*, 1875, 1*st Schedule*, *Order XIII. rule* 6.

INTERNATIONAL COPYRIGHT ACT, 1875. The stat. 38 Vict. c. 12, passed for the purpose of enabling her Majesty, by Order in Council, to extend the full protection of the law of copyright in this country to dramatic pieces first published in a foreign country.

INTERNATIONAL LAW (Lat. *Jus inter gentes*). The positive morality which obtains between nations or sovereigns. *Aust. Jur., Lect. VI.*

International law is divided into two branches:—

1. Public international law, which comprises the rights and duties of sovereign States towards each other.

2. Private international law, which comprises the rights and duties of the

INTERNATIONAL LAW – *continued.*

citizens of different States towards each other, and is mainly conversant with questions as to the particular law governing doubtful cases. This is otherwise called the "conflict of laws." [CONFLICT OF LAWS.]

Of the questions between a sovereign State and citizens of another State, some are generally reckoned as belonging to one of these branches and some to the other. Thus, the question of capturing contraband goods would be deemed to belong to public international law; but the question how far legacy duty is payable by a foreigner would be deemed to belong to private international law. Many of such questions might be held to belong indifferently to either.

The best known works in English on Public International Law are Kent's Commentaries, vol. i. pt. 1, of which there is an English edition by Dr. Abdy; Wheaton's International Law; Phillimore's International Law; Twiss' Law of Nations, and Woolsey on International Law; and on Private International Law, Story's Conflict of Laws, and Westlake's Private International Law.

INTERPLEADER. A motion by way of interpleader is a motion for relief from adverse claims. It often happens that a man finds himself exposed to the adverse claims of two opposite parties, each requiring him to pay a certain sum of money or to deliver certain goods, and that he is unable to comply safely with the requisition of either, because a reasonable doubt exists as to which of them is the rightful claimant. Formerly it was necessary to institute a suit in Chancery in order to obtain relief in such a case; but now, by 1 & 2 Will. 4, c. 58, passed in 1831, a defendant, sued by either party in the case above mentioned, may apply to the court or a judge to order the other party so claiming the money or goods to appear and state the particulars of his claim, and either to maintain or relinquish the same, and, if he maintains it, to make himself the defendant in the action.

There are also provisions in the same Act affording protection to sheriffs and other officers, who, under the process of a court of justice, are called upon to seize the goods of any person.

Interpleader is so called because the two rival claimants are by this process called on to *interplead* together.

The process of interpleader is enlarged and made more beneficial by the Common Law Procedure Act, 1860, ss. 12—18. 3 *Bl.* 448; 3 *Steph. Com.* 590; *Lush's Pr.* 768; *Sm. Man. Eq.; Chute's Eq.*

INTERPRETATION CLAUSE. A clause frequently inserted in Acts of Parliament, declaring the sense in which certain words used therein are to be understood.

INTERROGATORIES. 1. Questions in writing administered by a plaintiff to a defendant, or by a defendant to a plaintiff, on points material to the suit or action. 3 *Steph. Com.* 532, 597; *Hunt. Eq.; Kerr's Act. Law; Judicature Act*, 1875, 1*st Sched. Order XXXI.*

2. Questions administered to a person suspected of, or charged with, contempt of court. 4 *Bl.* 287; 4 *Steph. Com.* 343.

INTERVENER. A person who intervenes in a suit, either on his own behalf or on behalf of the public. This is allowed in certain cases, especially in suits for divorce and nullity of marriage, by stats. 23 & 24 Vict. c. 144, and 36 & 37 Vict. c. 31. In these suits it is usual for the Queen's Proctor to intervene, where collusion is suspected.

INTESTATE. Without making a will. 2 *Bl.* 494 – 496; 2 *Steph. Com.* 181—184.

INTOL AND UTTOL. Toll or custom paid for things imported or exported, or bought in or sold out. *Toml.*

INTRINSECUM SERVITIUM. [FORINSECUM SERVITIUM.]

INTROMISSION, in Scotch law, is the assuming possession, with or without lawful authority, of property belonging to another. *Bell.*

INTRUSION. 1. A species of injury to freehold, which happens when a tenancy for life, or other "particular estate of freehold," has come to an end, and a stranger enters, to the prejudice of the person entitled in remainder or reversion. Thus, if property be conveyed to A. for life, and after his death to B., C.'s entry after A.'s death, before B. has entered, is called an *intrusion*, and C. is an *intruder*. 3 *Bl.* 169; 3 *Steph. Com.* 386. There was formerly a writ of *entry sur intrusion*, which is abolished by stat. 3 & 4 Will. 4, c. 27, s. 36.

2. Trespass committed on the lands of the Crown; as, by entering thereon without title; holding over after a lease is at an end, &c. For this the remedy is by an *information of intrusion* in the Court of Exchequer. 3 *Steph. Com.* 669; *Kerr's Act. Law.*

INTRUSION DE GARD. A writ of entry which lay where an infant within age entered into his lands, and kept out his lord. *Toml.*

INTRUSIONE. A writ that lay against an intruder. *T. L.; Cowel.*

INUENDO. [INNUENDO.]

INURE. To take effect. [ENURE.]

INVADIARE. To mortgage lands. *Toml.*

INVADING A JUDGE. Assaulting a judge. *Paterson.*

INVECTA ET ILLATA, in the law of Scotland, are articles which, being brought into a house by a tenant, become liable to the landlord's right of hypothec. [HYPOTHECA, 3.] Such are articles of household furniture, and the utensils of a trade or business. *Bell.*

INVENTORY. 1. A description or repertory made by an executor or administrator of all the goods and chattels of the deceased, which he is bound to deliver to the Court of Probate, if and when thereunto lawfully required. The word *inventory* is derived from the Roman law, according to which an heir, exhibiting a true inventory of the deceased's goods coming to his hand, was chargeable, under the legislation of Justinian, no further than to the value of the inventory. This was called *benefit of inventory.* Otherwise, the general doctrine of the Roman law was, that an heir was saddled with all the liabilities of the deceased. *Cowel;* 2 *Bl.* 510; 2 *Steph. Com.* 201.

2. Any account of goods sold, or exhibited for the purpose of sale. *Toml.*

INVESTITURE. The giving possession. *Toml.*

The word is used with reference to the ceremonial admission by the lord of a tenant into his fee, which was called feudal investiture. 2 *Bl.* 53, 54, 209; 1 *Steph. Com.* 550, 613. [HOMAGE.]

The word is also often applied to a ceremonial introduction to some office or dignity. [INDUCTION; INSTITUTION; LAY INVESTITURE OF BISHOPS.]

INVOICE. A list of goods that have been sold by one person to another, stating the particulars and prices. The invoice is sent by the seller to the buyer, either along with the goods or separately by post. *Chambers' Bookkeeping.*

IPSE DIXIT. He himself said; words used to denote an assertion resting on the authority of an individual.

IPSO FACTO. By the very act. These words are often applied to forfeitures, indicating that when any forfeiture is incurred, it shall not be necessary to declare such forfeiture in a court of law, but that the penalty shall be incurred by the doing of the act prohibited. And so, when it is enacted that any proceeding shall be *ipso facto* void, it means that such a proceeding is to have not even *primâ facie* validity, but may be treated as void for all purposes *ab initio. Toml.* [VOID AND VOIDABLE.]

IRE AD LARGUM. To go at large. *Cowel.*

IRREGULARITY. 1. In the Canon Law, irregularity means an impediment which hinders a man from taking holy orders. *Toml.*

2. A departure from rule, or neglect of legal formalities. In practice the term is most frequently (though not exclusively) applied to such departure, neglect, or informality as does not affect the validity of the act done. Thus, an *irregular distress* is not now vitiated, so as to make the distrainer a trespasser *ab initio,* and so to render all his proceedings illegal from the first; but where distress is made for rent justly due, any subsequent irregularity will do no more than give an action for damages to the party grieved, and not even that, if tender of amends is made before action brought. This is by stat. 11 Geo. 2, c. 19, s. 19, passed in 1738. Formerly, any irregularity made the party distraining a trespasser *ab initio.* 3 *Bl.* 14, 15; 3 *Steph. Com.* 257, 401, 402; *Fawcett, L. & T.* 180, 181. [AB INITIO; DISTRESS; SIX CARPENTERS' CASE.]

IRREPLEVIABLE or **IRREPLEVISABLE.** That which cannot be replevied or set at large upon sureties. *Cowel.* [REPLEVIN.]

IRRITANCY, in the law of Scotland, is the forfeiture of a right in consequence of some neglect or contravention. Irritancy which takes place by force of the law alone is called a *legal irritancy.* Irritancy which takes place by force of a clause in a deed under which the right in question is held is called a *conventional irritancy. Bell.* [IRRITANT CLAUSE.]

IRRITANT CLAUSE, in a Scotch deed, is a clause by which certain acts specified therein, and done by the person holding under the deed, are declared null and void. *Bell.*

ISH AND ENTRY (Lat. *Cum libero exitu et introitu*) is the clause in a Scotch grant

ISH AND ENTRY—*continued.*
of land, which gives the grantee a right to all ways and passages, in so far as they may be necessary for going to kirk and market, through the adjacent grounds of the granter. *Bell.*

ISH OF A TACK is a Scotch phrase for the termination of a lease. *Bell.*

ISSUABLE PLEA. A plea which raises a defence on the merits of the case, so that the plaintiff may take issue thereon, and go to trial. *Toml.; Smith's Act. Law. ch.* 4. [ISSUE, 5.]

ISSUE hath divers significations in law:—
1. The children begotten between a man and his wife. *Cowel.*
2. Descendants generally. *Stat.* 7 *Will.* 4 *&* 1 *Vict. c.* 26, *s.* 33; *Wms. R. P., Pt. I. ch.* 10.
3. The profits growing from amerciaments and fines. *Cowel.*
4. The profits of lands and tenements. *Cowel;* 3 *Bl.* 280.
5. The point of matter issuing out of the allegations and pleas of the plaintiff and defendant in a cause, whereupon the parties join, and put their cause upon trial. *Cowel.*
6. Also the putting out of bank-notes and other paper money for public circulation. 3 *Steph. Com.* 225, 226.

ISSUE ROLL. The name of the roll on which the *issue* was formerly entered as soon as it was joined. Abolished in 1834 by the rules of Hilary Term of that year. *Toml.* [ISSUE, 5.]

ISSUES ON SHERIFFS. Fines and amerciaments inflicted on sheriffs for neglects and defaults, levied out of the issues and profits of their lands. *Toml.* [ISSUE, 3].

ISTIMRAR. Continuance or perpetuity; especially a farm or lease granted in perpetuity by government or a zemindar. *Wilson's Gloss. Ind.* [ZAMINDAR.]

ISTIMRARDAR. The holder of a perpetual lease. [ISTIMRAR.]

ITINERANT. Travelling or taking a journey; and those were anciently called justices *itinerant,* or justices *in eyre* (*in itinere*), who were sent into divers counties with commission to hear causes. 3 *Bl.* 58, 59; 3 *Steph. Com.* 349; *Toml.* [EYRE.]

IZAFA or **IZAFAT.** Increase, especially in the revenue received from a country. *Wilson's Gloss. Ind.*

JACENS. In abeyance. *Toml.* [HÆREDITAS JACENS.]

JACTITATION. Boasting of something which is challenged by another. The word is used principally with reference to the old suit of *jactitation of marriage,* where one of two parties falsely boasted or gave out that he or she was married to the other, whereby a common reputation of their matrimony might ensue; for which injury the only remedy the court could afford was to enjoin perpetual silence on that head. 3 *Bl.* 93, 94; 2 *Steph. Com.* 238, *n.*

JACTUS, or **JACTURA MERCIUM.** A throwing away of merchandise, for the purpose of lightening a ship. [JETSAM; JETTISON.]

JEOFAIL (from the old French *j'ay failli,* I have failed), in a legal sense, denotes an oversight in pleading. Various statutes, called statutes of amendment and jeofails, allow a pleader to amend any slip which he may have made in the form of his pleadings. Formerly, the most trifling objection in point of form might be alleged in arrest of judgment. This was in some respects corrected by the statutes of amendment and jeofails above mentioned. Now, by sect. 50 of the C. L. P. Act, 1852, no judgment shall be arrested, stayed or reversed for any imperfection, omission, defect in, or lack of form. *T. L.; Cowel;* 3 *Bl.* 407, 408; 3 *Steph. Com.* 563; *Kerr's Act. Law.*

JETSAM. Anything thrown out of a ship, being in danger of wreck, and by the waves driven to the shore. *T. L.; Cowel;* see 1 *Bl.* 292, 293; 2 *Steph. Com.* 542. [WRECK.]

JETTISON. The act of throwing goods overboard for the purpose of lightening a ship in danger of wreck. 2 *Steph. Com.* 131; *Sm. Merc. Law.*

JOCELET or **JOCLET.** A little farm or manor, in some parts of Kent called joclet. *Cowel.*

JOHN DOE. The name generally given to the fictitious plaintiff in an action of ejectment, before the passing of the C. L. P. Act, 1852. [EJECTMENT.]

JOINDER. 1. The coupling or joining of two things in a suit or action against another. *Cowel.*
2. The coupling of two or more persons together as defendants.
3. The acceptance, by a party in an action, of the challenge laid down in his adversary's demurrer or last pleading.
Thus a *joinder in demurrer* is a

JOINDER—*continued.*

formula delivered by a party to a demurring opponent, whereby such party appeals to the judgment of the court as to the sufficiency in law of his last pleading, which is challenged by the demurrer.

The form of a joinder in demurrer, by sect. 89 of the C. L. P. Act, is as follows, or to the like effect:—

"The plaintiff [*or* defendant] says that the declaration [*or* plea, &c.] is good in substance."

The party joining in demurrer thus asserts that sufficiency of his pleading in law which the opponent denies.

A joinder of issue is a denial on one side of some matter of fact alleged on the other. 3 *Bl.* 315; 3 *Steph. Com.* 508.

The forms for this purpose provided in sect. 79 of the C. L. P. Act, 1852, are—

"The plaintiff joins issue upon the defendant's first [*specifying what or what part*] plea."

"The defendant joins issue upon the plaintiff's replication to the first, &c. [*specifying what*] plea."

The above forms, or a form to the like effect, must be used.

JOINDER OF CAUSES OF ACTION. Joining in one action several causes of action. This matter is henceforth to be dealt with under the provisions of Order XVII. in the first schedule to the Judicature Act of 1875 (38 & 39 Vict. c. 77).

JOINT AND SEVERAL. When two or more persons declare themselves jointly and severally bound, this means that they render themselves liable to a joint action against all, as well as to a separate action against each, in case the conditions of the bond be not complied with. And the party to whom they are so jointly and severally bound is called a joint and several creditor.

JOINT COMMITTEE. 1. A committee composed jointly of members of both Houses. Thus joint committees were appointed in 1864 and in 1867. *May's Parl. Pr.*

2. A committee composed jointly of members of boards of different railway companies, &c.

JOINT STOCK BANK. The ordinary name given to banking companies other than the Bank of England. 3 *Steph. Com.* 224.

JOINT STOCK COMPANIES ACTS. Numerous Acts of Parliament have been passed with reference to joint stock companies; but the Act by which joint stock companies are now mainly governed is The Companies Act, 1862 (25 & 26 Vict. c. 89), which has been supplemented by The Companies Act, 1867 (30 & 31 Vict. c. 131), and The Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104). See 3 *Steph. Com.* 19—25.

JOINT STOCK COMPANY is defined by Mr. Serjeant Stephen as a qualified corporation constituted neither by charter, act of parliament or letters patent, but by the act of the members themselves, the interest of every member whereof is freely transferable without the consent of the rest. 3 *Steph. Com.* 19.

JOINT TENANCY is where an estate is acquired by two or more persons in the same land, by the same title, not being a title by descent, and at the same period; and (if created by a written instrument) without any words importing that the parties are to take in distinct shares. The principal feature of this tenancy is that on the death of one of the parties his share accrues to the others by survivorship. *T. L.; Cowel;* 2 *Bl.* 179, 187; 1 *Steph. Com.* 339, 346; *Wms. R. P., Pt. I. c.* 6.

A joint tenancy is distinguished from a tenancy in common, as to which see COMMON, TENANCY IN. See also CO-PARCENARY.

A joint tenancy is generally created by some written instrument; but it may also arise from wrongful possession.

Thus, in *Ward* v. *Ward*, L. R., 6 Ch. App. 789, two persons being in lawful possession of a share of a farm, the title by which they held it came to an end, but they nevertheless continued in possession for more than twenty years, and acquired a title by virtue of the Statute of Limitations. This was held to be a joint tenancy, so that, when one died, the survivor became entitled to the whole.

The phrase is also applied to the holding of personal property under the like conditions. 2 *Bl.* 399; 2 *Steph. Com.* 14, 15.

JOINTRESS. A woman entitled to jointure. [JOINTURE, 2.]

JOINTURE. 1. A name sometimes given to an estate in joint tenancy. 2 *Bl.* 180; 1 *Steph. Com.* 339.

2. But, in common speech, the term *jointure* is usually confined to that estate, which, by virtue of ss. 6—9 of stat. 27 Hen. 8, c. 10 (commonly called the Statute of Uses), is settled upon a husband and wife before marriage, as a full satisfaction and bar of the woman's

JOINTURE—*continued.*

dower. It should be, strictly speaking, a joint estate, limited to both husband and wife; but, in common acceptance, it extends also to a sole estate, limited to the wife only; and is defined by Sir Edward Coke as "a competent livelihood of freehold for the wife of lands and tenements, to take effect, in profit or possession, presently after the death of the husband, for the life of the wife at least." *Cowel;* 2 *Bl.* 137—139, 180; 1 *Steph. Com.* 272–275, 339, 340, 365.

JOURNAL. 1. A diary or day-book. *Cowel.*

2. A book of account used in double entry, the chief object of which is to contain a monthly abstract of the day-book, &c., so that the entries may be posted in a brief form into the ledger. *Chambers' Book-keeping.*

JOURNALS OF THE HOUSES OF PARLIAMENT. The daily records of the proceedings of the Houses. They are evidence in courts of law of the proceedings in Parliament, but are not conclusive of facts alleged by either House, unless they be within their immediate jurisdiction. *May's Parl. Pract.*

JOURNEYS' ACCOUNTS. An old term in our law. Where a suit had become abated without the default of the plaintiff or demandant, then if the plaintiff purchased a new writ by *journeys' accounts*, that is, within as little time as he possibly could after the abatement of the first writ, then the second writ should be as a continuance of the first. *Cowel.* [ABATEMENT, 4; ORIGINAL WRIT.]

JUDEX, in the Roman Law, signified a juryman. [JUS.]

JUDEX A QUO. A judge from whom an appeal is brought.

JUDEX AD QUEM. A judge to whom an appeal is made.

JUDGE. A term used especially of the judges of the superior courts of law and equity in England and Ireland, and of the Court of Session in Scotland, and of the Supreme Court in any colony or dependency. But the presiding officers of local and inferior courts are frequently so called. Thus we speak of *county court judges*, &c. In its widest sense it signifies any one invested with authority to decide questions in dispute between parties, and to award the proper punishment to offenders.

JUDGE-ADVOCATE-GENERAL. An officer appointed to advise the Crown in reference to courts martial and other matters of military law. 2 *Steph. Com.* 590, *n.*

JUDGE ORDINARY. The judge of the Court of Probate, sitting as judge of the Court of Divorce under sect. 9 of the Divorce Act, 1857 (20 & 21 Vict. c. 85), is so called, as being the *ordinary* judge of the Divorce Court. 2 *Steph. Com.* 239. [COURT FOR DIVORCE AND MATRIMONIAL CAUSES; DIVORCE COURT.]

JUDGE'S ORDER. An order made on summons by a judge at chambers. [CHAMBERS; SUMMONS.]

JUDGMENT. The sentence or order of the court in a civil or criminal proceeding. [FINAL JUDGMENT; INTERLOCUTORY JUDGMENT.]

JUDGMENT CREDITOR. A creditor who claims to be such by virtue of a judgment; that is, a party entitled to enforce execution under a judgment.

JUDGMENT DEBT. A debt due under a judgment.

JUDGMENT DEBTOR. A person liable to have his property taken in execution under a judgment.

JUDGMENT RECOVERED. A plea by a defendant that the plaintiff has already recovered that which he seeks to obtain by his action. This was formerly a species of sham plea, often put in for the purpose of delaying a plaintiff's action.

JUDGMENT ROLL. A parchment roll having the proceedings in a cause transcribed thereon, which is deposited, and filed as of record, in the office of the court. This step, whenever it has been taken, has hitherto been left to the successful party or his solicitor. 3 *Steph. Com.* 566, *and n.* (*d*). Now, by the Judicature Act, 1875, 1st Sched. Order XLI. rule 1, every judgment is to be entered by the proper officer in a book to be kept for the purpose. [ENTERING JUDGMENT; INCIPITUR.]

JUDGMENT SUMMONS. A summons issued under the Debtors Act, 1869, and the rules framed in pursuance thereof, on the application of a plaintiff who has obtained a judgment or order in a county court for the payment of any sum or sums of money, but has not succeeded in obtaining payment from the defendant of the sum or sums so ordered to be paid. The judgment summons cites the defendant to appear personally in court, and be examined on oath touching the means he has, or has had since the date of the judgment, to pay the sum in question, and also to show cause why he should not be committed to prison for his default. *Robson, Bkcy.*

JUDICATORES TERRARUM were certain tenants in Chester, who were bound by their tenures to perform judicial functions. In case of an erroneous judgment being given by them, the party aggrieved might obtain a writ of error out of Chancery, directing them to reform it. They then had a month to consider of the matter. If they declined to reform their judgment, the matter came on writ of error before the King's Bench; and if the Court of King's Bench held the judgment to be erroneous, they forfeited 100*l.* to the king by the custom. *Jenk. Cent.* (ii. 34), *p.* 71.

JUDICATURE ACTS. [SUPREME COURT OF JUDICATURE.]

JUDICIAL ACT. An act by a judicial officer which is not merely ministerial. Judicial acts, to be done by justices of the peace, must in general be done by at least two magistrates sitting together. *Toml.*

JUDICIAL COMMITTEE. This expression is used to denote the Judicial Committee of the Privy Council. The Judicial Committee, as constituted by stat. 3 & 4 Will. 4, c. 41, passed in 1833, and 14 & 15 Vict. c. 83, s. 15, passed in 1851, consists of the Lord President of the Council, the Lord Chancellor, the Lords Justices of Appeal, and such other members of the Privy Council as shall hold, or have held, certain judicial or other offices enumerated in the Acts, or shall be specially appointed by the Crown to serve on the committee. Moreover, by stat. 34 & 35 Vict. c. 91, passed in the year 1871, her Majesty was enabled to appoint, by warrant under her sign manual, four paid additional judges to act as members of the Judicial Committee, and to hold office during good behaviour. 2 *Steph. Com.* 461—463, *and n.* (*s*).

To the Judicial Committee are referred all appeals to the Crown from Admiralty and Ecclesiastical Courts; from courts in her Majesty's colonies and dependencies, and petitions for the prolongation of patents. See 3 *Steph. Com.* 308, 346.

Provision is made by the Judicature Acts for the transfer by Order in Council, after the 1st of November, 1876, of the appellate jurisdiction now exercised by the Judicial Committee to the new Supreme Court of Judicature.

JUDICIAL SEPARATION. A separation of man and wife by the Court of Divorce, which has the effect, so long as it lasts, of making the wife a single woman for all legal purposes, except that she cannot marry again; and similarly the husband, though separated from his wife, is not by a judicial separation empowered to marry again. It thus corresponds somewhat to a divorce *à mensâ et thoro* under the old law, but is more complete in its effects. *Stat.* 20 & 21 *Vict. c.* 85, *ss.* 16, 25, 26; 2 *Steph. Com.* 280. [DIVORCE, 1.]

JUDICIAL STATISTICS are statistics, published by authority, of the civil and criminal business of the United Kingdom, and matters appertaining thereto. Annual reports are published separately for (1) England and Wales, (2) Ireland, (3) Scotland. The statistics for England and Wales contains statements of the police establishments and expenses, and the number of offences committed and offenders apprehended; statements of the number of inquests held by coroners; of the number of persons committed for trial at assizes and sessions, with the result of the proceedings; of the state of prisons, with returns of reformatory and industrial schools, and of criminal lunatics; of the causes in the superior courts of common law and equity, &c., and the county courts; also of the appeals to the Privy Council, and the judicial proceeding of the House of Lords. The same matters, though with some difference in the arrangement, form the bulk of the report for Ireland. Kindred matters are dealt with in the report for Scotland, though here there is a wider divergence, rendered necessary by the variation between the laws of Scotland and England.

JUDICIAL WRIT. A writ that issues under the private seal of the court in which an action is brought, and not under the Great Seal of England, and is tested (or witnessed) not in the name of the Sovereign, but in that of the chief justice of the court. 3 *Bl.* 282; *Kerr's Act. Law.*

Judicial writs are, by our older legal writers, opposed to *original writs* out of Chancery, with which actions formerly commenced. [ORIGINAL WRIT.]

JUDICIO SISTI. The caution *judicio sisti*, given in a Scotch court, is a security to abide judgment within the jurisdiction of the court. By the ordinary form of the bond the surety undertakes that the principal shall appear to answer any action to be brought within six months. *Bell.*

JUDICIUM (in the Roman Law). A trial before *judices*. [JUS.]

JUDICIUM DEI. The judgment of God; a term applied by our ancestors to the

JUDICIUM DEI—*continued.*
trial by ordeal. 4 *Bl.* 341, *n.*, 342; 4 *Steph. Com.* 407. [ORDEAL.]

JUGE DE PAIX, in France, is an inferior judicial functionary, appointed to decide summarily controversies of minor importance, especially such as turn mainly on questions of fact. He has also the functions of a police magistrate. *Ferrière.*

JUNIOR BARRISTER. A barrister under the rank of Queen's counsel. Also, the junior of two counsel employed on the same side in any judicial proceeding.

JURA REGALIA. Royal rights, or rights in the nature of royal rights; especially civil and criminal jurisdiction. 1 *Bl.* 118, 120; 1 *Steph. Com.* 129, 133; 3 *Steph. Com.* 348. [COUNTY PALATINE.]

JURAT. 1. A short statement at the foot of an affidavit, *when*, *where*, and *before whom* it was sworn. *Kerr's Act. Law; Hunt. Eq.*

2. An officer in the island of Jersey. [JURATS.]

JURATA was formerly the conclusion of every *nisi prius* record, which stated in effect that the proceedings were respited till some day therein named, unless the judge who was to try the cause should before that day come (as he always did) to the place appointed for the trial. Now abolished. *Smith's Act. Law, ch.* 4.

JURATORY CAUTION. Such bail or security as a party swears is the best he can offer. *Coote's Adm. Pract.; Erskine's Law of Scotland.*

JURATS. 1. Twelve officers in the island of Jersey, members of the royal court, and also members of the states or legislative assembly of the island; elected for life by the whole of the ratepayers throughout the island. *Cowel;* 1 *Bl.* 107; 1 *Steph. Com.* 101; *L. R.*, 1 *P. C.* 94—114, *especially p.* 99. 2. Also, officers in the nature of aldermen, in certain towns of Kent and Sussex. *Cowel.*

JURE DIVINO. By divine right. [DIVINE RIGHT.]

JURE UXORIS. In right of his wife.

JURIS UTRUM, sometimes called the parson's writ of right, was a writ that lay for an incumbent whose predecessor had alienated the lands belonging to his benefice, to recover the same. *T. L.; Cowel;* 3 *Bl.* 252, 253.

JURISDICTION. An authority or power which a man hath to do justice in causes of complaint brought before him. *T. L.; Cowel.*

JUROR. A member of a jury, sworn to deliver the truth upon such evidence as shall be given touching a matter in question. *T. L.*

JURORS' BOOK. A book annually made out in each county, out of lists returned from each parish by the churchwardens and overseers, of persons therein qualified to serve as jurors. From this book the sheriff takes the names of the jurors to be summoned. 3 *Steph. Com.* 516; *Smith's Act. Law, ch.* 4. [JURY.]

JURY signifies twenty-four or twelve men sworn to inquire of a matter of fact, and to declare the truth upon such evidence as shall be delivered them. Juries are of two kinds: grand juries, to inquire whether there is a *primâ facie* ground for a criminal accusation [BILL, 3; GRAND JURY; INDICTMENT]; and petty juries, for determining disputed matters of fact in civil and criminal cases. [PETTY JURY.] *Cowel;* 3 *Bl.* 349—366; 4 *Bl.* 349—355; 3 *Steph. Com.* 513—529; 4 *Steph. Com.* 416—424; *Kerr's Act. Law.*

The principal Acts of Parliament at present in operation, relating to juries in England and Wales, are:

1. The County Juries Act, 1825 (stat. 6 Geo. 4, c. 50).
2. The Juries Act, 1862 (stat. 25 & 26 Vict. c. 107).
3. The Juries Act, 1870 (stat. 33 & 34 Vict. c. 77).

Under these Acts, every man is liable to serve on a jury who is between the ages of twenty-one and sixty years, and is qualified by such possession and occupation of land as is mentioned in these Acts, and is not disqualified or exempted as follows:—

Persons disqualified.

1. Aliens who have not been domiciled ten years in England or Wales.
2. Unpardoned convicts.
3. Outlaws.

Persons exempted.

1. Peers.
2. Members of Parliament.
3. Judges.
4. Clergymen.
5. Roman Catholic priests.
6. Ministers of any congregation of Protestant dissenters and of Jews, whose place of meeting is duly registered, provided they follow no secular occupation save that of schoolmaster.
7. Serjeants, barristers-at-law, certificated conveyancers, and special pleaders, if actually practising.

JURY—*continued.*

8. Members of the Society of Doctors of Law, and advocates of the civil law, if actually practising.

9. Attorneys, solicitors, and proctors, if actually practising and having taken out their annual certificates, and their managing clerks, and notaries public in actual practice.

10. Officers of the Courts of Law and Equity, and of the Admiralty and Ecclesiastical Courts, including therein the Courts of Probate and Divorce, and the clerks of the peace or their deputies, if actually exercising the duties of their respective offices.

11. Coroners.

12. Gaolers and keepers of houses of correction, and all subordinate officers of the same.

13. Keepers in public lunatic asylums.

14. Members and licentiates of the Royal College of Physicians in London, if actually practising as surgeons.

15. Members of the Royal Colleges of Surgeons in London, Edinburgh, and Dublin, if actually practising as surgeons.

16. Apothecaries certificated by the Court of Examiners of the Apothecaries' Company, and all registered medical practitioners and registered pharmaceutical chemists, if actually practising as apothecaries, medical practitioners, or pharmaceutical chemists respectively.

17. Officers of the navy, army, militia, and yeomanry, while on full pay.

18. The members of the Mersey Docks and Harbour Board.

19. The master, wardens, and brethren of the Corporation of Trinity House of Deptford Strond.

20. Pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations, and all pilots licensed by any act of parliament or charter for the regulation of pilots.

21. The household servants of her Majesty, her heirs and successors.

22. Officers of the Post Office, Commissioners of Customs, and officers, clerks, or other persons acting in the management or collection of the Customs, Commissioners of Inland Revenue, and officers or persons appointed by the Commissioners of Inland Revenue, or employed by them, or under their authority, in any way relating to the duties of Inland Revenue.

23. Sheriffs' officers.

24. Officers of the rural and metropolitan police.

25. Magistrates of the metropolitan police courts, their clerks, ushers, doorkeepers, and messengers.

26. Members of the council of the municipal corporation of any borough, and every justice of the peace assigned to keep the peace therein, and the town clerk and treasurer for the time being of every such borough, so far as relates to any jury summoned to serve in the county where such borough is situate.

27. Burgesses of every borough, in and for which a separate court of quarter sessions shall be holden, so far as relates to any jury summoned for the trial of issues joined in any court of general or quarter sessions of the peace in the county where such borough is situate.

28. Justices of the peace, so far as relates to any jury summoned to serve at any sessions of the peace for the jurisdiction of which he is a justice.

29. Officers of the Houses of Lords and Commons.

The churchwardens and overseers of each parish are bound annually to make out a list of every man within the parish who is qualified and liable to serve on juries, and to cause a copy of such list to be affixed on the doors of every church and chapel in the parish on the first three Sundays in September. The churchwardens and overseers must produce their lists at a special petty sessions of the justices, held within the last seven days of September for the purpose of revising the same. Any person desirous of having his name removed from the list on the ground of any legal disqualification or exemption must insist on his claim at the special sessions of the justices held for the purpose of revising the lists, as no person whose name is once down in the jury-book for the year is to be excused from attendance for any cause other than illness, not claimed by him at the time of the revision of the list by the justices.

JURY BOOK. [JURORS' BOOK; JURY.]

JURY BOX. The place in which jurors sit for the trial of matters submitted to them.

JURY OF MATRONS. A jury of twelve matrons appointed to inquire whether a woman, who pleads pregnancy in bar of execution, is quick with child. 4 *Bl.* 395; 4 *Steph. Com.* 467.

JURY PROCESS, now abolished, consisted of two writs, the *venire*, and (in the

JURY PROCESS—*continued.*

Court of Queen's Bench) the *distringas;* the former of which commanded the sheriff to cause a jury to come before the court on some day therein specified; the latter commanded him to distrain the jury so as to oblige them to come before the court on a day specified in that second writ, unless before that day the judge who was to try the cause came into the county where the *venue* was laid. The writ in the Common Pleas corresponding to the *distringas* was the writ of *habeas corpora juratorum.* 3 *Bl.* 353, 354; *Smith's Act. Law, ch.* 4; *Lush's Pr.* 539. [DISTRINGAS, 3; HABEAS CORPORA JURATORUM.]

JURYMAN. A member of a jury.

JUS. Law or right. In the Roman law, the whole of civil procedure was expressed by the two words *jus* and *judicium*, of which the former comprehended all that took place before the prætor or other magistrate (*in jure*), and the latter all that took place before the judex (*in judicio*): the judex being a juryman appointed to try disputed facts. In many cases a single judex was considered sufficient: in others, several were appointed, and they seem to have been called *recuperatores*, as opposed to the single judex. *Smith's Dict. Ant.* [For other meanings of *Jus*, see the following Titles.]

JUS ACCRESCENDI. The right of survivorship between joint tenants. 2 *Bl.* 184; 1 *Steph. Com.* 343, 346. [JOINT TENANCY.]

JUS AD REM. An inchoate and imperfect right; such, for instance, as a clergyman presented to a living acquires, before induction, by presentation and institution. 2 *Bl.* 312; 1 *Steph. Com.* 505, 506.

Jus ad rem is merely an abridged expression for *jus ad rem acquirendam;* and it properly denotes a right to the *acquisition* of a thing. *Aust. Jur., Lect. XIV.*

JUS ALBINATUS. [ALBINATUS JUS.]

JUS CIVILE. The civil law. It is defined by Justinian as the law which each State has established for itself: but the term is now almost exclusively appropriated to the Roman civil law. [CORPUS JURIS CIVILIS.]

JUS DELIBERANDI, in Scotland, is the right of an heir to take a year to consider whether he will take up the succession. *Paterson.* Compare the *cretio* of the Roman law. [CRETIO.]

JUS DUPLICATUM, or **DROIT-DROIT.** The right of possession combined with the right of property. 2 *Bl.* 199. [DROIT-DROIT.]

JUS GENTIUM. The law of nations, which is thus described in the opening passages of Justinian's Institutes:—"Quod naturalis ratio inter omnes homines constituit, id apud omnes peræque custoditur, vocaturque jus gentium, quasi quo jure omnes gentes utuntur." (That law which natural reason has established among men is maintained equally by all, and is called the law of nations, as being the law which all nations adopt.) [LAW OF NATIONS.]

JUS HABENDI ET RETINENDI. The right to have and retain the profits, tithes, and offerings of a rectory or parsonage. *Toml.*

JUS IN PERSONAM. A right availing against a determinate person or persons, as opposed to a right *in rem*, which avails against all the world. *Aust. Jur., Lect. XIV.*

JUS IN RE. Full and complete right, accompanied by corporal possession. 2 *Bl.* 312; 1 *Steph. Com.* 506. In the Roman law, however, the expression was equivalent to *jus in re alienâ*, as contradistinguished from *jus in re propriâ.* A *jus in re* was a servitude or easement; that is, a right, availing against the world at large, acquired over property residing in another person. *Austin's Tables and Notes.* [EASEMENT; SERVITUDE.]

JUS IN REM. A right availing against all the world. Thus the phrase denotes the *compass* and not the *subject* of the right. *Aust. Jur., Lect. XIV.*

JUS MARITI is the name, in the law of Scotland, for the right acquired by a husband in the moveable estate of his wife. *Bell.*

JUS PATRONATUS. 1. The right of patronage or presentation to a benefice. *Cowel.*

2. A commission from the bishop, awarded when two rival presentations are made to him upon the same avoidance of a living. This commission is directed to the bishop's chancellor, and others of competent learning, who are to summon a jury of six clergymen and six laymen to inquire who is the rightful patron. 3 *Bl.* 246, 247; 3 *Steph. Com.* 417.

JUS RECUPERANDI, INTRANDI, &c. The right of recovering and entering, &c. upon land. *Toml.*

JUS RELICTÆ. The name given by the law of Scotland to a widow's right in the moveable estate of her deceased husband. *Bell.*

JUS TERTII. The right of a third party.

JUSTICE OF THE PEACE. A subordinate magistrate appointed to keep the peace within a given jurisdiction, and to inquire of felonies and misdemeanors; with a statutory jurisdiction to decide summarily in many cases, and in some cases to adjudicate upon claims of a civil nature.

Justices of the peace for counties are selected on the recommendation of the Lord Lieutenant, and appointed by special commission under the Great Seal by the Lord Chancellor. *Cowel;* 1 *Bl.* 349—354; 2 *Steph. Com.* 644, 645.

Justices of the peace for boroughs are also in general selected by the Lord Chancellor. 3 *Steph. Com.* 37. [CONSERVATOR OF THE PEACE; CUSTOS ROTULORUM; QUORUM.]

JUSTICE SEAT. [FOREST COURTS; JUSTICES OF THE FOREST.]

JUSTICES. Officers deputed by the Crown to administer justice, and do right by way of judgment. [JUSTICE OF THE PEACE: see also the following Titles.]

JUSTICES AYRES. The circuits throughout Scotland for the distribution of justice. *Bell.*

JUSTICES IN EYRE. Justices who formerly made a circuit every seven years round the kingdom to try causes. Superseded by the more modern justices of assize. 3 *Bl.* 58, 59; 3 *Steph. Com.* 349, 350. [EYRE; ITINERANT.]

JUSTICES OF ASSIZE were originally judges appointed to try the real actions called *assizes.* The present justices of assize are judges of the superior courts sent with other commissioners twice every year to try causes in the respective counties. *Cowel;* 3 *Bl.* 58; 1 *Steph. Com.* 128; 3 *Steph. Com.* 349. [ASSIZE, COURTS OF; ASSIZE, WRIT OF.]

JUSTICES OF GAOL DELIVERY. [ASSIZE, COURTS OF; GAOL DELIVERY, COMMISSION OF.]

JUSTICES OF NISI PRIUS are now practically the same as the justices of assize. [ASSIZE, COURTS OF; NISI PRIUS.]

JUSTICES OF OYER AND TERMINER. Justices of assize are so called in respect of their commission to *hear and determine* all treasons, felonies, and misdemeanors. *Cowel;* 3 *Bl.* 60; 4 *Bl.* 270; 3 *Steph. Com.* 352; 4 *Steph. Com.* 313, 314. [ASSIZE, COURTS OF; OYER AND TERMINER.]

JUSTICES OF THE FOREST, also called justices in eyre of the forest, appointed to hold the court of *justice-seat,* for the purpose of hearing and determining trespasses within the forests, and trying causes arising therein. Now obsolete. *Cowel;* 3 *Bl.* 72, 73; 3 *Steph. Com.* 317, *n.* [FOREST COURTS.]

JUSTICES OF THE PAVILION. Certain judges of a pie-powder court, of a most transcendent jurisdiction, held under the Bishop of Winchester at a fair on St. Giles' Hill near that city, by virtue of letters-patent granted by Richard II. and Edward IV. *Cowel.* [COURT OF PIEDPOUDRE.]

JUSTICIARY. The old name of judge, before the *Aula Regia* was divided. *Toml.*

JUSTICIARY COURT. The chief criminal court of Scotland, consisting of five Lords of Session, added to the Justice General and Justice Clerk; of whom the Justice General, and, in his absence, the Justice Clerk, is president. This court has a jurisdiction over all crimes, and over the whole of Scotland. *Bell.* See *Stat.* 31 & 32 *Vict. c.* 95.

JUSTICIES. A special writ empowering the sheriff, for the sake of despatch, to do the same justice in his county court as might otherwise be had at Westminster. *T. L.; Cowel;* 3 *Bl.* 36; 3 *Steph. Com.* 282. The jurisdiction of the sheriff's county court is now almost wholly superseded. 3 *Steph. Com.* 283. [COUNTY COURT.]

JUSTIFIABLE HOMICIDE. [HOMICIDE.]

JUSTIFICATORS seem to signify compurgators, who by oath justified the innocence of others. [COMPURGATORS.] Also jurymen, because they justify that party for whom they deliver their verdict. *Cowel.*

JUSTIFYING BAIL. Showing the sufficiency of persons tendering themselves as bail.

JUSTINIAN. A Roman emperor of Sclavonic origin. His native name was Upranda, meaning upright. He was born on the 11th of May, A.D. 483, at Taurisium, in Bulgaria. He was nephew of Justin I., who became emperor in 518; was adopted by him in 520, succeeded him as emperor in 527, and died on the 14th of November, 565. It was under

JUSTINIAN—*continued.*

his directions that the Roman law was collected into the form in which it has descended to the modern world. *Smith's Dict. Biog.; Sandars' Justinian.* [CORPUS JURIS CIVILIS.]

KACHAHRI. [CUTCHERRY.]

KANTREF. An old Welsh word signifying one hundred towns. *Cowel.*

KEELAGE. A custom at Hartlepool to pay money for ships resting in a port or harbour. *Toml.*

KEEPER OF THE FOREST. The chief warder of the forest, who had the principal government over all officers within the forest, and formerly warned them to appear at the court of justice-seat, on a summons from the lord chief justice in eyre. *Cowel.* [FOREST COURTS.]

KEEPER OF THE GREAT SEAL is in general the Lord Chancellor. 3 *Bl.* 47; 3 *Steph. Com.* 321.

The officer to whom the Great Seal is delivered has sometimes been called the Lord Keeper of the Great Seal. *Cowel.*

KEEPER OF THE PRIVY SEAL. The officer through whose hands all charters, pardons, &c. pass, before they come to the Great Seal. *Toml.*

KEEPING HOUSE, as an act of bankruptcy, is when a man absents himself from his place of business and retires to his private residence, so as to evade the importunity of creditors. The usual evidence of "keeping house" is denial to a creditor who has called for money. *Robson, Bkcy.* [ACT OF BANKRUPTCY.]

KEEPING TERM, by a student of law, consists in eating a sufficient number of dinners in hall to make the term count for the purpose of being called to the bar. [CALL TO THE BAR.]

KEEPING THE PEACE. Avoiding a breach of the peace; or persuading or compelling others to refrain from breaking the peace.

Security for keeping the peace consists in being bound with one or more securities in a recognizance or obligation to the Crown, whereby the party acknowledges himself to be indebted to the Crown, in a given sum, with condition to be void if he shall keep the peace either generally, towards the sovereign and all his liege people, or particularly to the person who craves the security. 4 *Bl.* 252—256; 4 *Steph. Com.* 291, 292. [GOOD ABEARING; GOOD BEHAVIOUR; SURETY OF THE PEACE.]

KENNING TO THE TERCE, in Scotland, corresponds to *assignment of dower* in England. *Paterson.* [ASSIGNMENT OF DOWER; DOWER, 2.]

KENTLEDGE. The permanent ballast of a ship, consisting usually of pigs of iron cast in a particular form, or other weighty material, which, on account of its superior cleanliness and the small space occupied by it, is frequently preferred to ordinary ballast. *Abbott on Shipping, by Mr. Justice Shee, p.* 6.

KERHERE. A custom to have a cartway; or a commutation for the customary duty for carriage of the lord's goods. *Toml.*

KEYS, in the Isle of Man, are the twenty-four chief commoners, who form the local legislature. *Toml.*; 1 *Steph. Com.* 99, 103.

KIDNAPPING. The forcible taking away of a man, woman, or child from their own country, and sending them into another. 4 *Bl.* 219; 4 *Steph. Com.* 93, 94. [See next Title.]

KIDNAPPING ACT, 1872. The stat. 35 & 36 Vict. c. 19, for the prevention and punishment of criminal outrages upon natives of the islands of the Pacific Ocean, containing, among other provisions, penalties for carrying such natives without a licence, to be obtained from a governor of one of the Australasian colonies, or from a British consular officer appointed to reside in any of the said islands. Extended to the colony of Fiji, and otherwise amended, by the Pacific Islanders Protection Act, 1875 (38 & 39 Vict. c. 51).

KILKETH. An ancient servile payment made by tenants in husbandry. *Cowel.*

KIN. Legal relationship.

KIN-BOTE. Compensation for the murder of a kinsman.

KING. The King or Queen is the person in whom the supreme executive power of this kingdom is vested. 2 *Steph. Com.* 395. As the statutes of the realm and the older law cases and other records are in general referred to as being of such a year of such a reign, we append a list of the Kings and Queens of England, with the dates of their acces-

KING – *continued.*

sions and deaths, from the Conqueror to the present time.

King.	Accession.	Reigned until
William I. (the Conqueror)	1066 ..	1087
William II. (William Rufus, son of William I.) ..	1087 ..	1100
Henry I. (youngest son of William I.)	1100 ..	1135
Stephen	1135 ..	1154
Henry II.	1154 ..	1189
Richard I. (otherwise called Richard Cœur de Lion)	1189 ..	1199
John	1199 ..	1216
Henry III.	1216 ..	1272
Edward I.	1272 ..	1307
Edward II.	1307 ..	1327
Edward III.	1327 ..	1377
Richard II.	1377 ..	1399
Henry IV.	1399 ..	1413
Henry V.	1413 ..	1422
Henry VI.	1422 ..	1461
Edward IV.	1461 ..	1483
Edward V.	1483 ..	1483
Richard III.	1483 ..	1485
Henry VII.	1485 ..	1509
Henry VIII.	1509 ..	1547
Edward VI.	1547 ..	1553
Mary (married in 1554 to Philip of Spain; hence the subsequent statutes of her reign are referred to as those of Philip and Mary)	1553 ..	1558
Elizabeth	1558 ..	1603
James I.	1603 ..	1625
Charles I.	1625 ..	1649
Commonwealth declared ..	1649	
Oliver Cromwell, Protector	1653 ..	1658
Richard Cromwell ..	1658 ..	1659
Charles II.	1660 ..	1685

The statutes of the reign of Charles II. are dated as if from the year 1649, when his father was beheaded, on the fiction that, as heir to the Crown, he began to reign immediately on his father's death. Hence, the statute for the abolition of military tenures, passed in 1660, is called 12 Car. 2, c. 24; the Statute of Frauds, passed in 1677, 29 Car. 2, c. 3; &c.

James II.	1685 ..	1688
William III. and Mary	1689 ..	1702
	1689 ..	1694
Anne	1702 ..	1714
George I.	1714 ..	1727
George II.	1727 ..	1760
George III.	1760 ..	1820
George IV.	1820 ..	1830
William IV.	1830 ..	1837
Victoria	1837	

KING CAN DO NO WRONG. This maxim means that the king is not responsible legally for aught that he may please to do, or for any forbearance or omission. *Aust. Jur., Lect. VI.* It does not, therefore, mean that every thing done by the government is just and lawful; but that whatever is exceptional in the conduct of public affairs is not to be imputed to the king. 1 *Bl.* 246—248; 2 *Steph. Com.* 478—483.

KING-GELD. A royal aid or escuage. *Toml.*

KING'S ADVOCATE. [ADVOCATE, QUEEN'S.]

KING'S BENCH. [COURT OF QUEEN'S BENCH.]

KING'S BOOKS. Books containing the valuation of ecclesiastical benefices and preferments, pursuant to stats. 26 Hen. 8, c. 3, and 1 Eliz. c. 4. 2 *Steph. Com.* 533.

KING'S SILVER. A name given to the money formerly payable to the king in the Court of Common Pleas, for the licence there granted to any man to pass a fine. *T. L.* [FINE, 1.]

KING'S WIDOW. A widow of the king's tenant in chief, who could not marry without the king's leave. [IN CAPITE.]

KINTLIDGE. A ship's ballast. [KENTLEDGE.]

KIRBY'S QUEST. An ancient record, remaining with the Remembrancer of the Exchequer; so called from its being the inquest of John de Kirby, treasurer to Edward I. *Toml.*

KIRK SESSION. A parochial assembly of the Presbyterian church, composed of the minister of the parish and lay elders, elected by the congregation. There is an appeal therefrom to the Presbytery, thence to the Synod, and thence to the General Assembly. *Bell; Paterson.*

The functions of the Kirk Session were, under the Act of 1592, c. 116, "to take heede that the word of God be purely preached within their boundes, the sacramentes richtly ministred, the discipline enterteined, and ecclesiastical guddes uncorruptly distributed."

The Kirk Session had also, in former times, the management of funds for the relief of the poor, and also jurisdiction to punish vagrants and beggars. By stat. 8 & 9 Vict. c. 83, s. 22, passed in 1845, the administration of the poor's funds in Scotland was transferred to the parochial board established by that Act for each parish; and the functions of the Kirk Session are now mainly confined to matters of ecclesiastical discipline. *Duncan on Scotch Parish Law.*

KLEPTOMANIA. An irresistible mania for thieving. [HOMICIDAL MONOMANIA.]

KNAVE. An old Saxon word for a boy or man servant. *Cowel.*

KNAVESHIP. The quantity of grain which, by the custom of a mill, is given to the servant by whom the work of grinding is performed. *Bell; Paterson.*

KNIGHT. A commoner of rank, originally one that bore arms, who, for his martial powers, was raised above the ordinary rank of gentleman. The following are different degrees of knights:—

1. Knight of the Order of St. George, or of the Garter: first instituted, in the opinion of Selden, by Edward III. in the 18th year of his reign. [GARTER.]

2. A Knight Banneret: who ranks after privy councillors and judges; and, unless created by the king in person in the field, under royal banners, in time of open war, he ranks after baronets. [BANERET.]

3. A Knight of the Order of the Bath: an order instituted by King Henry IV. They are so called from the ceremony, formerly observed, of bathing the night before their creation.

4. Knight Bachelor: the most ancient, though the lowest order of knighthood among us. We have an instance of King Alfred conferring this order on his son Athelstan. *Cowel;* 1 *Bl.* 403, 404; 2 *Steph. Com.* 612—614.

5. Knight of the Order of St. Michael and St. George: an order instituted the 27th of April, 1818, for the United States of the Ionian Islands, and for the ancient sovereignty of Malta and its dependencies. *Toml.* This order is often conferred on persons who have distinguished themselves in the colonies and dependencies of the British Empire.

6. Knight of the Thistle: an order instituted by King Achias, of Scotland, and re-established by Queen Anne, on the 31st of December, 1703. *Toml.* [See also the following Titles.]

KNIGHT MARSHAL was an officer in the king's house, formerly having jurisdiction and cognizance of transgressions within the king's house and verge, and of contracts made there. *Cowel.*

KNIGHT OF THE BATH. [KNIGHT, 3.]

KNIGHT OF THE CHAMBER. A knight bachelor, so made in time of peace. *Cowel.* [KNIGHT, 4.]

KNIGHT OF THE SHIRE. A gentleman of worth chosen by the freeholders of a county to represent it in parliament. *Cowel;* 1 *Bl.* 172, 178; 1 *Steph. Com.* 128; 2 *Steph. Com.* 333, 356, 357, 369.

KNIGHTHOOD. The dignity of a knight.

KNIGHT-SERVICE (Lat. *Servitium militare*). The most universal and most honourable species of tenure under the feudal system. It was entirely military. To make a tenure by knight-service, a determinate quantity of land was necessary, which was called a knight's fee. [KNIGHT'S FEE.] And he who held this proportion of land by knight-service was bound to attend his lord to the wars for forty days in every year, if called upon. There were other burdens attached to this tenure, under the name of aids, reliefs, primer seisins, &c.

Knight-service was abolished, with other military tenures, by the stat. 12 Car. 2, c. 24, passed in the year 1660. *T. L.; Cowel;* 2 *Bl.* 62—77; 1 *Steph. Com.* 187—205. [AID; PRIMER SEISIN; RELIEF.]

KNIGHT'S FEE (Lat. *Feudum militare*). A quantity of land sufficient to maintain a knight with convenient revenue. In the reign of Henry III. it was 15*l.* per annum. In the reign of Edward I. it was estimated at twelve plough-lands, and its value in that and the following reign was stated at 20*l.* per annum. But there are many different opinions as to its extent and value at various times. *Cowel;* 2 *Bl.* 62; 1 *Steph. Com.* 188, 189.

Also, the rent that a knight paid to his lord of whom he held. *Cowel.* [KNIGHT-SERVICE.]

KORAN. The Mohammedan Bible.

KYTH. Kin or kindred. *Toml.*

L. S. [LOCUS SIGILLI.]

LA REYNE LE VEULT. [LE ROY LE VEULT.]

LARES REALIS, or VITIUM REALE, in the law of Scotland, is an inherent vice or defect in the title by which anything has been acquired, which affects even the rights of purchasers and creditors who have obtained it innocently. *Bell.*

LABORARIIS. An ancient writ against persons who, having not whereof to live, refused to serve. *Cowel.* [See next Title.]

LABOURERS, STATUTES OF. 1. Stat. 23 Edw. 3, passed in 1349 by the king

LABOURERS, STATUTES OF—*continued.*

and his council. The preamble of this statute complains that, many of the operative class having died of the plague, the survivors, seeing the necessity to which the masters were reduced for want of servants, refused to work unless for excessive wages. It is accordingly enacted that every able-bodied person (whether free or bond) within the age of threescore years, not exercising any craft, nor having of his own whereby he might live, nor any land of his own, should, if required to serve in a station that suited his condition, be bound to serve for the wages usual in the twentieth year of the king, on pain of being committed to gaol. Victuals were to be sold at reasonable prices; and no person, under pain of imprisonment, was to give anything to a beggar that was able to work, and preferred to live in idleness.

This statute, having been partially repealed by stat. 5 Eliz. c. 4 (see below), was finally repealed in 1863 by stat. 26 & 27 Vict. c. 125.

2. Stat. 12 Rich. 2, passed at Cambridge in 1388, by which a servant, at the end of his term, was forbidden to go out of his district without a letter under the king's seal, on pain of being put in the stocks. The amount of wages was regulated, and penalties inflicted on masters who gave more than the legal amount. Beggars were to be punished, with the exception of religious people and approved hermits, having testimonial letters from their ordinaries.

3. Stat. 5 Eliz. c. 4, passed in 1562, by which the above-mentioned statutes were for the most part repealed. Various regulations were made as to workmen and apprentices. The justices of the peace were directed to hold special sessions for fixing the rate of wages; and any justice absenting himself from such sessions without lawful excuse was to forfeit 10*l.* to the Queen's Majesty. Masters giving more wages than the taxed amount were to suffer imprisonment for ten days, and to forfeit 5*l.*

This statute is now practically repealed by subsequent statutes.

LAC or **LAKH.** A hundred thousand; thus a lac of rupees is 100,000 rupees or about 10,000*l.* of our money. *Wilson's Gloss Ind.*

LACHES. Slackness or negligence. In general it signifies neglect in a person to assert his rights, or long and unreasonable acquiescence in the assertion of adverse rights. This neglect or acquiescence will often have the effect of barring a man of the remedy which he might have had if he had resorted to it in proper time. Thus, by certain statutes called Statutes of Limitations, the time is specified within which various classes of actions respectively therein mentioned may be brought. And, independently of these statutes, a Court of Equity will often refuse relief to a plaintiff who has been guilty of unreasonable delay in seeking it. *Sm. Man. Eq.* [LIMITATIONS, STATUTE OF.]

LADE. The mouth of a river. *Toml.*

LADY-DAY. 1. When speaking of Lady-Day, we ordinarily mean the 25th of March, being the Feast of the Annunciation of the Blessed Virgin Mary. [QUARTER-DAYS.]

2. Sometimes, however, a different meaning is given to the phrase by local custom. *Fawcett, L. & T.* 113. And, particularly, in parts of Ireland they speak of the 15th of August as Lady-Day, that day being, in the Roman Catholic Church, the festival of the Assumption of the Virgin.

LÆSÆ MAJESTATIS CRIMEN. The name in Roman Law for high treason; called also *majestas.* 4 *Bl.* 75, 76.

LÆSIONE FIDEI. Suits *pro læsione fidei* were suits for non-payment of debts or breaches of civil contracts, which, in the reign of Stephen, were brought in the Ecclesiastical Courts. This attempt to turn the Ecclesiastical Courts into Courts of Equity, on the ground that such acts were offences against conscience, was checked by the Constitutions of Clarendon, A.D. 1164, which provided that such matters should be within the jurisdiction of the King's Courts. 3 *Bl.* 52; 3 *Steph. Com.* 325, 326. [CLARENDON, CONSTITUTIONS OF.]

LAGA (Lat. *Lex*). The law. *Cowel.*

LAGAN or **LAGON.** Goods cast out of a ship in danger of shipwreck, and fastened to a buoy or cork, so that they may be the more easily recovered. *Cowel.* [LIGAN; WRECK.]

LAGEMAN (Lat. *Probus et legalis homo*). A good and lawful man, for the purpose of serving on juries, &c. But the word is also used of one who had jurisdiction over the persons or estates of his fellow-citizens, such as the thanes and barons of former times. *Cowel.*

LAGH-DAY. Any day of open court; commonly used for the courts of a county or hundred. *Toml.*

LAGHSLITE. A breaking or transgressing of the law; and sometimes the punishment inflicted for so doing. *Toml.*

LAGON. [LAGAN; LIGAN.]

LAMBARD'S ARCHAIONOMIA. A work printed in 1568, containing the Anglo-Saxon laws.

LAMBETH DEGREES. Degrees conferred by the Archbishop of Canterbury. 2 *Steph. Com.* 670.

LAMMAS DAY. The first of August. On that day the tenants that held land of York Cathedral were bound by their tenure to bring a living lamb into the church at high mass. *Cowel.* [GULE OF AUGUST.] Lammas Day is one of the Scotch quarter days, and is what is called a "conventional term." [TERM, 3.]

LANCASTER COUNTY PALATINE was erected into a county palatine in the fiftieth year of Edward III., and granted by him to his son John for life, that he should have *jura regalia*, and a kinglike power therein. 1 *Bl.* 117; 1 *Steph. Com.* 129. [COUNTY PALATINE; DUCHY COURT OF LANCASTER; JURA REGALIA.]

LAND signifies generally not only arable ground, meadow, pasture, woods, moors, waters, &c., but also messuages and houses; comprehending everything of a permanent and substantial nature. Thus an action to recover possession of a pool must be brought for so much land covered with water, &c. *Toml.*; 2 *Bl.* 16—19; 1 *Steph. Com.* 168, 169.

LAND TAX. A tax upon land, the original of which may be traced, Blackstone says, to our military tenures. The personal attendance required of tenants of knights' fees growing troublesome, the tenants found means of compounding for it, first, by sending others in their stead, and in process of time by making a pecuniary satisfaction to the Crown in lieu of it. This pecuniary satisfaction at last came to be levied by assessments, under the name of *escuage* or *scutage*. [ESCUAGE.] It was promised by King John in *Magna Charta*, and provided by several statutes under Edward I. and Edward III., that no taxes should be levied but by consent of the Commons and great men in parliament.

Of the same nature with scutages upon knights' fees were assessments of *hidage* upon all other land, and of *talliage* in cities and boroughs. But they all fell into disuse upon the introduction of *subsidies*, about the time of Richard II. and Henry IV. These were a tax, not immediately imposed upon property, but upon persons in respect of their reputed estates. These taxes did not extend to spiritual preferments, such preferments being usually taxed by the clergy themselves in convocation. The last subsidies were given in 15 Car. II. (A.D. 1664); but periodical assessments upon the counties of the kingdom continued to be levied and granted as the national emergencies required. In the year 1692 there was a new assessment or valuation of estates throughout the kingdom, according to which the land tax was imposed by 4 Will. 3, c. 1, and has ever since continued a permanent charge on land; for, by stat. 38 Geo. 3, c. 60, this tax, which had long been annual, was converted into a perpetual one, and fixed at four shillings in the pound; but made subject, on the other hand, to redemption by the landowner. As between landlord and tenant, the tax is a charge upon the former, in the absence of any special engagement. Yet, if the tenant has, to any extent, a beneficial interest, and does not hold at a rack-rent, he becomes liable *pro tanto*, and can only charge the residue on his landlord. 1 *Bl.* 309—313; 2 *Steph. Com.* 554—559; *Fawcett, L. & T.* 120, 223.

LAND TITLES AND TRANSFER ACT, 1875. Stat. 38 & 39 Vict. c. 87, for the establishment of a land registry for the registration of titles to land; with various provisions in reference to the transmission of land, and unregistered dealings with registered land, &c.

LANDBOC. A charter or deed whereby lands or tenements are given. *Cowel.*

LANDCHEAP. An ancient customary fine paid either in cattle or money at every alienation of land lying in some particular manor, or in the liberty of some borough. *T. L.*; *Cowel.*

LANDED ESTATES COURT. A court in Ireland created in 1858 by stat. 21 & 22 Vict. c. 72, in succession to the Encumbered Estates Court, for the purpose of deciding questions relating to the title to land.

LANDEGANDMAN was, according to Spelman, one of the inferior tenants of a manor. *Cowel.*

LANDGABLE. A tax or rent issuing out of land. Spelman says that it was a penny for every house. *Cowel.* [GABEL.]

LANDIRECTA. Rights charged upon land. *Toml.* [TRINODA NECESSITAS.]

LANDLORD. He of whom lands and tenements are holden; the *tenant* being the person holding the lands. *Toml.* Landlord is thus a relative term; as the landlord himself may be, and in strict law must be, himself a tenant of the Crown or other superior lord.

LANDLORD AND TENANT, LAW OF. Although in its most extended signification this might be used to denote the whole law of real property, yet in fact it is generally confined to the law relating to tenancies from year to year, or terminable at shorter periods. Treatises on this subject have been written by Mr. Woodfall and by Mr. Fawcett.

LANDMAN (*Terricola*). The terre-tenant, or occupier of land. *Cowel.*

LANDREEVE. A person whose business it is to overlook parts of a farm or estate.

LANDS CLAUSES CONSOLIDATION ACTS, 1845.

1. The stat. 8 & 9 Vict. c. 18, for England and Ireland; amended by 23 & 24 Vict. c. 106, passed in 1860, and by 32 & 33 Vict. c. 18, passed in 1869.

2. Stat. 8 & 9 Vict. c. 19, for Scotland, amended by 23 & 24 Vict. c. 106.

The object of these general Acts is to provide legislative clauses in a convenient form for incorporation by reference in future special Acts of Parliament for taking lands, with or without the consent of their respective owners, for the promotion of railways and other public undertakings. 1 *Steph. Com.* 165, *n.*; 3 *Steph. Com.* 9, *n.*

LANGEMANNI. Interpreted by Sir Edward Coke to mean lords of manors. *Toml.*

LAPSE. 1. A species of forfeiture, whereby the right of presentation to a benefice accrues to the ordinary, by neglect of the patron to present; to the metropolitan, by neglect of the ordinary; and to the Crown, by neglect of the metropolitan. *T. L.; Cowel;* 2 *Bl.* 276; 2 *Steph. Com.* 717; 3 *Bl.* 246; 3 *Steph. Com.* 416. It is in the nature of a spiritual escheat. 4 *Bl.* 107.

2. The failure of a testamentary disposition in favour of any person, by reason of the death of the intended beneficiary in the lifetime of the testator.

In two cases, however, of the intended beneficiary dying in the testator's lifetime, there is now no lapse. The first case is that of a devise of real estate to any person for an *estate tail*, where any issue who would inherit under such entail are living at the testator's death. The second case is that of a devise or bequest to a *child* or *other issue* of the testator, leaving issue, any of whom are living at the testator's death. 2 *Bl.* 513; 1 *Steph. Com.* 606, 607; 2 *Steph. Com.* 206, 207; *Wms. R. P., Pt. I. ch.* 10; *Wms. P. P., Part IV. ch.* 3.

LAPSED DEVISE. [LAPSE, 2.]

LAPSED LEGACY. [LAPSE, 2.]

LARBOARD. The left side of a ship or boat when you stand with your face towards the bow. The term *port* is now ordered by the Lords Commissioners of the Admiralty to be used in the Royal Navy instead of *larboard*. Larboard is opposed to *starboard*, which is the right hand side, looking forward. *Young's Naut. Dict.*

LARCENY. The unlawful taking and carrying away of things personal, with intent to deprive the right owner of the same. *T. L.; Cowel;* 4 *Bl.* 229—243; 4 *Steph. Com.* 112—138. The taking must be *animo furandi* (*i. e.*, with the intention of stealing), in order to constitute larceny. [FURANDI ANIMUS.] There must also be an "asportation," that is, a "carrying away;" but for this purpose the smallest removal is sufficient.

It was formerly held necessary to constitute larceny, that the original taking of the goods should be without the consent of the owner, so that a person entrusted with the possession of goods, and subsequently appropriating them to his use, was not held to be guilty of larceny. But now, by stat. 24 & 25 Vict. c. 96, s. 3, a bailee, that is, a person entrusted with property, who fraudulently converts the same to his own use or the use of any person not the owner thereof, is guilty of larceny, and may be convicted on indictment of the same. *Oke, Mag. Syn.* 1034; *Cox & Saunders' Crim. Law*, 26, 27. [BAILMENT.]

Larceny may be *simple*, that is, not combined with any circumstances of aggravation; or, if so combined, it is called *compound* larceny. Under the latter are included:—

1. Larceny in a *dwelling-house* of goods above the value of *5l.*

2. Larceny in *ships, wharfs*, &c.

3. Larceny *from the person*; which is either by *privately stealing*, or by open and violent assault, usually called

LARCENY – *continued.*

robbery. And a robbery may be committed either directly from the person, or merely in the presence of the injured party by putting him in fear.

4. Larceny *by clerks and servants*, &c.

5. Larcenies, &c. *in relation to the Post Office*, by servants employed therein, which are punishable under the express provisions of the Post Office Acts.

Distinction between Larceny and False Pretences.—Where a man, being desirous to possess himself fraudulently of another's goods, obtains possession of the goods by some trick or artifice, the owner not intending to part with the entire right of property, but with the temporary possession only; this is held to constitute larceny. In *larceny* the owner of the thing stolen has no intention to part with his *property* therein to the person taking it, although he may intend to part with the *possession*; whereas in *false pretences* the owner does intend to part with his property in the money or chattel, but it is obtained from him by fraud.

Distinction between Larceny and Embezzlement.—Larceny by a servant is where a servant appropriates his master's property. Embezzlement is where a servant, having received property in the name of or on account of his master, appropriates the same before it reaches his master. And it is to be presumed that there is a similar distinction between larceny and embezzlement by a partner under the Larceny and Embezzlement Act, 1868 (31 & 32 Vict. c. 116).

Misappropriation by Servants.—It was formerly larceny for a servant to take corn or other food out of the possession of his master, contrary to his orders, for the purpose of feeding the horses or other animals of his master; but now, by stat. 26 & 27 Vict. c. 103, s. 1, passed in 1863, this offence is no longer felony, but is punishable on summary conviction by justices with a fine not exceeding 5*l.*, or imprisonment not exceeding three months, with or without hard labour.

See 4 *Steph. Com.* 112—147; *Archbold's Pl. Ev. Crim. Cas., Bk. II. Pt.* 1, *ch.* 1, *ss.* 1, 2; *Cox & Saunders' Cr. Law, pp.* 336—810, 400.

LASHBRITE denoted the Danish common forfeiture, which was twelve ores, every ore being about sixteen pence. *Cowel.*

LAST COURT. A court held by the twenty-four jurats in the marshes of Kent, and summoned by the bailiffs. *Toml.* [JURATS, 2.]

LAST HEIR (Lat. *Ultimus hæres*). He to whom land comes by escheat, for want of lawful heirs; that is, in some cases, the lord of whom they are held; in others, the king. *Cowel; Bell.*

LASTAGE. 1. A custom exacted in some fairs and markets, to carry things where one will. *Cowel.*

2. The ballast of a ship. *Cowel.*

3. Stowage room for goods in a vessel. *Young's Naut. Dict.*

4. A custom paid for wares sold by the last.—*Cowel.*

LATENT AMBIGUITY. [AMBIGUITY; INTENTION, 1.]

LATHE, LATH or **LETH.** A great part of a county containing three or four hundreds, as in Kent and Sussex. *T. L.; Cowel;* 3 *Bl.* 117; 1 *Steph. Com.* 127. [HUNDRED.]

LATH REEVE. An officer who, under the Saxons, had authority over the *lath* or *lathe*. 1 *Bl.* 117; 1 *Steph. Com.* 127; *Toml.* [LATHE.]

LATIMER. A word used by Sir Edward Coke for an interpreter. *Cowel.*

LATITAT. A writ whereby all men in personal actions were called to the King's Bench. It was a process sued out on a supposed bill of Middlesex, when the defendant did not reside in Middlesex, and was directed to the sheriff of some other county, as Berks, alleging that the defendant *latitat et discurrit*, lurks and wanders about in Berks. *T. L.; Cowel;* 3 *Bl.* 286; 3 *Steph. Com.* 333, *n.* [AC ETIAM; BILL OF MIDDLESEX.]

LATROCINIUM. Larceny, or jurisdiction in larceny.

LAUDATOR. An arbitrator. *Cowel.*

LAUDIBUS LEGUM ANGLIÆ. The treatise *De Laudibus Legum Angliæ* was a panegyric on the laws of England written by Sir John Fortescue in the reign of Henry VI. 1 *Bl.* 16; 1 *Steph. Com.* 9, 10, 51. [FORTESCUE.]

LAW is defined by Bracton as a just sanction, commanding honest things, and forbidding the contrary. *Cowel.*

Blackstone defines law as a rule of action prescribed or dictated by some superior, which an inferior is bound to obey. 1 *Bl.* 38, 39.

The word has been variously defined by different writers; but the writer who has treated the subject most minutely in all its bearings is the late Mr. John Austin, who, in his first lecture, describes

LAW—*continued.*

a law as being a *command* to *a course of conduct:* a *command* being the expression of a wish or desire conceived by a rational being that another rational being shall do or forbear, coupled with the expression of an intention in the former to inflict some evil upon the latter, in case he comply not with the wish. But besides laws properly so called, Austin alludes to laws improper, imposed by public opinion; also laws metaphorical or figurative, such as the laws regulating the movements of inanimate bodies, or the growth or decay of vegetables; or that uniformity in the sequence of things or events which often goes by the name of *law*. *Aust. Jur., Lects. I., V.*

LAW AGENT. Any person entitled to practise as an agent for another in a court of law in Scotland. *Stat.* 36 & 37 *Vict. c.* 63.

LAW DAY signifies a day for holding a leet or sheriff's tourn. Also a day of open court, especially with reference to the courts of a county or hundred. *T. L.; Cowel.* [COURT LEET; HUNDRED; SHERIFF'S TOURN.]

LAW JOURNAL. A weekly journal of the law, published at 5, Quality Court, Chancery Lane. The *Law Journal Reports*, published at the same office, appear monthly. They comprise reports of cases in all the superior courts in England. The reports of appeal cases in the House of Lords are published among the reports of the respective courts from which the appeals are brought; so are the reports of appeals in the Privy Council from the Admiralty and Ecclesiastical Courts; but otherwise the reports of Privy Council cases are, in general, published separately. The new series of these reports was commenced in the year 1832. The volumes are made up annually. There is a quinquennial digest connected with this publication, which is not confined to the *Law Journal Reports*, but extends also to cases in the *Law Reports* and the *Law Times Reports*.

There is also published, during the long vacation, an issue of the statutes of the year.

LAW LIST. An annual publication of a quasi-official character, comprising various statistics of interest in connection with the legal profession. The contents include (among other information) the following matters:—

1. A list of judges, queen's counsel, and serjeants-at-law. 2. The judges of the county courts. 3. Benchers of the Inns of Court. 4. Barristers in alphabetical order. 5. The names of counsel practising in the several circuits of England and Wales. 6. London attorneys. 7. Country attorneys. 8. Officers of the Courts of Chancery and Common Law. 9. The magistrates and law officers of the City of London. 10. The metropolitan magistrates and police. 11. Recorders. 12. County court officers and circuits. 13. Lord lieutenants and sheriffs. 14. Colonial judges and officers. 15. Public notaries.

LAW LORDS are peers who have held high judicial office, or have been distinguished in the legal profession.

LAW MARTIAL. [MARTIAL LAW.]

LAW MERCHANT (*Lex mercatoria*). The general body of European usage in matters relative to commerce, comprising rules relative to bills of exchange, partnership, and other mercantile matters, incorporated into the law of England. *Cowel;* 1 *Bl.* 273; 1 *Steph. Com.* 55.

LAW OF MARQUE. A law of reprisal, by which persons who have received wrong, and cannot get ordinary justice within the precincts of the wrong-doers, take their ships and goods. *Cowel.* [LETTERS OF MARQUE AND REPRISAL.]

LAW OF NATIONS (Lat. *Jus gentium*). This term is often used improperly as synonymous with the *jus inter gentes*, or international law. And in this sense it seems to be used by Blackstone, who speaks of it as a law to regulate the mutual intercourse of States. 1 *Bl.* 43; 1 *Steph. Com.* 24, 25.

The *jus gentium* of the Roman lawyers was very different. The meaning of the phrase varied at different times; but in the main it was intended to designate the common law of all the nations which composed the Roman world, as contradistinguished to those particular systems which were respectively peculiar to the different communities or *gentes*. *Aust. Jur., Lect. XXXI.*

The law of nations, in this its original sense, includes the modern international law, and also a great deal that is popularly ranked under municipal law. [INTERNATIONAL LAW; JUS GENTIUM.]

LAW OF NATURE is described by Blackstone as the will of God, ruling the conduct of man. 1 *Bl.* 39; 1 *Steph. Com.* 21. The use of this expression, "law of nature," is challenged by Austin as not being sufficiently distinct and definite.

LAW OF THE STAPLE. The same with law merchant. *Cowel.* [LAW MERCHANT.]

LAW REPORTS are the authorized monthly reports of decided cases commencing from 1866 inclusive. They are published under the direction of a body called the Council of Law Reporting, which consists of the Attorney and Solicitor general, the Queen's Advocate, and two representatives of each of the Inns of Court and the Incorporated Law Society. These reports are divided, as regards their first publication, into three series: the Appellate Series, the Equity Series, and the Common Law Series. These series are again subdivided for the purposes of the permanent volumes.

The Appellate Series contains three of these permanent series:—

1. The House of Lords Reports, English and Irish appeals, including also peerage cases.

2. The House of Lords Reports, Scotch appeals, and appeals from the English Divorce Court.

3. The Privy Council Reports.

The volumes of these are published at irregular intervals of not less than a year each.

The Equity Series is divided into—

1. The Chancery appeals, being the reports of cases in the Lord Chancellor's and Lords Justices' Courts. The volumes of this series are published annually.

2. The Equity cases, being the cases before the Master of the Rolls, the Vice-Chancellors, and the Chief Judge in Bankruptcy. The volumes of this series are published half-yearly.

The Common Law Series is divided into—

1. The Queen's Bench cases, and Exchequer Chamber cases on appeal from the Queen's Bench.

2. The Common Pleas cases, and Exchequer Chamber cases on appeal from the Common Pleas.

3. The Exchequer cases, and Exchequer Chamber cases on appeal from the Exchequer.

The volumes of the three series lastly above mentioned are published annually.

4. The Crown Cases Reserved.

5. The Probate and Divorce cases.

6. The Admiralty and Ecclesiastical cases.

The following publications are also issued under the direction of the Council of Law Reporting:—

The statutes of each year, which are issued in numbers during the summer months, and are ultimately bound into yearly volumes.

Indian Appeals, being reports of appeals from the East Indies to the Judicial Committee of the Privy Council.

Weekly Notes, being concise notes of decided cases, many of which are published in a more elaborate form in the Reports.

LAW SPIRITUAL. The ecclesiastical law, according to which the ordinary, and other ecclesiastical judges, do proceed in causes within their cognizance. *Cowel.*

LAW TIMES. A weekly journal of the law, published at 1, Wellington Street, Strand. There is a department of this journal called the *Solicitors' Journal* (not to be confounded with the independent journal of that name), which contains intelligence and editorial matter of special interest to solicitors.

The *Law Times Reports* appear once a week, and are sold with the journal. They contain reports of cases in all the superior courts in England, and not unfrequently Middlesex Sessions and other local cases, and cases in the Scotch, Irish and American courts. The new series of the *Law Times Reports* commenced in 1859, and its volumes are published half-yearly, commencing in March and September of each year, and are not, as are the *Law Journal Reports* and the *Law Reports*, divided into series; but the reports from all the courts are published in the same set of volumes.

There is also published during the long vacation an issue of the statutes of the year.

LAWING OF DOGS. The process of expeditation. *T. L.; Cowel;* 3 *Bl.* 72. [EXPEDITATION.]

LAWLESS COURT. A court held on Kingshill, at Rochford in Essex, on Wednesday morning next after Michaelmas Day in each year, at cockcrowing. They whisper, and have no candle, nor any pen and ink, but a coal; and he that owes suit and service, and appears not, forfeits double his rent every hour he is missing. *Cowel.* An account of this court was given in the *Daily News* of Tuesday, October 19, 1875; from which it seems that the court is now held on the Wednesday after Old Michaelmas Day, that is, after the day which we of the 19th century call the 11th of October. [OLD STYLE.]

LAWLESS MAN. An outlaw. *Cowel.*

LAWS OF OLERON. [OLERON, LAWS OF.]

LAWSUIT. This is not a legal expression, but it is generally used to denote a case before the courts of law or equity in which there is a controversy between two parties.

LAY. A word opposed to *professional.* It is generally, but not necessarily, used in opposition to *clerical.*

LAY CORPORATIONS. Corporations not composed wholly of spiritual persons, nor subject to the jurisdiction of the ecclesiastical courts. Lay corporations are either *civil* or *eleemosynary.* Eleemosynary corporations are such as are constituted for the perpetual distribution of the free alms or bounty of the founder of them, to such purpose as he has directed. All other lay corporations are civil corporations. 1 *Bl.* 470, 471; 3 *Steph. Com.* 5—7. [CORPORATION.]

LAY DAYS. The days ordinarily allowed to the charterer of a vessel for loading and unloading the cargo. Also called *running* days. 2 *Steph. Com.* 141.

LAY FEE. Lands held in fee of a lay lord, involving services of a temporal character, as opposed to *frankalmoign,* which is a tenure of a spiritual character. 2 *Bl.* 101; 1 *Steph. Com.* 226. [FEE; FRANKALMOIGN.]

LAY IMPROPRIATORS. [APPROPRIATION; IMPROPRIATION.]

LAY INVESTITURE OF BISHOPS. The formal act whereby the Crown invested a bishop with the temporalities of his office. This took place in very early times *per annulum et baculum;* that is to say, by the prince delivering to the prelate a pastoral staff or crosier. [ANNULUM ET BACULUM.] This was resented by the popes as an encroachment on the Church's authority, and an attempt by these symbols to confer a spiritual jurisdiction. But at length, when the Emperor Henry V. agreed to remove all suspicion of encroachment on the spiritual character by conferring investitures, for the future, *per sceptrum* and not *per annulum et baculum,* and when the kings of England and France consented also to alter the form in their kingdoms, and to receive only homage from the bishops for their temporalities, instead of investing them by the ring and crosier, the court of Rome found it prudent for awhile to suspend its other pretensions. 1 *Bl.* 378, 379; 2 *Steph. Com.* 665.

LAZZI, under the Saxons, were persons born to labour, who could not depart from their service without the leave of the lord, but who were fixed to the land where born, and were in the nature of slaves. Hence the word *lazzi,* or lazy, signifies those of a servile condition. *Toml.*

LE ROY LE VEULT, or **LA REINE LE VEULT.** "The king (or queen) wills it so to be." The form of words by which the sovereign assents to a public bill which has passed through both Houses of Parliament. 1 *Bl.* 184, 185; 2 *Steph. Com.* 387.

LE ROY S'AVISERA, or **LA REINE S'AVISERA.** "The king (or queen) will consider." The form for refusing the royal assent to a bill passed by both Houses of Parliament. This power of refusal was last exercised in the year 1707, when Queen Anne refused her assent to a Scotch militia bill. 1 *Bl.* 185; 2 *Steph. Com.* 387; *May's Parl. Prac. ch.* 18.

LEADER. The leading counsel in a case, as opposed to a *junior.*

LEADING A USE. This was an expression used of a deed whereby a person covenanted to levy a fine, or suffer a recovery of lands, to certain uses upon which it was intended to settle the lands. The deed was then said to *lead* to the uses of the fine; and the fine, when levied, would, by virtue of the Statute of Uses, enure (*i. e.,* take effect) to the uses so specified. Or, if a fine or recovery were had without any previous settlement, and a deed were afterwards made between the parties, *declaring* the uses to which the same would be applied; this would be equally good as if the fine had been expressly levied, or the recovery suffered, in consequence of a deed directing its operation to those particular uses. So that the difference between a deed *leading* the use, and a deed *declaring* the use, was that the former was made previous to the fine or recovery, and the latter subsequently thereto. 1 *Steph. Com.* 573—575. [ENURE; FINE, 1; RECOVERY; USE; USES, STATUTE OF.]

LEADING CASES are the cases which have had the most influence in settling the law.

Volumes of Leading Cases have been published, as follows:—

Two volumes of Leading Cases at Common Law, which are known as Smith's Leading Cases, having been first brought out by the late Mr. J. W. Smith;

Two volumes of Leading Cases in Equity, which are known as White and Tudor's Leading Cases;

LEADING CASES – *continued.*

One volume of Leading Cases on Real Property, the construction of wills and deeds, and conveyancing, by Mr. Tudor;

One volume of Leading Cases on Mercantile Law, by Mr. Tudor;

One volume of Leading Cases on Constitutional Law, by Dr. Herbert Broom.

LEADING QUESTIONS. Questions which suggest the answer which is expected: as "Did you not see this?" or "Did you not hear that?" 3 *Bl.* 449.

LEAKAGE. An allowance out of the customs to merchants importing wine, for the waste and damage it is supposed to receive by being kept. *Toml.*

LEASE. A demise or letting of lands or tenements, right of common, rent, or any hereditament, unto another for a term of years or life, or at will, usually for a rent reserved. The interest created by the lease must be *less* than the lessor hath in the premises, else it is not a *lease*, but an *assignment*. *T. L.; Cowel*; 2 *Bl.* 317; 1 *Steph. Com.* 282—284, 512, 513. [LEASE AND RELEASE.]

LEASE AND RELEASE. 1. There was a conveyance of this name at common law before the Statute of Uses, which took place where one, being desirous to convey in fee simple, first made a lease to the proposed alienee, which demise, if perfected by entry, conferred on him a complete estate of leasehold. The lessee then, being tenant of the "particular estate" on which the reversion was expectant, became capable of receiving a *release* of the reversion, which was accordingly executed to him and his heirs. 1 *Steph. Com.* 527, 528. [PARTICULAR ESTATE.]

2. The conveyance of the same name under the Statute of Uses is much better known. It was of a compound description, consisting of two separate parts, after the manner of the conveyance of the same name at common law:—First, a bargain and sale; secondly, a common law conveyance of release. The bargain and sale would not have been sufficient under the Statute of Enrolments (27 Hen. 8, c. 16) to transfer the *freehold*, unless the same were by deed indented, and enrolled within six months after its date. The practitioners of that day, being anxious to effect secret conveyances, made the conveying party execute a bargain and sale for some *leasehold* interest, generally for a year, which passed the legal estate for a year to the bargainee (the Statute of Enrolments not extending to leaseholds), and the estate so transferred was complete without entry. The transferee, therefore, was capable of receiving a release of the freehold and reversion; which release was accordingly granted to him on the next day. This form of conveying a freehold estate soon became so generally established as to supersede every other. By stat. 4 & 5 Vict. c. 21, passed in 1841, the release was made effectual without the previous lease; and by the stat. 8 & 9 Vict. c. 106, s. 2, passed in 1845, it was provided that corporeal hereditaments should, as regards the conveyance of the immediate freehold thereof, be deemed to *lie in grant* as well as *in livery*, and so become transferable by deed of grant, which is now the ordinary method of transferring such estates. 2 *Bl.* 339; 1 *Steph. Com.* 537—539; *Wms. R. P.* [ENROLMENT; GRANT, 1; LIE IN GRANT; LIE IN LIVERY; USES, STATUTE OF.]

LEASEHOLD. Any interest in land less than freehold might be so called; but in practice the word is generally applied to an estate for a fixed term of years.

LEASES AND SALES OF SETTLED ESTATES ACT. 1856. The stat. 19 & 20 Vict. c. 120, the object of which is to enable a tenant of an estate for life, or for a term of years determinable with his life, or for any greater estate, to demise the land for periods which may last beyond his own life, subject to the provisions and restrictions in the Act contained. 1 *Steph. Com.* 252, 253, 266, 279; *Wms. R. P.* This Act has been amended in some particulars by the stat. 37 & 38 Vict. c. 33, passed in 1874.

LEASING MAKING. [SEDITION.]

LEDGER, in bookkeeping, is a book into which the entries in the other books are posted. The accounts of the various persons with whom dealings are carried on are arranged consecutively in the ledger, and to these are frequently added what are called *impersonal* accounts; that is to say, goods, furniture, insurance, &c. accounts. [DOUBLE ENTRY.] *Chambers' Bookkeeping; Coombs' Solicitors' Bookkeeping.*

LEDGRAVE. The chief man of a *lath;* the same as *lath-reeve.* [LATHE.]

LEET. A court of local jurisdiction. [COURT LEET.]

LEGABLE. That which is not entailed as hereditary, but may be bequeathed by will. *Cowel.*

LEGACY. A bequest or gift of goods and chattels by testament. *T. L.; Cowel;* 2 *Bl.* 512; 2 *Steph. Com.* 205.

A legacy may be either specific, demonstrative, or general.

1. A *specific legacy* is a bequest of a specific part of the testator's personal estate.

2. A *demonstrative legacy* is a gift by will of a certain sum directed to be paid out of a specific fund.

3. A *general legacy* is one payable out of the general assets of the testator. *Wms. P. P.; Chute's Eq. ch.* 5.

LEGACY DUTY. A duty payable by an executor out of the legacies bequeathed by his testator, under certain statutes called the Legacy Duty Acts. The proportion of legacy duty varies according to the relationship which the legatee bears to the testator. A husband or wife is exempt from legacy duty, and so are the royal family. If the legatee be a lineal ascendant or descendant of the deceased, the duty is one per cent.; if a brother or sister, or descendant of a brother or sister, the duty is three per cent.; if an uncle or aunt, or descendant of an uncle or aunt, five per cent.; if a great uncle or great aunt, or a descendant of a great uncle or great aunt, six per cent. If a more distant relation, or a stranger, ten per cent. 2 *Steph. Com.* 205, 571, *n.* (*i*).

Legacy duty must not be confounded with probate duty. [PROBATE DUTY.]

LEGAL, in Scotch law, is the term of seven years, allowed for redeeming landed property which has been "adjudicated" to a creditor of the proprietor in satisfaction of his debt. *Bell.* [ADJUDICATION; EFFECTUAL ADJUDICATION; EXPIRY OF THE LEGAL.]

LEGAL ASSETS. Assets of a deceased person available in a court of law to satisfy the claims of creditors. [ASSETS.]

LEGAL ESTATE. An estate in land, fully recognized as such in a court of common law, has been hitherto called the "legal estate." 1 *Steph. Com.* 230, 308, 375. [EQUITABLE ESTATE.]

LEGAL MEMORY. The time of "legal memory" runs back to the commencement of the reign of Richard I. 1 *Steph. Com.* 57, 685, 686.

LEGAL TENDER is a tender in payment of a debt which will be held valid and sufficient. Gold coin is always a legal tender, so far as a debt admits of being paid in gold; silver coin is a legal tender in payment of a sum not exceeding forty shillings; and bronze coin is a legal tender in payment of a sum not exceeding one shilling. 2 *Steph. Com.* 531, 532.

LEGALIS HOMO. [LAGEMAN; PROBUS ET LEGALIS HOMO.]

LEGAMANNUS. The same as *lageman* or *liegeman.* [LAGEMAN.]

LEGANTINE CONSTITUTIONS, or **LEGATINE CONSTITUTIONS,** were ecclesiastical laws, enacted in national synods, held under the cardinals Otho and Othobon, legates from Pope Gregory IX. and Pope Clement IV., about the years 1220 and 1268. 1 *Bl.* 82, 83; 1 *Steph. Com.* 65.

LEGATARY (Lat. *Legatarius*). A legatee. *Cowel.*

LEGATE. An ambassador or Pope's nuncio. *Toml.*

LEGATEE. One to whom anything is bequeathed by last will and testament. *Cowl.*

LEGATINE CONSTITUTIONS. [LEGANTINE CONSTITUTIONS.]

LEGATORY. The same as legatee. *Cowel.*

LEGATUM. A legacy. In the ecclesiastical sense, *legatum* is often used to signify an accustomed "mortuary." *Cowel.* [MORTUARY, 1.]

LEGITIM. The share out of the free moveable estate of a father to which, by the law of Scotland, the children are entitled. *Bell.* [CUSTOM OF LONDON; DEAD'S PART; JUS RELICTÆ.]

LEGITIMACY DECLARATION ACT. The stat. 21 & 22 Vict. c. 93, passed in 1858, for enabling a party to apply to the Divorce Court for a declaration of his legitimacy, or his right to be deemed a natural-born subject. 2 *Steph. Comm.* 281, *n.; Tudor, L. C. R. P.* 647.

LEGITIMATIO PER SUBSEQUENS MATRIMONIUM. A legitimation of children by the subsequent marriage of their parents. This may be done according to the civil and canon law, and the systems founded thereon, including the law of Scotland. 1 *Bl.* 454; 2 *Steph. Com.* 284.

LEONINA SOCIETAS. A partnership in which one partner has all the loss, and another all the gain. *Bell.* It is so called, because the lucky partner has the "lion's share" of the profits.

LEPROSO AMOVENDO. A writ that lay for a parish, to remove a leper or lazar that thrust himself into the company of

LEPROSO AMOVENDO – *continued.*

his neighbours, either in church, or other public meetings, to their annoyance and disturbance. *T. L.; Cowel.*

LESPEGEND. An inferior officer in forests, appointed to take care of the vert and venison therein. *Cowel.*

LESSEE. A person to whom a lease is made. [LEASE.]

LESSOR. A person by whom a lease is made. [LEASE: see also next Title.]

LESSOR OF THE PLAINTIFF. The claimant in an action of ejectment was so called, as being the lessor of the fictitious plaintiff Doe, Goodright, or Goodtitle, &c. 3 *Bl.* 206; 3 *Steph. Com.* 619. [EJECTMENT.]

LESTAGEFRY. Lestage-free, or exempt from the duty of paying ballast money. This privilege was granted by King Edward I. to the Barons of the Cinque Ports. *Cowel.*

LESTAGIUM. The ballast of a ship, or ballast-money. *Cowel.* [LASTAGE.]

LETTER MISSIVE. 1. A letter from the king or queen to a dean and chapter, containing the name of the person whom he would have them elect as bishop. 1 *Bl.* 379; 1 *Steph. Com.* 666.

2. A letter sent by the Lord Chancellor to a peer, who is made a defendant to a bill in Chancery, to request his appearance. 3 *Bl.* 445; *Dan. Ch. Prac.* [BILL, 2; FILING BILL IN EQUITY.]

LETTER OF ATTORNEY. A writing by a person authorizing another to do a lawful act in his stead; as, to give seisin of lands, to receive debts, to sue a third person, &c. *Cowel.*

LETTER OF CREDIT. A letter written by one man to another, requesting him to advance money, or entrust goods to the bearer, or to a particular person by name, and for which the writer's credit is pledged. *Bell; Toml.; Chambers' Book-keeping.* It is an instrument in common use among bankers for the transmission of money. It is not negotiable, but is only an authority from the banker who signs it to the banker or other person to whom it is addressed, to honour the drafts of the person named in it, and who produces the letter; and consequently he alone is entitled to draw the drafts or to receive payment. *Grant on Bankers, ch.* 15.

LETTER OF LICENCE was an instrument or writing made by creditors to a man that had failed in his trade, allowing him longer time for the payment of his debts, and protecting him from arrests in going about his affairs. *Toml.*

LETTERS CLOSE or **CLAUSE.** [CLOSE ROLLS; LETTERS PATENT.]

LETTERS OF ADMINISTRATION. Letters granted formerly by the Ecclesiastical Court, but now by the Probate Court, authorizing the person to whom they are granted to administer the estate of a deceased person, who has not appointed an executor, or whose appointed executors are unable or unwilling to act as such. [ADMINISTRATION.]

LETTERS OF HORNING, in the law of Scotland, are letters running in the sovereign's name and passing the signet. They are directed to messengers at arms as sheriffs in that part (*i. e.*, persons specially appointed to perform particular duties appertaining to the office of sheriff), to charge the person against whom the letters are directed to pay or perform in terms of the "will" [WILL, 2] of the letters, which must be consistent with the warrant on which the letters proceed. The warrant on which the letters proceed is a decree either of the Court of Session or of some inferior court. *Bell.*

In untechnical language, we may describe letters of horning as the authority by which a person, directed by the decree of a court of justice to pay or perform anything, is ordered to comply therewith.

The ancient common law of Scotland seems not to have authorized imprisonment merely as a means of paying a debt, or for any crime less than that of rebellion; or, what was equivalent to it, a contempt of the command to perform an act directed by his Majesty's letters passing the signet. The authority of courts of justice thus came to be supplemented by "letters of horning."

LETTERS OF MARQUE AND REPRISAL. These words, *marque* and *reprisal*, are used as synonymous; *reprisal* signifying a *taking in return*, and *marque* the passing over the *marches* or frontiers in order to do so. Letters of marque and reprisal are granted by the law of nations whenever the subjects of one State are oppressed and injured by those of another, and justice is denied by that State to which the oppressor belongs.

The form of applying for and granting these letters, provided by stat. 4 Hen. 5, c. 7, passed in 1416, is as follows:—The sufferer must first apply to the Lord Privy Seal, and he shall make out *letters of*

LETTERS OF MARQUE AND REPRISAL—*continued.*

request under the privy seal; and if, after such request of satisfaction made, the party required do not within convenient time make due satisfaction to the party grieved, the Lord Chancellor shall make him out *letters of marque* under the Great Seal; by virtue of which he may attach the property of the aggressor nation, without hazard of being condemned as a robber or pirate. 1 *Bl.* 258, 259.

But this manner of granting letters of marque has been long disused; and the term itself is now applied to commissions granted in time of war to merchants and others to fit out *privateers* or armed ships, authorizing them to take the ships of the enemy, and directing that the prizes captured by them shall be divided between the owners, the captains and the crew. 2 *Steph. Com.* 492—494. [DECLARATION OF PARIS.]

LETTERS OF REQUEST. 1. Letters formerly granted by the Lord Privy Seal preparatory to granting letters of marque. [LETTERS OF MARQUE AND REPRISAL.]

2. Letters whereby a bishop, within whose jurisdiction an ecclesiastical cause has arisen, and who is desirous to waive such jurisdiction, requests the Dean of Arches to take cognizance of the matter. The acceptance of such letters on the part of the Dean of Arches is not optional. 2 *Steph. Com.* 672, *n.* (i); 3 *Steph. Com.* 306.

LETTERS OF SAFE CONDUCT. [SAFE CONDUCT.]

LETTERS PATENT (Lat. *Literæ patentes*) are writings sealed with the Great Seal of England, whereby a man is authorized to do or to enjoy anything that otherwise of himself he could not. And they be so termed by reason of their form, because they be open (*patentes*) with the seal affixed, ready to be showed for confirmation of the authority given by them. *Cowel.*

The form of granting letters patent, as regulated by stat. 14 & 15 Vict. c. 82, is as follows:—Her Majesty, by warrant under the royal sign manual, addressed to the Lord Chancellor, commands him to cause letters patent to be passed under the Great Seal according to such warrant; and that such warrant shall be prepared by the attorney or solicitor general, and shall set forth the proposed letters patent, and shall be countersigned by one of the principal secretaries of state, and sealed with the privy seal. Such is the general course established by this statute, with certain exceptions therein specified. 1 *Steph. Com.* 619, 620. For the old form of granting letters patent, see 1 *Bl.* 346, 347. [PATENT.]

LEVANT AND COUCHANT (Lat. *Levantes et cubantes*). A law term for cattle that have been so long in the ground of another, that they have lain down, and are risen up to feed, until which time they cannot be distrained by the owner of the lands, if the lands were not sufficiently fenced so as to keep out cattle. *T. L.; Toml.;* 3 *Bl.* 8, 9; 3 *Steph. Com.* 249; *Kerr's Act. Law.*

LEVARI FACIAS. A writ directed to the sheriff, for the levying a sum of money upon the lands and tenements of him that hath forfeited a recognizance. *Cowel.* This writ affects a man's goods and the profits of his lands, as the sheriff under it may seize the goods and receive the rents and profits of the lands, till satisfaction be made to the plaintiff. This writ, being less efficacious than the writ of *fieri facias*, is now practically obsolete; but the writ of *fieri facias de bonis ecclesiasticis* is in the nature of a writ of *levari facias*. *T. L.; Cowel;* 3 *Bl.* 417, 418; 3 *Steph. Com.* 585; *Kerr's Act. Law.* [FIERI FACIAS.]

LEVARI FACIAS DAMNA DE DISSEISITORIBUS. A writ formerly directed to the sheriff for the levying of damages, which a disseisor had been condemned to pay to the disseisee. *Cowel.*

LEVARI FACIAS QUANDO VICECOMES RETURNAVIT QUOD NON HABUIT EMPTORES. An old writ commanding the sheriff to sell the goods of a debtor which he had already taken, and had returned that he could not sell them; and as much more of the debtor's goods as would satisfy the whole debt. *Cowel.*

LEVARI FACIAS RESIDUUM DEBITI. An old writ directed to the sheriff, for levying the remnant of a partly satisfied debt upon the lands and tenements or chattels of the debtor. *Cowel.*

LEVY signifies to collect or exact, as to levy money; sometimes to set up anything, as to levy a mill, &c. *Cowel.*

LEWIS BOWLES'S CASE. A leading case on the law of real property, decided in 1615, by which various matters were settled in reference to tenancies in tail and tenancies for life; especially with

LEWIS BOWLES'S CASE—*continued.*

reference to the felling of timber, and the rights of a tenant for life without impeachment of waste. *Tudor's L. C. Conv.* 27. [WASTE.]

LEX BREHONIA. The Brehon or Irish law, overthrown by King John in the twelfth year of his reign. *Cowel.*

LEX DOMICILII. The law of the place of a man's domicile. [DOMICILE.]

LEX FORESTÆ. The law of the forest. [CARTA DE FORESTA; FOREST; FOREST COURTS.]

LEX FORI. The law of the *forum*, that is, the law of the place in which any given case is tried. [FORUM; LEX LOCI CONTRACTUS.]

LEX LOCI CONTRACTUS. The law of the place in which a contract was made. Thus, if an action were brought in England upon a contract made in France, the law of England would, as regards such action, be the *lex fori*, and the law of France the *lex loci contractûs.*

LEX LOCI REI SITÆ. The law of the place in which a thing in question happens to be. Thus it is said that the descent of immoveable property is regulated accords to the *lex loci rei sitæ;* that is, according to the law of the place where it is situated.

LEX MERCATORIA signifies the law or custom of merchants. [CUSTOM; LAW MERCHANT.]

LEX TALIONIS. The law of retaliation. This was tried for one year in cases of malicious accusation in the reign of Edward III., it being enacted by stat. 37 Edw. 3, c. 18, that such as preferred malicious accusations against others to the king's great council should be put in sureties of taliation; that is, should, if the suggestion were found untrue, incur the same pain that the other should have had if it had been true. But, after one year's experience, this punishment of retaliation was rejected, and imprisonment adopted in its stead. 4 *Bl.* 12—14.

LEY. 1. *Lex*, a law. 2. An open field, meadow, or large pasture. *Cowel; Toml.*

LIBEL (Lat. *Libellus*). A little book. Hence it signifies—

1. The original declaration of an action in the civil law. *T. L.; Cowel.*

2. Articles drawn out in a formal allegation in the Ecclesiastical Court, setting forth the complainant's ground of complaint. 3 *Bl.* 100; 3 *Steph. Com.* 314.

3. The charge on which, in Scotland, a civil or criminal prosecution takes place. *Bell.*

4. An obscene, blasphemous, or seditious publication, whether by printing, writing, signs, or pictures. 4 *Bl.* 150, 151; 4 *Steph. Com.* 259, 260.

5. A defamatory publication upon a person by writings, pictures, or the like. All contumacious matter that tends to degrade a man in the opinion of his neighbours, or to make him ridiculous, will, if published, amount to libel. Thus libel differs from slander, in that slander consists in oral defamation only, whereas a libel must consist of matter published; also the scope of the offence of libel is more extensive than that of slander. Libel may be punished criminally, whereas a person guilty of slander can only be proceeded against civilly. 3 *Bl.* 125, 126; 4 *Bl.* 150, 151; 3 *Steph. Com.* 381—383; 4 *Steph. Com.* 258. [DEFAMATION; FOX'S ACT; SLANDER.]

LIBERA CHASEA HABENDA. A writ judicial, formerly granted to a man for a free chase belonging to his manor, after he had, by a jury, proved it to belong to him. *Reg. Orig.* 36, 37; *Cowel.* [FRANK-CHASE.]

LIBERAM LEGEM AMITTERE. To lose the *status* of a free citizen, and to become infamous. 3 *Bl.* 340, 404; 4 *Bl.* 348; 4 *Steph. Com.* 239, 413, 415. [AMITTERE LEGEM TERRÆ; FRANK LAW.]

LIBERATE (deliver ye). An old writ issuing out of the Chancery to the treasurer, chamberlains, and barons of the Exchequer, for the payment of any annual pension, or other sums granted under the Great Seal; or sometimes to the sheriff, for the delivery of land and goods taken upon forfeits of recognizance. It might also be directed to a gaoler for the delivery of a prisoner that had put in bail for his appearance. *T. L.; Cowel.*

LIBERATIO. Money, meat, drink, and clothes yearly delivered by a lord to his domestic servants. *Toml.*

LIBERTATE PROBANDA. A writ that lay for such as were challenged for slaves, and offered to prove themselves free. It was directed to the sheriff, that he might take security of them, for the proving of their freedom before the jus-

LIBERTATE PROBANDA—*continued.*

tices of assize, and provide that in the meantime they were unmolested. *T. L.; Cowel.* [NATIVO HABENDO.]

LIBERTATIBUS ALLOCANDIS. A writ that lay for a citizen or burgess, who, contrary to the liberties of the city or town to which he belonged, was impleaded before the king's justices, &c. The writ lay for the purpose of enabling him to have his privilege allowed. *Cowel.*

LIBERTATIBUS EXIGENDIS IN ITINERE. A writ whereby the king willed the justices in eyre to admit of an attorney, for the defence of another man's liberty before them. *Cowel.* [EYRE.]

LIBERTIES, or FRANCHISES, are royal privileges subsisting in the hands of subjects; also districts in regard to which such privileges have been granted by the Crown to individuals, conferring on them or their bailiffs the exclusive jurisdiction of executing legal process therein. Such districts are, in consequence, exempt from the sheriff's jurisdiction; but the practical importance of this exemption is diminished by the fact that it is now usual to insert a *non omittas* clause in the writs directed to the sheriff ("that you omit not by reason of any liberty within your bailiwick," &c.), specially authorizing him to enter into such privileged places. And by stat. 13 & 14 Vict. c. 105, a liberty may now, on petition to the Crown by the Court of Quarter Sessions, be made to merge for the future in the general county jurisdiction. 2 *Steph. Com.* 630. [LIBERTY.]

LIBERTY. A privilege held by grant or prescription, whereby a man enjoys some favour beyond ordinary subjects. *T. L.; Cowel.* [See preceding Title.]

LIBERTY TO HOLD PLEAS signifies to have a court of one's own, and to hold it before a mayor, bailiff, &c. *Toml.*

LIBERUM TENEMENTUM. A freehold. [FREEHOLD.]

LICENCE. A power or authority to do some act which, without such authority, could not lawfully be done.

LICENCE TO ARISE (Lat. *Licentia surgendi*). A liberty anciently given by the court to a tenant (that is, a defendant in a *real action*) [ACTIONS REAL AND PERSONAL], to arise out of his bed, after he had caused himself to be "essoined *de malo lecti*," *i. e.*, had excused himself from appearing to the action on the ground of being in ill-health, and confined to his bed. For the tenant might not in that case go out of his chamber till he had been viewed by knights appointed to see whether he had caused himself to be essoined deceitfully; in other words, whether he was shamming or not. *Cowel.* [ESSOIGN.]

LICENCE TO ASSIGN A LEASEHOLD. [DUMPOR'S CASE.]

LICENCE TO MARRY. [MARRIAGE LICENCE.]

LICENSING ACTS. This expression is applied by Hallam (*Const. Hist. ch.* 13) to Acts of Parliament for the restraint of printing, except by licence. It may also be applied to any Act of Parliament passed for the purpose of requiring a licence for doing any act whatever.

But when we speak of the Licensing Acts, we generally mean the Acts regulating the sale of intoxicating liquors. These Acts are of two kinds. The first class of these enactments has in view the subject of revenue, and requires excise licences to be taken out for the sale of certain liquors. The second class has in view the proper regulation of the places where such sale is carried on, and the prevention of the abuses to which they are naturally liable. By these Acts, a magistrate's licence is required, in addition to the excise licence. The statutes of the latter and more important class, now wholly or partially in operation, are the following:—

1. Stat. 9 Geo. 4, c. 61, being the Intoxicating Liquors Licensing Act, 1828.
2. Stat. 32 & 33 Vict. c. 27, being the Wine and Beerhouse Act, 1869.
3. Stat. 33 & 34 Vict. c. 29, being the Wine and Beerhouse Act Amendment Act, 1870.
4. Stat. 35 & 36 Vict. c. 94, being the Licensing Act, 1872.
5. Stat. 37 & 38 Vict. c. 49, being the Licensing Act, 1874, for England.
6. Stat. 37 & 38 Vict. c. 69, being the Licensing Act, 1874, for Ireland.

See 3 *Steph. Com.* 194–201.

LICENTIA CONCORDANDI. [FINE, I.]

LICENTIA LOQUENDI. A licence to imparl. 3 *Bl.* 299. [IMPARLANCE.]

LICENTIA SURGENDI. [LICENCE TO ARISE.]

LICENTIA TRANSFRETANDI. A writ or warrant directed to the keepers of the port at Dover, &c, willing them to let

LICENTIA TRANSFRETANDI—*continued.* some pass quietly beyond sea, who had obtained the king's licence thereto. *Reg. Orig.* 193; *Cowel.* See also 1 *Bl.* 270, 271; 2 *Steph. Com.* 503, 504.

LIDFORD LAW. A proverbial speech, meaning as much as to hang men first, and judge them afterwards. *Cowel.*

LIE. 1. An action is said *to lie*, if it is legally maintainable.

2. See also the following Titles.

LIE IN FRANCHISE. Waifs, wrecks, estrays, and the like, which the persons entitled thereto may seize without the aid of a court, are said to *lie in franchise.* 3 *Bl.* 15; 3 *Steph. Com.* 258.

LIE IN GRANT. To *lie in grant*, when said of property, means to be capable of passing by deed of grant, as opposed to the passing of property by physical delivery. [FEOFFMENT; GRANT, 1; LEASE AND RELEASE, 2; LIE IN LIVERY.]

LIE IN LIVERY. To *lie in livery* is to be capable of passing by physical delivery. [CORPOREAL PROPERTY; FEOFFMENT; LIE IN GRANT.]

LIEGE is a word borrowed from the feudists, and hath two significations in the common law; sometimes being used for *liege lord*, by which is meant the king, who acknowledgeth no superior, and to whom allegiance is due. Sometimes it is used for *liege man*, who is one that oweth allegiance to his liege lord. *Skene; Cowel;* 1 *Bl.* 367; 2 *Steph. Com.* 400. [ALLEGIANCE.]

LIEGE HOMAGE. Homage which, when performed by one sovereign prince to another, included fealty and services, as opposed to *simple homage*, which was a mere acknowledgment of tenure. 1 *Bl.* 367; 2 *Steph. Com.* 400. [HOMAGE.]

LIEGE POUSTIE (Lat. *Legitima potestas*). A state of health, implying a lawful power of disposing of property, in contradistinction to "deathbed;" death-bed dispositions being formerly void by the law of Scotland. *Bell.* [REDUCTION EX CAPITE LECTI.]

LIEN. 1. As applied to personalty, a lien is understood to be the right of a bailee to retain the possession of a chattel entrusted to him until his claim upon it be satisfied. 2 *Steph. Com.* 83; *Sm. Man. Eq.* [BAILMENT; GENERAL LIEN; PARTICULAR LIEN.]

2. As applied to realty, a *vendor's lien* for unpaid purchase-money is his right to enforce his claim upon the land sold; a right which is recognized in a court of equity, subject to the doctrines of that court for the protection of *bonâ fide* purchasers for valuable consideration without notice. *Sm. Man. Eq.*

LIEU CONUS. A castle, manor, or other notorious place, well known and generally taken notice of by those that dwell about it. *Toml.*

LIEUTENANCY, COMMISSION OF. A commission for mustering the inhabitants of a district for the defence of the country. These commissions of lieutenancy were introduced by the Tudors, and superseded the old commissions of array. 1 *Bl.* 411, 412; 2 *Steph. Com.* 585, 586.

LIEUTENANT (Lat. *Locum tenens*) signifieth him that occupieth the king's or any other person's place, or representeth his person; as the Lord Lieutenant of Ireland. Especially is it used of a military officer of a company, next in command to the captain. *Cowel.*

LIFE ASSURANCE. [INSURANCE. See also next Title.]

LIFE ASSURANCE COMPANIES ACTS:—

1. Stat. 30 & 31 Vict. c. 144, passed in 1867, by which a party entitled to a life assurance policy by assignment or other derivative title, and having a right *in equity* to give a discharge to the insurance company, is enabled to sue *at law* thereon in his own name.

2. Stat. 33 & 34 Vict. c. 61, passed in 1870, by which life assurance companies are placed under the superintendence of the Board of Trade, and are, moreover, required to furnish annual statements of their accounts to each shareholder and policy holder. 2 *Steph. Com.* 135, 136.

3. Stat. 34 & 35 Vict. c. 58, passed in 1871.

4. Stat. 35 & 36 Vict. c. 41, passed in 1872. [NOVATION.]

LIFE ESTATE. [ESTATE.]

LIFERENT. A rent which a man receives for term of life or for sustentation of life. *Cowel.* The word is of common use in the law of Scotland, and signifies a right which entitles a person to use and enjoy property during life, without destroying or wasting its substance. The proprietor is called the *fiar;* the subject of the property, which is either a sum of money or heritage, is called the *fee;* and the person in possession the *liferenter. Bell.*

LIFERENTER. A tenant for life. [See preceding Title.]

LIGAN. Goods sunk in the sea, but tied to a buoy, in order to be found again. 1 *Bl.* 292, 293; 2 *Steph. Com.* 542. [LAGAN.]

LIGEANCE, LIGEANCY. The same as *allegiance*. [ALLEGIANCE.]

LIGHTS. The right which a man has to have the access of the sun's rays to his windows, free from any obstruction on the part of his neighbours. 1 *Steph. Com.* 660, 661. It is a species of easement. [EASEMENT.] This is sometimes spoken of as "the right to light and air;" sometimes as "ancient lights," because the possessor must have enjoyed them for a certain time before claiming the right in question. This period is now twenty years. *Stat.* 2 & 3 *Will.* 4, *c.* 71, *s.* 3; 1 *Steph. Com.* 691, 692.

LIGIUS. Liege. Thus, *homo ligius* is a liege man; *dominus ligius*, a liege lord. 1 *Bl.* 367; 2 *Steph. Com.* 400. [LIEGE.]

LIGNAGIUM. The right of cutting fuel in the woods. *Toml.*

LIMIT. [LIMITATION OF ESTATES.]

LIMITATION. [See the two following Titles.]

LIMITATION OF ESTATES. The "limitation" of an estate is the marking out, in a deed or other instrument in writing, of the estate or interest which a person is intended to hold in any property comprised therein. Thus when it is said, with reference to a conveyance to A. and his heirs, that the word *heirs* in a deed is a word of *limitation* and not of *purchase*, it means that the word *heirs* marks out the nature of the estate taken by A., which is an estate in fee simple; and that the *heirs* of A. take nothing *directly* (*i. e.*, take nothing "by purchase") under such a "limitation." [RULE IN SHELLEY'S CASE]

A limitation is also spoken of as a *condition in law*, as opposed to a *condition in deed*. 2 *Bl.* 155. Thus, when an estate or interest in land is so expressly confined and limited by the words of its creation that it cannot endure beyond a particular contingency, this is a *limitation* or *condition in law;* as when land is granted to a man *so long as* he is parson of Dale, or *while* he continues unmarried, &c. The estate ceases when, in the one case, the tenant ceases to be parson of Dale, or when, in the other, he marries. On the other hand, a *condition in deed* is where an estate is granted expressly upon condition to be void upon a given contingency, or *so that* the grantee continues unmarried, or *provided he goes to York*, &c. 2 *Bl.* 155; 1 *Steph. Com.* 300.

LIMITATIONS, STATUTE OF. A statute of limitations is one which limits a time for bringing actions after a ground for action has arisen. Various statutes have been passed with this object; but the two principal statutes of limitation are stat. 21 Jac. 1, c. 16, passed in 1623, and 3 & 4 Will. 4, c. 27, passed in 1833. The former of these Acts limits the right to bring personal actions in general to *six years* after the cause of action accrued. Actions for assault and false imprisonment are limited to *four years;* and actions for slander to *two years*. But to these limitations there are exceptions in favour of persons labouring under disabilities. This statute was defective in many ways; but its defects have been for the most part remedied by subsequent statutes. By stat. 3 & 4 Will. 4, c. 27, actions to recover land must be brought within *twenty years* from the time that the right of action accrued; and arrears of rent cannot be recovered for a longer period back than *six years*. 3 *Steph. Com.* 460, 481.

An Act has also been passed in the year 1874 for still further shortening the period of recovering land (37 & 38 Vict. c. 57); but this Act will not come into operation until the 1st of January, 1879.

LIMITED ADMINISTRATION means an administration of certain specific effects of a deceased person, the rest being committed to others. 2 *Bl.* 506; 2 *Steph. Com.* 198. [ADMINISTRATION.]

LIMITED COMPANY. A company in which the liability of each shareholder is limited by the number of shares he has taken, so that he cannot be called on to contribute beyond the amount of his shares. But by sect. 4 of the Companies Act, 1867 (30 & 31 Vict. c. 131), the memorandum of association of such company may provide that the liability of the directors, manager, or managing director thereof, shall be unlimited. 3 *Steph. Com.* 22, 23; *Lindley on Partnership.*

LIMITED EXECUTOR. An executor of a deceased person for certain limited purposes, or for a certain limited time. [EXECUTOR.]

LIMITED LIABILITY. [LIMITED COMPANY.]

LIMITED OWNERS' RESIDENCE ACT. The stat. 33 & 34 Vict. c. 56, passed in 1870, and amended by 34 & 35 Vict. c. 84, passed in 1871. The object of these Acts

LIMITED OWNERS' RESIDENCE ACT—*con.* is to enable limited owners of settled estates to make permanent improvements on the same (as by the erection of a suitable residence for themselves), and to charge a portion of the expense on those who come after them. 1 *Steph. Com.* 253; *Wms. R. P. Part I. ch.* 1.

LINCOLN'S INN. One of the Inns of Court, within which the Chancery Courts are held, with the exception of the Rolls Court, which sits in Rolls Yard, Chancery Lane. [INNS OF COURT.]

LINEAL CONSANGUINITY. The relationship between ascendants and descendants; as between father and son, grandfather and grandson, &c. 2 *Bl.* 203.

LINEAL DESCENT. Direct genealogical descent. 2 *Bl.* 203.

LIQUIDATED DAMAGES. The ascertained amount, expressed in pounds, shillings, and pence, which an injured party has sustained, or is taken to have sustained. 2 *Steph. Com.* 111–113.

LIQUIDATOR. An officer appointed to conduct the winding-up of a company; to bring and defend actions and suits in its name, and to do all necessary acts on behalf of the company. 3 *Steph. Com.* 24. Where more than one liquidator is appointed, the Court of Chancery is to direct what acts are to be done by them or any one or more of them. *Stat.* 25 & 26 *Vict. c.* 89, *s.* 92; *Smith's Act. Law. ch.* 13.

LIS MOTA. A lawsuit put in motion.

LIS PENDENS. A pending suit; an expression used especially of pending suits relating to land, as affecting the title to the land in question. 3 *Steph. Com.* 667, *n.*; *Wms. R. P. Part I. ch.* 3.

LIT DE JUSTICE. A bed of justice. In the Middle Ages, the "bed of justice" was the throne on which the king sat in the parliament of Paris, when he held a solemn sitting there. Hence the word is used for the sitting itself. *Littré.*

LITE PENDENTE. While a suit is pending. [LIS PENDENS.]

LITERÆ CLAUSÆ. [CLOSE WRITS.]

LITERÆ PATENTES. Letters patent. [CLOSE WRITS; LETTERS PATENT.]

LITERARY AND SCIENTIFIC INSTITUTIONS ACT, 1854. The stat. 17 & 18 Vict. c. 112, being an Act for relaxing the law of mortmain in favour of literary and scientific institutions. 1 *Steph. Com.* 461, *n.*; 3 *Steph. Com.* 104, 105. [MORTMAIN.]

LITIGIOUS. A church is said to be *litigious*, when two rival presentations are offered to the bishop upon the same avoidance of the living. 3 *Bl.* 246; 3 *Steph. Com.* 417. [AVOIDANCE; JUS PATRONATUS.]

LITTLETON. A judge in the reign of Edward IV., who wrote a treatise of tenures, upon which Chief Justice Coke has written an extensive comment. *Cowel;* 1 *Bl.* 72, 73.

Littleton, otherwise called Lyttleton, was born at Frankley, in Worcestershire, in the early part of the fifteenth century. He pursued his studies at the Inner Temple, and the subject of his public reading there was the Statute of Westminster the Second, *De Donis conditionalibus.* [DE DONIS.] From Sir William Trussel, one of his clients, he had a grant of the manor of Sheriff Hales, in Staffordshire, for his life, "for his good and notable counsel." He was called to the degree of the Coif, July 2, 1453 [COIF], and was also appointed steward of the Court of Marshalsea of the King's Household. [COURT OF MARSHALSEA.] He received a patent as king's serjeant on May 13, 1455. In the first parliament of Edward IV. he was named as arbitrator in a difference between the Bishop of Winchester and his tenants; and on April 17, 1466, he was made a judge of the Court of Common Pleas. He died where he was born, at Frankley, on August 23, 1481, and was buried in Worcester Cathedral. *Foss' Judges of England.*

LIVERPOOL COURT OF PASSAGE. [PASSAGE COURT.]

LIVERY (Lat. *Liberatura*). 1. A cloth or stuff that a gentleman giveth in cloaks, coats, hats or gowns to his servants or followers. *Cowel.*

2. A delivery of possession to tenants who held of the king *in capite*, or by knight-service. *Cowel.* [IN CAPITE; KNIGHT-SERVICE.]

3. A writ which lay for the heir to obtain the possession or seisin of land at the king's hands. All such liveries are taken away by stat. 12 Car. 2, c. 24, passed in 1660. *Cowel.* [FEOFFMENT; LIVERY OF SEISIN.]

4. The members of a company of the City of London chosen out of the freemen. [LIVERYMAN.]

LIVERY OF SEISIN. A delivery of feudal possession, part of the ceremony called a *feoffment. Cowel.* [FEOFFMENT.]

LIVERYMAN. A member of a company in the City of London, chosen out of the freemen, to assist the master and wardens in the government of the company. *Toml.*

LLOYD'S. An association in the City of London, the members of which underwrite each other's policies. 2 *Steph. Com.* 129, *n.* [UNDERWRITER.]

In the time of William the Third and Queen Anne, when coffee houses in London were the fashionable places of resort, Lloyd's, at the corner of Abchurch Lane, Lombard Street, became the celebrated resort of seafaring men, and those that did business with them. There, and subsequently in Pope's Head Alley, and ultimately on the west side of the old Royal Exchange, to which place the coffee house was successively removed, congregated the underwriters of London, having formed at this centre an association among themselves, and with it a ramified system of agency radiating everywhere to the ports of the world.

Lloyd's underwriters now meet and carry on their business in subscription rooms over the Royal Exchange, still called Lloyd's. The affairs of the subscribers to these rooms are managed by a committee, chosen from their own number, called Lloyd's Committee, and presided over by a chairman. Agents (generally called Lloyd's agents) are appointed by the committee in all the principal ports of the world, whose business it is to forward accounts of all departures from and arrivals at their ports, as well as of losses and other casualties; and, in general, all such information as may be supposed to be of importance in guiding the judgment of the underwriters. These written accounts, which arrive daily, and almost hourly, from some part or other of the world, are posted up as fast as they come in, and are called Lloyd's Written Lists. These written lists are copied into three books, called Lloyd's Book, and are subsequently printed and filed, and copies are distributed to subscribers. *Arnould's Marine Insurance, 4th ed. by Maclachlan, pp.* 135, 136.

LLOYD'S BONDS are instruments under the seal of a company admitting the indebtedness of the company in a specified amount to the obligee, with a covenant to pay him such amount with interest on a future day. 2 *Steph. Comm.* 108, *n.* The validity of these instruments depends on the considerations for which they are given; they are *primâ facie* binding on the company as admissions of indebtedness; but when issued by railway companies for money borrowed after their statutory powers for borrowing are exhausted, they are altogether illegal and void. *Lindley on Partnership, 3rd ed. p.* 284.

LOAD-LINE. This word indicates the depth to which a ship is loaded so as to sink in salt water. By sect. 6 of The Merchant Shipping Act, 1875 (38 & 39 Vict. c. 88), it is provided that every owner of a British ship before entering his ship outwards from any port in the United Kingdom shall mark, in white or yellow on a dark ground, a circular disc, twelve inches in diameter, with a horizontal line eighteen inches in length, drawn through its centre, and the centre of this disc is to indicate the maximum load-line in salt water to which the owner intends to load the ship for that voyage.

LOCAL ACT OF PARLIAMENT. An Act relating to a parish, city, county, or other locality. The majority of such Acts (though public in their character) are passed as private bills, and are accordingly placed (with rare exceptions) among the Local and Personal Acts. If, however, an Act relating to a particular locality is passed as a *public bill*, it will in general be printed among the Public General Acts. [ACT OF PARLIAMENT; LOCAL AND PERSONAL ACTS; PUBLIC LOCAL ACTS.] The expressions "Local Bill" and "Local Act" are obviously elastic. In general they are applied to local measures of a *public* character, as the establishment of a market, pier or harbour. Bills relating to private estates are generally called *estate bills*, and, when passed into law, are included under the Private Acts.

LOCAL ACTION. An action founded on such a cause as refers necessarily to some particular locality, as in the case of trespasses to land. 3 *Bl.* 294; 3 *Steph. Com.* 366.

LOCAL AND PERSONAL ACTS. This expression is applied to the second category of Acts of Parliament as classified for publication, comprising generally Acts which have been passed as private bills, except that they receive the royal assent in the form of public acts. [LE ROY LE VEULT.] These Acts when passed are to be judicially noticed as public acts. *May, Parl. Pract. ch.* 28.

Sometimes, however, Acts of Parliament which have been passed as private

LOCAL AND PERSONAL ACTS—*contd.*

bills, are, if deemed specially important, printed amongst the "Public General Acts." On the other hand, there has grown up of late years a practice of printing among the "Local and Personal Acts" certain local Acts which have been passed as public bills. Such Acts have received the name of "Public Local Acts." [PUBLIC LOCAL ACTS.]

The subjects of the Local and Personal Acts have, in the Sessional Papers of the House of Lords, been classified as follows:—

1. Bridges and ferries. 2. Canals, rivers, navigation, tunnels. 3. Charitable foundations and institutions. 4. County affairs. 5. Drainages and embankments. 6. Ecclesiastical affairs. 7. Estates. 8. Fisheries. 9. Gaslight companies. 10. Harbours, docks, &c. 11. Town improvements. 12. Inclosures and allotments. 13. Markets and fairs. 14. Parish affairs. 15. Personal affairs. 16. Railways. 17. Small debts courts and courts of conscience. 18. Tithes. 19. Trading and other companies. 20. Turnpike and other roads. 21. Waterworks.

Acts, however, upon the above subjects are not at all exclusively to be found among the "Local and Personal Acts."

LOCAL COURTS are courts whose jurisdiction is confined to certain districts, as the county courts, police courts, &c.

LOCAL GOVERNMENT ACTS. The stats. 11 & 12 Vict. c. 63; 21 & 22 Vict. c. 98; 24 & 25 Vict. c. 61; and the 26 & 27 Vict. c. 17. 3 *Steph. Com.* 173, 177.

LOCAL GOVERNMENT BOARD. A department of the Government, established by stat. 34 & 35 Vict. c. 70, passed in 1871. To this department were transferred all the powers and duties of the Poor Law Board, which then ceased to exist, as well as certain powers that had been exercised by the Home Secretary, or in the Privy Council, under certain Acts of Parliament specified in the schedule to the above Act. 3 *Steph. Com.* 49, 176.

LOCAL MARINE BOARDS are boards established at certain seaports for carrying into effect the provisions of the Merchant Shipping Acts. Each of such boards consists of the mayor or provost, and the stipendiary magistrate; four members appointed by the Board of Trade from persons residing or having business at the port or within seven miles thereof; and six members elected by the owners of foreign-going ships and of home-trade passenger ships registered at that port. *Stat.* 17 & 18 *Vict. c.* 104, *s.* 110.

LOCALITY, in the law of Scotland, signifies:—1. The adjustment of the increase of a minister's stipend among the several heritors liable to pay it. [DECREET OF LOCALITY.]

2. Lands "secured to a widow by her contract in liferent," *i. e.*, secured to her by her marriage settlement for the period of her life. *Bell.*

LOCATIO. The contract of letting and hiring, also called *locatio-conductio; locatio* expressing the letting out to hire, and *conductio* the hiring. This contract is a species of bailment. [BAILMENT.]

LOCATIO OPERIS FACIENDI. The letting to hire of work to be done; a species of bailment, which consists in one man delivering to another any article of property for the latter to expend work and labour upon it; or, in other words, *let his work to hire;* as when one gives a tailor a coat to be repaired. [BAILMENT.]

LOCATIO OPERIS MERCIUM VEHENDARUM. The hire of a person's labour for the purpose of carrying goods or merchandise from one place to another.

LOCATIO REI. The letting of anything to hire for temporary use. This also is a species of bailment. [BAILMENT.]

LOCKE KING'S ACTS. 1. The stat. 17 & 18 Vict. c. 113, passed in 1854, for making a mortgage debt of a deceased person a burden in the first instance upon the land subject to the mortgage, in the absence of any declaration having been made by the deceased to the contrary.

2. The stat. 30 & 31 Vict. c. 69, passed in 1869, which extends the above doctrine to the case of a vendor's lien for unpaid purchase-money against the estate of a deceased purchaser, described in the Act as a "testator." See 2 *Steph. Com.* 202, *n.*; *Sm. Man. Eq.*

LOCKMAN. An officer in the Isle of Man, appointed to execute the order of the governor, like our under sheriff. *Toml.*

LOCUM TENENS. A deputy or substitute. [LIEUTENANT.]

LOCUS IN QUO. The place in which anything is alleged to be done. *Toml.*

LOCUS PŒNITENTIÆ. A place of repentance; a phrase generally applied to

LOCUS PŒNITENTIÆ—*continued.*

a power of drawing back from a bargain before anything has been done to confirm it in law. *Toml.*

LOCUS SIGILLI. The place of the seal; being the place reserved on the fair copy of a document for the seal of any party intended to execute the same. The initials (L.S.) are also used in a copy of a document, to indicate the place where the seal was in the original document.

LOCUS STANDI (a place of standing) signifies a right of appearance in a court of justice, or before Parliament, on any given question. In other words, it signifies a right *to be heard*, as opposed to a right *to succeed on the merits.*

LODE MANAGE. The hire of a pilot, for conducting a ship from one place to another. *Cowel.*

LODGING HOUSE ACTS are—1. Stat. 14 & 15 Vict. c. 28, passed in 1851. 2. Stat. 14 & 15 Vict. c. 34, passed in 1851. 3. Stat. 16 & 17 Vict. c. 41, passed in 1853. 4. Stat. 18 & 19 Vict. c. 121, s. 43, passed in 1855. 5. Stat. 18 & 19 Vict. c. 132, passed in 1855. 6. Stat. 31 & 32 Vict. c. 130, passed in 1868.

LOG or **LOG BOOK** is a journal kept by the chief mate or first officer of a ship, in which the situation of the ship from time to time, the winds, weather, courses, and distances, the misconduct or desertion of any of the crew, and every thing of importance, are carefully noted down. That part of the log-book relating to transactions while the ship is in harbour is termed the *harbour-log;* and that part relating to what happens while the ship is at sea, is termed the *sea-log. Young's Naut. Dict.*

An *official log-book* is a book required by law to be kept in every ship (except those employed exclusively in the coasting trade of the United Kingdom) in a form sanctioned by the Board of Trade, either in connection with, or distinct from, the ordinary log-books. Every entry in every official log must be made as soon as possible after the occurrence to which it relates. Among the occurrences which must be entered are offences committed by any of the crew, and punishments inflicted for the same; also every case of illness or injury happening to any member of the crew, every death happening on board, and the cause thereof, every birth happening on board, every marriage taking place on board, with the names and ages of the parties, &c. *Stat.* 17 *&* 18 *Vict. c.* 104, *ss.* 280, 282; 3 *Steph. Com.* 153.

LONDON AND MIDDLESEX SITTINGS. The *nisi prius* sittings held at Westminster or in the Guildhall of London for the trial of causes arising for the most part in London or Middlesex. 3 *Steph. Com.* 514; *Stat.* 36 *&* 37 *Vict. c.* 66, *s.* 30. By the Judicature Act, 1875, 1st Sched. Ord. LXI. r. 1, the sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice are to be four in every year: (1) The Michaelmas sittings, from the 2nd of November to the 21st of December. (2) The Hilary sittings, from the 11th of January to the Wednesday before Easter. (3) The Easter sittings, from the Tuesday after Easter week to the Friday before Whitsunday. (4) The Trinity sittings, from the Tuesday after Whitsun week to the 8th of August.

LONDON COURT OF BANKRUPTCY. [BANKRUPTCY COURT.] By sect. 9 of the Judicature Act, 1875, the London Court of Bankruptcy is not to be united or consolidated with the Supreme Court of Judicature.

LONG PARLIAMENT is the name generally given to the Parliament which met in November, 1640, under Charles I., and was dissolved by Cromwell on the 10th of April, 1653. The name "Long Parliament" is, however, also given to the Parliament which met in 1661, after the restoration of the monarchy, and was dissolved on the 30th of December, 1678. This latter Parliament is sometimes called, by way of distinction, "the Long Parliament of Charles II."

LONG VACATION. The period from the 10th of August to the 24th of October. *Judicature Act*, 1875, *1st Sched. Ord. LXI. r.* 2; 3 *Steph. Com.* 485.

LOQUELA. An imparlance. [IMPARLANCE.]

LOQUELA SINE DIE. A respite in law to an indefinite time. *Toml.*

LORD ADVOCATE. [ADVOCATE, LORD.]

LORD AND VASSAL. The lord was the superior of whom a feud was held; and the vassal an inferior who had the use and possession of the same according to the terms of the grant by which he received it. 2 *Bl.* 53; 1 *Steph. Com.* 173. [FEE; FEUDAL SYSTEM; VASSAL.]

LORD CAMPBELL'S ACTS. 1. Stat. 6 & 7 Vict. c. 96, passed in 1843, for amending the law respecting defamatory words and libel. 3 *Steph. Com.* 382.

2. Stat. 9 & 10 Vict. c. 93, passed in 1846, for enabling the executors or administrators of persons killed by negligence to bring actions for the benefit of the wife, husband, parent, or children of the deceased, against the parties guilty of the negligence. 3 *Steph. Com.* 370, 371, *n*; *Lush's Pr.* 165.

3. Stat. 20 & 21 Vict. c. 83, passed in 1857, authorizing magistrates to issue warrants for the seizure of obscene books, papers, writings, or representations kept in some place for the purpose of being sold, distributed, lent on hire, or otherwise published for gain. 4 *Steph. Com.* 281.

LORD CHAMBERLAIN. [CHAMBERLAIN.]

LORD CHANCELLOR. [CHANCELLOR.]

LORD CRANWORTH'S ACT. The stat. 23 & 24 Vict. c. 145, passed in 1860, by which it is provided that certain clauses therein mentioned shall be deemed to apply to trust and mortgage deeds executed after the date of the Act (28th August, 1860), which do not contain any declaration to the contrary.

LORD DENMAN'S ACT. Stat. 6 & 7 Vict. c. 85, passed in 1843, for removing the disability of witnesses to give evidence on the ground of alleged interest. This Act does not apply to the *parties* themselves, whose evidence in ordinary civil cases was made admissible by stat. 14 & 15 Vict. c. 99, s. 2, passed in 1851. 3 *Steph. Com.* 534.

LORD ELLENBOROUGH'S ACT. The stat. 43 Geo. 3, c. 58, passed in 1803, for punishing with death various assaults upon and offences against the person.

This Act was repealed as regards England by stat. 9 Geo. 4, c. 31, passed in 1828; and, as regards Ireland, by stat. 10 Geo. 4, c. 34, passed in 1829.

LORD HIGH ADMIRAL. [ADMIRAL.]

LORD HIGH CONSTABLE. An officer who used to preside with the earl marshal in the Court of Chivalry. 3 *Steph. Com.* 335, *n*. The office was extinguished by the attainder of Stafford Duke of Buckingham in the reign of Henry VIII. 3 *Bl.* 68; 3 *Steph. Com.* 335, *n*. [COURT OF CHIVALRY.]

LORD HIGH STEWARD. [HIGH STEWARD.]

LORD IN GROSS. He that is lord, having no manor; as, for instance, the king in respect of his Crown. *T. L.; Cowel.* [GROSS.]

LORD JUSTICE. [LORD JUSTICE CLERK; LORD JUSTICE GENERAL; LORDS JUSTICES.]

LORD JUSTICE CLERK, in Scotland, is the judicial officer second in rank in the Court of Session, being the Chief Judge of the Second Division of the Inner House, and president of the Justiciary Court in the absence of the Lord Justice General. *Paterson.*

LORD JUSTICE GENERAL is the chief judge of the First Division of the Inner House of the Court of Session in Scotland, and chief of the Court of Session and Court of Justiciary. *Paterson.*

LORD KEEPER. The Keeper of the Great Seal, who is a lord by his office, and is of the Privy Council. Through his hands pass all commissions and grants under the Great Seal. By the English statute 5 Eliz. c. 18, the Lord Chancellor and Keeper have one and the same power: and since that statute there cannot be a Lord Chancellor and Lord Keeper at one and the same time. And accordingly the title of Lord Keeper is now almost a thing of the past, seeing the Lord Chancellor is created as such by the delivery of the Great Seal into his custody. *Toml.*

LORD LANGDALE'S ACT. The Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26).

LORD LIEUTENANT. 1. The Viceroy of the Crown in Ireland.

2. The principal officer of a county, originally appointed for the purpose of mustering the inhabitants for the defence of the country. It is at his recommendation that magistrates are appointed. 3 *Steph. Com.* 585, 586, 603.

LORD LYNDHURST'S ACTS. 1. The stat. 5 & 6 Will. 4, c. 54, passed in 1835, for making void *ab initio* marriages within the prohibited degrees. 2. The stat. 7 & 8 Vict. c. 45, passed in 1844, by which it was provided, in reference to dissenting meeting-houses, that when no particular religious doctrines or mode of worship should have been prescribed by the deed or instrument of trust, the usage of the congregation for twenty-five years should be taken as conclusive evidence of the doctrines and worship which might be properly observed in such meeting-house. 3 *Steph. Com.* 80.

LORD MAYOR. A title given to the principal magistrates of London, York, and Dublin.

LORD MAYOR'S COURT. A local court within the City of London, presided over by the Recorder, or, in his absence, by the Common Serjeant. By the stat. 20 & 21 Vict. c. clvii., passed in 1857, the practice and procedure of this court were amended, and its powers enlarged. 3 *Steph. Com.* 293, *n.*

LORD OF A MANOR. [COPYHOLD; MANOR.]

LORD ORDINARY is the judge of the Court of Session in Scotland, who officiates for the time being as the judge of first instance. *Darling on the Practice of the Court of Session.*

LORD PARAMOUNT. [PARAMOUNT.]

LORD PRIVY SEAL. One of the members of the Cabinet, through whose hands all charters, &c. pass before they come to the Great Seal. 2 *Steph. Com.* 458.

LORD ST. LEONARDS' ACTS. The stat. 22 & 23 Vict. c. 35, passed in 1859, and 23 & 24 Vict. c. 38, passed in 1860, for amending the law of property, and relieving trustees, and other miscellaneous purposes.

LORD TENTERDEN'S ACT. The stat. 9 Geo. 4, c. 14, passed in 1828, for the amendment and extension of the Statute of Frauds, and for other purposes. 2 *Steph. Com.* 56, 71. [FRAUDS, STATUTE OF.]

LORD TREASURER, otherwise called the Lord High Treasurer of England, was a high officer of State, who had the charge and government of the king's wealth contained in the Exchequer. He had the check of all the officers employed in collecting the customs and royal revenues: all the offices of the customs in England were in his gift and disposition; escheators in every county were appointed by him; and he made leases of lands belonging to the Crown: the Chancellor of the Exchequer being an under treasurer, and a check on the Lord Treasurer. *Toml.* The office of Lord Treasurer has now for a long time been entrusted to commissioners, who are called the Lords Commissioners of the Treasury. 2 *Steph. Com.* 528.

LORD WARDEN OF THE CINQUE PORTS. The principal officer of the cinque ports having the custody thereof, and having, until lately, a civil jurisdiction therein. 3 *Steph. Com.* 499, *n.* [CINQUE PORTS.]

LORDS' ACT. The stat. 32 Geo. 2, c. 28, passed in 1758, for the relief of insolvent debtors in prison; for their maintenance by creditors who insist upon detaining them in prison; and for requiring debtors under certain circumstances to make discovery of their property for the benefit of their creditors. This Act was called the Lords' Act, because it was introduced in the House of Lords. It has been partially repealed by stat. 30 & 31 Vict. c. 59, passed in 1867, and its operation has been further considerably restricted by the abolition of imprisonment for debt in ordinary cases, under sect. 4 of the Debtors Act, 1869 (32 & 33 Vict. c. 62.)

LORDS COMMISSIONERS. When a high public office in the State, formerly executed by an individual, is put into commission, the persons charged with the commission are called Lords Commissioners, or sometimes Lords or Commissioners simply. Thus we have, in lieu of the Lord Treasurer and Lord High Admiral of former times, the Lords Commissioners of the Treasury, and the Lords Commissioners of the Admiralty: and whenever the Great Seal is put into commission, the persons charged with it are called Commissioners or Lords Commissioners of the Great Seal.

LORDS COMMISSIONERS OF THE ADMIRALTY. [ADMIRAL; LORDS COMMISSIONERS.]

LORDS COMMISSIONERS OF THE TREASURY. [LORD TREASURER; LORDS COMMISSIONERS.]

LORDS, HOUSE OF. [HOUSE OF LORDS.]

LORDS JUSTICES. 1. Persons appointed to administer government temporarily during an emergency. 2 *Steph. Com.* 477; 3 *Steph. Com.* 331.

2. Two judges appointed, under stat. 14 & 15 Vict. c. 83, passed in 1851, to assist the Lord Chancellor in hearing appeals from the Master of the Rolls and the Vice Chancellors. They also heard appeals from the Chief Judge in Bankruptcy, and had original jurisdiction in lunacy. The Lords Justices sometimes sat separately from the Lord Chancellor, and sometimes with him. In the latter case the court was called the Full Court of Appeal. 3 *Steph. Com.* 331; *Haynes' Eq.; Hunt. Eq.*

By sect. 4 of the Judicature Act, 1875, the existing Lords Justices of Appeal

LORDS JUSTICES—*continued.*

are to be among the Judges of the new Court of Appeal under that Act.

There is one Lord Justice of Appeal for Ireland, with similar powers.

LORDS MARCHERS. [MARCHERS.]

LORDS OF JUSTICIARY. The judges of the Court of Justiciary in Scotland, being the principal criminal court of that country.

LORDS OF SESSION. The judges of the Court of Session.

LORDS SPIRITUAL. The bishops who have seats in the House of Lords: being the Archbishops of Canterbury and York, the Bishops of London, Durham, and Winchester, and twenty-one other bishops. 2 *Steph. Com.* 328. See also 1 *Bl.* 155.

LORDS TEMPORAL. The peers of the realm, that is, the members of the House of Lords other than the bishops. They consist of persons of the rank of nobility, whether as dukes, marquesses, earls, viscounts, or barons. Most of them sit in their own right, but, under the Acts of Union with Scotland and Ireland, there are sixteen Scottish representative peers elected for each Parliament to represent the Scottish nobility, and twenty-eight elected for life to represent the Irish nobility. 2 *Steph. Com.* 330, 331. See also 1 *Bl.* 157.

LOT. 1. A contribution or duty. *Toml.*

2. And, especially, the duty payable to the Queen or her lessee of the thirteenth part of leaden ore raised in the Derbyshire mines, within the jurisdiction of the Barmote Courts. The other mineral duty is called *cope*. *Cowel; Stat.* 14 & 15 *Vict. c.* 94, 1*st Sched. Art.* 9. [BARMOTE COURTS; COPE.]

LOT AND SCOT. [SCOT AND LOT.]

LOURGULARY. Casting any corrupt thing into water, or poisoning it. *Cowel.*

LOWBOTE. A recompence for the death of a man killed in a tumult. *Toml.*

LUCRI CAUSA. For the sake of gain.

LUNACY ACTS. 1. Stats. 16 & 17 Vict. c. 70, and 25 & 26 Vict. c. 86, as regards commissions of lunacy issued by the Lord Chancellor. 2 *Steph. Com.* 511—514.

2. Stats. 16 & 17 Vict. c. 97, 18 & 19 Vict. c. 105, 19 & 20 Vict. c. 87, 25 & 26 Vict. c. 111, and 26 & 27 Vict. c. 110, as regards lunatic asylums. 3 *Steph. Com.* 113.

LUNAR MONTH signifies in English law a month of weeks or twenty-eight days. 2 *Bl.* 141; 1 *Steph. Com.* 283. But when we speak of the *lunar month* of Mahommedan and other Eastern systems, we mean periods of twenty-nine and thirty days alternately, according to the changes of the moon. *Wilson's Gloss. Ind. s. v.* HIJRA.

LUNATIC is defined by Blackstone as a person who hath had understanding, but by disease, grief, or any other cause, has become *non compos mentis*, that is, of mind so unsound as to be incapable of managing himself or his affairs. 1 *Bl.* 304; 2 *Steph. Com.* 510.

But by 16 & 17 Vict. c. 70, s. 2, passed in 1853, it is enacted that in that statute the word "lunatic" shall be construed to mean any person found by inquisition idiot, lunatic, or of unsound mind, and incapable of managing himself or his affairs. 2 *Steph. Com.* 510, *n.*

LUNATIC ASYLUM. A house established for the reception of the insane. Such houses are either—

1. For the public benefit at the public expense;

2. For the public benefit by endowment of charitable donors; or

3. Private madhouses kept by individuals for their own profit. 3 *Steph. Com.* 112.

LUNATIC ASYLUMS ACTS. [LUNACY ACTS, 2.]

LUNATICO INQUIRENDO. An ancient writ to inquire whether a person be a lunatic. At the present day a commission may be granted by the Lord Chancellor under stat. 16 & 17 Vict. c. 70, in the nature of this writ. 2 *Steph. Com.* 511.

LUPINUM CAPUT GERERE. To bear a wolf's head; that was, in former times, to be outlawed, and have one's head exposed like a wolf's, with a reward to him that should bring it in. *Toml.* [CAPUT LUPINUM; OUTLAWRY.]

LUSHBOROW or **LUSBURGH** was a base sort of coin used in the days of King Edward III.; coined beyond sea to the likeness of English money, and brought in to deceive the King and his subjects. By the Statute of Treasons, 25 Edw. 3, st. 4, c. 2, it was made treason for any man wittingly to bring any such into the realm. *T. L.; Cowel.*

LYEF-YELD, LEF-SILVER. A small fine or pecuniary composition, paid by a customary tenant to a lord, for leave to plough or sow. *Toml.*

LYING BY. Neglecting to assert rights, or allowing persons to deal with land or other property as if one had no interest in it; as when a mortgagee allows his mortgagor to retain the title deeds and raise money upon a fresh mortgage of the land, without notice to the new mortgagee of the prior mortgage.

LYING IN FRANCHISE. [LIE IN FRANCHISE.]

LYING IN GRANT. [GRANT; INCORPOREAL HEREDITAMENT; LIE IN GRANT.]

LYING IN LIVERY. [LIE IN LIVERY.]

LYNCH LAW. The execution of summary justice by a mob without reference to the process of ordinary municipal law.

Lynch law differs from *martial law*, in that martial law is executed by military authority, and lynch law by persons having no authority whatever. Lynch law differs, on the other hand, from *mob law*, in that lynch law disregards the *forms* and the *process* of ordinary law, while maintaining its *substance*, at least in intention; whereas mob law disregards both *form* and *substance*.

LYNDEWODE was a doctor both of the civil and canon law, and Dean of the Arches. In the year 1422 he was sent by king Henry V. as ambassador to Portugal. *Cowel.*

LYON KING AT ARMS. An officer who takes his title from the armorial bearing of the Scotch king, the lion rampant. His ancient duty was to carry messages to foreign States. He has jurisdiction under an Act of 1592 to inspect the arms and ensigns armorial of noblemen and gentlemen in the kingdom of Scotland, and to give proper arms to virtuous and well-deserving persons. *Bell.*

LYON'S INN. One of the Inns of Chancery which formerly existed. 1 *Steph. Com.* 19, *n.* [INNS OF CHANCERY.]

LYTTLETON. [LITTLETON.]

M. C. An abbreviation for Magistrates' Cases. This abbreviation is used in reference to the series, in the *Law Journal Reports*, of the cases connected with the duties of magistrates.

M. W. P. ACTS. [MARRIED WOMEN'S PROPERTY ACTS.]

MACEGRIEFS (Lat. *Macecarii*) were such as willingly bought and sold stolen flesh, knowing the same to be stolen. *Cowel.*

MACER. A macebearer; an officer attending upon the Court of Session in Scotland. *Bell.*

MACNAGHTEN'S CASE. This case is a leading case on the subject of the criminal responsibility of insane persons. The accused, Daniel Macnaghten, was indicted for the murder of Mr. Edward Drummond (the private secretary of the late Sir Robert Peel) by shooting him. The plea of insanity was set up, and evidence was given for the accused, that persons, of otherwise sound mind, might be affected by morbid delusions: that the prisoner was in that condition: that he was not capable of exercising any control over acts which had connexion with his delusion: and that it was of the nature of his disease to go on gradually until it had reached a climax, when it burst forth with irresistible intensity. The judge told the jury that the question was whether the prisoner, at the time he committed the crime, had or had not the use of his understanding, so as to know that he was doing a wrong or wicked act. The jury returned a verdict of not guilty on the ground of insanity.

A discussion arose in the House of Lords on Macnaghten's acquittal, and the judges, in answer to the questions put to them by the Lords, gave it as their opinion—

1. That a party doing a criminal act is punishable according to the nature of the crime committed, if he is aware, at the time of committing such crime, that he is acting contrary to the law of the land, notwithstanding that the act was done under the influence of an insane delusion, with the view of redressing or revenging some supposed grievance or injury, or of producing some public benefit.

2. That every man is presumed to be sane, so as to be responsible for his crimes, until the contrary be proved; and that, to establish a defence on the ground of insanity, it must be clearly proved that the accused was labouring under such a defect of reason as not to know the quality of the act he was doing, or, if he did know it, that he did not know that he was doing wrong.

3. That a person labouring under a partial delusion must be considered, in

MACNAGHTEN'S CASE—*continued.*

reference to responsibility, as if the supposed facts with reference to which the delusion exists were real.

4. That where insanity is alleged on the part of the accused, it is not strictly proper, though it may often be convenient, for counsel to ask a medical man, who never saw the prisoner previous to the trial, but was present during the trial, what is his opinion as to the prisoner's state of mind at the time of committing the alleged crime. *Ann. Reg.* A.D. 1843; 10 *Clark & Fin.* 200.

MADRAS REGULATIONS. Regulations for the government of the Madras Presidency. *Clarke's Madras Regulations.*

As in the case of Bombay [BOMBAY REGULATIONS], the legislation affecting Madras from the year 1834, inclusive, is comprised in "Acts passed by the Governors General of India in Council." [See also BENGAL REGULATIONS.]

MAEGBOTE. A recompence for the slaying or murder of a kinsman. *T. L.; Cowel.*

MAGISTRATE. A person entrusted with the commission of the peace for any county, city, borough or other jurisdiction. [CONSERVATOR OF THE PEACE; JUSTICE OF THE PEACE.]

MAGNA ASSISA ELIGENDA. A writ formerly directed to summon four lawful knights before the justices of assize, there upon their oaths to choose twelve knights of the vicinage, &c., to pass with them upon the *great assise* between A., plaintiff, and B., defendant. *T. L.; Cowel;* 3 *Bl.* 351. Now obsolete. 3 *Steph. Com.* 392, *n.*; 4 *Steph. Com.* 412, *n.* [GRAND ASSISE.]

MAGNA CHARTA was a charter granted by King John in the year 1215, at Runningmead, and confirmed in Parliament in the 9th year of Henry III., A.D. 1225, and again by the *Confirmatio Chartarum*, in the 25th year of Edward I., A.D. 1297. [CONFIRMATIO CHARTARUM.]

It was called *Magna Charta*, either because it contained the sum of all the liberties of England, or else because there was another charter, called *Charta de Forestâ*, established with it, which was the less of the two. *Cowel;* 1 *Bl.* 127, 128; 1 *Steph. Com.* 68, 184, 196. [CARTA DE FORESTA.]

This Great Charter contains thirty-eight chapters on various subjects, especially with reference to landed estates and their tenures. Many of its provisions are now repealed. The famous 29th chapter, providing that no *freeman* should be disseised of his *freehold*, &c., clearly applied to none but such as were possessed of freeholds, and was not intended in any manner to protect villeins or persons of servile rank.

MAIDEN ASSIZE is defined in *Tomlins* as an assize at which no person is *condemned to die;* but at the present day, when the number of capital offences is so much fewer than it was, a maiden assize is understood to be one at which there are no prisoners to be tried.

MAIHEM or **MAYHEM.** The violently depriving another of the use of a member proper for his defence in fight. *T. L.; Cowel;* 3 *Bl.* 121; 4 *Bl.* 205; 3 *Steph. Com.* 373; 4 *Steph. Com.* 79.

MAILE was anciently a kind of money, but the word also signifies any proportion of grain or other rent. *Cowel.* [BLACK MAIL; MAILLS AND DUTIES.]

MAILLS AND DUTIES, in the law of Scotland, are the rents of an estate, whether in money or victual; hence an action for the rents of an estate is termed an action of maills and duties. *Bell.*

MAIMING. [MAIHEM.]

MAINOUR or **MEINOUR.** Anything that a thief taketh or stealeth. To be taken with the *mainour* is to be taken with the thing stolen about him, *in manu* (in his hand). *Cowel;* 3 *Bl.* 71; 4 *Bl.* 307, 347; 4 *Steph. Com.* 373, 414.

MAINOVRE (*Main-œuvre*, handywork, whence our word *manœuvre*). The word is used to signify some trespass committed by a man's handywork in a forest, as putting an engine to catch deer; also to occupy and *manure* land. *Cowel;* 3 *Bl.* 71.

MAINPERNABLE signifies that which may be delivered to mainpernors. *T. L.; Cowel.* [MAINPERNORS.]

MAINPERNORS (Lat. *Manucaptores*). Those persons to whom a person is delivered out of custody or prison, and they become security for his appearance. *Cowel.* [MAINPRISE.] Mainpernors differ from bail, in that a man's bail may imprison him, or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are barely sureties for his appearance at the day. Again, bail are only sureties that the party be answerable for the special matter for which they stipulate; mainpernors are bound to produce him to answer all charges whatsoever. 3 *Bl.* 128.

MAINPORT. A small duty which, in some places, parishioners pay to their rector in lieu of tithes. *Cowel.*

MAINPRISE (Lat. *Manucaptio*). A writ directed to the sheriff, commanding him to take sureties for a prisoner's appearance, usually called *mainpernors*, and to set him at large. *T. L.; Cowel;* 3 *Bl.* 128. [MAINPERNORS.]

MAINTAINORS. Persons guilty of *maintaining* a lawsuit. *Cowel.* [MAINTENANCE, 1.]

MAINTENANCE. 1. An officious intermeddling in a suit that in no way belongs to one, by maintaining or assisting either party, with money or otherwise, to prosecute or defend it. *T. L.; Cowel;* 4 *Bl.* 134, 135; 4 *Steph. Com.* 236.

2. Providing children, or other persons in a position of dependence, with food, clothing, and other necessaries. 1 *Bl.* 446—450; 2 *Steph. Com.* 288—299. [See next Title.]

MAINTENANCE AND EDUCATION CLAUSES, in a deed or will wherein property is conveyed or bequeathed upon trust, are clauses empowering the trustee or trustees to expend a portion of the trust property in the maintenance and education of the children who are to participate in the property when they come of age.

MAJORA REGALIA. The King's dignity, power, and royal prerogative; as opposed to his *revenue*, which is comprised in the *minora regalia.* 1 *Bl.* 240, 241; 2 *Steph. Com.* 475.

MAJUS JUS. An old writ, in some manors, issued for directing the trial of a disputed right to land. *Toml.*

MAKE. To perform or execute. Thus, to *make* services is to perform them; to *make* oath is to take an oath. *Cowel.*

MAKING UP THE ISSUE. This is done, after issue has been joined in an action, by the plaintiff's solicitor drawing up a transcript on paper of the pleadings, and delivering it to the defendant's solicitor, that he may ascertain it to be a correct copy of the pleadings which have actually taken place. This transcript is called the *issue.* 3 *Steph. Com.* 515.

By the Judicature Act, 1875, 1st Sched. Ord. XXVI., if the statement of claim or defence or reply does not sufficiently define the issues of fact, those issues may, if the parties differ, be settled by the judge.

MALA IN SE are defined by Blackstone as being such unlawful acts as contract no additional turpitude from being declared unlawful by the legislature. He opposes them to *mala prohibita*, which, independently of human law, are in themselves indifferent, and become right or wrong according as the legislature sees proper. As regards the latter, he goes so far as to maintain that conscience is no farther concerned than by directing a submission to the penalty in case of breach of those laws, except where it involves any degree of public mischief or private injury. 1 *Bl.* 54—58. The latter saving clause would seem to deprive his doctrine of all intelligible meaning; and the doctrine is one which has not been endorsed by his commentators. See *Coleridge's note;* 1 *Steph. Com.* 38, 39; *Aust. Jur., Lect. XXXII.*

MALA PRAXIS is improper or unskilful management of a case by a surgeon, physician, or apothecary, whereby a patient is injured; whether it be by neglect, or for curiosity and experiment. 3 *Bl.* 122; 3 *Steph. Com.* 376, 377.

MALA PROHIBITA. [MALA IN SE.]

MALESWORN. Forsworn. *Cowel.*

MALFEASANCE. The commission of some act which is in itself unlawful, as opposed to *nonfeasance*, which is the omission of an act which a man is bound by law to do; and to *misfeasance*, which is the improper performance of some lawful act. *Cowel;* 3 *Steph. Com.* 363. [MISFEASANCE; NONFEASANCE.]

MALICE. 1. The wicked and mischievous purpose which is of the essence of the crime of murder. This kind of malice is also called "malice aforethought," "malice and forethought," "malice prepense." Blackstone speaks of it as "the dictate of a wicked, depraved, and malignant heart." 4 *Bl.* 198, 199; 4 *Steph. Com.* 70; *Bell, s. v.* "Murder." Malice, as being of the essence of murder, may, at least for all practical purposes, be described as that wilfulness or criminal recklessness of intention, whereby any one contemplates the death of any person or persons as a probable consequence of an act done by himself without lawful justification or excuse, or of some unlawful omission. It is not, however, clear that this is sufficient as a definition: for, according to the better authorities, it is murder if any one, in the pursuit of any *felonious* intention, causes another's death, however incidentally and indirectly. [MURDER.]

MALICE—*continued.*

2. As regards malicious injuries to person or property, especially the latter, a "malicious act" has been defined by Mr. Justice Bayley as a wrongful act, intentionally done without just cause or excuse. *Bromage* v. *Prosser*, 4 *B. & C.* 247, 255. To support a conviction for malicious injury, the mischief done must be within the scope of the mischievous intention; and, therefore, malice under the Malicious Injuries Act (24 & 25 Vict. c. 97) must be understood in a more restricted sense than the malice which is of the essence of murder. On this point, see *Reg.* v. *Pembliton*, *L. R.*, 2 *C. C. R.* 9; 43 *L. J.*, *M. C.* 9; 30 *L. T.*, *N. S.* 40; 22 *W. R.* 553.

MALICE AFORETHOUGHT. [MALICE, 1.]

MALICE PREPENSE. [MALICE, 1.]

MALICIOUS PROSECUTION. A prosecution undertaken against a person without reasonable or probable cause. In an action for malicious prosecution, the burden lies upon the plaintiff to show that no probable cause existed. 3 *Steph. Com.* 383, 384.

MALUM IN SE. [MALA IN SE.]

MALVEIS PROCURORS. Such as use to pack juries by nomination, or other practice. *Cowel.*

MANAGERS OF A CONFERENCE are members of the Houses of Parliament appointed to represent each House at a conference between the two Houses. It is an ancient rule that the number of Commons named for a conference should be double those of the Lords. *May's Parl. Pr. ch.* 16.

MANBOTE. A pecuniary compensation for killing a man. *T. L.*; *Cowel.*

MANCIPLE. An officer in the Temple, now called the steward. *Cowel.*

MANDAMUS. 1. The prerogative writ of mandamus. This is, in its form, a command issuing in the Queen's name, and directed to any person, corporation, or inferior court of judicature, requiring them to do some particular thing which appertains to their office and duty. In its application, it may be considered as confined to cases where relief is required in respect of the infringement of some *public* right or duty, and where no effectual relief can be obtained in the ordinary course of an action.

2. A mandamus incidental to an action. Even prior to the C. L. P. Act, 1854, there was a *mandamus* for the purpose of examining witnesses in India and the other dependencies of the Crown. Now, by that Act, a plaintiff may, in any action except replevin and ejectment, endorse upon the writ of summons a notice that he intends to claim a writ of mandamus commanding the defendant to perform some duty in which the plaintiff is interested. It has been held that this will not enable a plaintiff to enforce by *mandamus* the specific performance of a contract; but that the Act contemplates a *public duty*, in which the plaintiff, *among others*, is interested, and not a private obligation which the plaintiff alone is entitled to enforce. But, under the Judicature Acts, it will be allowable for the court, by an interlocutory order, to grant a mandamus in any cases in which it shall appear just and convenient that such order should be made. 3 *Bl.* 110, 111, 264, 265; 3 *Steph. Com.* 630—635; *Kerr's Act. Law; Stat.* 36 & 37 *Vict. c.* 66, *s.* 25, *sub-s.* 8.

MANDATE. 1. A command of the king or his justices, to have anything done for despatch of justice. *T. L.*; *Cowel.*

2. A contract by which one man employs another gratuitously in the management of his affairs. *Bell*; 2 *Steph. Com.* 81, *n.* [BAILMENT.]

MANDATORY or **MANDATARY.** 1. He to whom a charge or commandment is given.

2. He that obtains a benefice by *mandamus*. *Cowel.*

MANDATUM. [MANDATE, 2.]

MANDAVI BALLIVO. A return to a writ whereby a sheriff states that he has committed its execution to the bailiff.

MANENTES. A word of old used for *tenentes*, or tenants. *T. L.*

MANNER. A word used sometimes for *mainour*. [MAINOUR.]

MANNER AND FORM. [MODO ET FORMA.]

MANNIRE. To cite any one to appear in Court, and stand in judgment there. *Toml.*

MANNOPUS, MANOPERA. Goods taken in the hands of an apprehended thief. *Toml.*

MANOR was originally a district of ground held by a lord or great personage, who kept to himself such parts of it as were necessary for his own use, which were called *terræ dominicales*, or *demesne*

MANOR—*continued.*

lands, and distributed the rest to freehold tenants. Of the demesne lands, again, part was retained in the actual occupation of the lord, and other portions were held in villenage; and there was also a portion which, being uncultivated, was called the lord's waste, and served for public roads and for common of pasture to the lord and his tenants. Manors were also called baronies, as they still are lordships, and each baron or lord was empowered to hold a domestic court called the *court baron*, for redressing misdemeanors and nuisances within the manor, and for settling disputes of property among the tenants. In most manors at the present day we find that species of tenants called *copyholders*, whose lands, though substantially their own property, are nominally part of the lord's demesnes. But a manor, in its proper and perfect state, also comprises land occupied by *freehold tenants* holding of the manor in perpetuity. The essence of a manor seems to consist in the jurisdiction exercised by the lord in his court; and it has been said that if the number of suitors should so fail as not to leave sufficient to make a jury or homage, that is, two tenants at least to attend in the court, the manor itself is lost. *T. L.; Cowel.* 2 *Bl.* 90, 91; 1 *Steph. Com.* 214, 220. But by stat. 4 & 5 Vict. c. 35, s. 86, passed in 1841, this attendance is now unnecessary.

The civil and criminal jurisdiction of these local courts is now practically obsolete (3 *Steph. Com.* 279—281); though they are held for the admittances of tenants, and surrenders, &c. 1 *Steph. Com.* 633, 634; *Wms. R. P., Pt. III. ch.* 2. [COMMON; COPYHOLD; COURT BARON; DEMESNE; FREEHOLD; VILLENAGE.]

MANSE. The dwelling-house of a minister of the Presbyterian Church. *Bell.*

MANSION or **MANSION-HOUSE.** 1. The lord's chief dwelling-house within his fee, otherwise called the *capital messuage* or manor-place. *Cowel.*

The principal mansion-house and the demesnes thereof, and lands occupied therewith, are excepted from the leasing powers given to tenants for life by the Leases and Sales of Settled Estates Act (19 & 20 Vict. c. 120). *Wms. R. P.;* 1 *Steph. Com.* 252, *n.* (*c*).

2. The house of a corporation, inhabited in separate apartments by the officers of the body corporate. 4 *Bl.* 225; 4 *Steph. Com.* 107.

MANSLAUGHTER is defined as the unlawful killing of another without malice express or implied; which may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act. *T. L.; Cowel;* 4 *Bl.* 191; 4 *Steph. Com.* 63.

Manslaughter being defined as culpable homicide without malice, and malice [MALICE, 1] being defined, in reference to homicide, as the wilfulness or criminal recklessness whereby a man contemplates the death of some person or persons as a probable consequence of his own unlawful act or omission, the absence of such wilfulness or criminal recklessness may be inferred under the following circumstances:—

1. Where there is not time for one to consider consequences; as when one, having a deadly weapon in his hand, throws it in the heat of passion at another who has provoked him.

2. Where there is time to consider the probable consequences of an unlawful act wilfully done, and yet the death of any person is by no means a natural or probable consequence of such unlawful act; as if two parties fight without deadly weapons; or as if a station-master, contrary to orders, starts a train before the proper time, having no reason to expect any obstacle, and yet a collision happens whereby some person is killed.

Perhaps manslaughter may also be described as the causing the death of another through recklessness, including under that term negligence, heedlessness, and rashness; provided that the negligence, heedlessness, or rashness in question be not such as to indicate a wanton and palpable disregard of human life, in which case it will amount to murder. [MURDER.] This definition would imply that the difference between murder and manslaughter is often one of degree, which is in fact the case. See 4 *Bl.* 192; 4 *Steph. Com.* 64, 65.

MANSUETÆ NATURÆ. Of a tame nature: *quasi manui assuetæ.* A phrase applied to tamed animals in opposition to wild animals or animals *feræ naturæ.* 2 *Steph. Com.* 5.

MANSUM CAPITALE. The manor-house or lord's court. *Toml.*

MANSUS was anciently a farm. *Cowel.*

MANTHEOF, in the laws of Alfred, signifies a horse-stealer. *Toml.*

MANUCAPTIO. [MAINPRISE.]

MANUCAPTORS. [MAINPERNORS.]

MANUMISSION. The freeing of a villein or slave out of his bondage. *T. L.; Cowel;* 2 *Bl.* 94; 1 *Steph. Com.* 217.

MANUOPERA. 1. Stolen goods taken upon a thief apprehended in the act of stealing. [MAINOUR.]

2. Cattle or any implements used to work in husbandry. *Toml.*

MARCHERS, also called *lords-marchers*, were the noblemen that lived on the *marches* of Wales or Scotland, who in times past had their private laws, as if they had been petty kings. *T. L.; Cowel;* 1 *Bl.* 397; 2 *Steph. Com.* 602, 603.

MARCHES. Boundaries or frontiers. Thus the word signifies:—

1. The boundaries and limits between England and Wales, or between England and Scotland; or generally the borders of the dominions of the Crown. *Cowel;* 1 *Bl.* 397; 3 *Steph. Com.* 602, 603.

2. The boundaries of properties in Scotland. *Bell.*

MARCHES, COURT OF. The Court of the Marches of Wales was a tribunal where pleas of debt or damages, not exceeding 50*l.*, were tried and determined. *Toml.*

MARCHETA. A word interpreted by some as a *cheta* or fine for marriage; by some as the composition or acknowledgment by the sokeman or villein for the lord's permission to give his daughter in marriage to one not subject to the lord's jurisdiction, or the fine for giving her away without such permission. *T. L.; Cowel.* See also 2 *Bl.* 83, 93; 1 *Steph. Com.* 212.

MARESCHAL. [MARSHAL.]

MARINE INSURANCE. An insurance undertaken by a private person or by a firm for indemnifying the owner of a ship or cargo from losses at sea. 2 *Steph. Com.* 129; *Arnould's Mar. Ins.; Crump, Mar. Ins.* [INSURANCE.]

MARINE MUTINY ACT. An Act of Parliament annually passed for the government of her Majesty's marine forces while on shore. 2 *Steph. Com.* 597, 598. [MUTINY ACT.]

MARINES, otherwise called **ROYAL MARINES**, are a species of force sometimes quartered on shore, and sometimes sent to do duty on board of transports or merchant ships, in which cases they are subject to the annual Marine Mutiny Acts; sometimes on board her Majesty's ships of war, in which case they are subject to the laws relating to the government of her Majesty's forces by sea. 2 *Steph. Com.* 597, 598. [NAVAL DISCIPLINE ACTS.]

MARITAGIO AMISSO PER DEFALTAM. A writ for a tenant in frank-marriage to recover lands whereof he was *deforced* (or deprived) by another. *Cowel.* [FRANK-MARRIAGE.]

MARITAGIUM. [MARRIAGE.]

MARITIMA ANGLIÆ. The profits and emoluments arising to the king from the sea, which anciently was collected by the sheriffs. It was afterwards granted to the lord admiral. *Toml.* [ADMIRAL.]

MARITIME COURTS. Courts having jurisdiction in maritime causes, which are the Court of Admiralty, and the Judicial Committee of Privy Council on appeal therefrom. 3 *Bl.* 68, 69; 3 *Steph. Com.* 341, 346. The maritime courts in our colonies and dependencies are called Vice-Admiralty Courts.

MARK. 1. An ancient coin (Sax. *Mearc*). In old times, a mark of silver was worth thirty pence, and a mark of gold 16*l.* 13*s* 4*d.* Latterly a mark of silver amounted to 13s. 4d. *Cowel.*

2. "Mark," in the Merchandise Marks Act, 1862, is defined as including any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any description. *Stat.* 25 & 26 *Vict. c.* 88, *s.* 1; *Cox & Saunders' Cr. Law*, 276.

MARKET. An emporium of commerce, or place of buying and selling; or the liberty to set up such a place, which any person or body corporate may have by act of parliament, grant, or prescription. *Cowel;* 1 *Bl.* 274; 3 *Bl.* 218; 1 *Steph. Com.* 663; 3 *Steph. Com.* 404, 411.

MARKET GELD or **MARKET-ZELD.** A toll of the market; the word zeld denoting a payment. *Cowel.*

MARKET OVERT. Open market; an expression applied to the open sale of goods as opposed to a clandestine or irregular sale. Market overt, in the country, is held only on the special days provided for particular towns; but in the city of London every day, except Sunday, is market day. Also in the

MARKET OVERT—*continued.*

country the market-place is the only market overt; but in London every shop in which goods are exposed publicly for sale is market overt for such things as the owner professes to trade in. 2 *Bl.* 449; 2 *Steph. Com.* 53, 72, 73.

The effect of a sale in market overt is that it will in general give the purchaser a secure title to the goods which he has bought, though the vendor has had no property therein. To this rule, however, there are some exceptions; as, if the goods be crown property; or if the goods be stolen, and the owner have prosecuted the thief to conviction. 2 *Steph. Com.* 73, 74. And the security derived by a purchaser from a sale in market overt has no place in the law of Scotland. *Paterson.*

MARKET TOWNS are towns entitled to hold markets. 1 *Steph. Com.* 124.

MARKETABLE TITLE has been defined as a title to land agreed to be purchased, which is not merely good, but so clear that a court of equity would compel a reluctant purchaser to take it, on a suit against him by the vendor to enforce the specific performance of his contract to purchase the land. It is now, however, quite settled, that, so far as a purchaser's objection is one of pure law, the court, if it think the objection untenable, will not refrain from compelling him to complete his purchase by reason of any supposed doubtfulness in the state of the law on the subject. *Alexander* v. *Mills*, *L. R.*, 6 *Ch. App.* 124; 40 *L. J., Ch.* 73; 24 *L. T. Rep., N. S.*, 206; 19 *W. R.* 310.

MARKSMAN. A deponent who cannot write, and therefore, instead of signing his name, makes his mark, generally a cross. In practice it is desirable that the mark should be attested by a witness.

MARLBRIDGE, STATUTE OF. A statute made at Marlbridge, Marleberge, or Marlborough, in the 52nd year of Hen. III., A.D. 1267. 3 *Bl.* 12; 3 *Steph. Com.* 253.

This statute includes the following matters:—The penalty of taking a distress wrongfully; a confirmation of the Great Charter and the Charter of the Forest; a fraudulent conveyance to defeat a lord of his wardship to be void; the authority and duty of guardians in socage, &c.

MARQUE. 1. A mark or sign. *Cowel.*

2. Passing the frontiers, or *marches*, in order to make *reprisals.* 1 *Bl.* 258, 259; 2 *Steph. Com.* 492, 494. Hence it is used as synonymous with *reprisals.* *Cowel.* [LETTERS OF MARQUE AND REPRISAL.]

MARQUIS or **MARQUESS** is a title of honour next before an earl, and next after a duke. It first came up in the time of Richard II., when it was applied to those lords who had the charge and custody of *marches* or limits, and who before that time were called *marchers* or *lords marchers.* *Cowel;* 1 *Bl.* 397; 2 *Steph. Com.* 602, 603. [MARCHERS.]

MARRIAGE (*Maritagium*), besides its ordinary meaning, signifies the right, formerly enjoyed by the lord of whom lands were held in knight-service, of disposing of his infant wards in matrimony, at their peril of forfeiting to him, in case of their refusing a suitable match, a sum of money equal to the value of the marriage; that is, what the suitor was willing to pay down to the lord as the price of marrying his ward; and double the market value was to be forfeited if the ward presumed to marry without the lord's consent. *Cowel;* 2 *Bl.* 70; 1 *Steph. Com.* 198; *Wms. R. P. Pt. I. ch.* 5. [VALOR MARITAGII.]

In socage tenure, however, marriage, or the *valor maritagii*, was of no advantage to the guardian. For, if the guardian married his ward under the age of fourteen, he was bound to account to the ward for the value of the marriage, even though he took nothing for it, unless he married him to advantage. 2 *Bl.* 88, 89; 1 *Steph. Com.* 208.

MARRIAGE BROKAGE CONTRACTS are agreements whereby a party engages to give another a remuneration if he will negotiate a marriage for him. Such agreements are void, as tending to introduce marriages not based on mutual affection, and therefore contrary to public policy. *Sm. Man. Eq., Tit. I. ch.* 4.

MARRIAGE LICENCE is of the following kinds:—

1. A common licence, granted by the ordinary or his surrogate.

2. A special licence from the Archbishop of Canterbury.

3. A licence from the registrar of the district.

A licence obtained in either of the forms (1) or (2) will enable the parties to marry without banns, according to the forms of the Church of England; and a licence obtained in form (3) will enable the parties to marry in any other lawful manner. 2 *Steph. Com.* 246—257.

MARRIAGE NOTICE BOOK. A person intending to be married *by the registrar's certificate without licence*, must deliver to the superintendent registrar of the district in which both the persons about to marry have dwelt for not less than seven days—or, if they have dwelt in different districts for that time, then to the superintendent registrar of each district—a *notice* of his or her intention to marry, in form required by law. This notice is entered by the registrar (who is entitled to the fee of one shilling for the entry) into a book called the *Marriage Notice Book*, which is open at all reasonable times, and without fee, to persons desirous of inspecting the same. 2 *Steph. Com.* 251, 252.

MARRIAGE SETTLEMENT. A settlement of property between an intended husband and wife, made in consideration of their marriage.

MARRIED WOMEN'S PROPERTY ACTS:—

1. The stat. 33 & 34 Vict. c. 93, passed in 1870, by which (among other things) it is provided that property under certain circumstances therein defined shall, when devolving on a married woman, be enjoyed by her for her separate use; also relieving the husband of liability for his wife's antenuptial debts.

2. The stat. 37 & 38 Vict. c. 50, passed in 1874, by which the husband's liability to answer for his wife's debts is restored, to the extent at least of the assets he may have received with her, as defined by this latter Act.

MARSHAL. 1. The lord mareschal, who decided matters of honour and of arms according to the law military and the law of nations. [EARL MARSHAL.]

2. The marshal of the king's house, whose special authority was to hear and determine all pleas of the Crown, and to punish faults committed within the verge, and to hear and judge of suits between those of the king's household. His court was called the Court of the Marshalsea. It was abolished in 1849, by stat. 12 & 13 Vict. c. 101, ss. 13, 14.

3. Marshal of a Judge of Assize, whose duty it is to swear in the grand jury, and to attend upon the judge; and, on the civil side, to receive records and enter causes. See *Lush's Pr.* 549.

4. The marshal of the Queen's Bench, who had the custody of the Queen's Bench Prison in Southwark.

5. An inferior university officer.

6. An executive officer of the United States of America, in each State of the Union, charged to execute the process of the United States' courts. The marshal of a State thus corresponds to the sheriff of a county. The officers appointed to execute the process of the State courts within their respective counties are called sheriffs, as with us. *Bouvier.*

MARSHALLING OF ASSETS. An adjustment of the assets of a deceased person so as to pay as many claims upon his estate as possible. *Chute, Eq.*

MARSHALSEA COURT. [MARSHAL, 2.]

MARSHALSEA PRISON. 1. The prison of the Marshalsea of the Court of Queen's Bench, in Southwark, otherwise called the Queen's Bench Prison, was a prison for debtors, and for persons confined under the sentence or charged with contempt of the Court of Queen's Bench.

2. The prison of the Marshalsea of her Majesty's Household was a prison for debtors, and for persons charged with contempt of the Courts of the Marshalsea, the Court of the Queen's Palace of Westminster, and the Court of Admiralty, and also for admiralty prisoners under sentence of court-martial. This prison was abolished in 1842, by stat. 5 & 6 Vict. c. 22, and the prisoners transferred to the Queen's Bench Prison, which was thenceforth to be called the Queen's Prison, and was so called until its abolition in 1862, by stat. 25 & 26 Vict. c. 104. [FLEET PRISON; QUEEN'S BENCH PRISON.]

MARTIAL COURTS. [COURT-MARTIAL.]

MARTIAL LAW. The law imposed by the military power. 2 *Steph. Com.* 592, *n.* *Cowel* defines it as the law of war, depending upon the pleasure of the king or his lieutenant: for though the king, in time of peace, never makes any laws but by common consent in Parliament, yet, in war, he useth absolute power, insomuch that his word is law. And the late Duke of Wellington defined martial law as "no law at all, but the will of the commander-in-chief." It is, in fact, absolutely discretionary military authority, not subject to the control of municipal tribunals; military officers executing it being answerable for the execution of martial law only before courts-martial or commissions appointed by the Crown. Thus, martial law is "no law" in the sense of being the suspension of civil jurisdiction, and therefore of civil liability, and subject only to military restraint and control. *Finlason.*

It is right, however, to add, that the questions—(1) what constitutes war for the purpose of justifying martial law;

MARTIAL LAW—*continued.*

and (2) what is or is not permissible when it is established;—have been debated with great acrimony whenever the occasion has arisen, and are yet far from being settled.

MARTINMAS. The 11th of November, which day was formerly kept as a festival in honour of St. Martin, bishop of Tours, in the latter part of the fourth century. *Smith's Dict. Biog.; Hook's Church Dict.*

Martinmas is one of the quarter days for the payment of rent in Scotland. [QUARTER DAYS; TERM, 3.]

MASTER. [See the following Titles.]

MASTER AND APPRENTICE. [APPRENTICE.]

MASTER AND SERVANT. [SERVANT.]

MASTER IN CHANCERY. Masters were officers of the Court of Chancery, whose principal duties were to inquire into matters referred to them by the Chancery judges, to take accounts and compute damages; also to take oaths, affidavits, and acknowledgments of deeds and recognizances. There were twelve masters ordinary, besides the masters extraordinary appointed to act in the country beyond ten miles from London. *Cowel;* 3 *Bl.* 442; 3 *Steph. Com.* 330, *n.; Haynes' Eq. Lect. II.; Hunt. Eq. Pt. II. ch.* 2. *s.* 1. [MASTER'S REPORT.]

They are abolished by stat. 15 & 16 Vict. c. 80, s. 59, passed in 1852, and their place is occupied by Chief Clerks attached to the respective courts.

MASTER IN LUNACY. The Masters in Lunacy are judicial officers appointed by the Lord Chancellor for the purpose of conducting inquiries into the state of mind of persons alleged to be lunatics. Such inquiries usually take place before a jury. 2 *Steph. Com.* 511—513.

MASTER OF A SHIP. A chief officer of a merchant ship, having a certificate from the Board of Trade, which is either a certificate of competency obtained in an examination, or a certificate of service obtained by his having attained a certain rank in the service of her Majesty. 3 *Steph. Com.* 151, 190.

MASTER OF THE CROWN OFFICE. The coroner and attorney of the sovereign, whose duty it is to file criminal informations in the Court of Queen's Bench under the direction of the Court, upon the complaint or relation of a private person. 4 *Bl.* 308—312; 4 *Steph. Com.* 374—378.

MASTER OF THE FACULTIES is an officer under the Archbishop of Canterbury, appointed to grant licences, dispensations, &c. [FACULTY.]

MASTER OF THE MINT is an officer whose duty it is to receive in the silver and bullion from the goldsmiths to be coined, and to pay them for it, and to superintend everything belonging to the Mint. *Cowel.* By stat. 33 & 34 Vict. c. 10, passed in 1870, the Chancellor of the Exchequer for the time being is made Master of the Mint. 2 *Steph. Com.* 523, *n.* (*o*).

MASTER OF THE ROLLS is one of the judges of the Court of Chancery, and keeper of the rolls of all patents and grants that pass the Great Seal, and of all records of the Court of Chancery. He was formerly but one of the Masters in Chancery, and his earliest judicial attendances seem to have been merely as assessor to the Chancellor, with the other Masters. His character as an independent judge was fully established in the reign of George II. *Cowel;* 3 *Bl.* 442; 3 *Steph. Com.* 330; *Haynes' Eq.; Hunt. Eq.* The Master of the Rolls ranks next after the Lord Chief Justice of the Queen's Bench, and above the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery, though the latter, sitting as judges, hear appeals from his decisions. 1 *Bl.* 405; 2 *Steph. Com.* 615, *n.* [ROLLS COURT.]

MASTERS OF THE COURTS OF COMMON LAW are the most important officers of the respective courts, appointed to record the proceedings of the court to which they belong, to superintend the issue of writs, and the formal proceedings in an action; to receive and account for the fees charged on legal proceedings, and moneys paid into court. There are five to each court. They are appointed under stat. 7 Will. 4 & 1 Vict. c. 30, passed in 1837. 3 *Steph. Com.* 341, *and note* (*d*); *Kerr's Act. Law.*

MASTER'S REPORT was the report made by a Master in Chancery pursuant to directions to take accounts and inquiries in any given suit. For this the Chief Clerk's certificate is now substituted. *Hunt. Eq., Part II. ch.* 3. [CERTIFICATE OF CHIEF CLERK; CHIEF CLERK; MASTER IN CHANCERY.]

MATRICIDE. The murder of a mother.

MATRIMONIAL CAUSES are causes respecting the rights of marriage, which

MATRIMONIAL CAUSES—*continued.*

were formerly a branch of the ecclesiastical jurisdiction, but are now, since the passing of the Divorce Act, 1857, under the cognizance of the Court for Divorce and Matrimonial Causes created by that Act. 3 *Bl.* 92; 2 *Steph. Com.* 279—282. [COURT FOR DIVORCE AND MATRIMONIAL CAUSES; DIVORCE.]

MATRIMONIUM signifies—

1. Marriage.

2. Inheritance descending to a man from his mother or her relatives. *Toml.*

MATRONS, JURY OF. [JURY OF MATRONS.]

MATTER. 1. *Matter in Deed* is a truth to be proved by some deed or "specialty," *i. e.*, writing under seal.

2. *Matter in Pais*, strictly speaking a thing done in the country, is matter to be proved by witnesses, and tried by a jury of the country. This is otherwise called *nude matter*. The expression, however, is also used so as to include *matter in deed*.

3. *Matter of Record* is matter which may be proved by some record, as having been done in some court of record.

Cowel; 2 *Bl.* 294; 1 *Stephen's Comm.* 492, *n.*, 502, 503.

MATURITY. A bill or note is said to be at *maturity* when the time arrives at which it is payable. 2 *Steph. Com.* 117.

MAUGRE (Fr. *Malgré*). In spite of, or against the will of. *T. L.; Cowel.*

MAYHEM. [MAIHEM.]

MAYOR. The chief magistrate of a city, anciently among the Britons called *meyr*, derived from the British word *miret*, to keep and preserve. *Cowel;* 3 *Steph. Com.* 35.

MAYOR'S COURT. [LORD MAYOR'S COURT; see also next Title.]

MAYOR'S COURT OF LONDON PROCEDURE ACT, 1857. The stat. 20 & 21 Vict. c. clvii, for the reform of the Lord Mayor's Court in the City of London.

MEAL RENTS. Certain rents formerly paid by some tenants in *meal*, to make meat for the lord's hounds. *Cowel.*

MEASE (Fr. *Maison*). A messuage or dwelling-house. *T. L.; Cowel.*

MEASON-DUE (Fr. *Maison de Dieu*). An hospital, monastery, or religious house. *T. L.; Cowel.*

MEASURE OF DAMAGE. The rule by which the *amount* of damage in any given case is to be determined.

MEASURER. [METAGE.]

MEDFEE. A bribe or reward. Also a compensation given in an exchange, where the things exchanged are not of equal value. *Cowel.*

MEDIATORS OF QUESTIONS were six persons authorized by statute in the reign of Edward III., who, upon any question arising among merchants relating to unmerchantable wool, or undue packing, &c., might, before the mayor and officers of the staple, upon their oath, certify and settle the same. *Toml.* [STAPLE.]

MEDIETAS LINGUÆ. An expression used to indicate a jury half composed of foreigners, formerly in use; now abolished. [DE MEDIETATE LINGUÆ.]

MEDITATIO FUGÆ. Intention of flight. If a creditor in Scotland apprehends that his debtor is about to fly the country, he may appear before a judge and swear that he believes his debtor to be *in meditatione fugæ*, when a warrant imprisoning him will be granted, which, however, is taken off on the debtor's finding caution *judicio sisti. Bell.* [JUDICIO SISTI.]

MELD FEOH, or MELD FEOT, was an informer's fee or reward. *Cowel.*

MELIUS INQUIRENDO, or MELIUS INQUIRENDUM, was a writ that lay for a *second* inquiry of what lands and tenements a man died seised of, where partial dealing was suspected upon the writ of *diem clausit extremum*, or where the facts were insufficiently specified in the inquisition upon such writ. *T. L.; Cowel.* [DIEM CLAUSIT EXTREMUM; EXTENT, 4; QUÆ PLURA.]

MEMORANDUM IN ERROR. A memorandum in writing, signed by a party desirous to bring "error in fact" for the purpose of reversing a judgment, or by his attorney. The memorandum is entitled in the court and in the cause, and delivered to one of the masters of the court in which the judgment has been given. It must be accompanied by an affidavit of the matter of fact wherein the alleged error consists. *Kerr's Act. Law.* Proceedings in error are now abolished in civil cases. *Jud. Act*, 1875, *Ord. LVIII. r.* 1. [ERROR.]

MEMORANDUM OF ASSOCIATION. A document to be subscribed by seven or more persons associated for a lawful purpose, by subscribing which, and otherwise complying with the requisitions of the Companies Acts in respect of regis-

MEMORANDUM OF ASSOCIATION—*contd.*
tration, they may form themselves into an incorporated company, with or without limited liability. 3 *Steph. Com.* 20.

MENIALS (from Lat. *Mœnia*, the walls of a house) are household servants, that is, such as live within the walls of their master's house. *T. L.; Cowel;* 1 *Bl.* 425; 2 *Steph. Com.* 227.

MENSA ET THORO ("from bed and board"). [DIVORCE; JUDICIAL SEPARATION.]

MENSURA, in a legal sense, is taken for a bushel, as *mensura bladi*, a bushel of corn. *Cowel.*

MENSURA DOMINI REGIS. The measure of our lord the king, being the weights and measures established under King Richard I., in his parliament holden at Westminster, A.D. 1197. 1 *Bl.* 275; 2 *Steph. Com.* 518.

MERCANTILE LAW AMENDMENT ACTS:—
1. Stat. 19 & 20 Vict. c. 60, passed mainly for the purpose of assimilating the mercantile law of Scotland in certain points to that of England and Ireland.
2. Stat. 19 & 20 Vict. c. 97, passed mainly for the purpose of assimilating the mercantile law of England and Ireland in certain points to that of Scotland.

MERCEN LAGE. The Mercian laws; a system of law observed in many of the midland counties, and those bordering on Wales, about the beginning of the eleventh century. This was one of the three systems of laws out of which the Conqueror framed our common law, the other two systems being the *West Saxon Lage* and the *Dane Lage. T. L.; Cowel;* 1 *Bl.* 65; 4 *Bl.* 412; 1 *Steph. Com.* 42; 4 *Steph. Com.* 487.

MERCHANDISE MARKS ACT. The stat. 25 & 26 Vict. c. 88, for punishing the forgery of trade-marks, and for some other purposes in connection therewith. 4 *Steph. Com.* 145; *Oke, Mag. Syn.* 500; *Cox & Saunders' Cr. Law*, 276—293.

MERCHANT SHIPPING ACTS:—1. Stat. 16 & 17 Vict. c. 131, passed in 1853. 2. Stat. 17 & 18 Vict. c. 104, passed in 1854. 3. Stat. 18 & 19 Vict. c. 91, passed in 1855. 4. Stat. 25 & 26 Vict. c. 63, passed in 1862. 5. Stat. 34 & 35 Vict. c. 110, passed in 1871. 6. Stat. 35 & 36 Vict. c. 73, passed in 1872. 7. Stat. 36 & 37 Vict. c. 85, passed in 1873. 8. Stat. 38 & 39 Vict. c. 88, passed in 1875.

By these Acts, the Board of Trade is charged with the general superintendence of matters relating to Merchant Shipping. Provisions are made with reference to the ownership, registration, and transfer of merchant ships; the efficiency and discipline of merchant seamen; the protection of seamen from the dangers of unseaworthy ships; the regulation of pilotage; the liability of shipowners for loss or damage, and various other matters. See 3 *Steph. Com.* 147—165; *Oke, Mag. Syn.* 504—534, 1062—6.

MERCHETA. [MARCHETA.]

MERCY. The arbitrament or discretion of the king, lord, or judge in punishing any offence; as, to be in the *grievous mercy* of the king, is to be in hazard of a great penalty. *Cowel.*

MERE MOTION. Spontaneously and voluntarily, without the suggestion of another. [EX MERO MOTU.]

MERE RIGHT signifies a right of property without possession. 2 *Bl.* 197; 3 *Steph. Com.* 392.

MERGER. The sinking or drowning of a less estate in a greater, by reason that they both coincide and meet in one and the same person. Thus, if there be a tenant for years, and the reversion in fee simple descends to or is purchased by him, the term of years is *merged* in the inheritance, and shall never exist any more. 2 *Bl.* 178; 1 *Steph. Com.* 317, 378; *Wms. R. P.; Fawcett, L. & T.* 277.

The importance which this doctrine of merger sometimes assumes may be illustrated by the merger of an estate for 1,000 years in an estate for life. An estate for 1,000 years is obviously a more valuable thing to its owner than an estate for life. Yet in law the estate for 1,000 years, being a leasehold interest only, is less than an estate for life, which is an estate of freehold; and if the owner of an estate for 1,000 years acquire also a life interest, his estate for years will *merge* in his estate for life.

MERITS. The substantial question at issue in an action or other proceeding.

MERTLAGE seems to be a corruption for *martyrology*, and to be a church calendar or rubric. *Cowel.*

MERTON, STATUTE OF. Stat. 20 Hen. 3; so called, because passed at Merton, in Surrey. 1 *Bl.* 19, 456; 1 *Steph. Com.* 13, 654; 2 *Steph. Com.* 285.

By this Statute, passed in 1235, it

MERTON, STATUTE OF—*continued.*

is provided that a widow shall recover damages in a writ of dower; that widows may bequeath the crop, as well of lands assigned to them for dower as of other lands; that redisseisors shall be imprisoned; that usury shall not run against any under age; that one born before the marriage of his parents should not be legitimate; that any freeman might make suit by attorney at his lord's court, or any county or hundred court. Lords also were refused permission to imprison at their pleasure persons trespassing in their parks.

MESCROYANTZ. Misbelievers or unbelievers. Hence the modern word *miscreant*. 4 *Steph. Com.* 202, *n.* (*f*).

MESNALTY. The right of a mesne lord. *T. L.*; *Cowel.*

MESNE. Middle, intermediate, or in the meantime. Thus, a *mesne* assignment is an assignment intermediate between two others; a *mesne* incumbrance is in like manner an intermediate incumbrance.

So, a *mesne lord* is a lord who has tenants holding under him, and yet himself holds of a superior lord. *T. L.*; *Cowel*; 2 *Bl.* 59; 1 *Steph. Com.* 186.

Mesne process was a phrase applied to the writs issued in an action subsequently to the first or original writ, but prior to the writ of execution, that is, all such process as intervened between the beginning and end of a suit. 3 *Bl.* 279; 3 *Steph. Com.* 489, *n.*

Mesne profits are profits of land taken by a tenant in wrongful possession, from the time that the wrongful possession commenced to the time of an action of ejectment brought against him. 3 *Bl.* 205; 3 *Steph. Com.* 628, 626. [See also next Title.]

MESNE, WRIT OF, was a writ in the nature of a writ of right, brought by a tenant paravail (or undertenant) against the mesne lord (of whom the tenant paravail immediately held the land), when the mesne lord had allowed the tenant paravail to be distrained for rent or services due from the mesne lord to the superior lord. *T. L.*; *Cowel.*; 2 *Bl.* 234; 3 *Steph. Com.* 410, *n.* [DISTRESS.]

The process on this writ was regulated by the statute of Westminster II., 13 Edw. 1, st. 1, c. 9, passed in 1285. This writ, being a real action, was abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

MESSAGE FROM THE CROWN is a written message under the royal sign manual to either House of Parliament singly, or to both Houses separately. The message is brought by a member of the House, being a minister of the Crown, or one of the royal household. The member charged with the message appears in the House, and acquaints the House that he has a message from her Majesty. If the message be to the House of Lords, it is read by the Lord Chancellor, and afterwards again by the Clerk; if to the House of Commons, by the Speaker, all the members of the House being uncovered. Verbal messages are also sometimes delivered. *May's Parl. Pract. ch.* 17.

MESSARIUS. A mower or reaper; one that works harvest-work. *Cowel.*

MESSENGERS. Carriers of messages employed by a Secretary of State. Also, officers of a court of justice, called in Scotland messengers-at-arms. *Toml.*; *Paterson.*

MESSUAGE. A house, comprising the outbuildings, the orchard, and curtilage or court yard, and, according to the better opinion, the garden also. *T. L.*; *Cowel*; *Wms. R. P.*

METAGE. The measuring of all coals, grain, salt, fruit, onions, and other merchandises coming into the port of London, by the Corporation of the City, as exercising the office of *measurer* under certain old charters and acts of parliament. For the execution of this office there are regular servants appointed by the Corporation. *Pulling on the Laws and Customs of London.*

As regards coals, compulsory metage and metage dues have, by various Acts of Parliament, been suspended or varied, and compulsory metage on grain has been abolished as from the 31st of October, 1872, by stat. 31 & 32 Vict. c. c, s. 3; but, by sect. 4, the Corporation may, for thirty years thereafter, demand and receive, in respect of all grain brought into the port of London for sale, a duty of $\frac{1}{16}$ths of a penny per hundredweight, to be called the City of London Grain Duty.

METALLIFEROUS MINE. A mine other than a coal mine. *Stat.* 35 *&* 36 *Vict. c.* 77, *ss.* 1, 3.

METECORN. A measure or portion of corn given out by the lord to customary tenants, as a reward and encouragement for their duties and labour. *Cowel.*

METEGAVEL. A rent paid in victuals; a thing usual of old as well with the king's tenants as with others, till Henry I. changed it into money. *Cowel.*

METRIC SYSTEM. A decimal subdivision of weights and measures. 2 *Steph. Com.* 519, 520.

METROPOLIS, for the purposes of the Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), and various subsequent enactments, includes the City of London and the following parishes and places, arranged with reference to their representatives in the Metropolitan Board of Works:—

St. Marylebone; St. Pancras; Lambeth; St. George, Hanover Square; Islington; Shoreditch; Paddington; Bethnal Green; Newington, Surrey; Camberwell; St. James, Piccadilly; Clerkenwell; Chelsea; Kensington; St. Luke, Middlesex; St. George the Martyr, Southwark; Bermondsey; St. George-in-the-East; St. Martin-in-the-Fields; Mile End Old Town; Woolwich; Rotherhithe; Hampstead; Whitechapel District; Westminster District; Greenwich District; Wandsworth District, including Clapham, Tooting Graveney, Streatham, Battersea, Wandsworth, Putney, Roehampton; Hackney District, including Hackney parish and St. Mary, Stoke Newington; St. Giles' District, including St. Giles-in-the-Fields and St. George, Bloomsbury; Holborn District; Strand District; Fulham and Hammersmith; St. Saviour's District; Plumstead and Lewisham, including Penge; St. Olave District. Also the following places:—Westminster Abbey and Close; the Charter House; Inner Temple; Middle Temple; Lincoln's Inn; Gray's Inn; Staple Inn; Furnival's Inn.

The Metropolis, as above defined, must not be confounded with the London Postal District, which embraces a radius of twelve miles from the Post Office, or with the Metropolitan Police District, as to which see CONSTABLE, 2.

METROPOLIS VALUATION ACT. Stat. 32 & 33 Vict. c. 67, passed in 1869, to provide for uniformity in the assessment of rateable property in the metropolis.

METROPOLITAN. An archbishop. *T. L.* But when turned into an adjective, the word is generally used in a civil sense, as indicating a reference to London and its neighbourhood; the corresponding ecclesiastical adjective being *metropolitical.*

METROPOLITAN BOARD OF WORKS. A board established in 1855, by stat. 18 & 19 Vict. c. 120, called the Metropolis Local Management Act, passed for the general local management of the metropolis, including the cleansing of sewers, naming streets, numbering houses, and otherwise making improvements for the benefit of the inhabitants of London. Now, under stat. 37 & 38 Vict. c. 67, passed in 1874, the Board has jurisdiction over slaughter-houses, and its powers are being continually increased by the legislature in various ways.

The Board of Works contains three representatives of the City of London, besides representatives of parishes and districts in other parts of the metropolis. [METROPOLIS.]

METROPOLITAN BUILDING ACTS. Stats. 18 & 19 Vict. c. 122; 23 & 24 Vict. c. 52; 24 & 25 Vict. c. 87; 32 & 33 Vict. c. 82; 34 Vict. c. 39. 3 *Steph. Com.* 179.

METROPOLITAN GAS ACTS. Stats. 23 & 24 Vict. c. 125; 34 Vict. c. 41.

METROPOLITAN POLICE. [CONSTABLE, 2.]

METTESHEP was an acknowledgment paid in a certain measure of corn; or a fine or penalty imposed on tenants for their defaults in not doing their customary services of cutting the lord's corn. *Toml.*

MICEL GEMOTE. [MICHEL GEMOTE.]

MICHAELMAS DAY. [QUARTER DAYS.]

MICHAELMAS HEAD COURT. A meeting of the heritors in Scotland, when the roll of freeholders is revised. *Bell.*

MICHAELMAS SITTINGS. [LONDON AND MIDDLESEX SITTINGS.]

MICHAELMAS TERM. One of the law terms, commencing on the 2nd of November and ending on the 25th or 26th of the same month, according as the 25th is not or is Sunday. 3 *Steph. Com.* 484; *Smith's Act. Law.*

Under the Judicature Act, 1875, the Michaelmas Term is, so far as regards the sittings of the Courts, to be superseded by the Michaelmas Sittings. [LONDON AND MIDDLESEX SITTINGS.]

MICHEL GEMOTE. The Great Council of the English nation in the Saxon times; more frequently called *wittenagemote.* 1 *Bl.* 147; 2 *Steph. Com.* 319, [WITTENA-GEMOTE.]

MICHEL SYNOTH. The same as MICHEL GEMOTE.

MIDDLE MAN. A person intermediate between two others; a word often used of a person who leases land (especially in Ireland) which he lets out again to tenants. The phrase is thus used as analogous to the "mesne lord" of feudal times. [MESNE.]

MIDDLESEX, BILL OF. [BILL OF MIDDLESEX.]

MIDDLESEX REGISTRY. A registry established in 1709 by stat. 7 Anne, c. 20, for the registration of deeds and wills affecting lands in the county of Middlesex. *Wms. R. P., Part I. ch.* 9. Yorkshire is the only other county in England having similar registries.

MIDSUMMER DAY. [QUARTER DAYS.]

MID-SUPERIOR. The Scotch for *mesne lord*. [MESNE.]

MILITARY CAUSES are, by stat. 13 Rich. 2, c. 2, passed in 1389, declared to be such causes as relate to contracts touching deeds of arms and of war, as well out of the realm as within it, which cannot be determined or discussed by the Common Law. [See next Title.]

MILITARY COURTS. 1. The Court of Chivalry, which was a court of honour, and is now practically obsolete. 3 *Bl.* 68; 3 *Steph. Com.* 335, *n.* [COURT OF CHIVALRY.]

2. Courts martial, having jurisdiction to try and to punish offences committed against the Articles of War, and the Mutiny Acts. 1 *Steph. Com.* 416; 2 *Steph. Com.* 590. [COURT MARTIAL; MUTINY ACT.]

3. The courts which, under the name of courts martial, execute martial law upon offenders in time of war.

MILITARY FEUDS. [FEE; FEUDAL SYSTEM; KNIGHT-SERVICE.]

MILITARY TENURES. The tenures by:—1. Knight-service; 2. Grand serjeanty; 3. Cornage. [See under their respective Titles.] These were all abolished in 1660, by stat. 12 Car. 2, c. 24, except the honorary services of grand serjeanty. 2 *Bl.* 59—77; 1 *Steph. Com.* 181—205; *Wms. R. P., Part I. ch.* 5. [FEE; FEUDAL SYSTEM.]

MILITARY TESTAMENT. A will made by a soldier in active service, without those forms which in ordinary cases are required by statute. 1 *Bl.* 418; 2 *Steph. Com.* 188, 593.

MILITIA. 1. A force for the defence of the country; raised, in default of voluntary enlistment, by compulsory levy in the way of ballot. *Stat.* 15 & 16 *Vict. c.* 50, *ss.* 11, 18; 2 *Steph. Com.* 587. Compulsory service is, however, practically at an end; and by the Militia Acts, 1852 and 1854, (stats. 15 & 16 Vict. c. 50, and 17 & 18 Vict. c. 13), the militia has been re-established as a volunteer force, and is annually called out for training. *Burn's Justice of the Peace.* The latest Act on the subject is stat. 38 & 39 Vict. c. 69, passed in 1875.

2. Furniture and habiliments for war. *Cowel.*

MINAS, DURESS PER. [DURESS.]

MINERAL COURTS. Courts for regulating the concerns of lead mines. *Cowel.* [BARMOTE COURTS.]

MINES REGULATION ACTS. The stats. 35 & 36 Vict. cc. 76, 77, passed in 1872.

MINIMENTS, otherwise called *muniments*, are the evidences or writings whereby a man is enabled to defend the title of his own estate. *Cowel.* [MUNIMENTS OF TITLE.]

MINISTRI REGIS (servants of the king). Persons having ministerial offices under the Crown; also the judges of the realm. *Cowel.*

MINOR. A person under the age of twenty-one years. In Scotland the word signifies especially a male between the ages of fourteen and twenty-one, and a female between the ages of twelve and twenty-one. *Paterson.*

MINOR CANONS are officers of a cathedral appointed to conduct the cathedral services. Their appointment is vested in the chapter. 2 *Steph. Com.* 675.

MINORA REGALIA. The king's revenue, as opposed to his dignity and regal power. 1 *Bl.* 240, 241; 2 *Steph. Com.* 475.

MINT. 1. The place where money is coined, near the Tower. *Cowel.* The constitution of the Mint was remodelled in the year 1815, and again in 1870, when the Chancellor of the Exchequer was made the Master of the Mint; the custody of the standard weights committed to the Board of Trade; and the general superintendence of the Mint entrusted to the Treasury. 2 *Steph. Com.* 523, *n.* (*n*).

2. Formerly a pretended place of privilege in Southwark. *Toml.*

MINUTE BOOK OF THE COURT OF SESSION is a book containing a short abstract of the decrees and judgments

MINUTE BOOK OF THE COURT OF SESSION—*continued.*
pronounced by the Court of Session, or by the Lords Ordinary. *Wm. Bell; Paterson.* [COURT OF SESSION; LORD ORDINARY.]

MINUTE TITHES. Small tithes, such as usually belong to a vicar, as herbs, seeds, eggs, honey, wax, &c. *Cowel.* [SMALL TITHES; TITHES; VICAR.]

MIRROR OF JUSTICE, generally spoken of as the Mirror, or Mirrour, is a work generally ascribed to the reign of Edward II. It is stated to have been written by one Andrew Horne. 1 *Steph. Com.* 51; 3 *Steph. Com.* 42.

This book treats of all branches of the law, whether civil or criminal. It gives a cursory retrospect of some changes effected by former kings; and enumerates a list of abuses, as the author terms them, of the common law, proposing at the same time what he considers to be desirable corrections. *Reeves's Hist. Eng. Law.*

MISADVENTURE. An unfortunate mischance arising out of a lawful act. It is a word generally used with reference to accidental homicide. 4 *Bl.* 182, 183; 4 *Steph. Com.* 52.

A different definition of this word is however given in the *Termes de la Ley* and *Cowel*, whereby it would appear that misadventure is equivalent to homicide partly by negligence and partly by chance. This is equivalent to homicide by negligence simply. For "negligence" implies the absence of *intention*, and chance implies no more.

MISCOGNIZANT. Ignorant, or not knowing. *Cowel.*

MISCONTINUANCE signifies—1. Discontinuance. *Cowel.* 2. Continuance by undue process. *Toml.*

MISCREANT. One who is perverted to heresy, or a false religion. *T. L.;* 4 *Steph. Com.* 202. [MESCROYANTZ.]

MISDEMEANOR. An offence not amounting to felony. The word is generally confined to indictable offences. 4 *Steph. Com.* 7. See 4 *Bl.* 5.

The punishment of a misdemeanor at common law was by fine and imprisonment at the discretion of the court; and this is therefore the law at the present day in cases to which no statutory enactment applies. But the misdemeanors most frequently committed are punishable with hard labour under various statutes, and in many cases with penal servitude, for terms specified in the Acts relating to them. The distinction between misdemeanor and felony is now in great measure unmeaning; but it is not yet entirely obsolete.

Larceny, for instance, is a felony, and obtaining goods by false pretences is a misdemeanor, and yet the punishment attached to each is the same. "The distinction," observes Mr. Justice Blackburn, in *Reg.* v. *Prince*, L. R., 1 C. C. R. 155; 38 L. J. M. C. 11; 19 L. T. Rep., N. S. 364-6; 17 W. R. 179; "seems to me, I must confess, unmeaning and mischievous. The distinction arose in former times, and I take it that it was then held in favour of life that in larceny the taking must be against the will of the owner, larceny then being a capital offence." [FELONY; LARCENY.]

MISDIRECTION. The wrong direction of a judge to a jury on a matter of law. 3 *Steph. Com.* 558; *Kerr's Act. Law.*

A new trial on the ground of misdirection will not in future be a matter of right in all cases. *Judicature Act,* 1875, 1*st Sched. Ord. XXXIX. r.* 3.

MISE. 1. A gift or customary present formerly made by the people of Wales to a new king or prince on his entrance into that principality. 2. A tax or tallage. 3. Costs and expenses. 4. A writ of right so called. 5. The issue in a writ of right. 6. Cast, or put upon. 7. For *mease,* a messuage or tenement. *Cowel;* 3 *Bl.* 305; 3 *Steph. Com.* 392, *n.*

MISERICORDIA is used in the common law—1. For an arbitrary amerciament or mulct set upon any person for an offence. If a man were outrageously amerced in a court not of record, there was a writ called *moderata misericordia* directed to the lord or his bailiff, commanding them that they take *moderate* amerciaments. 2. To be quit of amerciaments. *T. L.; Cowel.*

MISERICORDIA COMMUNIS. A fine levied on a whole county or hundred. *Cowel.*

MISERICORDIA IN CIBIS ET POTU. Overcommons, or meat and drink given to the religious above their ordinary allowance. In some convents they had a stated allowance of these overcommons upon extraordinary days, which were *misericordiæ regulares. Cowel.*

MISFEASANCE. 1. Misdeed or trespass. *Cowel.*

2. The improper performance of some act in itself lawful. 3 *Steph. Com.* 353. [MALFEASANCE; NONFEASANCE.]

MISJOINDER. The wrongful joining of parties in a cause, or of different causes of action. 3 *Steph. Com.* 493, *n.*; 509, *n.* Under the Judicature Act, 1875, by Order XVI. r. 13, no action is to be defeated by the misjoinder of parties. And the rules henceforth to be in force in relation to the joinder of causes of action are comprised in Order XVII. Different causes of action which cannot conveniently be tried together may be ordered by the court or a judge to be tried separately. And, in particular, it is provided that, without the leave of the court or a judge, no independent cause of action shall be joined with an action for the recovery of land, nor, without the like leave, shall any claim by a trustee in bankruptcy be joined with any claim by him in any other capacity.

MISKENNING. A wrongful summons to a court of justice. *Cowel.*

MISKERING. [ABISHERING.]

MISNOMER. Calling a person by a wrong name in a declaration or other pleading. Any mistake of this kind may now be amended. [JEOFAIL; VARIANCE.]

MISPLEADING is the omission, in pleading, of anything essential to the action or defence; as if a plaintiff does not merely set forth his title in a defective manner, but sets forth a title wholly defective in itself. The word was especially applied to such an error in pleading as could not be *cured by verdict. Toml.* [AIDER BY VERDICT; CURE BY VERDICT.]

MISPRISION (from the French *Mépris*). Contempt, neglect, or oversight. Thus, 1. Misprision of treason or felony is a neglect or light account showed of treason or felony by not revealing it; or by letting any person committed for felony go before he be indicted. 2. Also, in every treason and felony misprision is held to be included. 3. The word has also been applied to coining foreign coin, the reason given being that the offence was at one time visited with the same punishment as misprision. 4. It has also been applied to the neglect of clerks in writing and keeping records. *T. L.; Cowel;* 4 *Bl.* 119; 4 *Steph. Com.* 165, 233, 302, 426.

MISTAKE is where a man intending to do a lawful act, does, by reason of ignorance of fact, something which is unlawful. 4 *Bl.* 27; 4 *Steph. Com.* 80.

A mistake, as remediable in equity, is defined to be an act which would not have been done, or an omission which would not have occurred, but from ignorance, forgetfulness, inadvertence, mental incompetence, surprise, misplaced confidence, or imposition. *Smith's Man. Eq.*

MISTRIAL. A false or erroneous trial, as when it is in a wrong county. *Cowel.*

MISUSER. Such use of an office or grant as is contrary to the express or implied condition upon which it may have been made; as if a judge takes a bribe, or a park-keeper kills deer without authority. 2 *Bl.* 153; 1 *Steph. Com.* 693.

MITTENDO MANUSCRIPTUM PEDIS FINIS. A writ judicial, formerly directed to the treasurer and chamberlain of the Exchequer, to search and transmit the foot of a fine, acknowledged before justices in eyre, into the Common Pleas. *Cowel.* [FINE, I.]

MITTER LE DROIT. MITTER L'ESTATE.

1. *Mitter le Droit.* A form of release by *passing a right;* as if a man be disseised (*i. e.*, turned out of possession of his freehold), and releaseth to the disseisor all his right; hereby the disseisor acquires a new right, which renders that rightful which before was tortious or wrongful. 2 *Bl.* 325; 1 *Steph. Com.* 520.

2. *Mitter l'Estate.* A release by way of *passing an estate;* as when one of two coparceners releaseth all her right to the other; this passeth the fee-simple of the whole. 2 *Bl.* 324; 1 *Steph. Com.* 520. [COPARCENARY; FEE; RELEASE.]

MITTIMUS. 1. A writ by which records are directed to be transferred from one court to another.

2. A warrant under the hand and seal of a justice, committing a prisoner to gaol to take his trial. *T. L.; Cowel;* 4 *Bl.* 300.

MIXED ACTIONS. [ACTIONS MIXED.]

MIXED JURY. A jury *de medietate linguæ*, now abolished. [DE MEDIETATE LINGUÆ.]

MIXED LARCENY, also called *compound larceny,* signifies larceny combined with circumstances of aggravation. It is of a more penal character than simple larceny. 4 *Steph. Com.* 123; 4 *Bl.* 239. [LARCENY.]

MIXED POLICY is a policy of marine insurance in which not only the time is specified for which the risk is limited, but the voyage also is described by its local termini; as opposed to policies of

MIXED POLICY—*continued.*

insurance for a particular voyage without any limits as to time, and also to purely time policies, in which there is no designation of local termini at all. *Arnould, Mar. Ins. 4th ed. p.* 351; *Crump, Mar. Ins. s.* 371.

MIXED PROPERTY. 1. Property which, though falling under the definition of things real, is attended with some of the legal qualities of things personal.

2. Property which, though falling under the definition of things personal, is attended with some of the legal qualities of things real. 2 *Steph. Com.* 214.

MIXED TITHES are tithes consisting of natural products, but nurtured and preserved in part by the care of man; as tithes of cheese, milk, and the young of beasts. *Cowel;* 2 *Bl.* 24; 2 *Steph. Com.* 722.

MODERATA MISERICORDIA. [MISERICORDIA.]

MODIFICATION, in Scotland, is the ascertainment of a fit stipend to be paid to the minister of a parish. *Bell.*

MODO ET FORMA. Words signifying that the defendant, in his pleading, denied having done the thing for which he was sued *in manner and form* as in the declaration alleged. *Cowel.* This evasive kind of pleading is abolished under the Judicature Act, 1875, by Order XIX. rule 22.

MODUS. [MODUS DECIMANDI.]

MODUS DECIMANDI, generally called simply a *modus,* is a partial exemption from tithes; which is where by immemorial usage the general law of tithing is altered, and a new method of taking tithes is introduced. This may be by a pecuniary composition as satisfaction for tithes in kind; or by a compensation in work and labour; or in other ways. *T. L.; Cowel;* 2 *Bl.* 29, 30; 2 *Steph. Com.* 727—729. [TITHES.]

MOERDA. A word applied in the Teutonic language to the secret killing of another; whence comes our word *murder.* 4 *Bl.* 194; 4 *Steph. Com.* 66.

MOFUSSIL. Provincial. [MUFASSAL.]

MOLITURA or **MOLTA.** A toll or multure paid for grinding corn at a mill. *Molitura libera* signifies free grinding at a mill, without paying toll. *Toml.*

MOLLITER MANUS IMPOSUIT (he laid hands on him gently). A plea by a defendant, who is sued in an action for an assault and battery, to the effect that he used no more violence upon the plaintiff than was necessary for ejecting him from a place where he had no right to be. 3 *Bl.* 121; 3 *Steph. Com.* 375.

MOLMUTIAN LAWS. The laws of Dunvallo Molmutius, sixteenth king of the Britons, who began his reign about 400 B.C. These laws were famous in the land till the time of William the Conqueror. *Toml.*

MOLTA. [MOLITURA.]

MOLTURA. [MOLITURA.]

MONETAGIUM. 1. A tribute formerly paid by tenants to their lord every third year (at a time when it was lawful for great men to coin money current in their territories), the lord undertaking, in consideration thereof, not to change the money he had coined.

2. Mintage, or the right of coining or minting money. *Cowel.*

MONEY BILL. A bill for granting aids and supplies to the Crown. Such bills commence in the House of Commons, and are rarely attempted to be altered in the Lords, except by verbal alterations which do not affect the sense. *May's Parl. Pract. ch.* 22.

MONEY CLAIMS, in actions brought under the Judicature Act, 1875, are claims for the price of goods sold, for money lent, for arrears of rent, &c., and other claims where money is directly payable on a contract express or implied, as opposed to the cases in which money is claimed by way of damages for some independent wrong, whether by breach of contract, or otherwise. *First Schedule, Appendix A., Part II., sections* 2—4. These "money claims" correspond very nearly to the "money counts" hitherto in use. [MONEY COUNTS.]

MONEY COUNTS, otherwise called the "common counts," are the counts hitherto used in a plaintiff's declaration expressing the most usual grounds of action; as (1) for money lent; (2) for money paid by the plaintiff for the defendant at his request; (3) for money received by the defendant for the use of the plaintiff; and (4) for money found to be due from the defendant to the plaintiff, upon an account stated between them. 3 *Steph. Com.* 432; *Lush's Pr.* 905, 906; *Kerr's Act. Law.*

MONEY LAND. A phrase sometimes used to signify money held upon trust to be laid out in the purchase of land. *Haynes' Outlines of Eq., 3rd ed. p.* 432.

MONEY, PAYMENT OF, INTO COURT. [PAYMENT OF MONEY INTO COURT.]

MONEY SCRIVENER. [SCRIVENER.]

MONITION. A warning; generally a warning to a defendant in an ecclesiastical court not to repeat an offence of which he has been convicted.

MONOPOLIES, STATUTE OF. [See next Title.]

MONOPOLY. A licence or privilege allowed by the sovereign for the buying and selling, making, working, or using of anything, to be enjoyed exclusively by the grantee. Monopolies were, by stat. 21 Jac. 1, c. 3, passed in 1623, and called the Statute of Monopolies, declared to be illegal and void, subject to certain exceptions therein specified, including patents in favour of the authors of new inventions. 4 *Bl.* 159; 2 *Steph. Com.* 25; 4 *Steph. Com.* 266; *Wms. P. P., Part III. ch.* 2. [PATENT.]

MONSTER is one which hath not the shape of mankind, but in any part evidently resembles the brute creation. *Cowel;* 2 *Bl.* 246; 1 *Steph. Com.* 437.

MONSTRANS DE DROIT. Manifestation or plea of right; which is a claim made against the Crown when the Crown is in possession of a title the facts of which are already set forth upon record. At common law such a proceeding was had only when the right of the claimant as well as the right of the Crown appeared upon the record; and it consisted in putting in a claim of right grounded on facts already acknowledged and established, and praying the judgment of the court, whether upon those facts the king or the subject had the right. This proceeding was extended by statutes of Edward III. and Edward VI. to almost all cases where a subject claims against the right of the Crown founded on an inquisition of office. *T. L.; Cowel;* 3 *Bl.* 256, 257; 3 *Steph. Com.* 656, 657. [INQUEST, 1; PETITION OF RIGHT.]

The judgment in a *monstrans de droit* or other proceeding against the Crown is called *amoveas manus*, or *ouster-le-main*. [AMOVEAS MANUS.]

MONSTRANS DE FAITS OU RECORDS. Showing of deeds or records; which is where a party in an action *shows* to the court a deed or record, in pursuance of an allegation, in his pleading, of the existence of such deed or record. *Cowel.*

MONSTRAVERUNT. A writ that lay for tenants in ancient demesne, who were distrained for the payment of any toll or imposition, or the performance of any services, contrary to the liberty which they ought to enjoy. *T. L.; Cowel.* [ANCIENT DEMESNE.]

MONTH is a space of time containing by the week twenty-eight days, and by the calendar twenty-eight, thirty, or thirty-one days. At common law the meaning of the term "month" is restricted to a month of weeks, or twenty-eight days, otherwise called a *lunar month*. [LUNAR MONTH.] But, in ecclesiastical matters, and for various miscellaneous purposes, a month is interpreted to mean a calendar month. And by stat. 13 Vict. c. 21, passed in 1850, the word "month," in an Act of Parliament, is henceforth to mean a calendar month. *Cowel;* 2 *Bl.* 141; 1 *Steph. Com.* 283. In an ordinary deed or instrument in writing, the term "month" will mean a month of weeks, or twenty-eight days, unless—

1. There be anything in the instrument expressly or by necessary implication indicating the contrary; or

2. There be clear evidence, that by the custom of the locality, the term was understood differently.

MOOT. 1. A court, plea, or convention.

2. An exercise, or arguing of cases, which was formerly practised by students in the Inns of Court, the better to enable them to defend their clients. The places where moot-cases were argued was anciently called a *moot-hall;* and those who argued the cases were called *moot-men. T. L.; Cowel.*

Hence a *moot point* signifies a point open to argument and discussion.

MORA. 1. A moor, heath, or marsh land. *Toml.*

2. Delay. The word is used in this sense in the Roman civil law, with especial reference to the failure to pay a debt or perform a contract at the proper time. Thus a bailee of a chattel neglecting to return it at the time appointed is said to be *in morâ*, and is liable for all consequences, whatever the nature of the bailment. *Aust. Jur., Lect. XXV.* [BAILMENT.]

MORATUR, or DEMORATUR IN LEGE, signifies "he delays in law," or demurs; because the party goes not forward in pleading, but rests upon the judgment of the court, who take time to advise thereupon. *Cowel.* [DEMURRER.]

MORE OR LESS. These words, appended to measurements in a conveyance of land, import a vagueness, within certain small limits, in the measurements of the land referred to. *Fawcett, L. & T.* 77.

MORGANATIC MARRIAGE, or **LEFT-HANDED MARRIAGE**, is in Germany the marriage which a prince or nobleman contracts with a woman of humble birth, on the express condition that the ordinary civil effects shall not result therefrom, and that the children who shall be the issue thereof shall be contented with certain specified advantages. *Ferrière.* It seems to have been called a left-handed marriage from the man giving the woman his left hand at the nuptial ceremony. *Littré.*

MORGANGINA, or **MORGANGIVA** (from Sax. *Morgen*, the morning, and *gifan*, to give), was the gift that the husband presented to his wife on the wedding day. *Toml.*

MORT D'ANCESTOR. A real action or assize available to a demandant who complained of an "abatement" to his freehold, effected by a stranger on the death of the demandant's father or mother, brother or sister, uncle or aunt, nephew or niece. 3 *Bl.* 185. Abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36. 3 *Steph. Com.* 410, *n.* [ABATEMENT, 5; ASSIZE, WRIT OF.]

MORTGAGE (Lat. *Mortuum vadium, i. e.*, dead-pledge) is a conveyance, assignment, or demise of real or personal estate as security for the repayment of money borrowed. *T. L.; Cowel;* 2 *Bl.* 157, 158; 1 *Steph. Com.* 304, 305; *Sm. Man. Eq.*; *Wms. R. P.; Chute, Eq.*

If the conveyance, assignment, or demise be of land or any estate therein, the transaction is called a mortgage, notwithstanding that the creditor enters into possession; but the transfer of the possession of a moveable chattel to secure the repayment of a debt is called not a *mortgage*, but a *pledge*. [GAGE; PLEDGE; VIVUM VADIUM.]

The term "mortgage" is applied indifferently; (1) to the mortgage transaction; (2) to the mortgage deed; and (3) to the rights conferred thereby on the mortgagee.

MORTGAGEE. The creditor to whom a mortgage is made. [MORTGAGE.]

MORTGAGOR. The debtor who makes a mortgage. [MORTGAGE.]

MORTH. Death or murder. *Toml.*

MORTHLAGA. A murderer or manslayer. *Toml.*

MORTHLUGE. Homicide. *Toml.*

MORTIFICATION. A Scotch expression for *mortmain*. *Bell.* [MORTMAIN.]

MORTIS CAUSA DONATIO. [DONATIO MORTIS CAUSA.]

MORTMAIN (Lat. *Mortuâ manu*). An alienation of lands in mortmain is an alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal. The name is thought to have been derived from the fact that the religious houses, to whom principally in former days alienations in mortmain were made, were composed of persons dead in law. [MORTMAIN ACTS.]

MORTMAIN ACTS. The statutes whereby the rights of corporations to take lands by grant or devise is abridged. The principal Act on the subject now in operation is the stat. 9 Geo. 2, c. 36, passed in 1735. At the time of the passing of that Act, no devise of lands to a corporation was good, except for charitable uses. By that statute, no lands or hereditaments or money to be laid out therein may be given or conveyed, charged or incumbered, for any charitable use whatever, unless by deed executed in the presence of two witnesses, twelve calendar months before the death of the donor, and enrolled in Chancery within six calendar months of its execution, and unless such gift be made to take effect immediately, and be without power of revocation. Gifts to the Universities of Oxford and Cambridge, and their colleges, or in trust for the scholars on the foundations of Eton, Winchester and Westminster, are excepted from the operation of the Act; so are *bonâ fide* purchases for valuable consideration paid down. Various other exceptions have been introduced by subsequent statutes. *T. L.; Cowel;* 1 *Bl.* 479; 2 *Bl.* 268—274; 1 *Steph. Com.* 454—463; 3 *Steph. Com.* 70—72; *Wms. R. P., Pt. I. ch.* 3.

MORTUARY. 1. A mortuary was originally a gift left by a man at his death to his parish church, for the recompense of his personal tithes and offerings not duly paid in his lifetime. When presented at the church with the corpse, it was called a *corse-present*. But, so early as Henry III.'s time, we find it riveted into an established custom; so that in many parishes a mortuary was claimed as due to the minister on the death of a parishioner. *T. L.; Cowel;* 2 *Bl.* 425, 426; 2 *Steph. Com.* 741, 743.

2. A place for the temporary reception of the dead.

MORTUUM VADIUM. Dead pledge or mortgage. 2 *Bl.* 157, 158; 1 *Steph. Com.* 304. [MORTGAGE.]

MOSS-TROOPERS. Malefactors in the north of England, who lived by robbery and spoil. *Cowel.*

MOT-BELL. [MOTE-BELL.]

MOTE. A court; a plea; an assembly. [MOOT, 1.] Also a fortress; a standing pool of water to keep fish in; or a great trench of water encompassing a castle, or other dwelling-house. *Cowel.* The last is now generally called *moat.*

MOTE-BELL. The bell used by the Saxons to call people together to the Folkmote Court. *Cowel.*

MOTEER. A customary service or payment at the mote or court of the lord. *Toml.*

MOTIBILIS. A vagrant; one that may be removed or displaced. *Toml.*

MOTION. An application made to a court or judge *vivâ voce* in open court. Its object is to obtain an order or rule, directing some act to be done in favour of the applicant. 3 *Bl.* 304; 3 *Steph. Com.* 627.

Under rule 50 of the Bankruptcy Rules, 1870, all applications to a court having jurisdiction in bankruptcy, in the exercise of its primary jurisdiction under the Bankruptcy Act, 1869, must in general be made by motion.

Any application made to a Divisional Court of the High Court of Justice, or to a judge in an action, under the Rules appended to the Judicature Act, 1875, must be made by motion. *Order LIII. r.* 1.

A motion must in general be preceded by notice to any party intended to be affected thereby.

MOTION FOR DECREE. This has hitherto been (since its introduction in 1852 by stat. 15 & 16 Vict. c. 86, s. 15) the mode most frequently adopted by a plaintiff in a Chancery suit for obtaining the decree to which he claims to be entitled. It must be distinguished from interlocutory motions. The course of proceeding, where the plaintiff intends to move for a decree, will be found in *Hunt. Eq., Pt. I. ch.* 4, *s.* 4.

MOTION FOR JUDGMENT. A proceeding whereby a party to an action moves for the judgment of the court in his favour; which he may adopt under various circumstances enumerated in Order XL. of the Orders nnder the Judicature Act, 1875.

MOTION OF COURSE is a motion for an order which is granted by the officer of the court acting ministerially, merely satisfying himself that the circumstances are such as to entitle the applicant to the order which he seeks. *Hunt. Eq.*

MOVABLES. [MOVEABLES.]

MOVEABLE TERMS. Terms depending on the moveable feast of Easter. This was so with Easter and Trinity Terms, and is so to a slight extent now, when Easter falls late; but in general the Easter and Trinity Terms are fixed. 3 *Steph. Com.* 484, 485. Henceforth, so far as regards the sittings of the Courts, the Easter and Trinity Terms are, under the Judicature Act, 1875, to be superseded by Easter and Trinity sittings. [LONDON AND MIDDLESEX SITTINGS.]

MOVEABLES. 1. Things which may be moved from place to place. 2 *Bl.* 384; 1 *Steph. Com.* 157; 2 *Steph. Com.* 24; *Wms. P. P.*

2. Moveables, in the Scotch law, are opposed to *heritage;* so that every species of property, and every right a man can hold, is by that law either heritable or moveable. But this opposition of the two species of property has no further relation than as regards succession. Moveables, in fact, mean every species of property, corporeal or incorporeal, which does not go to the heir. *Bell.* [HERITABLE AND MOVEABLE RIGHTS.]

MUFASSAL. Separate, distinct, particular; a subordinate or separate district; the country as opposed to the town. Thus, a Mufassal or Mofussil Court is a Provincial Court of Justice. *Wilson's Gloss. Ind.*

MULIER (Lat. *Mulieratus*). A legitimate son. [BASTARD EIGNE; MULIER PUISNE.]

MULIER PUISNE. The lawful issue preferred before an elder brother born out of matrimony. Some think that *mulier* is a corruption of *melior. T. L.; Cowel;* 2 *Bl.* 248; 1 *Steph. Com.* 438, 439. [BASTARD EIGNE.]

MULMUTIN LAWS. [MOLMUTIAN LAWS.]

MULTA or **MULTURA EPISCOPI.** A fine given formerly to the king, that the bishop might have power to make his own last will and testament, and to have the probate of other men's, and the granting administrations. *Cowel.*

MULTIFARIOUSNESS, in a bill in equity, is the confounding distinct subjects in the same bill of complaint. *Hunt. Eq.* [BILL, 2.]

Under the Judicature Act, 1875, 1st Sched. Order XVII. rule 1, this may in general be done, subject to the power of the Court or a judge to order the several causes of action to be tried separately.

MULTIPLE POINDING, in the law of Scotland, means double distress.

An action of multiple poinding is an action brought by a person threatened by rival claimants, calling upon them to dispute their preferences *inter se*. *Bell.* It corresponds substantially to proceedings by way of *interpleader* in the English law. [INTERPLEADER.]

MULTIPLICITY OF SUITS or ACTIONS is where several different suits or actions are brought upon the same issue. This is obviated sometimes by a proceeding in equity called a Bill of Peace; sometimes by a rule of a Court of Common Law for the consolidation of different actions. *Haynes' Eq., Lect. VI.; Lush's Pr.* 964; *Kerr's Act. Law.* [BILL OF PEACE; CONSOLIDATION RULE.]

MULTURE. A toll paid to a miller for grinding corn. *Cowel.* The multure is a quantity of grain payable to the proprietor of the mill by every person who comes to the mill to have his corn ground. The tenants and proprietors of some lands are bound by their tenure to use a particular mill; and these lands, so bound or restricted to the mill, are termed the *thirl* or the *sucken*, and the tenants or proprietors the *insucken multurers;* while those who use the mill without being bound to use it are called the *out-town* or *outsucken multurers.* And the payments of the former are called *insucken multures*, and those of the latter *outsucken multures. Bell.*

MUNICIPAL CORPORATION. A town corporation consisting of a mayor, aldermen, and councillors, who together form the council of the borough. Under the Municipal Corporations Act (5 & 6 Will. 4, c. 76, passed in the year 1835), in the boroughs to which that Act applies, which are the great majority of the boroughs in England and Wales, the town councillors are elected by the burgesses, and the mayor and aldermen by the council. The council is directed to meet once a quarter (and oftener if due notice be given) for the transaction of the general business of the borough. 3 *Steph. Com.* 35—37.

MUNICIPAL LAW means strictly the law of a municipality. The expression is, however, generally used to denote the positive law of a particular State as opposed to the law of nations or international law.

MUNIMENT HOUSE in cathedrals, collegiate churches, &c., is the building used for the purpose of keeping the seal, evidences, charters, &c. of such cathedral, college, &c.; such evidences being called *muniments*, from Lat. *munio*, to fortify. *Cowel.* [See next Title.]

MUNIMENTS OF TITLE. The deeds and other evidences which fortify or protect a man's title to his estates; otherwise corruptly called *miniments. T. L.; Cowel.*

MURAGE. 1. A toll or tribute levied for the repairing of public walls.

2. A liberty granted to a town by the king for levying such toll or tribute. *T. L.; Cowel.*

MURDER is defined by *Bell* to be the depriving a human being of life, wilfully and deliberately, without a cause. The deliberation and malice, or forethought, with which it is committed, is one of the characteristics of the crime of murder. But the malice and forethought is merely that wicked and mischievous purpose which is the essence of the crime, and which may have been engendered at the meeting of the parties. The act of killing of itself implies malice; and it lies on the accused to prove any one of those circumstances which the law sustains as sufficient to lessen the crime.

Upon this we may observe:

1st. That the deliberateness and wilfulness, or, as we prefer to call it, the *intention*, which constitutes the crime of murder, must be held to embrace every result which may naturally or probably be expected to follow from deliberate action, whether such result be *desired* or not. *Aust. Jur., Lect. XIX., XX.*

2nd. That the murderous intention implies an intention to kill *any* person or persons; and it is not material in a legal sense that the particular person killed, or any specifically determined person, was the subject of the murderous intention.

For all practical purposes we may define murder as "the causing the death of any one by some act done without lawful justification or excuse, or by some unlawful omission, of which act or omission a probable consequence is to cause the death of some person or persons." But to this definition we ought in strictness to add, "or in the pursuance of any felonious intention." [EXPRESS MALICE; HOMICIDE; MALICE; MANSLAUGHTER.]

MURDRUM. The secret killing of another; or the fine or amerciament imposed by

MURDRUM—*continued.*

the Danish and Norman conquerors upon the town or hundred wherein the same was committed. 4 *Bl.* 194, 195; 4 *Steph. Com.* 66. [ENGLESCHERIE.]

MUTA CANUM. A kennel of hounds, to which the king was entitled at a bishop's and abbot's decease. *Toml.*

MUTE. Speechless, who refuses to speak; a word applied formerly to a prisoner who, being arraigned of treason or felony,

1. Made no answer at all; or
2. Answered foreign to the purpose; or
3. Having pleaded not guilty, refused to put himself upon his country. (This last formality is now unnecessary.)

Standing mute was, in high treason, in petty larceny, and in misdemeanors, held to be equivalent to conviction. But in other felonies, and in petty treason, it exposed the prisoner to the *peine forte et dure.* [PEINE FORTE ET DURE.] It is now equivalent in all cases to a conviction, except that the court may, if it think fit, order the proper officer to enter a plea of "not guilty" on behalf of the prisoner so standing mute. *Cowel;* 4 *Bl.* 324, 325; 4 *Steph. Com.* 391—393.

MUTINY is now by military men generally understood to imply collective insubordination, or rising against, or resisting military authority in combination or simultaneously, with or without actual violence. A distinction has been drawn between *mutinous conduct* and *mutiny; mutinous conduct* being behaviour tending to mutiny, which may nevertheless be clear of the completion or commission of that offence. Formerly, however, individual acts were frequently charged as mutiny, as the opposing by force any act ordered to be done; or any act of violence done to the person of any officer in the execution of his duty. *Simmons on Courts-Martial, ss.* 170, 171; *Hickman on Naval Courts-Martial, ch.* 21. Similarly, a collective insubordination of the crew of a ship, whether a ship of war or a merchant vessel, is spoken of as *mutiny.*

MUTINY ACT. An Act passed annually by Parliament "for punishing mutiny and desertion, and for the better payment of the army, and their quarters."

By the Bill of Rights (stat. 1 Will. & Mary, s. 2, c. 2) the keeping of a standing army in time of peace without consent of Parliament is against law. The definite establishment of a standing army by an Act of Parliament of unlimited duration, would be in effect a revocation of the above provision, as in that case no further "consent of Parliament" would be required for its continuance. Such consent is accordingly given by Acts of Parliament appointed to continue in force for one year only, called the Mutiny Acts. By these Acts provision is made for the manner in which troops are to be enlisted, paid and "billeted," that is, dispersed among the several innkeepers and victuallers throughout the kingdom. And regulations are laid down therein for the government of the army. By these the sovereign is empowered to make Articles of War, and to grant authority to convene courts-martial, with a jurisdiction over offences committed against such Articles of War and the provisions of the Act. 1 *Bl.* 415, 416; 2 *Steph. Com.* 589—592; *May's Parl. Pract.*

MUTUUM. The contract of a loan to be repaid in kind; as, so much barley, wine, &c.

MYSTERY. A trade or occupation. *Cowel.*

N. L. [NON LIQUET.]

N. P. [NISI PRIUS.]

NAAM. The taking another man's moveable goods, either by lawful distress or otherwise. *T. L.; Cowel.*

NAGAR, NAGUR, or **NAGGUR.** A town or city. *Wilson's Gloss. Ind.*

NAIB. A deputy or representative. *Wilson's Gloss. Ind.*

NAM or **NAAM.** [NAAM.]

NAMA, NAMU. A written document. *Wilson's Gloss. Ind.*

NAMATION. Taking or impounding. *Cowel.*

NAMIUM. A pledge or distress. [NAAM.]

NAMIUM VETITUM. [WITHERNAM.]

NANA. A maternal grandfather. *Wilson's Gloss. Ind.*

NARR (Lat. *Narratio*). The declaration in a cause. *Toml.* [DECLARATION.]

NARRATIO. A declaration or count. [COUNT, 2; DECLARATION.]

NATIONAL DEBT. The debt due by the nation to individual creditors, whether our own people or foreigners. *Toml.* This national debt is in part *funded* and in part *unfunded*; the former being that

NATIONAL DEBT—*continued.*

which is secured to the national creditor upon the public funds; the latter, that which is not so provided for. The unfunded debt is comparatively but of small amount, and is generally secured by Exchequer Bills and Bonds. 2 *Steph. Com.* 574. [CONSOLIDATED FUND; EXCHEQUER BILLS AND BONDS; PUBLIC FUNDS.]

NATIONS, LAW OF. [JUS GENTIUM; LAW OF NATIONS.]

NATIVI. Bondmen; strictly, persons born servants, as opposed to bondmen by contract. *Cowel;* 2 *Bl.* 93, 94; 1 *Steph. Com.* 217.

NATIVI CONVENTIONARII. Bondmen by contract or agreement. *Toml.*

NATIVI DE STIPITE. Bondmen by birth or descent. *Toml.*

NATIVITAS. 1. Bondage or villenage.

2. Casting the nativity, or seeking to know how long the Queen should live; made felony by stat. 23 Eliz. c. 2. *Cowel.* This Act was passed in 1580—1, and is now repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125).

NATIVO HABENDO. A writ for the apprehension of a villein or bondman who had run away from his lord. *T. L.; Cowel.*

NATURA BREVIUM. [FITZHERBERT; NEW NATURA BREVIUM; OLD NATURA BREVIUM.]

NATURAL AFFECTION. Often used in deeds for the motive, or consideration for a gift arising from relationship. This consideration is not sufficient to "sustain a promise," *i. e.*, to give an action to the promisee against the promiser for its non-fulfilment. *Toml.;* 2 *Steph. Com.* 61.

NATURAL ALLEGIANCE. The allegiance due from natural-born subjects. 1 *Bl.* 369; 2 *Steph. Com.* 403.

NATURAL-BORN SUBJECTS include by the common law:—

1. All persons born within the United Kingdom, or in the colonies and dependencies, except such as are born of alien enemies in time of war.

2. The children of the sovereign, wherever born.

3. The children of our ambassadors, born abroad.

But the class of natural-born subjects has been considerably extended by statutory enactments. By 25 Edw. 3, stat. 2, passed in 1351, it was enacted that all children born abroad, provided *both* their parents were, at the time of their birth, in allegiance to the king, and the mother had passed the seas by her husband's consent, might inherit as if born in England. Now, by stat. 7 Ann. c. 5, passed in 1709; 4 Geo. 2, c. 21, passed in 1731; and 13 Geo. 3, c. 21, passed in 1773, persons born abroad whose fathers, or grandfathers by the father's side, were natural-born subjects, are deemed to be natural-born subjects to all intents and purposes. That is to say, they are to be deemed natural-born subjects, except for the purposes of transmitting the same *status* to their descendants born abroad. 1 *Bl.* 366, 371; 2 *Steph. Com.* 406—408.

NATURAL LIFE. That which terminates by natural death, as opposed to civil death. [CIVIL DEATH.]

NATURALIZATION. The giving to a foreigner the *status* of a natural-born subject. *T. L.; Cowel.;* 1 *Bl.* 374. This may be done either by Act of Parliament, or by a certificate of the Secretary of State under the Naturalization Act, 1870 (33 Vict. c. 14), on his taking the oath of allegiance, as to which the Secretary of State is empowered by the Naturalization Oaths Act, 1870 (33 & 34 Vict. c. 102), to make regulations. 2 *Steph. Com.* 410, 411. [ALIEN; ALLEGIANCE; NATURAL-BORN SUBJECTS.]

NAUFRAGE. Shipwreck. *Toml.*

NAVAGIUM. A duty incumbent on tenants, to carry their lord's goods in a ship. *Toml.*

NAVAL DISCIPLINE ACTS. The method of ordering seamen in the royal fleet, and keeping up a regular discipline there, was first directed by certain express rules, articles and orders, enacted by the authority of Parliament soon after the Restoration. In these articles of the navy every offence was laid down, and the punishment thereof annexed. The scheme of naval discipline was, in 1749, embodied in a permanent statute (22 Geo. 2, c. 33), amended by subsequent Acts, instead of being provided for by annual Acts, as is done with reference to the army. [MUTINY ACT.] From whence this distinction arose it is hard (says Blackstone) to assign a reason, unless it proceeded from the perpetual establishment of the navy, which rendered a permanent law for its duration expedient, and the temporary duration of the army, which at first subsisted only

NE LUMINIBUS OFFICIATUR—*contd.*
his neighbour from building so as to interfere with his lights. [EASEMENT; SERVITUDE.]

NE RECIPIATUR. A caveat entered by the defendant in an action against receiving and setting down the cause to be tried. *Toml.; Kerr's Act. Law; Lush's Pr.* 498, 548.

NE UNQUES ACCOUPLE was a defence by a tenant (or defendant) in an action of dower, to the effect that the demandant and her alleged husband were never joined in lawful matrimony, and that therefore she could not claim dower as his widow. 3 *Steph. Com.* 607.

NE UNQUES EXECUTOR. A phrase indicating the defence by which a person, sued as executor, denies that he ever was executor.

NE UNQUES SEISIE. A defence to an action of dower, whereby it was alleged that the deceased husband of the demandant had never been seised of such an estate as would give the demandant a legal claim to dower. 3 *Steph. Com.* 607. [DOWER, 2.]

NECESSARIES, in the case of an infant, include meat, drink, apparel, physic, and likewise good teaching and instruction, whereby he may profit himself afterwards; and, in general, things suitable to his circumstances, degree, and station in life. For the supply of all such things an infant may bind himself by contract. 2 *Steph. Com.* 306, 307.

This definition of "necessaries" is not affected by the Infants' Relief Act, 1874 (37 & 38 Vict. c. 62). [INFANTS' RELIEF ACT.]

Similarly, necessaries for a married woman are things suitable for her station in life, and for the supply of these her husband will in general be responsible. 2 *Steph. Com.* 270.

NECESSITY is a constraint upon the will, whereby a man is urged to do that which his judgment disapproves, and is thereby excused from responsibility which might be otherwise incurred. It includes—

1. The obligation of civil subjection.

2. In certain cases, the coercion of a wife by her husband.

3. In certain cases also *duress per minas*, which impels a man to act in a given way from fear of death or personal injury. [DURESS.]

4. Where a man is constrained to choose the least of two evils. 4 *Bl.* 27—31; 4 *Steph. Com.* 31—34.

NEGATIVE PREGNANT is a negative implying also an affirmative, as if a man, being impleaded to have done a thing on such a day, or in such a place, denieth that he did it *in manner and form as alleged*, which implieth, nevertheless, that in some sort he did it. *T. L.; Cowel.*

NEGGILDARE, in the laws of Henry I., signifies to claim kindred. *Toml.*

NEGLECT. [NEGLIGENCE.]

NEGLIGENCE. A culpable omission of a positive duty. It differs from *heedlessness*, in that heedlessness is the doing of an act in violation of a *negative* duty, without adverting to its possible consequences. In both cases there is inadvertence, and there is breach of duty. *Aust. Jur. Lects. XIX., XX., XXIV.*

Negligence, in reference to the keeping of property, is divided by Sir W. Jones into three kinds—1. Gross negligence, which is the want of that care which every man of common sense takes of his own property. 2. Ordinary negligence, which is the omission of that care which men of prudence take of their concerns; and 3, slight negligence, which is the omission of that diligence which very circumspect and careful persons employ. 2 *Steph. Com.* 81, 82, *and n.* (*c*).

NEGLIGENT ESCAPE is where a prisoner escapes without his keeper's knowledge or consent. It is thus opposed to a *voluntary* escape, which is an escape by consent or connivance of the officer. 3 *Bl.* 415; 4 *Bl.* 130; 4 *Steph. Com.* 228.

NEGOCIABLE INSTRUMENTS are instruments purporting to represent so much money, in which the property passes by mere delivery, such as bills of exchange, promissory notes, &c. 2 *Steph. Com.* 53.

NEGOTIORUM GESTOR is a person who does an act to his own inconvenience for the advantage of another, but without the authority of the latter, or any promise to indemnify him for his trouble. The *negotiorum gestor* was entitled, by the Roman law, to recover compensation for his trouble; and this is so by the law of England in cases of salvage, and in some other cases. *Austin, Jur.*

NEIF, NEIFE or **NIEF** (Lat. *Nativa*). A bondwoman. *T. L.; Cowel;* 2 *Bl.* 94; 1 *Steph. Com.* 217.

NEIFTY. A writ whereby a lord claimed a woman for his *neife*. *Cowel.* [NEIF.]

NEM. CON. [NEMINE CONTRADICENTE.]

NEMBDA. The jury of the ancient Goths, in which there was required for a verdict only the consent of the majority. 3 *Bl.* 376; 3 *Steph. Com.* 549, *n.*

NEMINE CONTRADICENTE. No one contradicting; that is, unanimously; a phrase used with especial reference to votes and resolutions of the House of Commons; *nemine dissentiente* being the corresponding expression as to unanimous votes of the House of Lords. *Toml.*

NEUTRALITY LAWS are the Acts otherwise called the Foreign Enlistment Acts. [FOREIGN ENLISTMENT ACTS.]

NEVER INDEBTED. A plea in actions of contract which denies the matters of fact from which the liability of the defendant arises; thus, in actions for goods bargained and sold, the plea operates as a denial of the bargain and sale. 3 *Steph. Com.* 504; *Kerr's Act. Law.*

But a defendant cannot, under such a plea, contend that though a contract was made in fact, it was void in point of law, for the facts from which its invalidity is inferred must form the subject of a special plea. *Steph. Plead.; Jud. Act*, 1875 (38 & 39 *Vict. c.* 77), 1*st Sched. Ord. XIX. r.* 23.

NEW ASSIGNMENT. A reply by the plaintiff to a defendant's plea, by which the plaintiff alleged that he brought his action not for the cause supposed by the defendant, but for some other cause to which the plea pleaded was irrelevant. 3 *Bl.* 311; 3 *Steph. Com.* 507.

A new assignment might arise in two ways:—1. Where the plaintiff complained of one of several trespasses in a form so general that the declaration was applicable to any of them, and a trespass in respect of which the action was *not* brought was (by mistake or design) justified by the defendant. 2. Where the defendant pleaded a justification of the trespass complained of, and the plaintiff maintained that there had been an excess beyond what the circumstances justified, or that the trespass was not, *in fact*, justifiable in the way set up by the defendant. *Lush's Pr.* 483; *Kerr's Act. Law.* See *Common Law Procedure Act*, 1852 (15 & 16 *Vict. c.* 76), *s.* 87.

Under the Judicature Act, 1875 (38 & 39 Vict. c. 77), by Order XIX. rule 14, no new assignment shall hereafter be necessary or used. But everything which has heretofore been alleged by way of new assignment may hereafter be introduced by amendment of the "statement of claim." [STATEMENT OF CLAIM.]

NEW INN. One of the Inns of Chancery. 1 *Steph. Com.* 19, *n.* [INNS OF CHANCERY.]

NEW NATURA BREVIUM. A name sometimes given to the Natura Brevium compiled by Sir Anthony Fitzherbert, in opposition to an older publication called the Old Natura Brevium. [FITZHERBERT; OLD NATURA BREVIUM.]

NEW STYLE. The mode of reckoning time at present in use, introduced into the British dominions in the year 1752, by an Act of the previous year (24 Geo. 2, c. 23). [OLD STYLE.]

NEW TRIAL has been held to be grantable in civil cases on motion, on any of the following grounds:—

1. That the judge misdirected the jury on a point of law. 2. That he admitted or rejected evidence improperly. 3. That he improperly discharged the jury. 4. That he refused to amend the record when an amendment ought to have been made. 5. That the defendant did not receive due notice of trial. 6. That the successful party misbehaved. 7. That the jury, or any of them, have misbehaved, as by drawing lots for the verdict. 8. That the damages are excessive. 9. That the damages are too slight. 10. That the verdict has been obtained by a surprise. 11. That the witnesses for the prevailing side are manifestly shown to have committed perjury. 12. That the verdict was against the weight of evidence. 13. That new and material facts have come to light since the trial.

A new trial is not quite the same thing as a *venire de novo*, which is a much more ancient proceeding. [VENIRE DE NOVO.] 3 *Bl.* 387, 388; see also 393, *note by Coleridge*; 3 *Steph. Com.* 558; *Kerr's Act. Law.*

Under the Judicature Act, 1875, a party desirous of obtaining a new trial must apply by motion to a Divisional Court for an order, calling upon the opposite party to show cause within eight days, or so soon after as the case may be heard, why a new trial should not be directed. The motion must be made within four days after the trial, or, if the Divisional Court be not sitting, then within the first four days after the commencement of the next sitting, or within such extended time as the court or a judge may allow. A copy of such

NEW TRIAL—*continued.*

order must be served on the opposite party within four days from the time of the same being made. A new trial is not to be granted on the ground of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court some substantial wrong has been thereby occasioned; and if such wrong affects only part of the matter in controversy, the court may direct a new trial as to that part only. *Ord. XXXIX, rules* 1, 2, 3.

NEW TRIAL PAPER. The paper in which are set down the rules which are granted for new trials. *Kerr's Act. Law.*

NEXT FRIEND. 1. A guardian in socage. *T. L.; Cowel.* [GUARDIAN, I., 3.]

2. An adult under whose protection an infant or a married woman institutes an action or other legal proceeding, and who is responsible for the conduct and the costs of the same. *Hunt. Eq. Pt. II. ch.* 8; *Kerr's Act. Law; Jud. Act*, 1875 (38 & 39 *Vict. c.* 77), 1*st Sched. Ord. XVI. r.* 8.

NEXT OF KIN. 1. An expression generally used for the persons who, by reason of kindred, are, on the death of a person intestate, entitled to his personal estate and effects under the Statute of Distributions. See 2 *Bl.* 224; 2 *Steph. Com.* 193, 196, 209; *Wms. P. P., Pt. IV. ch.* 4.

2. Those who are, lineally or collaterally, related in the nearest degree to a given person.

NEXT PRESENTATION. The right to present to a living on the next vacancy. The purchase of the next presentation to a vacant benefice is illegal and void; so is the purchase by a clergyman, either in his own name or in another's, of the next presentation simply, with the view of presenting himself to the living, though the benefice be not vacant at the time of purchase. 2 *Bl.* 279; 2 *Steph. Com.* 720, 721. [SIMONY.]

NICHILLS. Debts to the Exchequer which the sheriff could not levy, and as to which he returned *nil.* The sums so "nilled" were transcribed once a year by an officer called the "clerk of the nichills," and sent to the Treasurer's Remembrancer's office, from whence process was issued to recover the "nichill" debts. *Manning's Exchequer Practice, p.* 321, *n.* The Treasurer's Remembrancer's office, and the offices connected therewith, including that of the Clerk of the Nichills, were abolished in 1833 by stat. 3 & 4 Will. 4, c. 99, s. 41.

NIEF. [NEIF.]

NIENT COMPRISE. An exception formerly sometimes taken to a petition as unjust, because the thing desired is not contained in the act or deed whereon the petition is grounded. As if one desireth to be put into possession of a house among other lands, &c. adjudged unto him, and it be pleaded against him that, though he had a judgment for certain lands and houses, yet the house is not contained among the things for which he had judgment. *Cowel.*

NIENT CULPABLE. Not guilty. 4 *Bl.* 339; 4 *Steph. Com.* 406.

NIENT DEDIRE. To suffer judgment by not denying or opposing it, that is, by default. *Cowel.*

NIGHT. 1. Night was anciently accounted to be the time from sunset to sunrise. 4 *Bl.* 224, 292.

2. The better opinion in Blackstone's time seemed to be that it extended during the time in which there was not sufficient twilight, begun in the morning or left in the evening, to see a man's face withal. 4 *Bl.* 224.

3. Now, by Act of Parliament, stat. 24 & 25 Vict. c. 96, s. 1, the night, during which time a burglary may be committed, is deemed to commence at 9 o'clock in the evening, and to end at 6 o'clock in the morning on the following day. 4 *Steph. Com.* 105.

4. By stat. 9 Geo. 4, c. 69, s. 15, passed in 1828, the night, for the purposes of night poaching, is to be considered to commence at the expiration of one hour after sunset, and to conclude at the beginning of the last hour before sunrise. 4 *Steph. Com.* 285, *n.* (*n*).

NIHIL, NIHILS or NICHILS (nothing).

1. Words formerly used of debts due to the Exchequer which could not be realized owing to the insufficiency of the debtors. *T. L.; Cowel.* [NICHILLS.]

2. Also of there being no assets available for the creditors of a bankrupt.

NIHIL CAPIAT PER BREVE or PER BILLAM. A judgment against a plaintiff, that he take nothing by his writ, or by his bill. *T. L.; Cowel.*

NIHIL DEBET, or NIL DEBET (he owes nothing). The plea of the general issue in an action of debt. 3 *Bl.* 305. Abolished by r. 11 of Trinity Term, 1853.

NIHIL DICIT, or NIL DICIT, means a failure on the part of a defendant to put in his defence to the plaintiff's action by the day assigned; on which the

NIHIL DICIT, or NIL DICIT—*continued.*
plaintiff may recover judgment by default; or, as it is sometimes called, judgment by *nil dicit*. *T. L.; Cowel;* 3 *Bl.* 296, 397; 3 *Steph. Com.* 567, 568; *Steph. Plead.; Jud. Act*, 1875 (38 & 39 *Vict. c.* 77). 1*st Sched. Ord. XXIX.*

NIHIL HABUIT, or NIL HABUIT, IN TENEMENTIS. A plea which could sometimes be pleaded by a lessee, when an action of debt was brought against him by a party claiming as landlord for rent due. The import of it was that the plaintiff had no title in the land demised, and that the defendant was not "estopped" by deed or otherwise from disputing the plaintiff's title. *Toml.* [ESTOPPEL.]

NIKAH. A legal marriage; in Bengal the term is applied to a sort of left-handed marriage, such as one contracted with a widow, or only for a limited time. *Wilson's Gloss. Ind.*

NISI. [DECREE NISI; NISI PRIUS; RULE NISI.]

NISI PRIUS. A writ judicial, whereby the sheriff of a county was commanded to bring the men impanelled as jurors in any civil action to the court at Westminster on a certain day, unless before that day (*nisi prius*) the justices of assize came into the county, in which case, by the statute of Nisi Prius, 13 Edw. 1, c. 30, it became his duty to return the jury, not to the court at Westminster, but before the justices of assize. The *nisi prius* business was thus at first a mere adjunct to the *assizes*, or real actions. Now these real actions are abolished altogether, though the name *assizes* is retained; and the judges in civil cases at the assizes are said to sit at *nisi prius*. And a trial at *nisi prius* is generally understood to mean a trial, before a judge and jury, of a civil action, which has been brought in one of the superior courts. It is thus to be distinguished from (1) a trial at bar, (2) a criminal trial, (3) a trial in an inferior court. Criminal cases are, however, sometimes tried at *nisi prius;* this is, when an indictment has been found in the Queen's Bench, or removed thereto, or a criminal information has been filed in the same court, and the proceeding has been sent down with other *nisi prius* business to be tried at the assizes. *T. L.; Cowel;* 3 *Bl.* 58, 63, 353, 354, 424, 425; 4 *Bl.* 269, 350, 351; 3 *Steph. Com.* 350—352; 4 *Steph. Com.* 314; *Kerr's Act. Law; Stat.* 36 & 37 *Vict. c.* 66, *s.* 93. [See the two following Titles.]

NISI PRIUS COURT. The court in which civil actions are tried at the assizes. [ASSIZE, COURTS OF; CROWN SIDE; NISI PRIUS.]

NISI PRIUS RECORD. The parchment roll on which the issue in a civil action, consisting of a record of the pleadings which have taken place, has, according to the hitherto existing practice, been transcribed for the purpose of being delivered to the proper officer of the Court, for the use of the judge who is to try the case. 3 *Bl.* 356; 3 *Steph. Com.* 515; *Lush's Pr.* 537, 538; *Kerr's Act. Law.*

Under the Judicature Act, 1875, 1st Sched. Ord. XXXVI. r. 17, the party entering the action for trial is to deliver to the officer a copy of the pleadings for the use of the judge.

NIZAM. Administration or administrator. *Wilson's Gloss. Ind.* [NAZIM.]

NOBILITY. The rank or dignity of peerage, comprising—1. Dukes. 2. Marquesses. 3. Earls. 4. Viscounts. 5. Barons. *Cowel;* 1 *Bl.* 157, 396—402; 2 *Steph. Com.* 330, 601—612.

NOCTANTER (by night). An old writ which lay for one who had made a ditch or hedge on waste ground, and it had been thrown down in the night time, and the offenders could not be found. The writ was directed to the sheriff commanding him to make inquisition relative thereto, and to distrain the neighbouring towns, if necessary, for the repair thereof. *Toml.* This writ was given in pursuance of stat. 13 Edw. 1, st. 1, c. 46, passed in 1285, which was repealed in 1828 by 9 Geo. 4, c. 27, s. 1.

NOCTES ET NOCTEM DE FIRMA. Entertainment for so many nights. *Cowel.*

NOCUMENTUM. Nuisance. [NUISANCE.]

NOLLE PROSEQUI (to be unwilling to prosecute) is a formal averment by the plaintiff in an action, that he will not further prosecute his suit as to one or more of the defendants, or as to part of the claim or cause of action. Its effect is to withdraw the cause of action, in respect of which it is entered, from the record. *Lush's Pr.* 391; 3 *Steph. Com.* 568; *Kerr's Act. Law.*

A *nolle prosequi* may also be entered in a criminal prosecution by the attorney-general. *Toml.*

NOMINAL DAMAGES. A trifling sum recovered by verdict, in cases where, although the action is maintainable, it is nevertheless the opinion of the jury that the plaintiff has not suffered substantial damage. 3 *Steph. Com.* 567.

NOMINAL PARTNER. A person who allows his name to appear in a partnership firm, without having any real interest therein. He is liable as a partner to strangers who have no notice of his want of interest in the partnership concern. 2 *Steph. Com.* 101, 102.

NOMINATION TO A LIVING. A power that a man hath by virtue of a manor, or otherwise, to appoint a clerk to a patron of a benefice, to be by him presented to the ordinary. *T. L.; Cowel.*

NOMINE PŒNÆ. A penalty incurred by the nonpayment of rent, &c., at the time appointed by a lease or agreement for payment thereof. *Toml.*

NON ASSUMPSIT (he did not promise). The plea of the general issue in an action of assumpsit, to the effect that the defendant did not promise as alleged in the plaintiff's declaration. 3 *Bl.* 305; 3 *Steph. Com.* 503. [ASSUMPSIT; GENERAL ISSUE, PLEA OF.]

NON ASSUMPSIT INFRA SEX ANNOS (he did not promise within six years). A plea to an action of assumpsit denying that any such promise as mentioned in the declaration was made within six years, and claiming the benefit of the Statute of Limitations. 3 *Bl.* 308. [LIMITATIONS, STATUTE OF.]

NON CEPIT. The plea of the general issue in the action of *replevin;* that the defendant did not take the goods as alleged by the plaintiff. 3 *Steph. Com.* 615. [GENERAL ISSUE, PLEA OF; REPLEVIN.]

NON CLAIM. The omission or neglect of him that ought to challenge his right within a time limited, by which neglect he is barred of his right; as was the case by the Statute of Fines (4 Hen. 7, c. 24) upon non-claim within five years after a fine levied with proclamations. *T. L.; Cowel;* 1 *Bl.* 465; 2 *Bl.* 354; 1 *Steph. Com.* 565. [FINE, I.]

NON COMPOS MENTIS. A phrase applied to a man to indicate that he is of unsound mind, so as to be incapable of managing himself or his affairs. *T. L.; Cowel;* 1 *Bl.* 304; 2 *Steph. Com.* 510.

NON CONSTAT (it is not evident). This phrase is often used as importing that an alleged inference is not deducible from given premises. [NON SEQUITUR.]

NON CUL. Short for *non culpabilis,* not guilty. 4 *Bl.* 339. [NOT GUILTY.]

NON DAMNIFICATUS (not damnified). A plea to an action on a bond of indemnity, whereby the defendant alleges that the plaintiff has suffered no such damage as to warrant him in bringing the action. *Toml.*

NON DECIMANDO. A claim to be entirely exempt from tithes, and to pay no compensation in lieu of them. 2 *Bl.* 31. [DE NON DECIMANDO.]

NON DEMISIT (he did not demise). The name of a plea on an action of debt for rent under a lease, denying the fact of the lease.

NON DETINET (he does not detain). The plea of the general issue in an action of detinue, which operates as a denial of the detention of the goods, but not of the plaintiff's property therein. *Rules of T. T.* 1853, *r.* 15. [DETINUE; GENERAL ISSUE, PLEA OF.]

NON DISTRINGENDO. A writ not to distrain, granted in divers cases. *Cowel.*

NON EST FACTUM (it is not his deed). The plea of the general issue in an action on a deed, denying the *fact* of the deed having been executed. *Cowel;* 3 *Bl.* 305; *Rules of T. T.* 1853, *r.* 10. See *Jud. Act,* 1875, 1*st Sched. Ord. XIX. r.* 22. [GENERAL ISSUE, PLEA OF.]

NON EST INVENTUS (he has not been found). A return by the sheriff to a writ of *capias,* when he cannot find the defendant within his bailiwick. 3 *Bl.* 283. [BAILIWICK; CAPIAS AD SATISFACIENDUM.]

NON IMPLACITANDO ALIQUEM DE LIBERO TENEMENTO SINE BREVI. An old writ to inhibit bailiffs, &c. from distraining any man touching his freehold without the king's writ. *Cowel.*

NON INFREGIT CONVENTIONEM (he did not break the covenant). A plea to an action on a covenant.

NON INTROMITTANT CLAUSE. A clause in the charter of a borough by which it is exempted from the jurisdiction of the county justices. 3 *Steph. Com.* 37, 38, *n.* (*a*).

NON INTROMITTENDO QUANDO BREVE DE PRÆCIPE IN CAPITE SUBDOLE IMPETRATUR. An old writ to prevent a person, who had fraudulently obtained a *præcipe in capite,* from using it. *Cowel.* [PRÆCIPE IN CAPITE.]

NON ISSUABLE PLEA. A plea which does not raise an issue on the merits of the case. [ISSUABLE PLEA.]

NON LIQUET (it is not clear). In ancient Rome, each *judex* or juryman was pro-

NON LIQUET—*continued.*
vided with three tablets, on one of which was marked A. (*absolvo*, I absolve or acquit); on a second, C. (*condemno*, I condemn), and on a third, N. L. (*non liquet*, it is not clear). The *judices* voted by placing one of these three tablets in an urn, which was afterwards examined for the purpose of ascertaining the votes. A majority determined the acquittal or condemnation of the accused; and if the votes for acquittal and condemnation were equal, there was an acquittal. *Smith's Dict. Ant.*

NON MERCHANDIZANDO VICTUALIA. An old writ directed to the justices of assize, commanding them to inquire whether the officers of such a town sold victuals in gross, or by retail, during their office, contrary to the statute, and to punish them if they found it true. *Cowel.*

NON MOLESTANDO. A writ that lay for him that was molested contrary to the king's protection granted to him. *T. L.; Cowel.*

NON OBSTANTE (notwithstanding). A clause by which the Crown occasionally attempted to give effect to grants and letters-patent, notwithstanding any statute to the contrary. The doctrine of *non obstante*, which set the prerogative above the laws, was demolished by the Bill of Rights at the Revolution. *Cowel;* 1 *Bl.* 342, 2 *Bl.* 273; 4 *Bl.* 401; 1 *Steph. Com.* 460. [See also next Title.]

NON OBSTANTE VEREDICTO (notwithstanding the verdict). A motion for judgment *non obstante veredicto* is a motion made on the part of a plaintiff for judgment in his favour after verdict found for the defendant, and, under the practice hitherto existing, it has been granted when it has appeared to the court that the defendant has, by his pleading, admitted himself to be in the wrong, and has taken issue on some point which, though decided in his favour by the jury, still does not better his case. 3 *Steph. Com.* 558, 564; *Steph. Plead.; Smith's Act. Law.*

Provision was made by sect. 48 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), for the hearing before a Divisional Court of motions for judgment *non obstante veredicto;* but that section is repealed by the Act of 1875 (38 & 39 Vict. c. 77, s. 33, and Second Schedule).

NON OMITTAS PROPTER ALIQUAM LIBERTATEM. A clause now generally inserted in writs directed to a sheriff, by which he is commanded "not to omit, by reason of any liberty within his bailiwick," to execute the process which the writ enjoins, but to execute the same within liberties and privileged places as well as in the county at large. 2 *Steph. Com.* 630, 631.

Formerly, this clause was inserted only after a return by the sheriff that the bailiff of some liberty or franchise within the county had neglected or refused to execute the writ. *T. L.; Cowel.* [BAILIWICK; LIBERTY.]

NON PONENDIS IN ASSISIS ET JURATIS. An old writ freeing men from attending upon assizes and juries. *Cowel.*

NON PROCEDENDO AD ASSISAM REGE INCONSULTO. An old writ to stop the trial of a cause appertaining to one that was in the king's service, until the king's pleasure be further known. *Cowel.*

NON PROS. or **NON PROSEQUITUR.** The delay or neglect by a plaintiff in proceeding with his action. So a judgment for the defendant by reason of such neglect in the plaintiff is called judgment of *non pros.* 3 *Bl.* 296; 3 *Steph. Com.* 614; *Steph. Plead.; Kerr's Act. Law.*

In equity, where a plaintiff neglects to proceed with his suit, the proper course for the defendant is to move to dismiss the plaintiff's bill for want of prosecution. *Hunt. Eq. Pt. II. ch.* 5, *s.* 2.

Under the Judicature Act, 1875, a plaintiff, failing to deliver a statement of his claim in due time, may, by Order XXIX. r. 1, have his action dismissed for want of prosecution. And the same course may, under Order XXXI. r. 20, be taken with a plaintiff who fails to comply with an order to answer interrogatories; besides that the party so making default renders himself liable to "attachment." [ATTACHMENT.] If the plaintiff fail in due time to give "notice of trial," the defendant may do so for him. *Ord. XXXVI. r.* 4. [NOTICE OF TRIAL.]

NON RESIDENCE. The neglect by a clergyman to reside on his cure. *Cowel.* The cases in which non residence is to be permitted to the clergy are now regulated by statute. See 2 *Steph. Com.* 689—691.

NON RESIDENTIA PRO CLERICIS REGIS. An old writ, directed to the ordinary, charging him not to molest a clerk employed in the king's service, by reason of his non residence. *Cowel.*

NON SANE MEMORY means generally unsoundness of mind; and, specially, an exception to an action on the ground that the act upon which the action was brought was done by a person who was mad at the time. *Cowel.*

NON SEQUITUR (it does not follow). An expression used in argument to indicate that the premises do not warrant the inference drawn from them.

NON SOLVENDO PECUNIAM AD QUAM CLERICUS MULCTATUR PRO NON RESIDENTIA. An old writ, prohibiting an ordinary from taking a pecuniary mulct imposed upon a clerk of the king for non residence. *Cowel.*

NON SUM INFORMATUS. I have no instructions. [INFORMATUS NON SUM.]

NON TENURE. An exception to the plaintiff's count in a real action, to the effect that the defendant did not hold the land mentioned in the count. *Cowel.* [ACTIONS REAL AND PERSONAL.]

NON TERM. The time of vacation between term and term. *T. L.; Cowel.* [TERM, 1.]

NONABILITY. An exception taken against a plaintiff on the ground that he is under a personal disability to sue, as if he be an alien enemy. *T. L.; Cowel.*

NONÆ ET DECIMÆ. Payments made to the Church by those who were tenants of Church farms. *Nonæ* was a rent or duty for things belonging to husbandry, *decimæ* were claimed in right of the Church. *Toml.*

NONAGE. 1. The absence of full age, which is for most purposes twenty-one years. *T. L.; Cowel.* [FULL AGE.]

2. An ecclesiastical payment. [See next Title.]

NONAGIUM. The ninth part of moveable goods formerly payable to the clergy on the death of persons in their parish. *Toml.*

NONCONFORMISTS. Dissenters from the Church of England; a word used more especially of the Protestant bodies who have seceded from the Church. 4 *Bl.* 51—59; 2 *Steph. Com.* 706.

NONFEASANCE. The omission of some act which a man is bound by law to do. 3 *Steph. Com.* 363. [MALFEASANCE; MISFEASANCE.]

NON-JOINDER. A plea in abatement by which it is alleged that the plaintiff has omitted to *join* in the action all the persons who ought to be parties to it. 3 *Steph. Com.* 493; *Kerr's Act. Law.* Under the Judicature Act, 1875, by Order XVI. r. 13, no action is to be defeated by the misjoinder of parties; and by Order XIX. r. 13, pleas in abatement are abolished in civil actions.

NON-JURORS. Persons who after the abdication of James II. refused to take the oaths to William III. and his successors in the government.

NON-SUIT. A renouncing of a suit by the plaintiff; most commonly upon the discovery of some error or defect, when the matter is so far proceeded with, as that the jury is ready at the bar to deliver their verdict. So, if the plaintiff does not appear at all he is said to be non-suit or non-suited; *non sequitur clamorem suum.* A non-suit is properly the voluntary act of the plaintiff in deserting his action; and the difference between a *non-suit* and *non pros.* is that in the former the plaintiff, being called upon in court to proceed, advisedly abandons the suit, because he sees it is likely to go against him; in the latter he simply neglects to take the proper steps. [CALLING THE PLAINTIFF; RETRAXIT.] A non-suit may, however, be entered by the court above, on application made by the defendant pursuant to leave reserved by the judge at the time of trial. *T. L.; Cowel;* 3 *Bl.* 296, 316, 376; 3 *Steph. Com.* 550, 551, 568; *Kerr's Act. Law.*

Under the Judicature Act, 1875, a plaintiff discontinuing his action must, by Ord. XXIII., pay the defendant's costs. And by Ord. XLI. r. 6, any judgment of non-suit, unless the court or a judge otherwise directs, is to have the same effect as a judgment upon the merits for the defendant.

NOT FOUND. An indorsement which may be made by a grand jury on a bill submitted to them where they consider the evidence insufficient; or they may in such case indorse "not a true bill," or "no bill." 4 *Bl.* 305; 4 *Steph. Com.* 367. [BILL, 3; INDICTMENT.]

NOT GUILTY. The plea of the general issue in actions of trespass (or trespass on the case), and in criminal trials. But there is this difference between the two cases. In criminal cases special matter, as, for instance, matter by way of justification, may in general be given in evidence on a plea of not guilty; whereas in civil actions special matter must in general be specially pleaded. *Cowel;* 3 *Bl.* 305; 4 *Bl.* 338; 3 *Steph. Com.* 503; 4 *Steph. Com.* 405; *Kerr's Act. Law.*

Under the Judicature Act, 1875, by Ord. XIX. r. 20, it is not sufficient for a defendant in his defence to deny generally the facts alleged by the plaintiff's statement of claim, but he must deal

NOT GUILTY—*continued.*

specifically with each allegation of fact of which he does not admit the truth. But, by rule 16 of the same Order, nothing in these rules contained is to affect the right of any defendant to plead "not guilty by statute." [See next Title.]

NOT GUILTY BY STATUTE. A plea of the general issue by a defendant in a civil action, when he intends to give special matter in evidence by virtue of some Act or Acts of Parliament; in which case he must add the reference to such Act or Acts, and state whether such Acts are public or otherwise. *Rule* 21 *of the Rules of Trinity Term*, 1853. But if a defendant so plead, he will not be allowed to plead any other defence without the leave of the court or a judge. *Jud. Act*, 1875 (38 *&* 39 *Vict. c.* 77), *First Sched. Ord. XIX. r.* 16.

NOT POSSESSED. A plea by the defendant in an action of trover to the effect that he was not possessed, at the time of action brought, of the chattels alleged to have been converted by him to his own use. [TROVER.] Under the Judicature Act, 1875, a defendant pleading "not possessed" would probably be held to have pleaded "evasively" within the meaning of Order XIX. rule 22.

NOT PROVEN. A verdict of a jury in a Scotch criminal trial, to the effect that the guilt of the accused is not made out, though his innocence is not clear. The legal effect of such a verdict is the same as that of a verdict of Not Guilty. [THOLED AN ASSIZE.]

NOTARY, or **NOTARY PUBLIC** (Lat. *Registrarius, Actuarius, Notarius*), is one that attests deeds or writings to make them authentic in another country. He is generally a solicitor.

A notary was anciently a scribe who took *notes* or minutes, and made short drafts of writings and other instruments, both public and private. When the Christian Church was struggling for existence, the apostolical notaries were appointed to preserve evidence of the acts and lives of those who suffered. As the Church advanced in power, their duties increased, and were extended to civil as well as to ecclesiastical affairs, and their superior reputation for sanctity gave them a superiority over the secular or imperial notaries. A notary is to this day a public officer of the civil and canon law, appointed by the Archbishop of Canterbury; who, in the instrument of appointment, decrees that "full faith be given as well in as out of judgment to the instruments by him made." It is the office of a notary, among other things, at the request of the holder of a bill of exchange of which acceptance or payment is refused, to *note* and *protest* the same. *Cowel; Bell; Byles on Bills; 2 Steph. Com.* 121. [NOTING A BILL.]

NOTE OF A FINE. An abstract which used to be made by the chirographer of the proceedings in a fine, before it was engrossed: naming the parties, the parcels of land, and the agreement. *Cowel;* 2 *Bl.* 351; 1 *Steph. Com.* 561. [FINE, I.]

NOTE OF HAND is the same as a promissory note. 2 *Bl.* 467; 2 *Steph. Com.* 123. [PROMISSORY NOTE.]

NOTICE is a word which sometimes means knowledge, either actual, or imputed by construction of law; sometimes a formal notification of some fact, or some intention of the party giving the notice; sometimes the expression of a demand or requisition. [See the following Titles.]

NOTICE OF ACTION is a notice to a person of an action intended to be brought against him, which is required by statute to be given in certain cases. Thus, a justice of the peace is entitled to one calendar month's notice of an action to be brought against him for an oversight in the discharge of his office. 2 *Steph. Com.* 650; *Kerr's Act. Law.*

NOTICE OF DISHONOUR is a notice that a bill of exchange has been dishonoured. This notice the holder of a dishonoured bill is bound to give promptly to those to whom, as drawers or indorsers, he wishes to have recourse for payment of the bill. 2 *Steph. Com.* 119. Putting a letter into the post is the most common and the safest mode of giving notice. *Byles on Bills*, 277. [BILL OF EXCHANGE; DISHONOUR.]

NOTICE OF TITLE is where an intending mortgagee or purchaser has knowledge, by himself or his agent, of some right or title in the property adverse to that of his mortgagor or vendor. Thus we speak of a *bonâ fide* purchaser for valuable consideration *without notice;* meaning that the purchaser of the property has paid the price to those who, he believed, had the right to sell.

"Notice" does not of necessity imply actual knowledge. For whatever is sufficient to put a man of ordinary prudence on an inquiry is constructive notice of everything to which that inquiry might have led. Thus, negligence in investigating a title will not exempt a purchaser from responsibility for knowledge

NOTICE OF TITLE—*continued.*

of facts stated in the deeds which are necessary to establish the title.

In reference to real property, the doctrine of notice is mainly important as between a prior owner or incumbrancer of an *equitable* interest in the land, and a subsequent purchaser of the *legal* estate. The subsequent purchaser will be preferred, if, when he advanced his money, he had no notice of the equitable incumbrance; but not otherwise.

As between incumbrancers on a fund in the hands of trustees, it is notice to the trustees which regulates the respective priorities of the incumbrancers; so that a prior incumbrancer neglecting to give notice of his claim will be postponed to a subsequent incumbrancer who gives notice. *Sm. Man. Eq. Tit. I. ch.* 4; *Chute's Eq. ch.* 3.

NOTICE OF TRIAL. The notice given by a plaintiff to a defendant that he intends to bring on the cause for trial. It must be a ten days' notice at least, unless the defendant be under terms to take "short notice," in which case a four days' notice is sufficient. 3 *Steph. Com.* 518; *Kerr's Act. Law; Judicature Act*, 1875, *1st Sched. Ord. XXXVI. r.* 9. Formerly it was necessary to give eight days' notice if the defendant lived within forty miles of London, and fourteen days in other cases. 3 *Bl.* 357.

Under the Judicature Act, 1875, the plaintiff may, with his reply, or at any time after the close of the pleadings, give notice of trial, and thereby specify one of the following modes of trial:—

(1.) Before a judge or judges.
(2.) Before a judge sitting with assessors.
(3.) Before a judge and jury.
(4.) Before an official or special referee, with or without assessors.

If the plaintiff does not within six weeks of the close of the pleadings give notice of trial the defendant may give notice of trial, specifying one of the above modes. *Ord. XXXVI. rr.* 2, 3, 4.

NOTICE TO ADMIT is where one party in an action calls on another to admit a document, saving all just exceptions. If the party so called on should neglect or refuse to admit it, he will bear the cost of proving the same, unless the judge certify that such refusal was reasonable. 3 *Steph. Com.* 540; *Judicature Act*, 1875 (38 & 39 *Vict. c.* 77), *1st Sched. Ord. XXXII. r.* 2.

NOTICE TO PLEAD. A notice by the plaintiff to the defendant, requiring him to plead within eight days. It may be indorsed on the declaration, or delivered separately. *Kerr's Act. Law.*

Under the Judicature Act, 1875, 1st Schedule, Order XXVI. rule 1, a defendant must deliver his defence within eight days from the delivery of the plaintiff's statement of claim, or from the time limited for the defendant's appearance, whichever shall be the last, unless such time is extended by the court or a judge.

NOTICE TO PRODUCE. A notice by one party in an action to the other to produce, at the trial, certain documents in his possession. If, after receiving this notice, the party do not produce them, then secondary evidence of their contents may be given. 3 *Bl.* 382, *note by Coleridge;* 3 *Steph. Com.* 543; *Kerr's Act. Law.*

NOTICE TO QUIT. A notice often required to be given by landlord to tenant, or by tenant to landlord, before the tenancy can be terminated. In cases of a tenancy from year to year, the notice required is generally a six months' notice. 3 *Bl.* 147; 1 *Steph. Com.* 291, 292; *Fawcett, L. & T.* 265—274.

NOTING A BILL. When a bill of exchange is not duly paid on presentation the holder applies to a notary-public, who again presents the bill; if not paid, he makes a memorandum of the non-payment, which is called *noting the bill. Chambers's Bookkeeping, App. pp.* vii, viii. Such memorandum by the officer consists of his initials, the month, day and year, and his charges for minuting; and is considered as the preparatory step to a protest. *Byles on Bills*, 258. PROTESTING A BILL.]

NOVA STATUTA (new statutes). An appellation sometimes given to the statutes which have been passed since the beginning of the reign of Edw. III. 1 *Steph. Com.* 68.

NOVÆ NARRATIONES. A collection of pleadings in actions during the reign of Edw. III. It consisted principally of declarations, as the title imports; but there were sometimes pleas and the subsequent pleadings. *Reeves' Hist. Eng. Law.*

NOVATION. The substitution of a new obligation for an old one. This subject of novation has been much before the courts in reference to the transfers of the business of life assurance companies. In order to constitute a novation the old obligation must be discharged; and it has often been the interest of claimants on the transferor company, where the

NOVATION—*continued.*

transferee company has become insolvent, to contend that there is no "novation," but that the old obligation is still in force.

The questions which have arisen on this matter are for the most part set at rest by the statute 35 & 36 Vict. c. 41, passed in 1872, by sect. 7 of which it is provided that no policy-holder shall be deemed to have abandoned any claim against the original company, and to have accepted in lieu thereof the liability of the new company, unless such abandonment and acceptance shall have been signified by some writing signed by him or by his agent lawfully authorized.

NOVEL ASSIGNMENT, in pleading, is an assignment of time, place or such like, otherwise than it was before assigned. *Cowel.* [NEW ASSIGNMENT.]

NOVEL DISSEISIN originally signified a disseisin committed since the last eyre or circuit of justices. [ASSIZE OF NOVEL DISSEISIN; DISSEISIN; EYRE.]

NOVELS (Lat. *Novellæ Constitutiones*) were Constitutions of the Emperor Justinian, published after the completion of the Code. [CONSTITUTION; CORPUS JURIS CIVILIS; JUSTINIAN.]

NUDE CONTRACT (Lat. *Nudum pactum*). A bare promise of a thing without any "consideration" or equivalent. *Cowel.* [CONSIDERATION; NUDUM PACTUM.]

NUDE MATTER. A bare allegation of a thing done, to be proved by witnesses. *Cowel.* [MATTER, 2.]

NUDUM PACTUM. An agreement to do or pay anything on one side without any consideration on the other. *Cowel;* 2 *Bl.* 445; 2 *Steph. Com.* 59.

NUGGUR. A town or city. [NAGAR.]

NUISANCE. Whatsoever unlawfully annoys or doth damage to another. Nuisances are of two kinds: public or common nuisances, which affect the public and are an annoyance to all, or at least to an indefinite number, of the Queen's subjects; and private nuisances, which cause special damage to particular persons, or a limited and definite number of persons, and do not amount to trespasses. *T. L.; Cowel;* 3 *Bl.* 5, 216—222; 4 *Bl.* 166—168; 3 *Steph. Com.* 402—405; 4 *Steph. Com.* 270—277; *Haynes' Eq. Lect. IX.* [ASSIZE OF NUISANCE.]

NUL DISSEISIN. A plea of the general issue in the action of *novel disseisin*, now abolished. 3 *Bl.* 187, 305. [ASSIZE OF NOVEL DISSEISIN; GENERAL ISSUE, PLEA OF.]

NUL TIEL AGARD (no such award). A plea by a defendant in an action brought to enforce an award, denying the existence of the award.

NUL TIEL RECORD (no such record). A plea denying the existence of a record alleged by the opposite party. 3 *Bl.* 331; 3 *Steph. Com.* 513, *n.*

NUL TORT was, like *nul disseisin*, a plea of the general issue in the action of *novel disseisin*, now abolished. 3 *Bl.* 187, 305. [ASSIZE OF NOVEL DISSEISIN.]

NULLA BONA (no goods). A return made by the sheriff to the writ of *fieri facias*, when there are no goods within the county out of which to levy the distress. *Kerr's Act. Law.* [RETURN.]

NULLIUS FILIUS (the son of no man). An expression sometimes applied to a bastard. 1 *Bl.* 458, 459; 2 *Steph. Com.* 299.

NULLUM ARBITRIUM. The plea of no award. *Toml.* [NUL TIEL AGARD.]

NUNC PRO TUNC. Now instead of then; meaning that a judgment is entered, or document enrolled, so as to have the same legal force and effect as if it had been entered or enrolled on some earlier day. See 3 *Steph. Com.* 572.

By the Judicature Act, 1875, 1st Sched. Ord. XLI. r. 2, where any judgment is pronounced by the court or by a judge in court, the entry of the judgment shall be dated as of the day on which such judgment in pronounced, and the judgment shall take effect from that date. And in other cases, by r. 3, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

NUNCUPATIVE WILL. A will declared by a testator before a sufficient number of witnesses, and afterwards reduced into writing. 2 *Bl.* 500; *Wms. Exors.* 116. Nuncupative wills are not now allowed, except in the case of soldiers and sailors on actual service. 2 *Steph. Com.* 188, 593.

NUNQUAM INDEBITATUS. [NEVER INDEBTED.]

NUPER OBIIT. A writ that lay for a co-heir who was deprived by her co-parcenor of the possession of lands, of which a common ancestor, or uncle or brother to them both, died seised of an estate in fee simple in possession. *T. L.; Cowel.* This writ, having been long obsolete, was abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

NURTURE, GUARDIAN FOR. [GUARDIAN, I., 2.]

NUSANCE. [NUISANCE.]

O. NI (*Oneretur, nisi habet sufficientem exonerationem*—Let him be charged, unless he have sufficient excuse). A mark formerly set against a sheriff when he had entered into his accounts in the Exchequer, to indicate that he thenceforth became the king's debtor for such accounts. *T. L.; Cowel.*

O YES. [OYEZ].

OATH EX OFFICIO was the oath by which a clergyman charged with a criminal offence was formerly allowed to swear himself to be innocent; also the oath by which the compurgators swore that they believed in his innocence. 3 *Bl.* 101, 447; 3 *Steph. Com.* 315, *n.* [COMPURGATORS.]

OATH OF ALLEGIANCE. An oath to bear true allegiance to the sovereign. 1 *Bl.* 368. [ALLEGIANCE; NATURALIZATION.]

OBEDIENTIA signifies:—

1. A rent.
2. An office, or an administration of an office. *Cowel.*

OBITER DICTUM. A dictum of a judge on a point not directly relevant to the case before him.

OBJECTS OF A POWER. Where property is settled subject to a power given to any person or persons to appoint the same among a limited class, the members of the class are called the *objects of the power*. Thus, if a parent has a power to appoint a fund among his children, the children are called the objects of the power. [POWER.]

OBJURGATRIX. A common scold. *Toml.* [CASTIGATORY FOR SCOLDS.]

OBLATA. 1. Offerings, oblations.

2. Old debts, brought together from precedent years, and, according to the ancient practice of the Exchequer, put to the then sheriff's charge.

3. Gifts by the king to his subjects. *Cowel.*

OBLIGANT, in Scotland, is the "granter of an obligation"; called in England the "obligor." [OBLIGOR.]

OBLIGATION. 1. Legal or moral duty as opposed to physical compulsion. *Aust. Jur. Lect. XXIII.*

2. A duty incumbent upon an individual, or a specific and limited number of individuals, as opposed to a duty imposed upon the world at large. *Aust. Jur. Tables and Notes.*

3. The right to enforce such a duty (*jus in personam*), as opposed to such a right as that of property (*jus in rem*), which avails against the world at large. *Austin, Jur. Tables and Notes.*

4. A bond containing a penalty, with a condition annexed, for the payment of money, performance of covenants, or the like. *Cowel; 2 Bl.* 340.

OBLIGEE. The person who is entitled to the benefit of a bond or obligation. *Cowel; 2 Steph. Com.* 108.

OBLIGOR. The person bound by an obligation. *Cowel; 2 Steph. Com.* 108.

OBREPTION, in Scotland, signifies obtaining gifts of escheat by false pretences and lies. *Wm. Bell.*

OBTEMPER. To obtemper, in Scotland, is to obey a judgment or decree. *Paterson.*

OBVENTIONS. Offerings or tithes. *Toml.; 2 Steph. Com.*

OCCASIO. 1. An impediment. *Cowel.*

2. A tribute which a lord imposed on his vassals or tenants, or the cause of pretext for such imposition. *Toml.*

OCCUPANCY. The taking possession of those things which before belonged to nobody. 2 *Bl.* 3, 8, 258—262, 400; 1 *Steph. Com.* 157, 448, 682; 2 *Steph. Com.* 16, 24; *Aust. Jur., Lect. LVII.*

OCCUPANT. One who takes property by occupancy. [OCCUPANCY.] Especially one who entered upon land on the death of tenant *pur auter vie*, living *cestui que vie. T. L.; Cowel.* That is, A. having an estate during the life of B., and dying in B.'s lifetime, C. entered; C. was called an *occupant*. If C. had no right prior to his entry, he was called a *general occupant*, and his occupancy was called *common occupancy*, but if he entered as A.'s heir under a grant to A. and his heirs, he was called a *special occupant*. Common occupancy is now abolished by the Statute of Frauds (29 Car. 2, c. 3), passed in 1677, and stat. 14 Geo. 2, c. 20, passed in 1741. 2 *Bl.* 258—260; 1 *Steph. Com.* 448—452. [ADMINISTRATOR; AUTRE VIE; CESTUI QUE VIE; CHATTELS; EXECUTOR.]

OCCUPATION. 1. The putting a man out of his freehold in time of war, corresponding to disseisin in time of peace. 2. The use, tenure, or possession of land.

OCCUPATION—*continued.*

3. An usurpation upon the king, as when one uses liberties which one has not. [LIBERTY.] *Cowel.*

OCCUPAVIT. A writ that lay for him that was ejected out of his land in time of war. *Cowel.* [OCCUPATION, 1.]

OCTO TALES. [TALES.]

ODHAL. Complete property, as opposed to *feudal* tenure. The transposition of the syllables of Odhal makes it Allodh, and hence (Blackstone considers) arises the word *allod* or *allodial.* All-odh is thus put in contradistinction to fee-odh. 2 *Bl.* 45, *n.* [FEE; FEUDAL SYSTEM.]

ODIO ET ATIA. [DE ODIO ET ATIA.]

OFFICE. A species of incorporeal hereditament, consisting in the right to exercise a public or private employment. But, in its more limited sense, it is a right which entitles a man to act in the affairs of others without their appointment or permission. *T. L.; Cowel;* 2 *Steph. Com.* 620.

OFFICE COPY is a copy, made under the sanction of a public office, of any deed, record, or other instrument in writing deposited therein.

OFFICE FOUND is when, by an *inquest of office,* facts are found entitling the Crown to any real or personal property by forfeiture or otherwise. 3 *Bl.* 259; 3 *Steph. Com.* 661. [INQUEST.]

OFFICE, INQUEST OF. [INQUEST.]

OFFICE OF A JUDGE. A criminal suit in an ecclesiastical court, not being directed to the reparation of a private injury, is regarded as a proceeding emanating from the *office of the judge,* and may be instituted by the mere motion of the judge. [MERE MOTION.] But in practice these suits are instituted by private individuals, with the permission of the judge or his surrogate; and the private prosecutor in any such case is, accordingly, said to *promote the office of the judge. Coote's Eccl. Practice.*

OFFICIAL, or **OFFICIAL PRINCIPAL,** in the ancient civil law signified him who was the minister of, or attendant upon, a magistrate. In the canon law, it is especially taken for him to whom any bishop doth generally commit the charge of his spiritual jurisdiction, and in this sense the chancellor of the diocese is called the official principal. The word official also includes the deputy of an archdeacon. *Cowel; Toml.*

Some deans and chapters still preserve their "officials" (who were formerly judges exercising, in a great measure, episcopal jurisdiction) as legal advisers and assessors in matters affecting the interests of the chapter. *Phillimore's Eccl. Law,* 1203.

OFFICIAL ASSIGNEES. Officers of the bankruptcy courts appointed by the Lord Chancellor under the Bankruptcy Acts for the purpose of acting, as occasion might require, with other assignees in the winding up of bankrupt's estates.

By the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), these officers are, as regards the country districts, abolished; in London they are, by sect. 129, attached to the new Bankruptcy Court, to perform such duties as the Lord Chancellor shall direct. The Lord Chancellor may release from the performance of any further duties any officer whose services he may deem unnecessary. *Robson, Bkcy.*

OFFICIAL LIQUIDATOR. A person appointed by the judge in Chancery in whose court a joint stock company is being wound up, to bring and defend suits and actions in the name of the company, and generally to do all things necessary for winding up the affairs of the company, and distributing its assets. 3 *Steph. Com.* 24. [LIQUIDATOR.]

OFFICIAL LOG BOOK. [LOG.]

OFFICIAL PRINCIPAL. [OFFICIAL.]

OFFICIAL REFEREES are officers to be attached to the Supreme Court of Judicature, to whom the trial of any question in any civil proceeding before the High Court of Justice or before the Court of Appeal may be referred by the court or by any divisional court or by a judge for inquiry and report. *Stat.* 36 *&* 37 *Vict. c.* 66, *ss.* 56, 83. A referee is to have no power to commit any person to prison or to enforce any order by attachment. *Stat.* 38 *&* 39 *Vict. c.* 77, *1st Sched. Ord. XXXVI. r.* 33. By rule 34, he may state facts specially for the decision of the court, and, by stat. 36 & 37 Vict. c. 66, s. 58, his report is equivalent to the verdict of a jury.

OFFICIARIIS NON FACIENDIS VEL AMOVENDIS. An ancient writ directed to the magistrates of a corporation, willing them not to make such a man an officer or to put one out of the office he hath, until inquiry be made of his manners. *Cowel.*

OFFICINA JUSTICIÆ (the shop or mint of justice). An expression applied to the Court of Chancery, wherein the king's writs were framed. 3 *Bl.* 273; 3 *Steph. Com.* 322, *n.* [ORIGINAL WRIT.]

OLD NATURA BREVIUM. A law tract published in the reign of Edw. III., containing those writs which were then most in use, and annexing to each a short comment concerning their nature and the application of them, with their various properties, effects and consequences. This work became a model to Fitzherbert in writing his "Natura Brevium." *Reeves' History of the Eng. Law.* [FITZHERBERT; NEW NATURA BREVIUM.]

OLD STYLE. The mode of reckoning time which prevailed in this country until the year 1752. This method differed from the *New Style* at present in use in the following particulars:—

1. The year commenced on the 25th of March, instead of, as now, on the 1st of January.

2. The reckoning of days was based on the assumption that every fourth year was a leap-year, no exception being admitted; instead of, as now, but 97 leap-years in 400 years.

3. The rules for determining the feast of Easter were far less elaborate than at present.

So far as regards the second point above mentioned, the Old Style is still observed in Russia.

The New Style was introduced into the British dominions by stat. 24 Geo. 2, c. 23, passed in 1751, and came into operation in the following year. It had prevailed in the Roman Catholic countries of the Continent since the year 1582.

OLD TENURES. A treatise on tenures in the reign of Edw. III. It is called "Old Tenures," to distinguish it from Littleton's book on the subject of tenures. *Reeves' Hist. Eng. Law.* [LITTLETON.]

OLERON, LAWS OF. A code of maritime laws compiled in the twelfth century by King Rich. I. at the isle of the bay of Aquitaine, on the coast of France, then part of the possessions of the Crown of England. *T. L.; Cowel;* 1 *Bl.* 419; 4 *Bl.* 423; 2 *Steph. Com.* 542; 3 *Steph. Com.* 343, 344.

OMNIPOTENCE OF PARLIAMENT. An expression used to indicate that in parliament resides that absolute despotic power which in all governments must reside somewhere; so that parliament may do anything not naturally impossible, without being controlled by any recognized superior authority. 1 *Bl.* 160, 161; 2 *Steph. Com.* 336.

OMNIUM. A term used in the Stock Exchange, to express the aggregate value of the different stocks in which a loan is usually funded. *Toml.*

ONCUNNE, in the laws of Alfred, signifies *accused. Toml.*

ONERANDO PRO RATA PORTIONIS. A writ that lay for a joint tenant, or tenant in common, that was distrained for more rent than his proportion of the land came to. *Cowel.* [COMMON, TENANCY IN; JOINT TENANCY.]

ONEROUS CAUSE. The Scotch phrase for a good consideration. [CONSIDERATION.]

ONUS EPISCOPALE. Ancient customary payments of the clergy to their diocesan bishop. *Toml.*

ONUS PROBANDI. The burden of proof. [BURDEN OF PROOF.]

OPEN POLICY. An *open policy,* in marine insurance, is one in which the value of the subject insured is not fixed or agreed upon in the policy, as between the assured and the underwriter, but is left to be estimated in case of loss. An *open policy* is opposed to a *valued policy,* in which the value of the subject insured is fixed for the purpose of the insurance, and expressed on the face of the policy. *Arnould, Mar. Ins. 4th ed. pp.* 217, 218; *Crump's Mar. Ins. s.* 869. [INSURANCE.]

OPENING A COMMISSION is the commencement of the judicial proceedings at an assize, by the reading of the commissions by virtue of which the judges sit to try cases. It was formerly deemed necessary that the commissions should be opened and read on the day appointed for holding the assizes; and the consequence was, that inconvenience often arose, owing to the pressure of business elsewhere, or other unforeseen circumstances. Now, by stat. 3 Geo. 4, c. 9, passed in 1822, in cases where the opening of the commissions on the day specified shall be prevented by pressure of business or other unforeseen circumstances, the commissions may be opened and read on the following day, in which case the cause of the delay must be certified to the Lord Chancellor.

OPENING A RULE is where the court allows the propriety of a rule to be again open for argument after it has been made absolute. Where a rule has issued improvidently through a mistake of the officer of the court, or in a case in which the court had no jurisdiction to grant it, the court will allow it to be *opened* for the purpose of correcting the mistake or discharging the rule; but this will not in general be done on any other ground. *Lush's Pr.* 943.

OPENING BIDDINGS is where an estate having been put up and sold by auction, it is again put up to competition. This practice long prevailed in sales under the authority of the Court of Chancery, if, after the sale, an intending purchaser offered a large increase over the price at which the estate had been actually knocked down; so that a *bonâ fide* purchaser was never sure of his bargain. This practice is abolished by stat. 30 & 31 Vict. c. 48, s. 7, passed in 1867; and the opening of biddings is now allowed only in cases of fraud or misconduct in the sale. *Wms. R. P.; Hunt. Eq.*

OPENING PLEADINGS is the statement, in a concise form, of the pleadings in a case by the junior counsel for the plaintiff, for the instruction of the jury. 3 *Bl.* 366; 3 *Steph. Com.* 529.

OPERARII. Tenants who held portions of land by the tenure of performing certain bodily labours und servile works for their lord. *Toml.*

OPERATIO. One day's work performed by a tenant for his lord. *Toml.*

OPERATIVE PART OF A DEED is that part whereby the object of the deed is effected, as opposed to the recitals, &c. [RECITALS.]

OPERATIVE WORDS IN A LEASE are those words by which the lessor actually lets the premises to the lessee. The terms generally used are "demise and lease;" but any words clearly indicating an intention of making a present demise will suffice. *Fawcett, L. & T.* 74.

OPTION. The archbishop has a customary prerogative, when a bishop is consecrated by him, to name a clerk or chaplain of his own to be provided for by such bishop; in lieu of which the bishop used to make over by deed to the archbishop, his executors and assigns, the next presentation of such dignity or benefice in the diocese within the bishop's disposal, as the archbishop himself should choose; which, therefore, was called his *option.* 1 *Bl.* 381; 2 *Steph. Com.* 669.

OPTIONAL WRIT. Original writs were either *optional* or *peremptory.* An optional writ, otherwise called a *præcipe,* was a writ commanding a defendant to do a thing required, or else to show the reason wherefore he had not done it; thus giving the defendant his choice, either to redress the injury, or to stand the suit. 3 *Bl.* 274. [ORIGINAL WRIT.]

ORAL PLEADINGS. Pleadings put in *vivâ voce* in court, which was formerly done. *Kerr's Act. Law.*

ORANDO PRO REGE ET REGNO. An ancient writ, common in the reign of king Edward III., by which the bishops and clergy were required to pray for the peace and good government of the realm. *Toml.*

ORATOR. A word formerly used in bills in Chancery to denote the plaintiff; *oratrix* being the word used to denote a female plaintiff.

ORATRIX. [ORATOR.]

ORDEAL or **ORDEL.** The most ancient species of trial, called also *judicium Dei* (the judgment of God), and based generally on the notion that God would interpose miraculously to vindicate the guiltless. This was of two sorts:—

1. *Fire Ordeal,* which was performed either by taking up in the hand, unhurt, a piece of red-hot iron; or else by walking barefoot, and blindfold, over nine red-hot ploughshares, laid lengthwise at unequal distances. If the party escaped being hurt, he was adjudged innocent; otherwise he was condemned as guilty.

2. *Water Ordeal,* which was performed either by plunging the bare arm up to the elbow in boiling water, and escaping unhurt therefrom; or by casting the person suspected into a river or pond of cold water; and, if he floated thereon without any action of swimming, it was deemed an evidence of his guilt; but, if he sunk, he was acquitted. 4 *Bl.* 342, 343; 4 *Steph. Com.* 407, 408.

ORDEFFE or **ORDELFE.** A liberty whereby a man claims to dig or delve *ore* in his own ground. *T. L.; Cowel.*

ORDELS. The right of administering oaths, and judging of trials by ordeal, within a given precinct or liberty. *Toml.*

ORDER. Any command of a superior to an inferior may be so called. But the word is frequently applied to those acts of courts of justice which do not dispose of the merits of any case before them. In Chancery the word is used generally of decisions on interlocutory applications, whether by motion or petition; whether the decision be given in court or in chambers; and whether by a judge or a chief clerk. The word is also applied to the case of a bill being dismissed at the hearing. It is said to be done by an *order of dismissal.* *Hunt. Eq.* The word is applied at common law to the decision of a judge or master obtained by summons at chambers, as opposed to a rule made

ORDER—*continued.*

on motion in open court. *Lush's Pr.* 947—956; *Kerr's Act. Law*; *Hunt. Eq.*; see also the *Judicature Act*, 1875, 1*st Sched. Ord. LIV. rr.* 4, 6.

Besides these orders, which are applicable merely in particular instances, there are what are called General Orders, which are framed by courts of justice, sometimes by virtue of their inherent jurisdiction, but now more frequently under the express authority of some statute. [GENERAL RULES AND ORDERS.]

Such orders are sometimes incorporated in a schedule to an Act of Parliament, as is the case with the orders in the First Schedule to the Judicature Act, 1875. But they are more frequently made by judicial authority in pursuance of some statutory direction: as, for instance, the Order of the Court of Chancery issued February 5th, 1861, in pursuance of stat. 23 & 24 Vict. c. 128; also the Orders of the 12th of August, 1875, issued by the authority of the Queen in Council under the name of "Additional Rules of Court" under the Supreme Court of Judicature Act, 1875.

An *order*, in this sense, generally contains several *rules;* a *rule* being a section or subdivision of an *order*.

ORDER AND DISPOSITION is a phrase denoting the apparent possession, on the part of a bankrupt, of goods not his own, with the consent of the true owner. In such case the title of the trustee in the bankruptcy, as representing the creditors, will in general prevail over that of the person claiming the goods as owner. 2 *Steph. Com.* 165, 166; *Robson, Bkcy.*

ORDER BOOK. A book containing the printed notices and orders of the day in the House of Commons. *May's Parl. Pract.*

ORDER OF DISCHARGE. An order obtainable by a bankrupt after passing his public examination, but, unless his bankruptcy has closed, only with the consent of his creditors, testified by special resolution.

This order has the effect of releasing the bankrupt from his debts, except such as are due to the Crown, and such as have been incurred by fraud. *Bankruptcy Act*, 1869, *sects.* 48, 49; 2 *Steph. Com.* 161, 162; *Robson, Bkcy.*

ORDER OF REVIVOR. An order to revive a suit which has become abated or defective by the death of some party thereto, or for some other cause. *Hunt. Eq.*

Now, by the Judicature Act, 1875, 1st Schedule, Order L. rule 1, an action is not to become abated by reason of the marriage, death or bankruptcy of any of the parties, if the cause of action survive or continue; and is not to become defective by the assignment, creation, or devolution of any estate or title *pendente lite*. In such cases the Court may, by rule 2, order that the husband, personal representative, trustee, or other successor in interest, if any, may be made a party to the action. [ABATEMENT, 4.]

ORDER, PAYABLE TO. A bill or note payable to order is a bill or note payable to a given person, or as he shall direct by any indorsement he may make thereon. Until he has so indorsed it, no one else can maintain an action upon it; and in this respect it differs from a bill or note *payable to bearer*. 2 *Steph. Com.* 116.

ORDERS. [HOLY ORDERS.]

ORDERS OF THE DAY. Matters which the House of Commons may have agreed beforehand to consider on any particular day are called the "orders of the day," as opposed to original motions. *May's Parl. Pract.*

ORDINANCE OF PARLIAMENT. In ancient times there seems to have been a distinction between the *statutes* and *ordinances* of parliament. A *statute* was drawn up with the advice and deliberation of the judges and other learned men, and was entered on a roll called the *statute roll;* afterwards the tenor of it was annexed to a proclamation writ, directed to the sheriffs to proclaim it in their several counties; whereas *ordinances* appear to have been answers of the king to the great men and commons in parliament, entered upon the parliament roll. Ordinances were, in theory, merely declaratory of the existing law. They were never proclaimed by the sheriff, but the king sometimes recommended the commons to publish them in their counties. *Reeves' Hist. Eng. Law.*

ORDINANCE OF THE FOREST. A statute made touching forest causes in the 34th year of Edward I., A.D. 1305. *Cowel.*

ORDINARY. 1. In the civil law, an *ordinary* signifies any judge that hath authority to take cognizance of causes in his own right, and not by deputation.

2. In the common law, it is taken for him that hath exempt and immediate jurisdiction in causes ecclesiastical, who is generally the bishop of the diocese. *T. L.; Cowel; 2 Steph. Com.* 191.

ORDINARY OF NEWGATE is the chaplain of Newgate Gaol.

ORDINATION. The admission by the bishop of any person to the order of priest or deacon, *Toml.; 2 Steph. Com.* 671. [HOLY ORDERS.]

ORDINATIONE CONTRA SERVIENTES. A writ that lay against a servant for leaving his master contrary to the Statute of Labourers (stat. 23 Edw. 3). *Cowel.* [LABOURERS, STATUTES OF.]

ORDINES MAJORES ET MINORES. The orders of priest, deacon, and sub-deacon, which qualified for presentation and admission to ecclesiastical cures, were called, according to some, *ordines majores*, the greater orders; and the inferior orders of chantor, psalmist, ostiary, reader, exorcist, and acolyte, were called *ordines minores*, the lesser orders.

According to others, the order of sub-deacon was among the lesser orders, which is certainly the more probable opinion. [HOLY ORDERS.]

ORDNANCE OFFICE was a public department consisting of six officers, called respectively—1. The Master General. 2. The Surveyor General. 3. The Clerk of the Ordnance. 4. The Principal Storekeeper. 5. The Secretary to the Master General. 6. The Secretary to the Board.—The Surveyor General, Clerk of the Ordnance, and Principal Storekeeper, constituted together what was called the Board of Ordnance. The department was under the control of the Master General and the Board. It was the duty of the Master General to direct personally all matters relating to the Corps of Artillery and Engineers. It was the duty of the Board to superintend the construction and repair of fortifications, barracks, and military buildings in the United Kingdom and in the Colonies, and of the Colonial Government Buildings; also the supply of arms, ammunition, and military stores for the army and navy, and the contract and issue of fuel, lights, and the various military supplies, both at home and abroad, and of provisions and forage for the army in Great Britain; also the surveys, both civil and military, required at home and abroad, and the direction of the scientific works pertaining to the Corps of Engineers.

By stat. 18 & 19 Vict. c. 117, passed in 1855, the estates and powers of the officers of Ordnance are transferred to one of her Majesty's Principal Secretaries of State.

ORFGILD signifies a payment or restoring of cattle; or a penalty for taking away cattle. *T. L.; Cowel.*

ORGILD. Without compensation. *Cowel.*

ORIGINAL BILL IN EQUITY was a bill filed otherwise than by way of supplement or revivor. *Hunt. Eq. 5th ed. p.* 128. [BILL, 2; FILING BILL IN EQUITY; ORDER OF REVIVOR; REVIVOR; SUPPLEMENT.]

ORIGINAL WRIT was formerly the beginning or foundation of every action. When a person had received an injury for which he desired satisfaction at law, the first step in the process of obtaining redress was to sue out, or purchase, by paying the stated fees, an *original*, or *original writ*, from the Court of Chancery. This original writ was a mandatory letter from the king on parchment, sealed with his Great Seal, and directed to the sheriff of the county wherein the injury was supposed to have been committed, requiring him to command the wrongdoer or party accused either to do justice to the complainant, or else to appear in court, and answer the accusation against him. Whatever the sheriff did in pursuance of the writ, he was bound to *return* or certify to the Court of Common Pleas, together with the writ itself, which was the foundation of the jurisdiction of that court, being the king's warrant for the judges to proceed to the determination of the causes. For it was a maxim introduced by the Normans that there could be no proceedings in Common Pleas before the king's justices without his original writ, by which a matter in question was expressly referred to their judgment, those justices being at that time considered as the substitutes of the Crown. 3 *Bl.* 272, 273. Various devices were in course of time resorted to by the connivance of the judges, in order to avoid the expense of an original writ, until, in 1831, an Act of Parliament (stat. 2 Will. 4, c. 39) was passed, called the Uniformity of Process Act, by which a comparatively simple and uniform system was introduced into actions at common law. 3 *Steph. Com.* 490.

The various original writs known to the law in former times are to be found in a book called Registrum Omnium Brevium (a Register of all the Writs), which is divided into two parts—one containing the *original* writs, and referred to as "Reg. Orig.;" the other containing the *judicial* writs, and referred to as "Reg. Jud.," or "Reg. Judic." [JUDICIAL WRIT; WRIT.]

ORIGINALIA. Records or transcripts sent out of the Chancery to the Treasurer's Remembrancer's Office in the Exchequer. *Cowel.* These transcripts contained extracts of all grants of the Crown enrolled on the patent and other rolls in Chancery, wherein any rent was received, any salary payable, or any service to be performed. *Toml.* The Treasurer's Remembrancer's Office was abolished in 1833 by stat. 3 & 4 Will. 4, c. 99.

ORPHANAGE PART. The share in the property of a deceased intestate, to which, under the custom of London (abolished in 1856 by stat. 19 & 20 Vict. c. 94), his children were entitled. 2 *Bl.* 519. [CUSTOM OF LONDON.]

ORWIGE SINE WITA (without war or feud). A security provided by our ancient laws for homicides under certain circumstances, against the fœho or deadly feud on the part of the family of the slain. *Anc. Inst. England.*

OSTENSIBLE PARTNER is a man who allows his credit to be pledged as a partner; as in the case where a man's name appears in a firm, or where he interferes in the management of the business, so as to produce in strangers a reasonable belief that he is a partner. The person so acting is answerable as a partner to all who deal with the firm without having notice at the time that he is a stranger to it in point of interest. 2 *Steph. Com.* 101—104.

OSTENSIO. A tribute paid by merchantmen, under the laws of Ethelred, for leave to expose their goods for sale in markets. *Toml.*

OSTIUM ECCLESIÆ. The door of the church. [AD OSTIUM ECCLESIÆ.]

OSWALD'S LAW. The law introduced by Oswald, Bishop of Worcester, about the year 964, by which married priests were ejected, and monks introduced into churches. *Toml.*

OSWALD'S LAW HUNDRED. An ancient hundred in Worcestershire, so called from Bishop Oswald, who obtained it from King Edgar, to be given to St. Mary's Church at Worcester. *Toml.*

OUSTED. Removed or put out of possession. *Cowel.* [OUSTER.]

OUSTER. The dispossession of a lawful tenant, whether of freehold or chattels real, whereby the wrongdoer gets occupation, and obliges him that hath the right to seek his remedy at law, in order to gain possession, with damages for the injury sustained. 3 *Bl.* 167, 198; 3 *Steph. Com.* 385—398.

OUSTER LE MAIN (out of the hand). 1. A delivery of lands out of the king's hands by judgment given in favour of the petitioner in a *monstrans de droit.* 3 *Steph. Com.* 657. [AMOVEAS MANUS; MONSTRANS DE DROIT.]

2. A delivery of the ward's lands out of the hands of the guardian on the former arriving at the proper age, which was twenty-one in males, and sixteen in females. Abolished by 12 Car. 2, c. 24. *T. L.; Cowel;* 2 *Bl.* 68; 1 *Steph. Com.* 191.

OUSTER LE MER, beyond the sea; formerly a cause of excuse or "essoin," if a man appeared not in court upon summons. *T. L.; Cowel.* [ESSOIGN.]

OUT LAND. Land beyond a lord's demesnes, which was let out to tenants. *Toml.*

OUT OF COURT. This is a colloquial phrase often applied to a litigant party, which may be otherwise expressed by saying that "he has not a leg to stand on." Thus, when the principal witness, who was expected to prove a party's case, breaks down, it is often said, "that puts him *out of court.*"

OUT-DWELLERS. Persons occupying land in a parish, but dwelling outside it. *Toml.*

OUTER BAR. A phrase applied to the junior barristers who plead "ouster" or outside the bar, as opposed to Queen's Counsel, who are admitted to plead within the bar. [UTTER BARRISTER.]

OUTER HOUSE. A department of the Court of Session in Scotland, consisting of five lords ordinary, sitting each separately, to decide causes in the first instance. *Paterson.*

OUTFANGTHEF. A liberty or privilege, whereby a lord was enabled to judge in his own court one of his own tenants charged with felony outside the lord's fee. *T. L.; Cowel.*

OUTLAWRY. Putting a man out of the protection of the law, so that he became incapable of bringing an action for redress of injuries, and forfeited all his goods and chattels to the king.

Outlawry was a process which might be resorted to against an absconding defendant in a civil or criminal proceeding. An outlawry for treason or felony operated as a conviction and attainder; and anciently a person outlawed might be

OUTLAWRY—*continued.*

killed by any one who should meet him. But as early as the reign of Edward III. it was held that no man was entitled to kill him, except the sheriff having lawful warrant. *T. L.; Cowel;* 1 *Bl.* 42; 3 *Bl.* 284; 4 *Bl.* 319; 3 *Steph. Com.* 495; 4 *Steph. Com.* 383, 465.

But though an outlaw may not prosecute any action, except for the purpose of reversing the outlawry, he may appear for the purpose of protecting himself from the claims of others; thus not only may he appear to an action, but he may come to the Court to set aside proceedings taken against him. He is not prohibited from suing or defending in another's right; he is still a competent witness, though he cannot be a juror. If he appear as plaintiff in an action, the objection, it is said, should be taken by plea in abatement. *Lush's Pr.* 762—767. Pleas in abatement being abolished in ordinary civil actions under the Judicature Act, 1875 (Order XIX. rule 13), it would seem that an outlaw is no longer disabled to sue. The point is not of much importance, as proceedings in outlawry are now practically obsolete.

OUTSTANDING TERM. A term of years (that is, an interest for a definite period of time [TERM, 2]) in land, of which the legal estate was vested in some person other than the owner of the inheritance, in trust for such owner; such a term was said to *attend* or *protect* the inheritance, because it took priority of any charges which might have been made upon the inheritance, of which the owner had no notice when he took his conveyance and paid his purchase-money. [NOTICE OF TITLE.] But in such case if the owner took an assignment of the term for himself, it would become merged and lost in the inheritance [MERGER]; and he would lose the benefit of its protection. The protection afforded by these terms was abolished by the Satisfied Terms Act (stat. 8 & 9 Vict. c. 112, passed in 1845), which provided that such terms should for the future cease and determine, on becoming attendant upon the inheritance. 1 *Steph. Com.* 380—383; *Wms. R. P., Part IV. ch.* 1.

OUTSUCKEN MULTURES. Multures or payments made by persons who voluntarily use a mill for the purpose of grinding their corn, as opposed to tenants bound to do so by their tenure. *Bell.* [MULTURES.]

OVER INSURANCE is where the whole amount insured in different policies is greater than the whole value of the interest at risk. *Arnould, Mar. Ins.; Crump, Mar. Ins. s.* 352.

OVER VERT. [VERT.]

OVERCYTED. Convicted of crime. *Toml.*

OVERDUE BILL OR NOTE. A bill or note is said to be *overdue* so long as it remains unpaid after the time for payment is past.

OVERHERNISSA. Contumacy, or contempt of Court. *Toml.*

OVERSAMESSA. A fine laid upon those who, hearing of a murder or robbery, did not pursue the malefactor. *Cowel.*

OVERSEERS. Officers appointed in each parish, under stat. 43 Eliz. c. 2, to provide for the poor of the parish. By that statute it was enacted that the churchwardens of the parish should be overseers; and that, besides the churchwardens, two, three, or four additional persons, being substantial householders, should be nominated yearly as overseers by two justices living near the parish.

By stat. 12 & 13 Vict. c. 103, s. 6, passed in 1849, no person shall be appointed overseer who is engaged in any contract for the supply of food for the relief of the poor. By stat. 29 & 30 Vict. c. 13, s. 11, passed in 1866, a *single* overseer may be appointed by the justices; and, if need be, he may be an inhabitant householder of an adjoining parish. By sects. 10—12 of the same Act, the same person may hold jointly the offices of churchwarden and overseer. The office of overseer is compulsory; but the following classes of persons are exempted from serving:—Peers and members of parliament; justices of the peace; aldermen of London; clergymen; dissenting ministers; practising barristers and attorneys; registered medical practitioners; officers of the courts of law, of the army and navy, and of the customs and excise. The appointment must, by stat. 54 Geo. 3, c. 91, be made on the 25th of March, or within fourteen days afterwards. The appointment may be appealed against by the person appointed, or by any parishioner, or it may be removed into the Court of Queen's Bench by *certiorari*.

Where a parish is under the government of guardians, or of a select vestry, the duty of administering relief to the poor belongs to those authorities; and, where there are no such authorities, it belongs to the overseers. In all cases, however, of sudden and urgent necessity arising in a parish under the government

OVERSEERS—*continued.*

of guardians or of a select vestry, any overseer is empowered and required by law, whether the applicant for relief is settled in the parish or not, to give such temporary relief as the case may require; which he is directed to do in articles of absolute necessity, but not in money.

In parishes not under the management of guardians, or a select vestry, the authority of overseers in this matter is not specific but general. If the overseer refuse relief in any case in which it is reasonably claimed, he may be ordered to administer it by a justice of the peace residing in the parish, or (if there be none resident) then by a justice of the peace residing in the parish next adjoining, or by the justices at quarter sessions; and an overseer disobeying such order may be indicted.

The duty of making and levying the poor rate belongs to the churchwardens and overseers; and the concurrence of the inhabitants is not necessary. The rate is raised prospectively for some given portion of the year, at so much in the pound, according to the parochial assessment, and upon a scale adapted to the probable exigencies of the parish. No rate is deemed to be valid unless allowed by two justices; but this allowance by the justices is held to be a mere matter of form. After allowance and publication, any person aggrieved by the rate, as irregular and unequal, may appeal against it to the next practicable quarter sessions. It is also provided by stat. 6 & 7 Will. 4, c. 96, that justices in petty sessions shall, four times at least in every year, hold a special sessions for hearing poor-rate appeals within their respective divisions; and their decision shall be conclusive, unless the parties impugning it shall, within fourteen days, give notice of appeal therefrom to the next general or quarter sessions of the peace.

Overseers are charged also with a variety of other duties. The county rate, for instance, is now raised through the agency of the guardians and overseers. And the churchwardens and overseers are also charged with the preparation of the lists of persons liable to serve on juries. 3 *Steph. Com.* 42—69, 516; *Oke's Mag. Syn.* 1157—1168.

Under sect. 6 of the Metropolis Valuation Act, 1869 (32 & 33 Vict. c. 67), the overseers of every parish in the Metropolis are required to make and sign a valuation list of their parish in duplicate, and to send one copy to the surveyor of taxes. Various other special duties are thrown upon the overseers of the metropolitan parishes.

As to the preparation of the jury lists, and the revision of such lists by the magistrates, see the last paragraph of the title JURY, *ante*, p. 221.

OVERT (Fr. *Ouvert*). Open: thus, an overt act is an open act, as opposed to an intention conceived in the mind, which can be judged of only by overt acts. *Cowel;* 4 *Bl.* 79, 357; 4 *Steph. Com.* 22, 154, 240. [For *market overt* and *pound overt*, see MARKET OVERT; POUND.]

OVRAGE or **OUVRAGE.** A day's work. *Toml.*

OVRES (Fr. *Œuvres*). Acts, deeds, or works. *Toml.*

OWELTY. Equality. Where there is lord paramount, mesne, and tenant, and the tenant holds of the mesne by the same service that the mesne holds of the lord above him, this is called owelty of services. *T. L.; Cowel.*

OWLERS. Persons who carried wool or sheep out of the kingdom to the detriment of its staple manufacture. [OWLING.]

OWLING. The offence of exporting wool or sheep, formerly punishable by fine, and, if the fine were not paid, then by transportation. 2 *Bl.* 421; 4 *Bl.* 154. These punishments are abolished by stat. 5 Geo. 4, c. 47, passed in 1824, and there is now no longer any such offence. 2 *Bl.* 421, *note by Coleridge;* 4 *Steph. Com.* 266, *n.*

OXGANG. Fifteen acres of land, or as much as one ox can plough in a year. *Toml.*

OYER. 1. To hear. 2. Assizes. *Toml.* [See the two following Titles.]

OYER AND TERMINER. To hear and determine; a commission issued to judges and others for hearing and determining cases upon indictments found at the assizes, being the largest of the commissions by which our judges of assize sit in their several circuits. *T. L.; Cowel;* 4 *Bl.* 269, 270; 3 *Steph. Com.* 352; 4 *Steph. Com.* 313. [ASSIZE, COURTS OF.]

OYER OF DEEDS AND RECORDS. The hearing them read in Court. Formerly, a party suing upon or pleading any deed was bound to make *profert* of the same, that is, to bring it into Court (Lat. *profert in curiam*), and the opposite party was entitled to crave *oyer* of the same; that is, to have it read by the

OYER OF DEEDS AND RECORDS—*contd.*

officer of the Court. But now, by sect. 55 of the C. L. P. Act, 1852 (stat. 15 & 16 Vict. c. 76), it is no longer necessary to make *profert* of any deed or other document mentioned or relied on in any pleading; and if *profert* is made it will not entitle the opposite party to crave *oyer* of the same. *Cowel; Lush's Pr.* 836.

Oyer of a *record* was never a matter of right. *Toml.*

OYEZ (hear ye). Now generally pronounced O yes. It is used by criers in courts and elsewhere when they make proclamation of anything. *T. L.*; *Cowel;* 4 *Bl.* 340, *n.*

P. C. An abbreviation used variously for:

1. Parliamentary Cases.
2. Pleas of the Crown.
3. Police Constable.
4. Privy Council.

P. O. An abbreviation for Public Officer. These initials appended to a person's name in the title of a suit indicate that he is suing or being sued not in his private capacity, but as the public officer of some banking or other corporation.

P. P. An abbreviation sometimes used:

1. For Parish Priest (in Ireland).
2. For Per Procurationem, "by agency," meaning that a receipt, note, or other writing, is signed by one man as agent for another.

PAAGE. A toll for passengers. *Cowel.*

PACIFIC ISLANDERS PROTECTION ACTS.

1. Stat. 35 & 36 Vict. c. 19, passed in 1872; also called the Kidnapping Act.
2. Stat. 38 & 39 Vict. c. 51, passed in 1875, amending and extending the Act of 1872. [KIDNAPPING ACT, 1872.]

PACKAGE. A duty formerly charged in the port of London on goods imported and exported by aliens. *Toml.*

PACT. A promise or contract.

PAINE FORT ET DURE. [PEINE FORT ET DURE.]

PAIRING OFF. A kind of system of negative proxies, by which a member whose opinions would lead him to vote on one side of a question agrees with a member on the opposite side that they both shall be absent at the same time, so that a vote is neutralized on each side. This practice has been resorted to for many years in the House of Commons. Sometimes members of opposite parties pair with each other, not only upon particular questions, but even for weeks or months at a time. *May's Parl. Pract.*

PAIS. The country. A trial *per pais* is a trial by the country, that is, by a jury; and matter *in pais* is matter triable by the country; that is, an ordinary matter of fact. *T. L.; Cowel;* 3 *Steph. Com.* 513. [MATTER, 2.] A conveyance of land *in pais* meant originally a conveyance on the spot to be transferred. 2 *Bl.* 294; 1 *Steph. Com.* 502.

PALACE COURT. [COURT OF PALACE AT WESTMINSTER.]

PALAGIUM. A duty paid to lords of manors for importing and exporting vessels of wine within any of their ports. *Toml.*

PALATINE. [COUNTY PALATINE.]

PALLIO COOPERIRE (to cover with a cloak). It was anciently a custom where children were born out of wedlock, and their parents afterwards intermarried, that those children, together with the father and mother, stood under a cloth extended while the marriage was solemnized, which was in the nature of adoption. *Toml.*

PALMER'S ACT. A name often given to the stat. 19 & 20 Vict. c. 16, providing that trials for offences committed in the country might, by order of the Queen's Bench, be tried at the Central Criminal Court. It was so called because passed on the petition of William Palmer, who, being charged with poisoning at Rugeley, in November, 1855, was apprehensive that he could not get a fair trial in the neighbourhood in which the offence took place, in consequence of the local feeling on the subject. He was tried under the Act at the Central Criminal Court, in May, 1856, and hanged at Stafford on the 14th of June in the same year. See 4 *Steph. Com.* 315, *n.* (*s*), and 316, *n.* (*t*); *Oke's Mag. Syn.* 910—912.

PANDECTS. A name given to the Digest of Roman Law, compiled by order of the Emperor Justinian. [CORPUS JURIS CIVILIS; DIGEST, 1; JUSTINIAN.]

PANEL. 1. A schedule or roll of parchment containing the names of jurors which the sheriff hath returned to pass upon any trial. *T. L.; Cowel;* 3 *Bl.* 353; 4 *Bl.* 351; 3 *Steph. Com.* 516; 4 *Steph. Com.* 423.

2. A prisoner in a Scotch criminal trial. *Bell.*

PANNAGE or **PAWNAGE.** 1. The food which swine feed on in the woods, as mast of beech, acorns, &c.

2. Money taken by the *agisters* for the same. *T. L.; Cowel.* [AGIST.]

PANNEL. [PANEL.]

PAPER BOOKS. Copies of the demurrer-book taken for the perusal of the judges. 3 *Bl.* 317. [DEMURRER BOOK.]

PAPER OFFICE. 1. An ancient office within the palace of Whitehall, wherein state papers are kept.

2. An ancient office belonging to the Court of Queen's Bench. *Toml.*

PARACIUM. That tenure which the youngest of parceners oweth to the eldest. *Cowel.* [COPARCENARY.]

PARAGE. Equality of name, blood, or dignity; also of lands to be partitioned. Hence comes the word *disparagement*, which signifies inequality. *Cowel.* [DISPARAGEMENT.]

PARAMOUNT. 1. The supreme lord of a fee. Thus, the Queen is lady paramount of all the lands in the kingdom. *T. L.; Cowel;* 2 *Bl.* 59; 1 *Steph. Com.* 186; *Wms. R. P.*, 11*th ed. pp.* 2, 118.

2. The word is also frequently used in a *relative* sense, to denote a superior lord as opposed to a mesne lord holding under him.

PARAPHERNALIA (Gr. παρὰ φερνήν). *Things besides dower;* the goods which a wife, besides her dower or jointure, is, after her husband's death, allowed to have, as furniture for her chamber, and wearing apparel. *T. L.; Cowel;* 2 *Bl.* 435, 436; 2 *Steph. Com.* 266; *Sm. Man. Eq.*

PARAVAIL. The lowest tenant; being he who was supposed to make *avail* or profit of the land. It is thus the reverse of *paramount. T. L.; Cowel;* 2 *Bl.* 60; 1 *Steph. Com.* 186. [PARAMOUNT.]

PARCEL (Lat. *Particula*). A small piece of land. *Cowel.*

A description of *parcels*, in a deed, is a description of lands with reference to their boundaries and local extent. See *Fawcett, L. & T.* 74.

A *bill of parcels* is an account of the items composing a parcel or package of goods, transmitted with them to a purchaser. *Toml.*

PARCEL MAKERS were two officers in the Exchequer who formerly made the parcels or items of the escheators' accounts, wherein they charged them with everything they had levied for the king during the term of their office. *Cowel.*

PARCELS. [PARCEL.]

PARCENERS. The same as *coparceners;* those who hold an estate in coparcenary. [COPARCENARY.]

PARCO FRACTO. A writ that lay against him who violently broke into a pound, and took beasts lawfully impounded therein. *T. L.; Cowel;* 3 *Bl.* 146. [POUNDBREACH.]

PARCUS. A pound or inclosure. 3 *Steph. Com.* 255. [PARK.]

PARENS PATRIÆ (parent of his country). A title sometimes applied to the king or queen. 2 *Steph. Com.* 181, 508.

PARENTELA. Kindred. *De parentelâ se tollere* was to renounce one's kindred. This was done in open court before a judge, and in the presence of twelve men, who made oath that they believed it was done lawfully, and for a just cause. *Toml.*

PARERGON. A supplement or appendix; a name especially applied to a work in great repute, published in 1726 by Dr. John Ayliffe, Fellow of New College, Oxford. The full name of this work is "Parergon Juris Canonici Anglicani" (A Supplement of the Anglican Canon Law); but it is generally referred to shortly as "Ayliffe's Parergon." The work commences with a historical introduction; then various subjects relating to ecclesiastical law are treated in alphabetical order. The treatment of these subjects forms the main body of the work. Then follows a list of the monasteries dissolved by Henry VIII.; then a table of the fees payable to the officers of the ecclesiastical courts: and the book closes with an index of the principal matters contained in the book.

PARES. Peers, equals. Thus, the various tenants of the same manor were called *pares curtis* or *pares curiæ*, as being *equals* in attendance upon the lord's court. 2 *Bl.* 54, 127; 1 *Steph. Com.* 265. [PEERS.]

PARI PASSU. On an equal footing, or proportionately. A phrase used especially of the creditors of an insolvent estate, who (with certain exceptions) are entitled to payment of their debts in shares proportioned to their respective claims. [PRIVILEGED DEBTS.]

PARISH. A circuit of ground committed to the charge of one parson or vicar, or other minister having the cure of souls therein. *Cowel;* 1 *Bl.* 112—114; 1 *Steph.*

PARISH—*continued.*

Com. 117—120. Populous and extensive parishes are now, however, under various acts of parliament, divided into smaller ecclesiastical districts for spiritual purposes. 2 *Steph. Com.* 750—754.

PARISH APPRENTICES. The children of parents unable to maintain them may by law be *apprenticed*, by the guardians or overseers of their parish, to such persons as may be willing to receive them as apprentices. Such children are called *parish apprentices.* The reception of a parish apprentice was formerly compulsory, but, by stat. 7 & 8 Vict. c. 101, s. 13, passed in 1844, this is no longer so. 2 *Steph. Com.* 230.

PARISH CLERK. An officer of a church, generally appointed by the incumbent. By custom, however, he may be chosen by the inhabitants. Formerly, the parish clerk was very frequently in holy orders, and was appointed to officiate at the altar; but now his duty consists chiefly in making responses in church to the minister. By the common law he has a freehold in his office. 1 *Bl.* 395; 2 *Steph. Com.* 700, 701; *Toml.* The office seems now to be falling into desuetude.

PARISH CONSTABLE. A petty constable exercising his functions within a given parish. [CONSTABLE, 1.]

PARISHIONER. An inhabitant of a parish, who is lawfully settled there. [SETTLEMENT, 1.]

PARK, in a legal sense, is a piece of ground enclosed, and stored with beasts of chase, which a man may have by prescription, or the king's grant. *T. L.; Cowel;* 2 *Bl.* 38, 416; 1 *Steph. Com.* 670.

PARKBOTE. To be quit of enclosing a park, or any part thereof. *Cowel.*

PARLIAMENT. A solemn conference of all the estates of the kingdom, summoned together by the authority of the Crown, to treat of the weighty affairs of the realm. The constituent parts of the Parliament are the Sovereign and the three estates of the realm, namely, the lords spiritual and lords temporal, who sit, together with the Sovereign, in one house, and the Commons, who sit by themselves, in another. *T. L.; Cowel;* 1 *Bl.* 147, 153; 2 *Steph. Com.* 318, 326; *May's Parl. Pract. ch.* 1. [ESTATES OF THE REALM; HOUSE OF COMMONS; HOUSE OF LORDS; LORDS SPIRITUAL; LORDS TEMPORAL. See also the following Titles.]

PARLIAMENTARY AGENTS are agents (generally solicitors) who, in Parliament, promote or oppose the passing of private bills, and conduct other proceedings for pecuniary reward. No person may act as an agent before the House of Commons until he has subscribed a declaration engaging himself to observe the rules of the House. Nor may any member or officer of the House act as an agent. *May's Parl. Pract. ch.* 26.

PARLIAMENTUM DIABOLICUM (the diabolical Parliament) was one held at Coventry, 38 Hen. VI., A.D. 1460, wherein Edward Earl of March (afterwards King Edward IV.), and many of the chief nobility, were attainted. *Toml.*

PARLIAMENTUM INDOCTUM (the lack-learning Parliament) was a Parliament holden at Coventry, 6 Hen. IV., A.D. 1405, from which lawyers were excluded. *Cowel;* 1 *Bl.* 177.

PARLIAMENTUM INSANUM (the insane Parliament) assembled at Oxford, 41 Hen. III., A.D. 1257. It was so styled from the madness of their proceedings, and because the lords came with armed men to it, and contentions grew very high between King, Lords, and Commons, and very extraordinary things were done. *Cowel.*

PAROL. Anything done by word of mouth. [See the following Titles.]

PAROL AGREEMENT. An agreement by word of mouth. Sometimes, however, the phrase is used to include writings not under seal; since at common law, prior to the Statute of Frauds, there was no difference between an agreement by word of mouth and one in writing without seal. [FRAUDS, STATUTE OF.]

PAROL ARREST. An arrest, ordered by a justice of the peace, of one who is guilty of a breach of the peace in his presence. *Toml.*

PAROL DEMURRER. The staying of proceedings in a real action brought by or against an infant, until the infant should come of age. 3 *Bl.* 300. Real actions are now abolished. [ACTIONS REAL AND PERSONAL.]

PAROL EVIDENCE, otherwise called *oral evidence,* is evidence given *vivâ voce* by witnesses, as opposed to that given by affidavit.

PARRICIDE. He that kills his father; or the crime of murdering a father. *Cowel;* 4 *Bl.* 202, 203; 4 *Steph. Com.* 76.

PARS RATIONABILIS. A reasonable part. [DE RATIONABILI PARTE.]

PARSON (*Persona ecclesiæ*). The rector or incumbent of a parochial church, who hath full possession of all the rights thereof. He is called parson, *persona*, because by his person the church, which is an invisible body, is represented; and he is himself a body corporate, in order to protect and defend the rights of the church, which he personates, by a perpetual succession. *Cowel;* 1 *Bl.* 384; 2 *Steph. Com.* 677. In a larger sense, the word "parson" includes all clergymen having ecclesiastical preferment. *Toml.*

PARSON IMPARSONEE (Lat. *Persona impersonata*). The parson in full possession of his church. 1 *Bl.* 391; 2 *Steph. Com.* 677, *n.* [IMPARSONEE.]

PARSON MORTAL (*Persona mortalis*). The rector of a church instituted and inducted for his own life, as opposed to *persona immortalis, i. e.*, a collegiate body, to whom a church might be for ever appropriated. [APPROPRIATION.]

PARSONAGE. A certain portion of lands, tithes, and offerings, established by law, for the maintenance of the minister who hath the cure of souls. *Toml.* The word is generally used for the *house* set apart for the residence of the minister.

PART OWNERS. Persons who have a share in anything, especially those who have an interest in a ship. 2 *Bl.* 399; 2 *Steph. Com.* 14.

PARTES FINIS NIHIL HABUERUNT (the parties to the fine had nothing). An exception taken to a fine, on the ground that the parties thereto had no freehold estate in the lands which they professed to affect thereby. *Cowel;* 2 *Bl.* 357; 1 *Steph. Com.* 565, 566. [FINE, I.]

PARTIAL LOSS, in marine insurance, otherwise called an *average* loss, is one in which the damage done to the thing insured is not so complete as to amount to a *total loss*, either actual or constructive. In every such case the underwriter is liable to pay such proportion of the sum which would be payable on total loss, as the damage sustained by the subject of insurance bears to the whole value at the time of insurance. 2 *Steph. Com.* 132, 133; *Crump, Mar. Ins. s.* 331. [TOTAL LOSS.]

PARTICEPS CRIMINIS. An accomplice or partaker in wrongdoing.

PARTICULAR AVERAGE. [AVERAGE, 8.]

PARTICULAR ESTATE is an estate in land which precedes an estate in remainder or reversion, so called because it is a *particula*, or small part, of the inheritance. 2 *Bl.* 165; 1 *Steph. Com.* 315; *Wms. R. P.* [CONTINGENT REMAINDER; ESTATE, 2; REMAINDER; REVERSION; VESTED REMAINDER.]

PARTICULAR LIEN, as opposed to a *general lien*, is a lien upon a particular article for the price due or the labour bestowed upon that article. 2 *Steph. Com.* 83. [GENERAL LIEN; LIEN.]

PARTICULAR TENANT. The tenant of a particular estate. 2 *Bl.* 274; 1 *Steph. Com.* 463. [PARTICULAR ESTATE.]

PARTICULARS OF PLAINTIFF'S DEMAND. A detailed statement by a plaintiff of the items of his claim, which by rule 19 of the rules of Hilary Term, 1853, every plaintiff, suing for money due on the most ordinary causes of action (specified as Nos. 1—14 in Schedule B. to the C. L. P. Act, 1852), is bound to furnish to the defendant together with his declaration, unless such particulars have been specially indorsed on the writ of summons. 3 *Steph. Com.* 492, 501, *n.*; *Lush's Pr.* 366, 424; *Kerr's Act. Law.*

Under the Judicature Act, 1875, 1st Schedule, Order XIX. rule 2, and Order XXI. rule 1, the plaintiff is bound to deliver a *statement of claim* within six weeks from the time of the defendant's entering an appearance, unless the defendant shall dispense with the same, or unless the court or a judge shall otherwise order. [ENTERING APPEARANCE; STATEMENT OF CLAIM.]

PARTICULARS OF SALE, at an auction, are the particulars of the property which is to be sold, and the terms and conditions on which the sale is to take place.

PARTIES. 1. Persons who voluntarily take part in anything, in person or by attorney; as the parties to a deed.

2. Persons required to take part in any proceeding, and bound thereby, whether they do so or not; as the defendants in a suit or action. The rules as to parties in actions under the Judicature Acts will be found in Order XVI. in the First Schedule to the Act of 1875.

3. One of several owners in joint tenancy, coparcenary, or common.

PARTITION. A dividing of land held in joint tenancy, in coparcenary, or in common, between the parties entitled thereto; so that the estate in joint tenancy, co-

PARTITION—*continued.*

parcenary or common is destroyed, and each party has henceforth an undivided share. This may be done by agreement, by bill in equity, or by the Inclosure Commissioners. There was a *writ* of partition, but that was abolished by stat. 3 & 4 Will. 4, c. 27, s. 36. *T. L.; Cowel;* 2 *Bl.* 185, 189, 323, 324; 1 *Steph. Com.* 544—355, 516, 517; *Wms. R. P., Pt. I. ch.* 6; *Hunt. Eq.* [See next Title.]

Under the Judicature Act, 1873, the partition of real estates is assigned to the Chancery Division of the High Court of Justice. *Stat.* 36 & 37 *Vict. c.* 66, *s.* 33, *sub.-s.* 3.

PARTITION ACT, 1868. The stat. 31 & 32 Vict. c. 40, directing the Court of Chancery in many cases to order a sale of property instead of a partition. *Wms. R. P.; Hunt. Eq.* [PARTITION.]

PARTITIONE FACIENDA. The writ for making partition. *Cowel.* Abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36. [PARTITION.]

PARTNERSHIP is where two or more persons agree to carry on any business or adventure together, upon the terms of mutual participation in its profits and losses. It is generally constituted by a deed, the provisions of which are usually denominated *articles of partnership.* 2 *Steph. Com.* 79; *Smith's Merc. Law; Lindley on Partnership.*

PARTY AND PARTY, COSTS AS BETWEEN. [COSTS.]

PARTY STRUCTURE is a structure separating buildings, stories, or rooms which belong to different owners, or which are approached by distinct staircases or separate entrances from without; whether the same be a partition, arch, floor, or other structure. *Stat.* 18 & 19 *Vict. c.* 122, *s.* 3. [See next Title.]

PARTY-WALL. A wall adjoining lands or houses belonging to two different owners. The common user of such a wall by the adjoining owners is *primâ facie* evidence that it belongs to them in equal moieties as tenants in common. *Gale on Easements, Part I. ch.* 7; *Fawcett, L. & T.* 216.

In Part III. of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), various provisions are enacted with respect to party structures in the metropolis, and the rights and liabilities of "building owners" and "adjoining owners," respectively defined; the "building owner" being defined by sect. 82 to be that one of the two owners who is desirous of executing any work in respect to the party structure, and the owner of the other premises being the "adjoining owner."

PARVISE. [PERVISE.]

PASCH. An abbreviation sometimes used for Easter Term. [EASTER TERM.]

PASCHAL RENTS. Rents or annual duties payable by the inferior clergy to the bishop or archdeacon at their Easter visitation. *Cowel.* Provision is made by stat. 23 & 24 Vict. c. 124, s. 2, for the payment of all such dues to the Eccleslastical Commissioners.

PASNAGE. Money taken for feeding hogs. *Cowel.* [PANNAGE.]

PASS. 1. To bring or come into force; of an act of parliament, grant, or public charter; the word being used to indicate that the act, grant, charter, &c. *passes* or *is passed* through the necessary stages to its full and complete legal effect and operation.

2. To be conveyed by deed, will, or other instrument of conveyance. Here the word is used of the subject-matter of the conveyance. Thus it is often a question whether such an estate *passes* by a clause in a deed or will by which property is conveyed; the meaning of the question being, whether such an estate is comprised in the property so conveyed.

PASSAGE COURT. An ancient court of record in Liverpool, originally called the Mayor's Court of Pays Sage, but now usually called the Court of the Passage of the Borough of Liverpool. *Appendix to Fourth Report of Common Law Commissioners* (published July, 1832). This court was formerly held before the mayor and two bailiffs of the borough, and had jurisdiction in actions where the amount in question exceeded forty shillings. In 1834, the stat. 4 & 5 Will. 4, c. xcii, was passed for amending the proceedings and practice of this court. By this Act it was provided, that the said court might be held before the mayor and bailiffs, or before the mayor and one of the bailiffs, or before the two bailiffs only; and that it should be lawful for his Majesty, his heirs and successors, to appoint a barrister-at-law of not less than seven years' standing to be assistant to the mayor and bailiffs in the trial of causes and the hearing of arguments; and that the mayor and bailiffs should not sit without the assistance of

PASSAGE COURT—*continued.*

such barrister. In case of the death, sickness, or necessary absence of the barrister, the Recorder is to take his place. The barrister is to be paid a sufficient yearly salary out of the funds of the corporation. Actions brought in this court, where the amount in question does not exceed 20*l.*, are not to be removable therefrom except by writ of error. By stat. 7 Will. 4 & 1 Vict. c. xcviii, s. 11, passed in 1837, the registrar may hold courts without the presence of the mayor and aldermen. The procedure of the court is further amended by stat. 1 & 2 Vict. c. xcix, passed in 1838.

PASSAGIO. An ancient writ directed to the keepers of a port to permit a man to pass over sea that had the king's licence. *Cowel.*

PASSATOR. He who has the interest or command of the passage of a river, or the lord to whom duty is paid for the same. *Toml.*

PASSIVE TRUST. A trust in which the trustee has no active duty to perform. 1 *Steph. Com.* 370, 372.

PASSPORT means strictly a licence to *pass* a *port* or haven; that is, a licence for the safe passage of any man from one place to another. *T. L.; Cowel;* 1 *Bl.* 260; 4 *Bl.* 68; 2 *Steph. Com.* 494.

PASTURE. Any place where cattle may feed; also feeding for cattle. *Toml.* [COMMON, I.]

PASTUS. The provision which tenants were bound to make to their lords at certain times, as often as they made a progress to their lands. This, in many places, was turned into money. *Toml.*

PATENT. Letters patent from the Crown. *Cowel;* 2 *Bl.* 346; 1 *Steph. Com.* 619. [LETTERS PATENT.] These are granted for various purposes; among other things, for conferring a peerage. But the term *patent*, or *patent right*, is usually restricted to mean a privilege granted by letters patent from the Crown to the first inventor of any new contrivance in manufacture, that he alone shall be entitled, during a limited period, to benefit by his own invention. This is one of the exceptions reserved in the Statute of Monopolies, 21 Jac. 1, c. 3, passed in 1623, by which the granting of monopolies is in general forbidden. From this general prohibition are excepted all letters patent for the term of fourteen years or under, by which the privilege of sole working or making any new manufactures within this realm, which others at the time of granting the letters patent shall not use, shall be granted to the true and first inventor thereof; "so as they be not contrary to law, nor mischievous to the State, nor to the hurt of trade, nor generally inconvenient." The grant of a patent right is not *ex debito justitiæ*, but is an act of royal favour; though in a fit case it is never refused.

The mode in which a patent is to be obtained is prescribed by the Patent Law Amendment Act, 1852, stat. 15 & 16 Vict. c. 83; amended in some of its provisions by stats. 16 & 17 Vict. cc. 5 and 115, passed in 1853. The application is made by petition to the Crown, the allegations of which are to be supported by a solemn declaration that the petitioner is the true and first inventor, and that the invention is not in use in this country by any other person to the best of his knowledge and belief. This petition and declaration are to be left at the office of the Commissioners of Patents for Inventions, and with them an instrument called the "provisional specification," describing the nature of the invention. Or the applicant may insert a "complete" instead of a "provisional" specification, more particularly describing the nature of the invention. The next step is for the applicant to give notice to the Commissioners of his intention to proceed with his application. The intention will be advertised, and time will be given for lodging objections to the grant, which being heard, the law officer may grant a warrant for the sealing of the letters patent. The warrant being sealed by the Commissioners, the Lord Chancellor may thereupon cause the letters patent to be sealed. In the letters patent is contained a proviso that they are to be void if the specification is incorrect. For a further description of these proceedings, see 2 *Steph. Com.* 25—34.

PATENT OF PRECEDENCE. Letters patent granted to such barristers as the Crown thinks fit to honour with that mark of distinction, whereby they are entitled to such rank and pre-audience as are assigned in their respective patents, which is sometimes next after the Attorney-General, but more usually next after his Majesty's counsel then being. These rank promiscuously with the king's (or queen's) counsel, but are not the sworn servants of the Crown. 3 *Bl.* 28; 3 *Steph. Com.* 274.

PATENT RIGHT. [PATENT.]

PATENTEE. A person to whom a patent is granted. *Cowel; 2 Steph. Com.* 33.

PATRICIDE. [PARRICIDE.]

PATRIMONY. A hereditary estate. The legal endowment of a church or religious house was called ecclesiastical patrimony. *Toml.*

PATRON. 1. In the Roman civil law a patron signifies him that hath manumitted a servant, and thereby is justly accounted his benefactor, and challengeth reverence and duty of him during his life.

2. In the canon and common law, it signifies him that hath the gift of a benefice. *T. L.; Cowel; 2 Bl.* 21; *2 Steph. Com.* 715.

PAUPER. 1. A person who, on account of his poverty, becomes chargeable to the parish. *3 Steph. Com.* 42—59.

2. A person who, on account of his poverty, is admitted to sue or defend *in formâ pauperis.* [FORMA PAUPERIS.]

PAWN. The transfer of a chattel as security for a debt. [PLEDGE.]

PAWNAGE. [PANNAGE.]

PAWNBROKERS' ACT, 1872. The stat. 35 & 36 Vict. c. 93, for regulating the duties and liabilities of pawnbrokers. *2 Steph. Com.* 74, 81.

PAYEE. A person to whom, or to whose order, a bill of exchange or promissory note is expressed to be payable. *2 Bl.* 468; *2 Steph. Com.* 115; *Byles on Bills.*

PAYMASTER-GENERAL. A public officer whose duties consist in the payment of all the voted services for the army and navy, and all charges connected with the naval and military expenditure. The Paymaster-General likewise makes payments for the civil services in England, and for some in Scotland. *Murray's Official Handbook.* The duties of this office have increased very much by legislative enactments of late years, various pay departments of a special character being merged in it. The most recent addition to the duties of the Paymaster-General has been effected by the Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), by which the office of Accountant-General is abolished, and its duties transferred to that of the Paymaster-General. [ACCOUNTANT-GENERAL; see also the two following Titles.]

The officers, clerks and messengers in the Paymaster-General's office are enumerated in the Post Office London Directory, p. 117.

PAYMENT OF MONEY INTO COURT.

1. *At Common Law.* This is when a defendant in an action at law pays into the hands of the proper officer of the Court, as much as the defendant acknowledges to be due, together with the costs already incurred, in order to save the expense of further proceedings. *3 Bl.* 304; *3 Steph. Com.* 505; *Lush's Pr.* 823—835; *Kerr's Act. Law.* Having done so, he may plead the payment as being enough to satisfy the plaintiff's claim; and if the plaintiff replies that it is not enough, and the jury find that it is, the defendant will be entitled to the judgment and his costs of suit. *C. L. P. Act,* 1852, *ss.* 71, 73; *Lush's Pr.* 826.

In actions of assault and battery, false imprisonment, and some others, this power of paying money into Court has not hitherto been allowed; but now, by the Judicature Act, 1875, 1st Sched. Ord. XXX. rule 1, a defendant may, in any action brought to recover a debt or damages, pay into Court a sum of money in satisfaction or amends. He may do so even after delivering his defence, by leave of the Court or a judge.

2. *In Equity.* It frequently happens that, when there is a clear admission by a party to a suit that he holds money on trust, an order is made for payment of the sum into Court. This was done, until the year 1872, through the medium of an officer called the Accountant-General; but that office is abolished by stat. 35 & 36 Vict. c. 44, and the duties of the Accountant-General are transferred to the Paymaster-General, and the department which has to deal with these payments is called the Chancery Pay Office. The payment is made in the first instance to the Bank of England, and by the Bank placed to the credit of the Chancery Pay Office Account. *Hunt. Eq., Part II. ch.* 1. See also *sect.* 30 *of the Judicature Act,* 1875. [PAYMASTER-GENERAL.]

PAYMENT OF MONEY OUT OF COURT. When money is to be paid out of Court the order directing the payment is taken to the Chancery Pay Office, and in due course a cheque for the amount will be given by the Paymaster-General. [PAYMENT OF MONEY INTO COURT, 2.]

PEACE, BILL OF. [BILL OF PEACE.]

PEACE OF GOD AND THE CHURCH (Lat. *Pax Dei et Ecclesiæ*) was anciently used for that rest and cessation which

PEACE OF GOD AND THE CHURCH—*cont.* the king's subjects had from trouble and suit of law between the Terms. *Cowel.*

PEACE OF THE KING. That peace and security, both for life and goods, which the king promiseth to all his subjects, or others taken under his protection. *Cowel.*

PECULIAR. A particular parish or church exempt from the jurisdiction of the ordinary. All ecclesiastical causes arising within them are cognizable in the Court of Peculiars. *T. L.; Cowel;* 3 *Bl.* 65; 3 *Steph. Com.* 806. [COURT OF PECULIARS.]

PECUNIA SEPULCHRALIS. Money anciently paid to the priest at the opening of a grave, for the good of the deceased's soul. *Toml.*

PECUNIARY CAUSES. Causes cognizable in the Ecclesiastical Court, which arise from the withholding ecclesiastical dues, or the doing or neglecting some act whereby some damage accrues to the plaintiff. These causes are contrasted by Blackstone with causes matrimonial and testamentary, which were formerly also matters of ecclesiastical cognizance. 3 *Bl.* 88. By stat. 20 & 21 Vict. c. 77, passed in 1857, the testamentary jurisdiction was transferred to the Court of Probate; and by stat. 20 & 21 Vict. c. 85, passed in the same year, the matrimonial jurisdiction was transferred to the Court for Divorce and Matrimonial Causes.

PEDIS ABSCISSIO. Cutting off the foot; a punishment anciently inflicted instead of death, as appears by the laws of William the Conqueror. *Toml.*

PEERAGE. The dignity of the lords or peers of the realm. *Cowel.* A *peerage case* is a case in which a question of the right to that dignity is involved. [PEERS, 2.]

PEERESS. A woman who has the dignity of peerage, either in her own right or by right of marriage. In the latter case she loses the dignity by a second marriage with a commoner. 1 *Bl.* 401, 402; 2 *Steph. Com.* 609.

PEERS (Lat. *Pares*). Equals. 1. Those who are impanelled in an inquest upon any man, for the convicting or clearing him of any offence for which he is called in question. "The co-vassals by whose verdict a vassal is condemned of felony." 2. Those that be of the nobility of the realm and lords of parliament. *T. L.; Cowel.* [ESTATES OF THE REALM; LORDS TEMPORAL; NOBILITY.]

PEERS OF FEES. The vassals or tenants of the same lord, who were obliged to serve and attend him in his courts, being equal in function. *Toml.* [PEERS, 1.]

PEINE FORT ET DURE. This was the punishment for standing mute on an indictment of felony. Before it was pronounced the prisoner had a threefold admonition (*trina admonitio*), and also a respite of a few hours; and the sentence was distinctly read to him that he might know his danger. If his offence was clergyable he had the benefit of clergy allowed him, even although he was too stubborn to pray it. [BENEFIT OF CLERGY.] The sentence was that he be remanded to the prison from whence he came, and put into a low, dark chamber, and laid naked on his back on the bare floor; that there be placed upon his body as great a weight of iron as he could bear, and more; that he have no sustenance, save only on the first day three morsels of the worst bread, and on the second day three draughts of standing water that should be nearest to the prison door; and in this situation this should be alternately his daily diet until he died, or, as anciently the judgment ran, till he answered.

Blackstone conjectures that the practice of loading the prisoners with weights was gradually introduced between 31 Edw. III. and 8 Hen. IV., at which last period it first appears upon our books.

It was abolished in 1772 by stat. 12 Geo. 3, c. 20, which provided that standing mute should be equivalent to a confession. *T. L.; Cowel;* 4 *Bl.* 325—329; 4 *Steph. Com.* 391, 392. [MUTE.]

PELLS, CLERK OF THE. The Clerk of the Pells was an officer in the Exchequer whose duty was to enter every teller's bill into a parchment roll or skin, called the *pellis receptorum*, and also to make another roll of payment, called *pellis exituum*, wherein he set down by what warrant the money was paid. *Toml.* Abolished in 1834 by stat. 4 & 5 Will. 4, c. 15, s. 1.

PENAL ACTIONS. [ACTIONS CIVIL AND PENAL.]

PENAL LAWS. Laws imposing penalties or punishments. In one sense all laws, properly so called, are penal laws; for any infringement of the directions of an Act of Parliament, or of the rights and duties created thereby, will, in the absence of provisions excluding, expressly or by implication, the common law rule, be visited by the Courts with fine and

PENAL LAWS—*continued.*

imprisonment. But ordinarily, when we speak of a penal law, we mean a law which expressly defines or limits the punishment of any offence; whether such offence be one previously known to the law, or whether it be one created by the law itself, which provides the punishment.

The question whether a given provision in an Act of Parliament is a penal one or not, is sometimes important. For instance, it is a rule that penal statutes must be construed *strictly* (that is, narrowly). It may also be sometimes a question, whether a sum of money payable under a statute by a person who has done or omitted to do certain things is intended to be so payable by way of *penalty* or by way of *composition*. If the former, then the act to which the penalty is annexed is itself illegal, and cannot be made the foundation of a legal contract; whereas, in the latter case, no such consequence will follow.

PENAL SERVITUDE. A punishment introduced in 1853 by stat. 16 & 17 Vict. c. 99, in lieu of transportation beyond seas. Every person sentenced to this punishment may be kept in any prison or place of confinement in the United Kingdom, or in any river, port, or harbour thereof, or in some place in her Majesty's dominions beyond seas, duly appointed for such purpose by Order in Council, according as the Secretary of State may from time to time direct; and may, while confined there, be kept to hard labour, and otherwise dealt with, in like manner as persons formerly sentenced to transportation might be dealt with while so confined.

The Act above referred to was amended in 1857, by stat. 20 & 21 Vict. c. 3, which abolished transportation; and was further amended in 1864 by stat. 27 & 28 Vict. c. 47, by sect. 2 of which it is provided that no person shall be sentenced to penal servitude for a shorter period than five years. See 4 *Steph. Com.* 449—452; *Oke's Mag. Syn.* 940—945; *Cox & Saunders' Cr. Law*, 311.

PENAL STATUTES. [PENAL LAWS.]

PENAL SUM. A sum declared by bond to be forfeited if the condition of the bond be not fulfilled. This is otherwise called the *penalty* of the bond. It is regarded in courts of equity, and under stats. 8 & 9 Will. 3, c. 11, 4 & 5 Ann. c. 16, and 7 Geo. 2, c. 20, as a security for the fulfilment of the condition of the bond. If the bond be for the payment of money, the penal sum is generally fixed at twice the amount. 3 *Bl.* 434, 435; 2 *Steph. Com.* 108—111.

PENALTY. 1. Punishment; especially used of a pecuniary fine.

2. Money recoverable by virtue of a penal statute.

3. A sum named in a bond as the amount to be forfeited by the obligor in case he comply not with the conditions of the bond. Notwithstanding that a sum may be so named, still, in an action on the bond, a jury is directed, by stat. 8 & 9 Will. 3, c. 11, to inquire what damages the plaintiff has sustained by breach of the condition; and the plaintiff cannot take out execution for a larger amount than the jury shall so assess. 2 *Steph. Com.* 111. [PENAL SUM.]

PENDENTE LITE. While a suit is pending. Thus letters of administration may be granted *pendente lite*, where a suit is commenced touching the validity of a will. 2 *Bl.* 503; 2 *Steph. Com.* 196, 197. [ADMINISTRATOR.]

PENSION. I. The payment of a sum of money; especially—

1. A periodical payment for past services.

2. Annual payments to each Inn of Court by the members thereof. *Cowel.*

3. Money paid to clergymen in lieu of tithes. *Toml.*

4. A payment made by one church, or the parson or vicar thereof, to the use of another, in virtue either of a prescription, or of some ordinance or reservation made at the time of the endowment. Such a pension may be sued for either in the ecclesiastical or in the temporal court. *F. N. B.* 51 *B.*; *Collier's Case*, *Croke, Eliz.* 675.

II. An assembly of the members of the Society of Gray's Inn to consult of the affairs of the house. *Cowel.*

PENSION WRIT. A peremptory order against a member of an Inn of Court who is in arrear for pensions and other duties. *Cowel.* [INNS OF COURT.]

PENSIONERS. 1. A band of gentlemen so called, in attendance upon the king's person. *Cowel.*

2. Persons receiving payments from the Crown. 2 *Steph. Com.* 515, 516.

3. Persons receiving periodical payments, especially for past services. [PENSION, I., 1.]

4. Persons making periodical payments are sometimes so called; thus, resident undergraduates of the University of Cambridge, who are not on the

PENSIONERS—*continued.*

foundation of any college, are spoken of as *pensioners*.

PEPPERCORN RENT. A rent of a peppercorn, that is, a nominal rent.

Rent is not an essential constituent in a lease; but instances of leases without rent are seldom or never met with; and, even where an actual valuable return is not payable, it is usual to indicate the relation of reversioner and tenant by reserving a peppercorn or other nominal rent. *Platt on Leases, Vol. II. p.* 82.

PER AUTER VIE. For another's life. [OCCUPANT; PUR AUTRE VIE.]

PER CAPITA. [CAPITA, DISTRIBUTION PER.]

PER CUI ET POST. Old writs of entry, abolished by stat. 3 & 4 Will. 4, c. 27, s. 36. [ENTRY, WRIT OF; POST, WRIT OF ENTRY IN THE.]

PER CURIAM (by the Court). An expression implying that such a decision was arrived at by the court, consisting of one or more judges, as the case may be.

Similarly, the word *per*, preceding the name of a judge, signifies that a dictum which follows is quoted on the authority of the judge.

PER, IN THE. A writ of entry, abolished by stat. 3 & 4 Will. 4, c. 27, s. 36. [ENTRY, WRIT OF.]

PER MY ET PER TOUT (by the half and by all). An expression applied to occupation in joint-tenancy, indicating, according to some, that the joint-tenants have each of them the entire possession as well of every parcel as of the whole. *Cowel;* 2 *Bl.* 182; *Wms. R. P., Pt. I. ch.* 6. But Mr. Serjeant Stephen considers the meaning to be, that the joint-tenants are all jointly seised of the whole, with the right to transfer in equal shares. 1 *Steph. Com.* 341.

PER PAIS (Lat. *Per patriam*). By the country. A trial *per pais* is a trial by jury of the country. 3 *Bl.* 349; 4 *Bl.* 349; 3 *Steph. Com.* 513; 4 *Steph. Com.* 416, 417.

PER PROCURATIONEM. By means of procuration or agency. This phrase is often used, either in full or abbreviated into "p. p.," where one man signs a receipt or other written document as agent for another. But the phrase is especially applied to the acceptance, &c. of a bill of exchange by one man as agent for another.

The words "per procuration," attached to a signature on a bill of exchange, are held to be an express intimation of a special and limited authority; and a person who takes a bill so drawn, accepted, or indorsed, is bound to inquire into the extent of the authority. *Byles on Bills.*

PER QUÆ SERVITIA (by which services). A writ judicial issuing from the note of a fine, which lay for the cognizee of a manor, seigniory, &c. to compel the tenant of the land to attorn unto him. *T. L.; Cowel.* [ATTORN, 1.]

The nature of the writ may be otherwise expressed in this way:—A fine [FINE, 1] being nominally a judicial proceeding, but practically a conveyance of lands from one man to another, the writ issued from the court in which the fine was "levied," to require the tenant of the party making the conveyance to accept the party, to whom the conveyance was made, as his landlord, and to render to him the same services (*servitia*) he had hitherto performed for his prior landlord.

Abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

PER QUOD (by reason of which). A phrase indicating special damage sustained by the plaintiff by reason of the defendant's conduct. In most cases of slander, for instance, it is necessary for the plaintiff to aver special damage to have happened by reason of the alleged slander, which is called laying his action with a *per quod*. 3 *Bl.* 124, 125; 3 *Steph. Com.* 378.

PER QUOD CONSORTIUM AMISIT. An allegation by a husband that he has lost the benefit of his wife's society; being the special damage shown by a husband who brings a separate action against a person for grossly maltreating the wife, whereby he is deprived of her company and assistance. 3 *Steph. Com.* 439.

PER QUOD SERVITIUM AMISIT. An allegation of loss of service by a plaintiff against a defendant, who has seduced a female servant of a plaintiff; the loss of service being the special damage on which the action is founded. 3 *Steph. Com.* 441, 442.

PER SE. Of himself, herself, or itself. For instance, where a person objects to an act *per se*, he means that he would object to it under any circumstances whatever: as opposed to the case where a person, by reason of special circumstances, objects to an act to which he would not ordinarily make objection.

PER STIRPES. [STIRPES, DISTRIBUTION PER.]

PER TOTAM CURIAM. By the whole court. [PER CURIAM.]

PER VERBA DE FUTURO. A marriage *per verba de futuro*, according to the law of Scotland, is a marriage established by mutual promises between the parties to marry at some future time, confirmed by subsequent cohabitation, without which the promise may be "resiled from," *i. e.*, repudiated; the party so "resiling" being, however, liable in damages for breach of promise. *Haggard's Consist. Rep., Vol. II. p.* 66; *Wm. Bell.* [See next Title.]

PER VERBA DE PRÆSENTI is where a man and woman deliberately agree to accept each other henceforth *from this present time* as husband and wife. Such consent, so given, completes a marriage according to the law of Scotland. *Hagg. Consist. Rep., Vol. II. p.* 66; *Wm. Bell.* [See preceding Title.]

PERAMBULATIONE FACIENDA. A writ which might be sued out by two or more lords of manors lying near one another, and consenting to have their bounds severally known. It was directed to the sheriff, commanding him to make perambulation, and to set down their certain limits. *T. L.; Cowel.*

PERDONATIO UTLAGARIÆ is a pardon for him who, for contempt in not coming to the king's court, is outlawed, and afterwards, of his own accord, yieldeth himself to prison. *Cowel.* [OUTLAWRY.]

PEREMPTORY signifies a final and determinate act, without hope of renewing or altering. *Cowel.* [See also the following Titles.]

PEREMPTORY CHALLENGE is where a party challenges a juror without showing cause. Peremptory challenges, to the number of twenty, are allowed to a person arraigned for felony. 4 *Bl.* 353; 4 *Steph. Com.* 422. [CHALLENGE; JURY.]

PEREMPTORY DAY is when any business, by rule of court, is to be spoken to on a precise day. *Toml.* See also *Lush's Pr.* 943.

PEREMPTORY MANDAMUS. A *mandamus* to do a thing at once, directed to a person to whom a previous writ of *mandamus* has issued to do the thing in question, and who has made some excuse, either insufficient in law, or false in fact, for not doing it. 3 *Bl.* 111, 265; 3 *Steph. Com.* 632, 633.

PEREMPTORY PAPER. In the Courts of Common Pleas and Exchequer, when a rule moved for in one term was drawn up to show cause in the next term, or was enlarged till the following term, it was the custom to place it in a paper called the *peremptory paper*. Certain days were allotted in these courts for taking the *peremptory paper*, usually the first five or six days in each term. Regularly, it was necessary for the party who desired to support or to show cause against the rule, to do so by counsel *on the very day* allotted to the rule in the peremptory paper; and if he neglected to do so, the court would not, in favour of a mere technical objection, afterwards permit the rule to be opened and discussed. *Chitty's Gen. Pract., Vol. III. p.* 477. By the General Rules of Hilary Term, 1853, rule 152, all enlarged rules must be drawn up for the first day of the ensuing term, unless otherwise ordered by the court. See *Lush's Pr.* 941-2. And the division of the legal year into terms is now abolished, so far as relates to the administration of justice. *Jud. Act*, 1873 (*Stat.* 36 & 37 *Vict. c.* 66), *s.* 26. [ENLARGE; OPENING A RULE; TERM, 1.]

PEREMPTORY PLEAS, more usually termed *pleas in bar*, are pleas by a defendant tending to impeach the plaintiff's right of action, as opposed to what are called *dilatory pleas*. 3 *Steph. Com.* 502, 503. Dilatory pleas are now for the most part abolished, in civil cases, by Ord. XIX. rule 13, in the First Schedule to the Judicature Act, 1875. [DILATORY PLEA.]

PEREMPTORY RULE. A rule to show cause peremptorily on a given day. *Lush's Pr.* 943.

PEREMPTORY UNDERTAKING. An undertaking by a plaintiff to bring on a cause for trial at the next sittings or assizes. *Lush's Pr.* 649.

PEREMPTORY WRIT. An original writ not optional. [OPTIONAL WRIT; ORIGINAL WRIT.] The peremptory writ was called a *si fecerit te securum*. It directed the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim. 3 *Bl.* 274.

PERFECTING BAIL is a phrase used to signify the completion of the proceedings whereby persons tendering themselves as sureties for the appearance of a party

PERFECTING BAIL—*continued.*

in Court on a day assigned are admitted in that capacity, when they have established their pecuniary sufficiency. [BAIL; COMMON BAIL; SPECIAL BAIL.]

PERFORMANCE. The doing wholly or in part of a thing agreed to be done. *Haynes' Eq., Lecture on Satisfaction and Performance.* [SATISFACTION, 2; SPECIFIC PERFORMANCE.]

PERFORMANCE, PLEA OF. A plea of performance in an action on a bond, covenant, or contract, is a plea by which the defendant alleges that he has satisfied the condition of the bond, or has performed the covenant or contract upon which he is sued. Such a plea must not be pleaded generally, but the defendant must show specially the manner of the performance; and where the subject to be performed consists of several distinct acts, the defendant must show specially the performance of each. *Stephen on Pleading; Judicature Act*, 1875, *1st Sched. Order XIX. rule* 18.

PERILS OF THE SEA. Policies of marine insurance include all fortuitous occurrences which are incident to navigation, and the extraordinary action of the winds and waves proximately causing loss or damage to the subject insured. If the damage or loss arises from no unusual cause, though the winds and waves may be concerned in it, the loss is to be attributed to wear and tear, for which the underwriters are not responsible. *Crump, Mar. Ins. s.* 362. See also 2 *Steph. Com.* 131. [UNDERWRITER.]

PERINDE VALERE (to be available equally with). An expression used in ecclesiastical law, to signify a dispensation granted to a clerk who, being under some disability, had nevertheless been admitted to a benefice or other ecclesiastical function, to retain his promotion as if the disability had not existed. *T. L.; Cowel.*

PERJURY is the swearing, wilfully, absolutely, and falsely, in a judicial proceeding, in a matter material to the issue or cause in question. 4 *Bl.* 137. By many statutes, however, false oaths in certain cases, not of a judicial kind, are to be deemed to amount to perjury, and to be visited with the same penalties. The penalties of perjury also attach to wilful falsehood in an affirmation by a Quaker, Moravian, or Separatist, or any other witness, where such affirmation is in lieu of an oath, and would, if believed, have the same legal consequences. 4 *Steph. Com.* 242; *Oke's Mag. Syn.* 1074.

PERKINS. A learned lawyer; a fellow and bencher of the Inner Temple, who lived in the days of King Edward VI. and Queen Mary. He wrote a book upon divers points in the common law. *Cowel.*

PERMISSIVE WASTE. [WASTE.]

PERMIT. A licence or warrant for persons to pass with and sell goods, on having paid the duties of customs or excise for the same. *Toml.*

PERMUTATIONE ARCHIDIACONATUS ET ECCLESIÆ EIDEM ANNEXÆ CUM ECCLESIA ET PRÆBENDA. A writ to an ordinary, commanding him to admit a clerk to a benefice, upon exchange made with another. *Cowel.*

PERNANCY. A taking or receiving tithes in kind. A pernancy of profits is a taking of profits. *Cowel.* [PERNOR OF PROFITS.]

PERNOR OF PROFITS. He who receives the profits of land. Thus, a *cestui que use* was said to be a *pernor of profits. T. L.; Cowel.*

PERPETUAL CURATE. A permanent minister in holy orders of an "appropriated" church in which no vicar had been endowed, was, until the year 1868, called a *perpetual curate.* But by the stat. 31 & 32 Vict. c. 117, it is provided that every incumbent of a church (not being a rector), who is entitled to perform marriages, &c., and to claim the fees for his own use, shall be deemed and styled a *vicar*, and his benefice a vicarage. 2 *Steph. Com.* 682, 683. [APPROPRIATION, 1; VICAR.]

PERPETUAL INJUNCTION. An injunction which is not merely temporary or provisional, and which cannot be dissolved except by appeal, or some proceeding in the nature of an appeal. An interim injunction granted on motion is sometimes made *perpetual* by the decree. *Hunt. Eq.* [INJUNCTION.]

PERPETUATING TESTIMONY. A bill to perpetuate testimony is a bill to enable a person to take evidence, otherwise in danger of being lost, for the purpose of quieting his title, where the facts likely to come into dispute cannot be immediately investigated by legal process; for instance, where the person filing it has merely a future interest. 3 *Bl.* 450; 3 *Steph. Com.* 468, 464; *Haynes' Eq., Lect. VI.; Chute's Eq. ch.* 9.

PERPETUITY. 1. The settlement of an estate in tail so that it cannot be undone or made void, which the State of England cannot bear. *T. L.*

2. And, generally, the attempt, by deed, will, or other instrument, to control the devolution of an estate beyond the period allowed by law, is spoken of as an attempt to create a *perpetuity*, and the disposition so attempted to be made is *void for remoteness*, though in some cases the courts will, by the operation of the *cyprès* doctrine, give effect to the disposition to the extent permitted by law. 1 *Steph. Com.* 552—554; 2 *Steph. Com.* 13; *Tudor, L. C. R. P.* 398; *Wms. R. P.* [CYPRES.]

PERPETUITY OF THE KING means the continuance, or, as Blackstone calls it, the immortality of the king in his political capacity. This is what is meant when it is said that the king never dies. The royal office is never without a living occupant, for on the decease of a reigning prince the royal office is instantly filled by his successor. 1 *Bl.* 249.

PERQUISITES. 1. Things gotten by a man's own industry, or purchased with his own money, as opposed to things which come to him by descent.

2. Profits accruing to a lord of a manor by virtue of his court baron, over and above the yearly profits of his land; also other things that come casually and not yearly. *T. L.; Cowel.*

PERSON is used variously as follows:—

1. A human being.
2. A human being capable of rights.
3. A character; as when we say, "he appears in such a character."
4. A corporation or legal person, otherwise called a fictitious person.
5. A parson, being *persona ecclesiæ*. [PARSON.]

Cowel; Aust. Jur., Lect. XII.

PERSONA IMPERSONATA. [PARSON IMPARSONEE; IMPARSONEE.]

PERSONABLE. An old word signifying that a man was enabled to maintain a plea in court, that is, to bring an action, as opposed to one disabled to sue, as being an outlaw or alien enemy, &c. *Cowel.*

PERSONAL ACTION signifies:—

1. An action which can be brought only by the person himself who is injured, and not by his representatives. [ACTIONS PERSONAL.]
2. An action which is not an action for the recovery of land. [ACTIONS REAL AND PERSONAL.]

PERSONAL CHATTELS are things moveable, as opposed to interests in land. [CHATTELS.]

PERSONAL PROPERTY. [REAL AND PERSONAL PROPERTY.]

PERSONAL REPRESENTATIVE. This phrase is used to denote an executor or administrator, who has the charge of the personal property of the deceased. [REPRESENTATION, 2.]

PERSONAL TITHES. Tithes paid out of the fruits of personal labour, as of manual occupations, trades, fisheries, and the like. 2 *Steph. Com.* 722, 723. [TITHES.]

PERSONALTY. Personal property. Personalty is either *pure* or *mixed*. Pure personalty is personalty unconnected with land; mixed personalty is a personal interest in land, or connected therewith. [CHATTELS REAL.] The distinction is important with reference to the Statutes of Mortmain, as pure personalty is not within the operation of those statutes. [MORTMAIN.]

PERVISE signifies, according to Selden, an afternoon exercise or moot for the instruction of young students. [MOOT.] According to Sumner, it means the Palace Yard at Westminster. *Cowel.*

PESAGE. A duty paid for the weighing of merchandise and other wares. *Cowel.*

PETER-PENCE, or **PETER'S PENCE,** was a tribute formerly paid to the Court of Rome through the papal legates. *Cowel;* 4 *Bl.* 107. [ALMESFEOH; DENARIUS SANCTI PETRI.]

PETIT CAPE. [CAPE.]

PETIT JURY. [JURY; PETTY JURY.]

PETIT LARCENY. [PETTY LARCENY.]

PETIT SERJEANTY is said by Littleton to consist in holding lands of the king by the service of rendering to him annually some small implement of war, as a bow, a sword, a lance, an arrow, or the like. The services of this tenure being free and certain, it is in all respects like free socage. No wardship of lands or body could be claimed by the king in virtue of petit serjeanty. *T. L.; Cowel;* 2 *Bl.* 81, 82; 1 *Steph. Com.* 210; *Wms. R. P., Pt. I. ch.* 5. [SOCAGE; WARDSHIP.]

PETIT TREASON. A lower kind of treason, which might be committed:

1. By a servant killing his master.
2. By a wife killing her husband.
3. By an ecclesiastical person killing

his superior, to whom he owes faith and obedience.

The punishment of petit treason was, in a man, to be drawn to the place of execution and hanged; and in a woman (as in high treason), to be drawn and burnt to death: which, in the year 1790, was altered to hanging. 4 *Bl.* 89, 203, 204. The crime of petit treason is now abolished by stat. 9 Geo. 4, c. 31, s. 2, and 24 & 25 Vict. c. 100, s. 8; and any killing which formerly amounted to petit treason now amounts to murder only. 4 *Steph. Com.* 77, 78, 150, *n.*

PETITION hath a general signification for all kinds of supplications made by an inferior to a superior, especially one having jurisdiction and authority. *Cowel.* Thus we speak of petitions to the Queen; petitions to Parliament; petitions to the Court of Chancery; &c.

A *petition in Chancery* is an application, addressed to the Lord Chancellor or to the Master of the Rolls, stating the matters on which it is founded, put in the same manner as a bill, and concluding with a prayer for the specific order sought; or for such other order as the Lord Chancellor or Master of the Rolls (as the case may be) shall think right. If the petition is for an order to be made in a cause pending before the court, the petition is entitled in that cause. Otherwise it must be presented under some act or acts of parliament; in which case it is entitled in the act or acts in question; and also in matter of the person, corporation, deed, will, trust, or estate, &c. to which it relates. *Hunt. Eq., Part II. ch.* 6, *and Part III.*

The word "petition" is used capriciously in English legal proceedings. Thus we speak of a *petition* for adjudication in bankruptcy (in the Bankruptcy Court); a *petition* for a divorce (in the Divorce Court); but of a *bill* for the administration of a deceased's estate (in the Court of Chancery); the regular mode of commencing an ordinary Chancery suit having, prior to November, 1875, when the Judicature Acts came into operation, been by *bill*. [BILL, 2; FILING BILL IN EQUITY. See also the following Titles.]

PETITION DE DROIT. [PETITION OF RIGHT, 1.]

PETITION OF RIGHT. 1. A petition for obtaining possession or restitution of property, either real or personal, from the Crown, which suggests such a title as controverts the title of the Crown, grounded on facts disclosed in the petition itself, in which case the petitioner must be careful to state truly the whole title of the Crown, otherwise the petition shall abate. As if a disseisor of lands dies without heir, and the Crown enters, the disseisee has remedy by petition of right. 3 *Bl.* 256; 3 *Steph. Com.* 655—6.

The modern practice in a petition of right is regulated by stat. 23 & 24 Vict. c. 34, passed in 1860, which provides that the petition shall be left with the Home Secretary for her Majesty's consideration; who, if she shall think fit, may grant her fiat that right be done; whereupon (the fiat having been served on the solicitor to the Treasury) an answer, plea, or demurrer shall be made on behalf of the Crown, and the subsequent pleadings be assimilated so far as practicable to the course of an ordinary action. 3 *Steph. Com.* 657, 658; *Hunt. Eq., Part III. Introd.*

2. The stat. 3 Car. 1, being a parliamentary declaration of the liberties of the people, including personal liberty and immunity from arbitrary taxation, assented to by King Charles I. in the beginning of his reign. 1 *Bl.* 128; 4 *Bl.* 437; 1 *Steph. Com.* 145, 166; 2 *Steph. Com.* 469; 4 *Steph. Com.* 513.

PETITION TO PARLIAMENT. A written address to the House of Lords or the House of Commons, concluding with a prayer. *May's Parl. Pract. ch.* 19.

PETITIONING CREDITOR. A creditor who petitions that his debtor may be adjudicated bankrupt. 2 *Bl.* 480; 2 *Steph. Com.* 154; *Robson, Bkcy. ch.* 10.

PETITIONING CREDITOR'S DEBT. A debt sufficient to maintain a petition in bankruptcy, so far as concerns the *locus standi* of the petitioner. This must amount to 50*l.* in the case of a single petitioner; and if there be more than one, the aggregate of the debts due to them must amount to 50*l.* The debt must be a liquidated sum due at law or in equity. 2 *Steph. Com.* 154; *Robson, Bkcy. ch.* 10, *s.* 2.

PETTIFOGGER. A petty attorney or lawyer. *Cowel.* The first part of the word is evidently from the French *petit;* but as to the latter, various derivations have been given. Cowel derives the latter part of the word from the Saxon *fogere*, a wooer or suitor; Dr. Johnson from the French *voguer*, to sail. Others say that *to fog* means to hunt in a servile manner; others, that the word owes its origin to the Fugger family, who

PETTIFOGGER—*continued.*

were proverbial for their commercial eminence on the Continent of Europe in the fifteenth and sixteenth centuries. See *Wedgwood's Dict. Eng. Etym.*

PETTY BAG OFFICE. The office belonging to the common law side of the Court of Chancery, out of which writs issued in matters wherein the Crown was mediately or immediately concerned; so called because the writs were kept originally in a little sack or bag, *in parva baga. Cowel;* 3 *Bl.* 49; 3 *Steph. Com.* 322, *n.*; *Hunt. Eq., Pt. III.* The petty bag office was also formerly used for suits for and against officers of the Court of Chancery. *T. L.* [CHANCERY; HANAPER OFFICE.]

PETTY JURY. Twelve good and lawful men of a county impanelled by the sheriff for the trial of issues of fact in civil and criminal cases; so called in opposition to the grand jury. 3 *Bl.* 351; 4 *Bl.* 349; 3 *Steph. Com.* 513, 553; 4 *Steph. Com.* 416—435. [GRAND JURY; JURY.]

PETTY LARCENY. Theft under the value of twelve pence, formerly distinguished from *grand* larceny, which was theft to a higher amount. This distinction is now abolished. 4 *Bl.* 229; 4 *Steph. Com.* 119, 120. [GRAND LARCENY; LARCENY.]

PETTY SERJEANTY. [PETIT SERJEANTY.]

PETTY SESSIONS. The meeting of two or more justices for trying offences in a summary way under various Acts of Parliament empowering them to do so; for committing offenders for trial; for making orders in bastardy, hearing poor-rate appeals, and other similar purposes. 4 *Bl.* 272, 273; 2 *Steph. Com.* 298, 649; 3 *Steph. Com.* 67. A bench of magistrates, which is also called a petty sessions, or a court of petty sessions, is formed by the periodical (generally weekly), as well as occasional, meetings of the justices of the peace for boroughs or for counties, ridings, or divisions, within certain recognized divisions or districts called *divisions for special sessions*, but really divisions for the holding of petty sessions, and transacting and determining all matters arising within those limits, as well as business required to be done in special sessions for those limits. [SPECIAL SESSIONS.] Such divisions are popularly called petty sessional divisions.

The petty sessions for divisions of counties is generally held at the most important or central town of the division, either at one of the principal inns or at the Town Hall, or other public building, if there should happen to be one; but a petty sessions may be held by any two justices on their mere private agreement, for the purpose of acting either ministerially or judicially in any cases within their authority, and anywhere in the division, except in certain cases where the statute giving cognizance of the offence or other matter requires the sitting to be "at the usual place" for the division, or otherwise fixes the place of meeting, or controls the justices in their selection of the same. Justices for boroughs are forbidden by sect. 100 of the Municipal Corporation Act, 1835 (5 & 6 Will. 4, c. 76), to hold their petty sessions at any public inn or tavern. *Oke's Mag. Syn.* 59—63.

PETTY TREASON. [PETIT TREASON.]

PETTYFOGGER. [PETTIFOGGER.]

PEW. 1. An elevated place or balcony (Lat. *Podium*). *Wedgwood.*

2. A pulpit or reading-desk. (See the rubric prefixed to the Commination Service in the Book of Common Prayer.)

3. An enclosed seat in a church. *Latham.* The right to sit in a particular pew in a church arises either from prescription, the pew being appurtenant to a messuage, or from a faculty or grant from the ordinary, who has the disposition of all pews which are not claimed by prescription. *Toml.*

PHARMACY ACTS. 1. Stat. 15 & 16 Vict. c. 56, passed in 1852.

2. Stat. 31 & 32 Vict. c. 121, passed in 1868, amended by—

3. Stat. 32 & 33 Vict. c. 117, passed in 1869.

Under these Acts, any person selling or keeping an open shop for the retailing, dispensing, or compounding poisons, or using the name of chemist and druggist, or either, not being a duly registered pharmaceutical chemist; or using the name, &c. of pharmaceutical chemist, pharmaceutist, or pharmacist, not being a pharmaceutical chemist; or failing to conform to regulations for keeping or selling poisons; or not compounding medicines according to the formulæ of the British Pharmacopœia, is liable to a penalty of 5*l.* *Oke's Mag. Syn.* 584—5.

PHAROS. A watch-tower. No man may erect any lighthouses, *pharos*, sea-marks, or beacons, without lawful warrant or authority. *Cowel.*

PICCAGE, PICAGE, or PICKAGE. Money paid in fairs, for breaking the ground to set up booths or stalls. *T. L.; Cowel;* 1 *Steph. Com.* 664.

PICKERY. The Scotch term for a petty theft. *Bell.*

PIE POUDRE COURT. [COURT OF PIED-POUDRE.]

PIGNORATION. Pawning or pledging.

PIGNUS. A pawn or pledge. [PLEDGE.]

PILLORY. An engine of wood for the punishment of offenders. The offender had to put his head through a hole or door as it were, and his hands through other holes, and to stand there for such time as might be appointed by his sentence. It was at first appointed for fraudulent bakers, and those who used false weights, and was afterwards applied to perjury. It was abolished in 1837 by 7 Will. 4 & 1 Vict. c. 23. *T. L.; Cowel;* 4 *Bl.* 377; 4 *Steph. Com.* 443, *n.*

PILOT. He who hath the government of a ship, under the master. *Toml.* [See next Title.]

PILOTAGE AUTHORITIES are various bodies of persons in different parts of the kingdom, having powers and jurisdictions with regard to the appointment and regulation of pilots for the districts in which they respectively act. The most important of these pilotage authorities is the Trinity House of Deptford Strond. [TRINITY HOUSE.]

The Board of Trade may also, by 25 & 26 Vict. c. 63, s. 39, constitute a pilotage authority in a district where none exists. 3 *Steph. Com.* 156, 159.

The employment of a properly qualified and licensed pilot is in general compulsory upon the masters of ships within the limits of the pilotage jurisdictions. *Stat.* 6 *Geo.* 4, *c.* 125, *s.* 59; *Stat.* 17 & 18 *Vict. c.* 104, *s.* 353; *Abbott on Shipping, by Mr. Justice Shee, p.* 179.

PIN-MONEY. A sum payable by a husband to a wife for her separate use, in virtue of a particular arrangement, to be applied by the wife in attiring her person in a manner suitable to the rank of her husband, and in defraying other personal expenses. 2 *Steph. Com.* 274; *Sm. Man. Eq.; Haynes' Eq.*

PIPE. A roll in the Exchequer, otherwise called the Great Roll, on which were taken down the accounts of debts due to the king. It was called a pipe because it was put together like a pipe. *Cowel; Toml.* Abolished by stat. 3 & 4 Will. 4, c. 99, passed in 1833.

PIRACY. I. Robbery and depredation upon the high seas. The definition of piracy in this sense varies according to circumstances.

1. At common law, the crime of piracy consisted in committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony there. If committed by an alien, it was held to be felony; if by a subject, it was a species of treason, until the Statute of Treasons, 25 Edw. 3, c. 2.

2. By statute law, the following offences are to be deemed piratical:—

Hostilities by a natural-born subject against any of her Majesty's subjects, under colour of a commission from a foreign power.

The betrayal of his trust by a commander or other seafaring person.

Endeavouring to make a revolt on board ship.

Trading with known pirates, or fitting out a vessel for a piratical purpose, &c. 4 *Bl.* 71—73; 4 *Steph. Com.* 219—222.

3. Piracy, by the law of nations, includes such piratical acts as are committed on board vessels, whose *de facto* possessors are not recognized by any sovereign power as the lawful owners thereof; also all unauthorized acts of private hostility committed at sea.

II. The infringement of a copyright.

PIRATE. 1. A person guilty of piracy. [PIRACY, I.]

2. A person to whose care the mole or pier of a haven was entrusted was sometimes so called. *Cowel.*

3. A sea-soldier. *Cowel.*

PISCARY. A liberty of fishing in another man's waters, or in one's own. *T. L.; Cowel;* 2 *Bl.* 34—40; 1 *Steph. Com.* 653. [COMMON, II.; FISHERY.]

PITTANCE (Fr. *Pitance;* Ital. *Pietanza*). A small repast of fish or flesh eaten with bread. Hence it signifies a small portion of anything. *Cowel; Wedgwood; Littré.*

PIX. [PIXING THE COIN.]

PIXING THE COIN signifies the ascertaining whether coin is of the proper standard. For this purpose, resort is had on stated occasions to an ancient mode of inquisition called the *trial of the pyx*, before a jury of members of the Goldsmiths' Company. 2 *Steph. Com.* 523, *n.*

PLACITA. Pleas or pleadings. Formerly it signified the public assemblies at which the king presided. *Toml.*

PLACITORUM ABBREVIATIO. A book containing an abstract of pleadings delivered in the reigns of Richard I., John, Henry III., Edward I., and Edward II. This book, having been preserved in the Chapter House at Westminster, was reprinted in 1811 by command of his Majesty King George III., in pursuance of an address of the House of Commons.

PLACITUM NOMINATUM, in the laws of Hen. I., was the day appointed for a criminal to appear and make his defence. *Cowel.*

PLAINT. 1. The propounding or exhibiting of any action in writing. *Cowel.*

2. A private memorial tendered in open court to a judge, wherein the party injured sets forth his cause of action; which was done in the old County Court, or other local court, when the action was brought to recover a sum under forty shillings; and the judge was bound of common right to administer justice therein, without any mandate from the king. The proceeding in the local court thus differed from that in the king's courts, where actions commenced by original writ. 3 *Bl.* 273. [COUNTY COURT; ORIGINAL WRIT.]

3. The written statement of an action in the modern County Court, which is entered by the plaintiff in a book kept by the Registrar for the purpose. *Stat.* 9 *&* 10 *Vict. c.* 95, *s.* 59; 3 *Steph. Com.* 288; *Davis' County Courts, 5th ed. p.* 65.

PLAINTIFF. He that sues or complains in an assize or action personal. *T. L.* See also 3 *Bl.* 25. The plaintiff in an assize or real action (now abolished) was generally called a demandant. In the Judicature Act, 1873, "plaintiff" includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise. *Sect.* 100. [See next Title.]

PLAINTIFF IN ERROR. A party who brings error, complaining of the judgment of the court below. *Lush's Pr.* 668—9; *Kerr's Act. Law.* The technical proceedings called "proceedings in error" are now abolished under the Judicature Act, 1875. *Stat.* 38 *&* 39 *Vict. c.* 77, 1*st Sched. Ord. LVIII. r.* 1.

PLANTATION. A settlement or colony dependent on a mother country, with whose inhabitants it was originally peopled. *Toml.*

PLEA. 1. That which either party allegeth for himself in court. *Cowel.*

2. The defendant's answer to the declaration of the plaintiff in an action at common law. The general division of pleas is into dilatory pleas and peremptory pleas, or, which is nearly the same thing, pleas in abatement and pleas in bar. Pleas in abatement in civil actions are now abolished. *Stat.* 38 *&* 39 *Vict. c.* 77, 1*st Sched. Ord. XIX. r.* 13.

3. A short statement, in answer to a bill in equity, of facts which, if inserted in the bill, would render it demurrable. It differs from an answer, in that an answer is a complete statement of the defendant's case, and contains answers to any interrogatories the plaintiff may have administered. *Hunt. Eq., Pt. I. ch.* 3, *s.* 2. If a plea, when set down for argument, is found insufficient in law, it will sometimes be allowed *to stand for an answer, with liberty to except;* that is to say, to be regarded as an answer, subject to any right the plaintiff may have of taking exception to it as not sufficiently answering his interrogatories, or otherwise.

4. A plaintiff's allegation in the action of replevin in answer to a justification by the defendant by way of *avowry* or *cognizance. Smith's Act. Law, ch.* 15.

The pleas hitherto used in civil proceedings in the Superior Courts are henceforth to be superseded by the "statement of defence" introduced under the Judicature Acts. *Stat.* 38 *&* 39 *Vict. c.* 77, 1*st Sched. App.* (*C*). [See the following Titles.]

PLEA SIDE OF THE EXCHEQUER. [COURT OF EXCHEQUER.]

PLEAD. [PLEA; see also the following Titles.]

PLEADER. One who pleads. [See the following Titles; see also SPECIAL PLEADER.]

PLEADING is a word used: 1. Of drawing the written pleadings in a suit or action. 2. Of advocating a client's cause *viva voce* in court. [See the following Titles.]

PLEADING ISSUABLY. [ISSUABLE PLEA.]

PLEADING OVER is where a party pleads without taking advantage, by demurrer or otherwise, of a defect in his adversary's pleading. *Steph. Plead. 7th ed. pp.* 143—148. Also where a defendant, having demurred or specially pleaded, has judgment given against him on such

PLEADING OVER—*continued.*

demurrer or special plea, and proceeds to plead the general issue, he is said to plead over. 4 *Bl.* 338; 4 *Steph. Com.* 339, 405. [DEMURRER; GENERAL ISSUE, PLEA OF; SPECIAL PLEA.]

PLEADINGS are the mutual formal altercations between the parties in a suit or action, with a view to the development of the point in controversy between them. 3 *Bl.* 293; 3 *Steph. Com.* 497. According to *Termes de la Ley* and *Cowel*, the "declaration" is not included in the pleadings. [DECLARATION.]

The rules of pleading hitherto in use in the Courts of Chancery, Common Law, Admiralty, and Probate are now superseded by the orders in the first schedule to the Judicature Act, 1875, especially Order XIX., which treats of pleading generally.

PLEAS. 1. See PLEA.

2. Suits and actions (in the widest sense of these terms), which are divided into *Pleas of the Crown* and *Common Pleas.* Pleas of the Crown are suits in the king's name against offences committed against his crown and dignity, that is to say, crimes and misdemeanors generally. Common pleas be those that be held between common persons. *Cowel;* 3 *Bl.* 40; 4 *Bl.* 2; 4 *Steph. Com.* 2. [COMMUNIA PLACITA NON TENENDA IN SCACCARIO.]

PLEAS OF THE CROWN. [PLEAS.]

PLEDGE. 1. The transfer of a chattel by a debtor to his creditor to secure the repayment of the debt.

2. The chattel so transferred. *Sm. Man. Eq., Tit. III. ch.* 3, *s.* 3.

3. A surety. [FRANK-PLEDGE; PLEDGES.]

PLEDGES. Sureties which a plaintiff was formerly required to find, in order to prosecute an action. After a time, John Doe and Richard Roe did duty as such pledges; but the statement of formal pledges was abolished by rules of court in 1832. *T. L.; Cowel; Toml.*

PLEGII DE PROSEQUENDO. Pledges to prosecute an action of replevin, which a party desirous of recovering goods which he alleged to have been unlawfully distrained was required to put in, in order to recover them from the sheriff or other officer who had them in possession. 3 *Bl.* 147; 3 *Steph. Com.* 422, *n.*; *Kerr's Act. Law.* The mode of proceeding in such cases is now altered by the County Courts Act, 9 & 10 Vict. c. 95, passed in 1846. [REPLEVIN.]

PLEGII DE RETORNO HABENDO. Pledges given by the party replevying to return the goods distrained, in case the action of replevin were decided against him. 3 *Bl.* 147; 3 *Steph. Com.* 422. [PLEGII DE PROSEQUENDO; REPLEVIN.]

PLEGIIS ACQUIETANDIS. A writ which lay for a surety against him for whom he had become surety, if he paid not the money at the day, so that the surety was compelled to pay it. *T. L.; Cowel.* And it is still a recognized doctrine of law, that the principal shall reimburse the surety for any payment which he is obliged to make upon his guarantee. 2 *Steph. Com.* 107.

PLENA FORISFACTURA. A complete forfeiture, or forfeiture of all that one hath. *Cowel.*

PLENA PROBATIO. [SUPPLETORY OATH.]

PLENARTY. Fulness; a word indicating that an ecclesiastical benefice is occupied and not vacant. *T. L.; Cowel;* 3 *Bl.* 243; 3 *Steph. Com.* 415, 611.

PLENE ADMINISTRAVIT. A plea by an executor or administrator to an action brought against him as representing the deceased, on the ground that he has already fully administered the estate of the deceased, and that the assets come to his hands have been exhausted in the payment of debts. 2 *Steph. Com.* 204; *Lush's Pr.* 134; *Kerr's Act. Law, 3rd ed. p.* 15. [See next Title.]

PLENE ADMINISTRAVIT PRÆTER. A plea by an executor or administrator that he has fully administered the testator's estate, with the exception of certain assets acknowledged to be still in his hands. *Smith's Act. Law, ch.* 13.

PLEVIN. A warrant or assurance. *T. L.; Cowel.*

PLIGHT. An old English word, signifying the estate held by any one in land; also the habit and quality thereof. *Toml.*

PLOUGH BOTE. Wood to be employed in repairing instruments of husbandry. 2 *Bl.* 35; 1 *Steph. Com.* 256, 288.

PLOUGH LAND is the same with a hide of land. In respect of repairing the highway, a plough land was settled by stat. 7 & 8 Will. 3, c. 29, at 50*l.* a year. *Toml.*

PLOUGH SILVER. Money formerly paid in lieu of the service of ploughing the lord's lands. *Toml.*

PLOWDEN was a lawyer of the highest eminence in the sixteenth century, who wrote reports and commentaries. 1 *Steph. Com.* 50.

Edmund Plowden was born at Plowden, in Shropshire, about the year 1518, and entered upon the study of the law in the twentieth year of his age. He attended at the moots [MOOT], and took reports of cases for his own private instruction. He tells us in his preface that he had not intended to publish them, as he distrusted their value. Having, however, lent a copy to some friends, their clerks got the book into their hands and had it printed, in order to make a profit by the publication. But (as not unfrequently happens) the cases were transcribed by persons who did not understand the matter, and the copies were, in consequence, very faulty and corrupt; besides that the pleadings in the cases were not transcribed. Hence the author was induced to publish a correct edition. The cases extend, in point of time, from 1550, the fourth year of Edward VI., to 1578, the twentieth year of Queen Elizabeth. The author congratulates himself on his confining his reports to decisions given, not by the sudden speech of the judges upon motion, but after argument and grave deliberation. Plowden also wrote a moot-book of choice cases, useful for the young students of the common law. He lived a Roman Catholic, and died in that faith on the 6th of February, 1584-5.

Anthony Wood, in his *Athenæ Oxonienses*, gives an account of Plowden which it is not easy to reconcile with the author's own statements. Wood says that Plowden "spent three years in the study of arts, philosophy and medicine at Cambridge, and afterwards, as I conceive, was entered into one of the Inns of Court. Soon after coming to Oxon, he spent four years more in the same studies there, and in Nov. an. 1552, he was admitted to practise chirurgery and physic, by the venerable convocation of the university. But as about that time Dr. Thomas Phaer did change his studies from common law to physic, so did our author Plowden from physic to the common law, being then about 35 years of age. In 1557 he became autumn or summer reader of the Middle Temple, and three years afterwards Lent reader, being then a serjeant at, and accounted the oracle of, the law. He hath written in old French."

PLOWLAND. [PLOUGH LAND.]

PLURALITY. The having two, three, or more benefices. *T. L.; Cowel.* Pluralities are now abolished, except in certain cases. 2 *Steph. Com.* 691, 692.

PLURIES. A *pluries* writ is a writ that goeth out in the third place, after two former writs have been disregarded. *T. L.; Cowel;* 3 *Bl.* 135, 283; 4 *Bl.* 319.

POACHING. The unlawful destruction of game, especially by night; also trespassing by night on land in pursuit of game. By stat. 9 Geo. 4, c. 69, passed in 1828, and stat. 7 & 8 Vict. c. 19, passed in 1844, it is provided that if any person shall, by night, unlawfully take or destroy any game or rabbits, in any land (whether open or enclosed); or on any public road, highway or path, or the sides thereof; or at the openings, outlets, or gates from any such lands into such roads; or shall by night be in such places with any gun, net, engine, or other instrument, for the purpose of taking or destroying game;—he shall be liable to imprisonment, for the first offence, for any period not exceeding three months, with hard labour; and, at the expiration of such period, to be bound over to his good behaviour by sureties for a year; and, in default, to be further imprisoned for six months. These penalties are doubled on a repetition of the offence, And one who offends for a third time may be sent to penal servitude for seven years. Moreover, any person committing any such offence may be seized and apprehended by the owner or occupier of the land, or by any person having a right of free warren or free chase therein, or by the lord of the manor, or by any of their gamekeepers or servants. 4 *Steph. Com.* 285—287.

POCKET SHERIFFS. Sheriffs appointed by the sole authority of the Crown, not having been previously nominated in the Exchequer. The practice of occasionally naming pocket sheriffs continued until the reign of George III. 1 *Bl.* 342; 2 *Steph. Com.* 626. [PRICKING FOR SHERIFFS; SHERIFF.]

POINDING is the "diligence" (or legal process) which the law of Scotland has devised for transferring the property of a debtor to his creditor. It answers to the *distress* of the English law. Poinding is of three kinds:—

1. Real poinding, or poinding of the ground. This is the action by which a creditor, having a security on the land of his debtor, is enabled to appropriate the rents of the land, and the goods of

POINDING—*continued.*

the debtor or his tenants found thereon, to the satisfaction of the debt.

2. Personal poinding. This consists in the seizure of the goods of the debtor, which are sold under the direction of a court of justice; and the nett amount of the sales paid over to the creditor in satisfaction of his debt; or, if no purchaser appears, the goods themselves are delivered.

3. Poinding of stray cattle, committing depredations on corn, grass, or plantations, until satisfaction is made for the damage. *Bell.* This corresponds to the English process of distraining cattle "*damage feasant.*" [DAMAGE FEASANT.]

POLICE. The due regulation and domestic order of the kingdom. 4 *Bl.* 462. Especially that part of it which is connected with the prevention and detection of crime. [CONSTABLE.]

POLICE SUPERVISION. It is provided by the Prevention of Crimes Act, 1871 (stat. 34 & 35 Vict. c. 112, repealing stat. 32 & 33 Vict. c. 99, to the same effect), that where a person is convicted on indictment of a crime, and a previous conviction of a crime is proved against him, the court may, in addition to any other punishment, direct that he be subject to the *supervision of the police* for a period not exceeding seven years, commencing immediately after the expiration of the sentence passed on him for the last of such crimes; and that any person, so subject to supervision as aforesaid, who shall remain in any place for forty-eight hours without notifying the place of his residence to the chief officer of police for the district, or who shall fail to comply with the requisitions of the Act, in periodically reporting himself to such chief officer, shall, unless he can show that he did his best to act in conformity to the law, be liable to be imprisoned, with or without hard labour, for any period not exceeding one year. 4 *Steph. Com.* 452, 453; *Oke, Mag. Syn.* 320; *Cox & Saunders' Cr. Law*, 422.

POLICIES OF ASSURANCE, COURT OF. [COURT OF POLICIES OF ASSURANCE.]

POLICY OF ASSURANCE or **INSURANCE.** An instrument by which one party, in consideration of a premium, engages to indemnify another against a contingent loss. *T. L.; Cowel;* 2 *Bl.* 458—461; 2 *Steph. Com.* 127. [INSURANCE.]

POLITICAL LIBERTY is defined by Austin (*Lect. VI.*) as the liberty from legal obligation, which is left or granted by a sovereign government to any of its subjects. Every supreme political government, by the laws which it makes, controls the actions of those subject to it; and political liberty is that choice or freedom of action to which such control does not extend.

Sir George Cornwall Lewis, in his Treatise on the Methods of Observation and Reasoning in Politics, vol. ii. pp. 325—6, adopts the above definition with a slight variation. After saying that liberty, in its primary and proper sense, signifies a power of acting without being restrained, or a power of forbearing without being forced; and that, in its secondary or derivative sense, it signifies a power of doing or forbearing without apprehending an infliction of pain as a punishment, he proceeds to say, that "political liberty is merely an exemption from political duties, and is a purely negative term. But, inasmuch as this exemption from duties would be unavailing, unless it were accompanied with the possession of legal rights, the term liberty is often used as a compendious expression to denote both the negative and positive facts—the exemption from legal duty, and the rights which guarantee that exemption and render it effectual. It is in this sense that we speak of the 'liberties of an Englishman.'"

POLL. The process of giving and counting votes at an election. See 2 *Steph. Com.* 370. [POLLING; POLLS.]

POLL, DEED. [DEED.]

POLL MONEY, POLL SILVER or **POLL TAX.** A tax by which every person in the kingdom was assessed by the head or poll, according to his degree. It has been imposed at various periods in our history. *Cowel.*

POLLING. Counting heads; especially used of counting voters at an election.

POLLS. Heads or individuals; also the place where polling takes place for the purpose of an election. For *challenges to the polls*, see CHALLENGE, 2.

POLYGAMY. The having more wives than one, especially used with reference to countries where plurality of wives is permitted by law. Blackstone, however, considers the word applicable to what is ordinarily and properly called the offence of bigamy. 4 *Bl.* 164. His use of the term is criticised by Mr. Serjeant Stephen. 4 *Steph. Com.* 278, *n.*

PONDUS REGIS. The king's weight; signifying the original standard of weights and measures in the time of Richard I. 1 *Bl.* 275, 276; 2 *Steph. Com.* 518.

PONE. 1. A writ whereby a cause depending in an inferior court might be removed into the Court of Common Pleas. *T. L.; Cowel;* 3 *Bl.* 34, 37, 195; *Kerr's Act. Law.*

2. *Pone per vadium et plegios* was a writ whereby the sheriff was commanded to take security of a man for his appearance at a day assigned. *T. L.; Cowel.* It generally issued when a defendant failed to appear. 3 *Bl.* 280.

PONE PER VADIUM ET PLEGIOS. [PONE, 2.]

PONENDIS IN ASSISIS. An old writ whereby a sheriff was directed to impanel a jury for an assize or real action. *Cowel.* [ACTIONS REAL AND PERSONAL; ASSISE; ASSIZE, WRIT OF.]

PONENDUM IN BALLIUM. A writ commanding a prisoner to be bailed in causes bailable. *Cowel.* Now quite obsolete.

PONENDUM SIGILLUM AD EXCEPTIONEM. The placing the judge's seal to a bill of exceptions. *Cowel;* 3 *Bl.* 372; *Kerr's Act. Law.* [BILL OF EXCEPTIONS.] Bills of exceptions are abolished by the Judicature Act, 1875, 1st Sched. Ord. LVIII. rule 1.

PONTAGE. A toll or tax for the maintenance or repair of bridges. *T. L.; Cowel.*

PONTIBUS REPARANDIS. An old writ directing the sheriff to charge a man with the repair of a bridge. *Cowel.*

POOR LAW BOARD. A Government Board appointed by stat. 10 & 11 Vict. c. 109, passed in 1847, to take the place of the Poor Law Commissioners, under whose control the general management of the poor, and the funds for their relief throughout the country, had been for some years previously administered. The Poor Law Board is now superseded by the Local Government Board, which was established in 1871 by stat. 34 & 35 Vict. c. 70. 3 *Steph. Com.* 49. [LOCAL GOVERNMENT BOARD.]

POOR LAWS. The laws relating to the relief of the poor. The most important of such laws passed in recent times is the Poor Law Amendment Act, 1834, stat. 4 & 5 Will. 4, c. 76. It has been amended by several subsequent Acts. 3 *Steph. Com.* 48, *and n.* (*r*). [See preceding Title.]

POOR RATE. The rate levied by churchwardens and overseers for the relief of the poor. [OVERSEERS; RELIEF, 2.]

POPULAR ACTION. [ACTIONS POPULAR; QUI TAM ACTIONS.]

POPULOUS PLACE, under the Licensing Act, 1874, means any area with a population of not less than a thousand, which by reason of the density of such population the county licensing committee may determine to be a populous place. [LICENSING ACTS.]

PORT. A place where persons and merchandise are allowed to pass into and out of the realm. 1 *Bl.* 264. The duty of appointing ports and sub-ports, and declaring the limits thereof, is confided, by sect. 9 of the Customs Consolidation Act, 1853 (stat. 16 & 17 Vict. c. 107), to the Commissioners of Her Majesty's Treasury. By s. 10, the Commissioners may appoint "warehousing ports" and "sufferance wharves" for the purpose of the customs. 2 *Steph. Com.* 500.

PORTGREVE (Lat. *Portus præfectus*) signifies a magistrate in certain sea-coast towns. The chief magistrate of London was so called in the time of William the Conqueror. Richard I. appointed two bailiffs, but presently after him King John granted the citizens a mayor for their yearly magistrate. *Cowel.*

PORTION. A part of a person's estate which is given or left to a child. *Toml.* The word is especially applied to payments made to younger children out of the funds comprised in their parents' marriage-settlement, and in pursuance of the trusts thereof.

PORTIONER. Where a parsonage is served by two or three ministers alternately, the ministers are called *portioners*, because they have but their portion or proportion of the tithes and profits of the living. *Cowel.*

PORTMEN. The burgesses of Ipswich. Also the inhabitants of the *Cinque Ports. Cowel.* [CINQUE PORTS.]

PORTMOTE or **PORTMOOT.** A court kept in haven towns. *T. L.; Cowel.*

PORTREVE. [PORTGREVE.]

POSITIVE LAW is properly synonymous with law properly so called. For every law is *put* or set by its author. But in practice the expression is confined to

POSITIVE LAW—*continued.*

laws set by a sovereign one or number to a person or persons in a state of subjection to its author; that is, to laws enacted by sovereign States, or by their authority. *Austin's Jur., passim.*

POSSE. A word signifying a possibility. A thing *in posse* means a thing which may be; as opposed to a thing *in esse*, or in being. *Cowel.* Thus, a wall not yet built would be a thing *in posse.*

POSSE COMITATUS. The power of the county; that is, the people of the county which the sheriff may command to attend him for keeping of the peace and pursuing felons; also for defending the county against the king's enemies. To this summons all persons, except peers, women, clergymen, persons decrepit, and infants under the age of fifteen, are, by stat. 2 Hen. 5, c. 8, passed in the year 1414, bound to attend, under pain of fine and imprisonment. 1 *Bl.* 343; 4 *Bl.* 122; 2 *Steph. Com.* 629; 4 *Steph. Com.* 254.

POSSESSIO FRATRIS FACIT SOROREM ESSE HEREDEM (the possession of the brother makes the sister heir). A maxim indicating that if a man, having a son and daughter by a first wife, and a son (with or without other children) by a second wife, died intestate, and his eldest son died after him without entering on the land; then the younger son would inherit as heir to their common father, who was the last person actually seised. But if the eldest brother, before his death, entered and took possession, and died seised of the land and intestate, that possession enabled the sister to succeed in exclusion of the brother; because the descent was traced from the person last seised. *T. L.;* 2 *Bl.* 227, 228. This maxim would not now apply; for, by sect. 2 of the Inheritance Act of 1833 (stat. 3 & 4 Will. 4, c. 106), the descent is to be traced from the *purchaser;* that is, the last person who acquired the land *otherwise than by descent.* So that, in the case above put, there could be no descent traced from the eldest son, as he himself succeeded to the land by descent; and the younger brother would inherit, as from the father, on the death of the elder brother intestate. 1 *Steph. Com.* 391; *Wms. R. P., Pt. I. ch.* 4.

POSSESSION. 1. When a man actually enters into lands and tenements. This is called actual possession. *T. L.; Cowel.*

2. When lands and tenements descend to a man, and he hath not yet entered into them. This is called possession in law. *T. L.; Cowel.* Thus we speak of estates in possession as opposed to estates in remainder or reversion. Into the former a man has a right to enter at once; of the latter the enjoyment is delayed. 2 *Bl.* 163, 195, 196; 1 *Steph. Com.* 313, 314.

3. The exercise of the right of ownership, whether rightfully or wrongfully. [See the following Titles.] This is defined by Sir H. S. Maine as "physical detention, coupled with the intention to use the thing detained as one's own." *Maine's Ancient Law, p.* 291.

POSSESSION, WRIT OF. A writ giving a person possession of land. A phrase used especially with reference to the fictitious plaintiff in the old action of ejectment. 3 *Bl.* 202. [EJECTMENT.]

POSSESSORY ACTION was an action brought for the purpose of regaining possession of land whereof the demandant or his ancestors had been unjustly deprived by the tenant or possessor of the freehold, or those under whom he claimed. All that was alleged in this action was that the right of possession of the demandant was superior to that of the actual tenant; not necessarily that he had a right of *property* in the land. On the other hand, the tenant had a species of presumptive title, otherwise called *an apparent right of possession*, sufficient to protect him from expulsion *by mere entry* on the part of the adverse claimant. A possessory action was either a writ of entry or an assise. 3 *Bl.* 179—190. [ACTIONS ANCESTRAL, POSSESSORY, AND DROITURAL; ASSIZE, WRIT OF; ENTRY, WRIT OF.]

These actions belonged to the class of real actions, and, having been for some time obsolete, were abolished in the year 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36. 3 *Steph. Com.* 361, 396.

POSSIBILITY. A chance or expectation. Possibilities are of two kinds:—

1. A bare possibility, such as that of the eldest son succeeding, on his father's decease intestate, to the inheritance of his lands.

2. A possibility *coupled with an interest*, or in other words, a possibility recognized in law as an estate or interest; as the chance of B. succeeding to an estate, held by A. for his life, in the event of C. not being alive at A.'s death. In this sense it includes a contingent remainder. 2 *Bl.* 290; 1 *Steph. Com.* 229, 328. [CONTINGENCY WITH DOUBLE ASPECT; DOUBLE POSSIBILITY.]

POST. After. [See the following Titles.]

POST DIEM (after the day) was a phrase used to denote the return of a writ after the day assigned, for which the *custos brevium* had fourpence. The phrase was also used for the fee itself. *T. L.; Cowel.* [CUSTOS BREVIUM.]

POST DISSEISIN. Where one person, having recovered lands from another in a possessory action, not being an *assize of novel disseisin*, was *afterwards disseised* by the party against whom he had obtained the judgment, the act of the latter was called a *post disseisin;* and the former might have a writ of *post disseisin* against him, which subjected the post disseisor to the same penalties as a re-disseisor. *T. L.; Cowel;* 3 *Bl.* 188. [ASSIZE OF NOVEL DISSEISIN; DISSEISIN; POSSESSORY ACTION; REDISSEISIN.]

POST ENTRY. When goods are weighed or measured, and the merchant has got an account thereof at the Custom House, and finds his entry already made too small, he must make a *post* or additional *entry* for the surplusage, in the same manner as the first was done. Post entries are usually confined to cargoes of grain. *M'Culloch's Com. Dict.*

POST, ENTRY IN THE. [POST, WRIT OF ENTRY IN THE.]

POST FINE. A duty formerly paid to the king by the cognisee in a fine, when the same was fully passed. *Cowel;* 2 *Bl.* 350; 1 *Steph. Com.* 561. [FINE, I.]

POST LITEM MOTAM. After a suit has been in contemplation; or, "after an issue has become, or appeared likely to become, a subject of judicial controversy." *Powell on Evidence, 4th ed. p.* 164.

POST OBIT BOND. A bond executed by a person on the receipt of money from another, whereby the borrower binds himself to pay to the lender a sum exceeding the sum so received, and the ordinary interest thereof, upon the death of a person upon whose decease he (the borrower) expects to become entitled to some property. *Sm. Man. Eq.*

POST OFFICE. A department of the Government charged with the conveyance of letters through the kingdom, as well from foreign parts, as from place to place within Great Britain. This office owes its first legislative establishment to the Long Parliament, who in 1644 appointed Mr. Edward Prideaux postmaster, by an ordinance of both Houses. In 1657 a regular post office was erected by the authority of the Protector and his parliament, upon nearly the same model as has since been adopted. 1 *Bl.* 321—323; *Toml.* In 1840 the penny postage was introduced, and the privilege of "franking" abolished. [FRANK.] The machinery of the Post Office is also used in providing small insurances and annuities with Government securities, under stat. 16 & 17 Vict. c. 45, passed in 1853. A system of savings banks has also been established in connection with the Post Office by stat. 24 & 25 Vict. c. 14, passed in 1861, which authorizes the Postmaster General, with the consent of the Commissioners of the Treasury, to cause his officers to receive deposits. The security of the Government is pledged for the repayment of such deposits, with interest at 2½ per cent. per annum. Electric telegraphs are also placed under the direction of the Post Office, by stat. 31 & 32 Vict. c. 110, passed in 1868. 2 *Steph. Com.* 568—570; 3 *Steph. Com.* 84—86.

POST TERMINUM. The return of a writ not only after the day assigned for the return thereof, but after the term also, for which the *custos brevium* was entitled to a fee of twenty pence. Sometimes also it is taken for the fee itself. *Cowel.* [POST DIEM.]

POST, WRIT OF ENTRY IN THE. A writ of entry in the *post*, otherwise called a writ of entry *sur disseisin* in the *post*, was a writ brought by a party claiming land, and alleging that the tenant, or party in actual possession, had not entry unless *after* the injury done by the original dispossessor; "*non habuit ingressum nisi* post *intrusionem quam Gulielmus in illud fecit;*" and rightly concluding that, if the original title was wrongful, all claims derived from thence must participate in the same wrong. In this writ, which was introduced in 1268—9 by the Statute of Marlbridge (stat. 52 Hen. 3, c. 29), it was not necessary to trace the title from the original wrongdoer to the actual tenant in possession. 3 *Bl.* 182.

This writ, with other real actions, was abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

POSTDATING AN INSTRUMENT. The dating of an instrument as of a date after that on which it is executed.

POSTEA. According to the practice hitherto observed in actions at common law, the *postea* is the record of that which is done subsequently to the join-

POSTEA—*continued.*

ing of issue and awarding the trial; so called from its first word, "afterwards." It takes up the story of the proceedings where the *nisi prius record* terminates. The *nisi prius record* contains a complete history of all the proceedings in the action up to the time of trial. The *postea* states the appearance of the parties, judge and jury, at the place of trial, and the verdict of the latter on the issues joined. *T. L.; Cowel;* 3 *Bl.* 386; 3 *Steph. Com.* 557; *Lush's Pr.* 569; *Smith's Act. Law, ch.* 5. [NISI PRIUS RECORD.]

POSTING, in book-keeping, signifies the copying or transferring into the ledger the entries made in the day-book, invoice book, &c. *Chambers' Book-keeping.*

POSTLIMINIUM. A fiction in the Roman law by which a person who, having been taken captive by the enemy, returned from captivity, was deemed never to have lost his liberty or his *status* as a citizen. A similar fiction is applied by prize courts in the case of goods captured in war by an enemy, and afterwards rescued. See 2 *Steph. Com.* 407.

POSTMAN. This word, besides its ordinary signification, is used to denote a barrister in the Court of Exchequer, who, with the tubman, has a general precedence in motions in that court. 3 *Bl.* 28, *n.* (*a*). The Attorney-General, however, in moving for the Crown, is entitled to be heard before the postman and tubman. *Reg.* v. *Bishop of Exeter,* 7 *Meeson & Welsby,* 188, 189.

Mr. Serjeant Stephen says that the postman and tubman are so called from the places in which they sit. 3 *Steph. Com.* 274, *n.* (*m*).

POSTMASTER GENERAL. The minister of State who is at the head of the department of the Post Office. [POST OFFICE.]

POSTNATI. Persons born in Scotland after the descent of the Crown of England to King James, who, in *Calvin's case,* decided in 1608, were held not to be aliens in England. *Cowel.*

POSTNUPTIAL, After marriage; thus a post-nuptial settlement is a settlement made after marriage, and, not being made on the consideration of marriage, it is in general considered as *voluntary,* that is, as having been made on no valuable consideration. 2 *Steph. Com.* 275. [CONSIDERATION.]

POSTREMOGENITURE. The right of the youngest born. [BOROUGH ENGLISH.]

POSTULATION. A petition. The word was especially used in former times of a petition to the Pope to allow of the translation of a bishop from one see to another. The pretence was, that the bishop was "married" to the first church, which marriage could not be dissolved except by the Pope. This practice of translating by postulation was restrained by stat. 16 Rich. 2, c. 5, passed in 1392. *Toml.*

POTENTIA PROPINQUA is a common possibility, which may reasonably be expected to happen. 1 *Steph. Com.* 328.

POTENTIA REMOTA is a remote possibility, which cannot reasonably be expected to happen. 1 *Steph. Com.* 328.

POTWALLERS or **POTWALLOPERS.** Such as cooked their own diet in a fire-place of their own, and were on that account entitled, by the custom of some boroughs, to vote in the parliamentary election for the borough. The rights of such persons as were entitled, on this account, at the time of the passing of the Reform Act, 1832, to exercise the franchise, are preserved during their lives; but the number of such individuals has, since that time, become so much diminished by death, as to be of little practical importance. 2 *Steph. Com.* 360.

POUND (Lat. *Parcus*) is an enclosure for keeping cattle or other goods distrained. By stat. 11 Geo. 2, c. 19, passed in 1738, any person distraining for rent may turn any part of the premises, upon which a distress is taken, into a pound, *pro hâc vice,* for securing of such distress. A pound is either pound *overt,* that is, open overhead; or pound *covert,* that is, close. *T. L.; Cowel;* 3 *Bl.* 12, 13; 3 *Steph. Com.* 255. [DISTRESS.]

POUNDAGE. 1. A subsidy to the value of twelve pence in the pound on all manner of merchandise, formerly granted to the king. *T. L.; Cowel;* 1 *Bl.* 315, 316; 2 *Steph. Com.* 561.

2. A sheriff's allowance on the amount levied by him in execution, in addition to such fees as are from time to time allowed by the judges. *Stat.* 23 *Eliz. c.* 4; *Lush's Pr.* 593.

POUNDBREACH. The destruction of a pound, or any part, lock, or bolt thereof, or the taking of cattle or other goods from the place where they are impounded. 3 *Bl.* 146; 3 *Steph. Com.* 254. [POUND.]

By stat. 6 & 7 Vict. c. 30, s. 1, passed in 1843, any person releasing, or at-

POUNDBREACH—*continued.*

tempting to release, any horse, ass, sheep, swine, or other beast or cattle lawfully seized for the purpose of being impounded, in consequence of having been found wandering, straying, lying, or being depastured on any inclosed land without consent of the owner or occupier, from the pound or place where impounded, or on the way to or from the same; or pulling down, damaging or destroying the same pound or place, or any part thereof, or any bolt or lock belonging thereto or therewith fastened, may, on conviction before two justices, be fined 5*l.* and expenses; and, in default of payment, may be imprisoned with hard labour for three calendar months. *Oke's Mag. Syn.* 612, 613.

POUR FAIRE PROCLAMER. An ancient writ directed to the mayor, sheriff, or bailiff of a city or town, commanding them to proclaim that none cast filth into the ditches or places near adjoining; and, if any cast already, to remove it. *Cowel.*

POUR SEISIR TERRES LA FEMME QUE TIENT IN DOWER was a writ whereby the king seized upon the land which the widow of a tenant, that held *in capite*, had for her dower, if she married without the king's leave. *Cowel.* [DOWER, 2; IN CAPITE; KING'S WIDOW.]

POURPARTY. The part or share of an estate held by coparceners, which is by partition allotted to them. *Cowel.*

POURPRESTURE (from Fr. *Pourpris*, an enclosure) is the wrongful enclosing of another man's property, or of the property of the public. Thus, a house erected, or an enclosure made, on any public property, is called a *pourpresture.* According to Skene, there are three sorts of this offence, one against the king, a second against the lord of the fee, a third against a neighbour by a neighbour. *T. L.; Skene; Cowel;* 4 *Bl.* 167; 4 *Steph. Com.* 271, *n.* (*f*); *Bell; Goldsmith's Eq.*

POURSUIVANT. The king's messenger, attending upon him in his wars, or at the council-table, exchequer, in his court, or his chamber, to be sent upon any occasion or message. *Cowel.*

2. An officer under the Lyon-King-at-Arms. *Bell.* [LYON-KING-AT-ARMS.]

POURVEYANCE. The providing corn, fuel, victual, and other necessaries for the king's house. *Cowel.* [PRE-EMPTION.]

POURVEYOR. An officer of the king or queen or other great personage, that provideth corn or other victual for their house. *Cowel.*

POWER is an authority to dispose of any real or personal property independently of any estate or interest therein. This may be either because the person entitled to exercise the power (who is called the *donee of the power*) has no interest whatever in the premises, or because it is desired to enable him to dispose of the same further or otherwise than his own interest would warrant; as in the common case of a parent having a life-interest in a fund, with power to appoint the shares to his children after his death. If the donee of the power be one who has no interest in the property in question, the power is called a power *collateral* or *in gross.* If he be one who has an interest in the property, the power is then called a power *coupled with an interest*, or a power *appendant* or *appurtenant.* A power, then, is a method of constituting any given person the owner of property otherwise than by the ordinary methods of grant, conveyance, and testamentary disposition. The exercise of the power is called an *appointment;* and the persons taking the property under such an appointment are called *appointees*, and not grantees or assigns. See 1 *Steph. Com.* 549.

Properly speaking, therefore, every power, as above defined, is a power of appointment. A power of sale is a power of appointing a purchaser; a power of leasing is a power of appointing a person as lessee, &c. But we frequently use the phrase "power of appointment" in a very limited sense, so as to mean a power to be exercised in favour of one or more of a limited class, and for the sole advantage of the appointee or appointees. In this sense, a *power of appointment* is to be distinguished from such powers as are not exercised for the benefit of the appointee; as, for instance, a power of sale, which is exercised with a view to the advantage, not of the intending purchaser, but of the persons who will be entitled to the moneys arising from the sale. [ILLUSORY APPOINTMENT.]

POWER OF ATTORNEY. An authority given by one to another to act for him in his absence. The party so authorized to act is called the *attorney* of the party giving the authority. [ATTORN, 2.]

POWER OF THE COUNTY. [POSSE COMITATUS.]

POYNINGS' LAW was an Act of Parliament (otherwise called the Statute of Drogheda) made in Ireland by Henry VII., in the year 1495, whereby it was enacted that all the statutes in England then in force should be in force in Ireland. It was called Poynings' Law because Sir Edward Poynings was at that time Lord Lieutenant of Ireland. All private hostilities without the deputy's licence were declared illegal, and to incite the Irish to war was made high treason. The principal officers of State, and the judges, were to hold their patents during the king's pleasure. *Cowel; Hallam's Const. Hist. ch.* 18. Other Poynings' laws are mentioned. 1 *Bl.* 102, 103; 1 *Steph. Com.* 93—95.

PRACTICE is the procedure in a court of justice, through the various stages of any matter, civil or criminal, depending before it. Rules of pleading are distinguished from rules of practice in that the former tell what is the most efficient form to adopt in shaping the pleadings; the latter tell in what manner the pleadings should be brought under the notice of the court, and what steps should be taken to obtain the benefit of them. *Hunt. Eq., 6th ed. pp.* 2, 3.

The practice in the Supreme Court of Judicature is henceforth mainly regulated by the 63 Orders comprised in the First Schedule to the Act of 1875 (38 & 39 Vict. c. 77).

PRACTICE COURT. A name sometimes given to the Bail Court. [BAIL COURT.]

PRÆCIPE. 1. A writ commanding a person to do a thing, or show the reason wherefore he hath not done it. 3 *Bl.* 274. [See the following Titles.]

2. A note of instructions delivered by a plaintiff or his solicitor to the officer of the court who stamps the writ of summons, specifying the county in which the defendant is supposed to reside, the nature of the writ, the names of the plaintiff and defendant, and the name of the attorney issuing the writ, and the date. The *præcipe* is filed by the officer. *Smith's Act. Law, ch.* 4. The *præcipe* is merely a ticket or authority for the officer to seal the writ. It has been described by Chief Justice Mansfield as "a little worthless memorandum, which is no authority at all." It forms no part of the process. *Lush's Pr.* 370.

By the Judicature Act, 1875, 1st Schedule, Order V. rule 7, the plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, of such writ, and all the endorsements thereon; and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

No writ of *execution*, however, can be issued without the party issuing it, or his solicitor, filing a præcipe for the purpose. *Judicature Act*, 1875, *1st Sched. Ord. XLII. rule* 9. Forms of præcipe are given in Appendix (E).

PRÆCIPE IN CAPITE. A writ of right, brought by one of the king's immediate tenants *in capite*, was called a *præcipe in capite. T. L.; Cowel;* 3 *Bl.* 195. [IN CAPITE; WRIT OF RIGHT.]

PRÆCIPE QUOD REDDAT (command that he restore). A writ by which a person was directed to restore the possession of land; a phrase used especially of the writ by which a *common recovery* was commenced. *T. L.; Cowel;* 2 *Bl.* 358; 1 *Steph. Com.* 568. [RECOVERY.]

PRÆCIPE QUOD TENEAT CONVENTIONEM. The writ which commenced the action of covenant in fines. 1 *Steph. Com.* 560. [FINE, 1.]

PRÆCIPE, TENANT TO THE, signified a tenant in a real action, against whom a *præcipe* or writ was sued. But the phrase was especially used of the person against whom, in the proceeding called a *common recovery*, the fictitious action was to be brought. [RECOVERY.]

PRÆDIA VOLANTIA. Volatile estates; that is to say, certain moveable things, such as beds, tables, and other heavy implements of furniture, which by the local law of the Duchy of Brabant were ranked among immoveables. 2 *Bl.* 428.

PRÆDIAL TITHES. Tithes paid out of the produce of land. [PREDIAL TITHES.]

PRÆFINE. The same as *primer fine. Toml.* [FINE, 1; PRIMER FINE.]

PRÆMUNIRE (by stat. 16 Rich. 2, c. 5, called the Statute of *Præmunire*) is the offence of procuring, at Rome or elsewhere, any translations, processes, excommunications, bulls, instruments or other things, against the king, his crown and realm, to which, by stat. 2 Hen. 4, c. 3, is added the offence of accepting any provision of the Pope, to be exempt from obedience to the proper ordinary. The original meaning, then, of the offence of *præmunire* was the introducing a foreign power into this land, and creating an *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the king alone.

PRÆMUNIRE—*continued.*

The penalties of a *præmunire* are, to be put out of the king's protection, to lose lands and goods, and to be imprisoned during the king's pleasure.

Various other statutes, to which we need not here refer, were passed, exposing offences mentioned therein to the penalties of a *præmunire*.

The offence was so called from the words *præmunire facias* (cause him to be forewarned, *præmunire* being a barbarous word for *præmoneri*), by which the writ for the citation of the party charged with any such offence was commenced. *T. L.; Cowel;* 4 *Bl.* 103—118; 4 *Steph. Com.* 179.

PRÆPOSITUS. A person in authority; hence the word *provost*. [PROVOST.]

PRÆPOSITUS ECCLESIÆ. A churchreeve or churchwarden. *Cowel.*

PRÆPOSITUS VILLÆ. 1. A high or petty constable in a town. *Cowel.* [CONSTABLE.]

2. A head officer of the king in a town, manor, or village. *Cowel.*

PRÆSCRIPTION. [PRESCRIPTION.]

PRÆSUMPTIO. [PRESUMPTION.]

PRAY IN AID is a phrase often used to signify "claiming the benefit of an argument." Especially in suits or actions in which there are several parties, the above phrase is sometimes used by a counsel who claims the benefit, on behalf of his own client, of an argument already used on behalf of some other party in the suit or action. For the original meaning of the phrase, see AID PRAYER.

PRAYER OF A BILL. The concluding portion, in which the plaintiff asks for the relief to which he conceives himself entitled. *Hunt. Eq., Pt. I. ch.* 1. This is to be superseded, under the Judicature Acts, by the concluding paragraphs of the statement of claim, which commence with these words, "the plaintiff claims," or "the plaintiffs claim." *Stat.* 38 *&* 39 *Vict. c.* 77, 1*st Sched. App.* (*C*). [BILL, 2.]

PRAYER OF PROCESS. A prayer with which a bill in equity formerly concluded. [BILL, 2.]

PREAMBLE OF A STATUTE. The recital at the beginning of an act of parliament, to explain the minds of the makers of the act, and the mischiefs they intend to remedy by the same. *T. L.*

PRE-AUDIENCE. The priority of right of being heard in a court of justice. 3 *Bl.* 28, *n.*; 3 *Steph. Com.* 274, *n.*

PREBEND. A fixed portion of the rents and profits of a cathedral church set apart for the maintenance of the prebendaries. *T. L.; Cowel;* 2 *Steph. Com.* 674, *n.*

PREBENDARY. He that hath a prebend. *T. L.; Cowel.* So called, according to Cowel, *a præbendo auxilium aut consilium episcopo vel decano* (from affording help or counsel to the bishop or dean); but this is more than doubtful. Now, by stat. 3 & 4 Vict. c. 113, all the members of the chapters, except the dean, are styled canons; and such canons as are prebendaries are such as have prebends or stipends for their maintenance. 2 *Steph. Com.* 674, *n.*; 3 *Steph. Com.* 14, *n.*

PRECARIÆ. A name given to the work which the tenants of some manors were bound by their tenure to do for the lord in harvest. *Cowel.*

PRECE PARTIUM was when a suit was continued by the prayer, assent, or agreement of both parties. *Cowel.*

PRECEDENCE, PATENT OF. [PATENT OF PRECEDENCE.]

PRECEDENCE, TABLE OF. The table of rules regulating the respective priorities of the various orders and dignities within the realm. See 1 *Bl.* 404—406, *n.*; 2 *Steph. Com.* 614—616, *n.* (*x*).

PRECEDENT CONDITION. [CONDITIONS PRECEDENT AND SUBSEQUENT.]

PRECEDENTS are examples which may be followed. The word is used principally, though by no means exclusively, to indicate one of the two following things:—

1. A decision in a court of justice, cited in support of any proposition for which it is desired to contend.

2. Drafts of deeds, wills, mortgages, pleadings, &c. which may serve as patterns for future draftsmen and conveyancers.

PRECEPT. 1. A commandment in writing sent out by a justice of the peace or other like officer for the bringing of a person or record before him. *Cowel.*

2. An instigation to murder or other crime. *Cowel.* In this sense the word is quite obsolete.

3. The direction formerly issued by a sheriff to the proper returning officers of cities and boroughs within his jurisdiction for the election of members to serve in parliament. 1 *Bl.* 178.

PRECEPT—*continued.*

4. The direction by the judges or commissioners of assize to the sheriff for the summoning a sufficient number of jurors. 3 *Steph. Com.* 516; *Lush's Pr.* 542—3; *Kerr's Act. Law.*

5. The direction issued by the clerk of the peace to the overseers of parishes for making out the jury lists. 3 *Steph. Com.* 516, *n.*

6. A *precept of clare constat* ("it clearly appears") is a deed in the Scotch law by which a superior acknowledges the title of the heir of a deceased vassal to succeed to the lands. *Wm. Bell; Paterson.* Now, by stat. 37 & 38 Vict. c. 94, s. 9, a personal right to every estate in land descendible to heirs shall, without service or other procedure, vest or be held to have vested in the heir entitled to succeed thereto, by his survivance of the person to whom he is entitled to succeed.

7. *Precept of sasine.* A "precept of sasine," in the Scotch law, is the order of a superior to his bailie (or agent) to give infeftment (*i. e.*, feudal possession) of certain lands to his vassal. The present form of the precept of sasine is prescribed by stat. 8 & 9 Vict. c. 35, s. 5, and schedule A. That form is as follows:—"Moreover, I desire any notary public to whom these presents may be presented, to give to the said A. B. or his foresaids sasine" [*or* liferent sasine, or sasine in liferent and fee respectively, *as the case may be*] "of the lands and others above disponed" [here is to be added any incumbrances to which the lands are liable].

PRECINCT. Boundary. Hence it signifies—

1. A certain limited district round some important edifice, as a cathedral. *Latham's Dict.*

2. The local district for which a high or petty constable is appointed. [CONSTABLE.]

3. A place formerly privileged from arrests.

PRECLUDI NON was the name of the formal commencement of a replication to a plea in bar. This formula was as follows:—"—[the plaintiff] says, that by reason of anything in the said plea alleged, he ought not to be barred from having and maintaining his aforesaid action against the defendant, because he says," &c. This is rendered unnecessary by sect. 66 of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76). *Steph. Plead. 7th ed. pp.* 150, 151.

PRECOGNITION, in Scotland, is an examination by a judge ordinary or justices of peace, where any crime has been committed, that the fact may be ascertained, and full and perfect knowledge given to the public prosecutor in carrying on the prosecution. In this examination the witnesses are not put upon oath, and they are examined separately; nor is the accused, or any person on his part, admitted to be present when the precognition is taken. Those who know anything of the fact may be compelled to come forward, on pain of imprisonment. *Bell.* The word is also used of the examination of witnesses by an attorney preparatory to a jury trial in a civil cause. *Paterson.*

PRE-CONTRACT. A contract made before another contract; especially with reference to a contract of marriage, which, according to the ancient law, rendered void a subsequent marriage solemnized in violation of it. *Cowel;* 1 *Bl.* 435; 2 *Steph. Com.* 240.

PREDIAL TITHES. Tithes paid out of the profits and stock upon lands, as of corn, grass, hops and wood. *T. L.; Cowel;* 2 *Bl.* 24; 2 *Steph. Com.* 722. [TITHES.]

PRE-EMPTION. A right of purchasing before another. *Latham.*

The word is used especially to denote a privilege formerly allowed to the king's purveyor, to have the first buying of corn and other provision for the king's house, without the consent of the owner. This was abolished in 1660 by stat. 12 Car. 2, c. 24. *Cowel;* 1 *Bl.* 287; 2 *Steph. Com.* 537, 599; 4 *Steph. Com.* 183.

PREFER often means to bring a matter before a court of justice; as when we say that A. preferred a charge of assault against B.

PREFERENCE. A word often used in connection with payments made by a bankrupt by way of fraudulent preference to some of his creditors over others. Any person receiving such a payment, being cognisant of the fraud, and assenting to the preference, may be ordered to refund the money for the benefit of the creditors. Moreover, a bankrupt making such fraudulent preference, and concealing it from the trustee in the bankruptcy, is, under the Debtors Act, 1869, sect. 11, sub-sect. 1, liable to two years' imprisonment with hard labour.

PREFERENCE SHARES in a joint-stock company are shares entitling their holders to a preferential dividend; so that a holder of preference shares is

PREFERENCE SHARES—*continued.*

entitled to have the whole of his dividend (or so much thereof as represents the extent to which his shares are, by the constitution of the company, to be deemed preference shares) paid before any dividend is paid to the ordinary shareholders. A company may not issue preference shares except in pursuance of a power reserved for the purpose in its original constitution. *Hutton* v. *The Scarborough Cliff Bridge Company*, 2 *Dr. & Sm.* 514—526; 4 *De G. F. & J.* 672.

PREFERENTIAL DEBTS. [PRIVILEGED DEBTS.]

PREJUDICE. Prejudging a matter. Thus, for instance, a court may decide that A. is entitled for his life to the income of a fund "without prejudice" to any question between B. and C., who claim adversely to each other the income of the fund after his death. And generally, the expression "without prejudice" implies that the consideration of the question to which it refers is postponed to a future time. And the phrase is often used in a lawyer's letter for the purpose of guarding himself as to anything therein contained being construed as an admission of liability.

PREMIER SERJEANT. A serjeant-at-law, constituted *premier serjeant* by special patent. The premier serjeant formerly took precedence of the attorney and solicitor-general, but now, by royal mandate of the 14th December, 1814, the attorney and solicitor-general are to have place and audience before the premier serjeant. 3 *Bl.* 28, *n.*; 3 *Steph. Com.* 274, *n.* [SERJEANT-AT-LAW.]

PREMISES (Lat. *Præmissa*). 1. The commencement of a deed, setting forth the number and names of the parties, with their additions or titles, and the recital, if any, of such deeds and matters of fact as are necessary to explain the reasons upon which the deed is founded; the consideration upon which it is made; and, if the deed be a disposition of property, the particulars of the property intended to be thereby transferred; also the operative words, with the exceptions and reservations (if any). *T. L.; Cowel;* 2 *Bl.* 298; 1 *Steph. Com.* 485, 486; *Woodfall, L. & T.* 91, 92; *Fawcett, L. & T.* 78.

2. Hence it has come to signify the lands granted; and hence any specified houses or lands.

PREMIUM. A reward. A word especially used of the periodical payment for the insurance of life or property. *Cowel;* 2 *Steph. Com.* 135.

PREMUNIRE. [PRÆMUNIRE.]

PRENDER. The power or right of taking a thing before it is offered. Thus heriot-custom is said to lie in *prender* and not in *render*, because the lord may seize the identical thing itself; but he cannot distrain for it. *T. L.; Cowel;* 3 *Bl.* 15; 3 *Steph. Com.* 258. [DISTRESS; HERIOT.]

PRENDER DE BARON signifies literally to take a husband; but it was also the name of an exception to disable a woman married again from prosecuting an appeal of murder against the slayer of her former husband. *Cowel.* Appeals of murder, &c. are now abolished. [APPEAL.]

PREPENSE. Aforethought. Thus, malice prepense is equivalent to malice aforethought. *Cowel.* [MALICE.]

PREROGATIVE. The special power, pre-eminence or privilege which the king hath, over and above other persons, in right of his crown. *Cowel;* 1 *Bl.* 141, 237—280; 2 *Steph. Com.* 464—527. [MAJORA REGALIA; MINORA REGALIA; see also the following Titles.]

PREROGATIVE COURTS. The courts of the provinces of Canterbury and York respectively, presided over by judges appointed by the respective archbishops. These courts had testamentary jurisdiction in cases where the deceased had *bona notabilia* (or goods above the value of 5*l.*) in each of two or more different dioceses. 2 *Bl.* 509; 3 *Bl.* 65, 66. The jurisdiction of these courts has become practically obsolete since, by the Probate Act of 1857 (20 & 21 Vict. c. 77) the testamentary jurisdiction of the ecclesiastical courts was transferred to the Court of Probate. 2 *Steph. Com.* 185, *n.*, 192; 3 *Steph. Com.* 305, *n.*

PREROGATIVE WRITS are writs which in their origin arise from the extraordinary powers of the Crown. They differ from other writs mainly in the two following points:—1st. They do not issue as of mere course, nor without some probable cause being shown why the extraordinary powers of the Crown should be called in to the party's assistance. 2nd. They are generally directed, not to a sheriff or other public officer, but to the parties themselves whose acts are the subject of complaint. 3 *Bl.* 132; 3 *Steph. Com.* 629.

Among these writs Mr. Serjeant Stephen enumerates *procedendo*, *mandamus*, *prohibition*, *quo warranto*, *habeas corpus*, and *certiorari*. [See these Titles.]

PRESBYTERY. In the Established Church of Scotland, a presbytery for a given district (which district is technically called "the bounds of the presbytery") is composed of the parochial ministers, together with one lay elder selected from the kirk-session of each parish within the district, along with the professors of divinity (being ministers) of any university within such district. The number of parishes of which different presbyteries consist is arbitrary, and varies greatly in different instances. Each presbytery holds its meetings at stated times, which are presided over by its moderator. Presbyteries are invested with a certain secular, as well as with a spiritual, jurisdiction. They are entitled to bring actions to recover property destined for the sustentation of the ministers, or otherwise claimed on behalf of the church, and to enforce upon the heritors the statutory burden of providing manses and glebes for the parish ministers, and maintaining the same in repair. *Duncan's Parochial Ecclesiastical Law of Scotland.*

PRESCRIBE, TO. To assert or claim anything by title of prescription. 2 *Bl.* 264. [PRESCRIPTION.]

PRESCRIPTION.

1. *Præscriptio*, in the Roman law, was an exception *written in front* of the plaintiff's pleading. Afterwards it became applied exclusively to the *præscriptio longi temporis*, &c., or the prescription founded on length of possession. *Sandars' Justinian, pp.* 47, 126. Hence its modern meaning. It was allowed by way of equitable plea where a defendant, sued in reference to the possession of property, had complied with the main conditions of *usucapion*, without having acquired ownership by usucapion. [USUCAPION.]

2. Prescription at common law, as defined by Blackstone, is where a man can show no other title to what he claims than that he, and those under whom he claims, have immemorially used and enjoyed it. The difference between prescription and custom is, that custom is a *local* usage, and not annexed to any *person*, whereas prescription is a *personal* usage. Prescription may, perhaps, in this sense be defined as the presumption of a grant arising from long usage. 2 *Bl.* 263—266; 1 *Steph. Com.* 685—689.

3. The subject of prescription is now regulated by the Prescription Act, 1832 (2 & 3 Will. 4, c. 71), which provides that a thirty years' enjoyment of rights of common, and other profits or benefits to be taken or enjoyed upon any land, shall no longer be defeated by proof that the enjoyment commenced at a period subsequent to legal memory [LEGAL MEMORY]; and that a prescriptive claim of sixty years' enjoyment shall be absolute and indefeasible except by proof that such enjoyment took place under some deed, or written consent or agreement. In the case of ways, easements, and watercourses, the periods are twenty and forty years respectively. In the case of lights, the period is twenty years.

4. It will be seen that *prescription* in the English law properly applies to incorporeal hereditaments only. 2 *Bl.* 264. See *Austin's Jur., Lect. XXVI.* For a prescription is the presumption of a grant; and, until recently, none but incorporeal hereditaments could pass by grant; though, by some writers, and especially by Cowel, it is extended to *any* right, privilege, exemption, or immunity, arising from lapse of time.

5. Thus prescription is either positive or negative. Positive prescription, otherwise called *acquisitive prescription*, is that by which a title is acquired (as the *usucapio* of the Roman law, or the prescription of the Prescription Act of 1832). Negative prescription is that by which a right of challenge is lost (as the prescription under the Statutes of Limitation). *Bell.*

PRESCRIPTION ACT, 1832. The stat. 2 & 3 Will. 4, c. 71. [PRESCRIPTION, 3.]

PRESENT. To make a presentment or presentation. [See those Titles.]

PRESENT USE. A use of land which may be enjoyed *now*, as opposed to a future use. [USE.]

PRESENTATION. The act of a patron in offering his clerk to the bishop, to be instituted in a benefice of his gift. *Cowel;* 1 *Bl.* 388, 389; 2 *Bl.* 22, 23; 1 *Steph. Com.* 684—686. [ADVOWSON.]

PRESENTATIVE ADVOWSON. [ADVOWSON.]

PRESENTEE. A clerk presented by the patron of a living to the bishop. *Cowel.* [ADVOWSON; PRESENTATION.]

PRESENTLY. Now, at once. A word applicable to a right which may be exercised at once, as opposed to one in reversion or remainder.

PRESENTMENT. 1. Presentation to a benefice. *T. L.* [PRESENTATION.]

PRESENTMENT—*continued.*

2. The formal information to the lord, by the tenants of a manor, of anything done out of court. 1 *Steph. Com.* 644. 3. An information made by a jury in a court before a judge who hath authority to punish an offence. Especially is it used of notice taken by a grand jury of anything from their own knowledge or observation. *T. L.; Toml.;* 4 *Bl.* 301; 4 *Steph. Com.* 360. 4. The presenting a bill of exchange to the drawee for acceptance, or to the acceptor for payment. 2 *Bl.* 469; 2 *Steph. Com.* 117. 118. [ACCEPTANCE OF A BILL; BILL OF EXCHANGE.]

PRESENTS. A word in a deed signifying the deed itself, which is expressed by the phrase "these presents." It is especially used in a deed-poll, which cannot be described as "This Indenture."

PRESIDENT OF THE COUNCIL. A high officer of the State, whose office is to attend on the sovereign, and to propose business at the council table. He is a member of the Judicial Committee. 1 *Bl.* 230; 2 *Steph. Com.* 458, 461, 615. [JUDICIAL COMMITTEE.]

PRESSING TO DEATH. [PEINE FORTE ET DURE.]

PREST MONEY (from the French *Prêt*, ready) is a name for money which binds those that receive it to be ready at all times appointed, being meant especially of soldiers. *Cowel.*

PRESUMPTION. That which comes near, in greater or less degree, to the proof of a fact. It is called violent, probable, or light, according to the degree of its cogency. *Cowel;* 3 *Bl.* 371; 3 *Steph. Com.* 540—545. Presumptions are also divided into—(1) *præsumptiones juris et de jure*, otherwise called irrebuttable presumptions (often, but not necessarily, fictitious), which the law will not suffer to be rebutted by any counter-evidence; as, that an infant under seven years is not responsible for his actions; (2) *præsumptiones juris tantum*, which hold good in the absence of counter-evidence, but against which counter-evidence may be admitted; and (3) *præsumptiones hominis*, which are not necessarily conclusive, though no proof to the contrary be adduced. *Aust. Jur., Lect. XXVI.;* 3 *Steph. Com.* 545, *n.; Powell on Evidence, 4th ed. p.* 70. [See also the following Titles.]

PRESUMPTION OF DEATH. The presumption that a man is dead where there is no direct evidence of the fact. This presumption takes place when a man has not been heard of for seven years; but the presumption is simply that the man is dead, and not that he died at the end of the seven years, or any other specified time. So that if B., a legatee under A.'s will, have been last heard of six years before A.'s death, B.'s representatives will not, after A. has been dead a year, be entitled to presume that B. survived A., so as to claim the legacy for themselves. See 3 *Steph. Com.* 545, *n.* (*g*), and cases there cited.

PRESUMPTION OF SURVIVORSHIP is the presumption that A. survived B., or B. survived A., when there is no evidence which died first.

PRESUMPTIVE EVIDENCE. A term especially used of evidence which, if believed, would not be necessarily conclusive as to the fact in issue, but from which, according to the ordinary course of human affairs, the existence of that fact might be presumed. In this sense it is synonymous with circumstantial evidence. 3 *Steph. Com.* 545; *Powell on Evidence, 4th ed. pp.* 6, 7, 66—98.

PRESUMPTIVE HEIR. [HEIR APPARENT.]

PRETENCES. Allegations sometimes made in a bill in Chancery for the purpose of negativing an anticipated defence. *Hunt. Eq., Pt. I. ch.* 1. [BILL, 2; FILING BILL IN EQUITY.] The bill in Chancery is abolished under the Judicature Acts, and its place is supplied, partly by an indorsement under Order III., and partly by the Statement of Claim under Order XXI. [See also FALSE PRETENCE.]

PRETENDED or **PRETENSED RIGHT** or **TITLE** (Lat. *Jus prætensum*) is the right or title to land set up by one who is out of possession against the person in possession. *Cowel.* The stat. 32 Hen. 8, c. 9, forbids the sale of a pretended right or title to land, unless the vendor hath received the profits for one whole year before the grant, or have been in actual possession of the land, or of the reversion or remainder, on pain that both purchaser and vendor shall each forfeit the value of such land to the king and the prosecutor. 4 *Bl.* 136; 4 *Steph. Com.* 287.

PREVARICATION originally signified the conduct of an advocate who betrayed the cause of his client, and by collusion assisted his opponent. And it is defined by Cowel to be when a man falsely and deceitfully seems to undertake a thing,

PREVARICATION—*continued.*

with intent that he may defeat the object which he professes to promote. At the present day when we say that a witness *prevaricates*, we mean that he gives quibbling and evasive answers to questions put to him.

PREVENTION OF CRIMES ACT. The stat. 34 & 35 Vict. c. 112, passed for the purpose of securing a better supervision over habitual criminals. This Act provides that a person who is for a second time convicted of crime, may, on his second conviction, be subjected to police supervision for a period of seven years after the expiration of the punishment awarded him. Penalties are imposed on lodging-house keepers, &c. for harbouring thieves or reputed thieves. There are also provisions relating to receivers in stolen property, and dealers in old metals who purchase the same in small quantities. This Act repeals the Habitual Criminals Act of 1869 (32 & 33 Vict. c. 99).

PREVENTIVE JUSTICE is that portion of law which has reference to the direct prevention of offences. It generally consists in obliging those persons, whom there is probable ground to suspect of future misbehaviour, to give full assurance to the public that such offence as is apprehended shall not happen, by finding pledges or securities to keep the peace, or for their good behaviour. 4 *Bl.* 251; 4 *Steph. Com.* 290; *Oke's Mag. Syn.* 1473—1477. [GOOD ABEARING; GOOD BEHAVIOUR; SURETY OF THE PEACE.]

PREVIOUS QUESTION. When, upon any question in parliament, there is no debate, or after a debate is closed, the speaker ordinarily puts the question, as a matter of course, without any direction from the House; but by a motion for the previous question, this act of the speaker may be intercepted and forbidden. The question, whether the original question be put, is called the previous question, because, if once moved, it is put before the main question can be put. In the Commons, the words of the motion are that the main question be *now* put; and those who propose it vote against their own motion in order to avoid the putting of the main question. If the previous question be put and resolved in the affirmative, then the main question must be put at once to the vote. In 1778 the Congress of the Confederation of the United States adopted the "previous question" in a *negative* form, *i. e.* "that the main question be *not* now put," and thus, by this simple and obvious expedient, avoided the needless intricacies of the English practice. See *May's Parl. Pract. 7th ed. pp.* 277, 278.

PRICKING FOR SHERIFFS. Sheriffs were formerly chosen by the inhabitants of their several counties; but by the stat. 9 Edw. 2, st. 2, passed in 1316, it was enacted that the sheriffs should thenceforth be assigned by the Chancellor, Treasurer, and the judges, as being persons in whom the same trust might with confidence be reposed. And the custom now is, that all the judges, together with the other great officers, meet in the Court of Exchequer on the morrow of St. Martin (that is, on the 12th of November), and then and there the judges propose three persons for each county, to be reported (if approved of) to the king or queen, who afterwards appoints one of them for sheriff. This appointment is made by marking each name with the prick of a pin, and is therefore called "pricking for sheriffs." 1 *Bl.* 339—342; 3 *Steph. Com.* 624—626.

PRICKING NOTE. Where goods intended to be exported are put direct from the station of the warehouse into a ship alongside, the exporter fills up a document to authorize the receiving the goods on board. This document is called a "pricking note," from a practice of pricking holes in the paper corresponding with the number of packages counted into the ship. *Hamel on Customs*, 181.

PRIDE GAVEL. A return paid to the lord by certain tenants in the manor of Rodeley, in Gloucestershire, for the privilege of fishing for lampreys in the Severn.

PRIMA FACIE CASE. A litigating party is said to have a *primâ facie* case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. A *primâ facie* case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side. In some cases, the only question to be considered is whether there is a *primâ facie* case or no. Thus a grand jury are bound to find a true bill of indictment if the evidence before them creates a *primâ facie* case against the accused; and for this purpose, therefore, it is not necessary for them to hear the evidence for the defence.

PRIMA FACIE EVIDENCE. A phrase sometimes used to denote evidence which establishes a *primâ facie* case in favour of the party adducing it. [PRIMA FACIE CASE.]

PRIMÆ IMPRESSIONIS (of first impression). A case of first impression is one as to which there is no precedent directly in point.

PRIMÆ or PRIMARIÆ PRECES. An imperial prerogative whereby each Roman Emperor had immemorially exercised a right of appointment to the first prebend that became vacant after his accession, in every church in the empire. 1 *Bl.* 381; 2 *Steph. Com.* 670, *n.*

PRIMAGE. A payment due to mariners and sailors, for the loading of a ship at the setting forth from any haven. *Cowel.*

PRIMARY ALLEGATION. This phrase is especially applied to the opening pleading in a suit in the Ecclesiastical Court. It is also called a "primary plea." *Coote's Eccl. Practice.*

PRIMARY CONVEYANCES, as opposed to derivative conveyances, are conveyances which do *not* take effect by way of enlarging, confirming, altering, or otherwise affecting other conveyances. 2 *Bl.* 309; 1 *Steph. Com.* 517, 518. [DERIVATIVE CONVEYANCE.]

PRIMARY EVIDENCE may be defined as evidence which is *not* secondary, second-hand, or hearsay evidence. 3 *Steph. Com.* 541, 542; *Powell on Evidence, 4th ed. p.* 61. [SECONDARY EVIDENCE; SECOND-HAND EVIDENCE.]

PRIMATE. A title given to the archbishops of Canterbury and York, and of Dublin and Armagh.

PRIMER FINE. [FINE, 1.]

PRIMER SEISIN. A burden incident to the king's tenants *in capite,* by which the king was entitled, when any of such tenants died, to receive of the heir, if he were of full age, one whole year's profits of the lands, if they were in immediate possession; and half a year's profits if they were in reversion expectant upon an estate for life. *T. L.; Cowel;* 2 *Bl.* 66, 87; 1 *Steph. Com.* 198, 209. [IN CAPITE.]

PRIMIER SERJEANT. [PREMIER SERJEANT.]

PRIMITIÆ. The first year's profits of a benefice, formerly payable to the Crown. [FIRST FRUITS.]

PRIMOGENITURE. The title of the eldest son in right of his birth. *Cowel;* 1 *Bl.* 194; 2 *Bl.* 214; 1 *Steph. Com.* 403. [FEUDAL SYSTEM.]

PRINCE OF WALES. The eldest son of the reigning sovereign. Edward II., being born at Carnarvon, was the first English Prince of Wales. Before his time the king's eldest son was called "Lord Prince." *Cowel.* And, to this day, the heir apparent to the Crown is usually made Prince of Wales and Earl of Chester, by special creation and investiture. 1 *Bl.* 225; 1 *Steph. Com.* 84; 2 *Steph. Com.* 450.

PRINCESS SOPHIA OF HANOVER. The mother of George I., who was also granddaughter of James I. by his daughter Elizabeth. Upon her descendants, being Protestants, the inheritance of the Crown is vested by the Act of Settlement (12 & 13 Will. 3, c. 2). 1 *Bl.* 216, 217; 2 *Steph. Com.* 441, 442.

PRINCIPAL. 1. An heirloom. *Cowel.* [HEIRLOOM.]

2. The amount of money which has been borrowed, as opposed to the interest payable thereon. [INTEREST, 2.]

3. The head of a college or other institution.

4. The person directly concerned in the commission of a crime, as opposed to an accessory. 4 *Bl.* 34; 4 *Steph. Com.* 38.

5. A person who employs an agent. 2 *Steph. Com.* 65, 78.

6. A person for whom another becomes surety. 2 *Steph. Com.* 106.

PRINCIPAL CHALLENGE. A challenge to a juror for such a cause assigned as carries with it *primâ facie* marks of suspicion. 3 *Bl.* 363; 3 *Steph. Com.* 522. [CHALLENGE; FAVOUR, CHALLENGE TO.]

PRIORITY. 1. An antiquity of tenure, in comparison with one not so ancient. *Cowel.*

2. Any legal precedence or preference; as when we say that certain debts are paid in *priority* to others; or that certain incumbrancers of an estate are allowed *priority* over others, that is, are to be allowed to satisfy their claims out of the estate before the others can be admitted to any share therein, &c.

PRISAGE.

1. An ancient hereditary duty belonging to the Crown, being the right of taking two tuns of wine from every ship importing into England twenty tuns or more. But, by charter of Edward I., this was exchanged into a duty of two

PRISAGE, etc.—*continued.*

shillings for every tun imported by merchant strangers, and was then called *butlerage* because paid to the king's butler. *Cowel;* 1 *Bl.* 315; 2 *Steph. Com.* 561.

2. The share which belongs to the Crown of such merchandises as are taken at sea by way of lawful prize.

PRISONER. 1. A man restrained of his liberty. *Cowel.*

2. A person tried on a criminal charge.

PRIVATE ACT OF PARLIAMENT is an Act of Parliament of which the courts of law are not bound to take judicial notice. But, in order that this may be the case, it must be expressly so stated in the act, for by stat. 13 & 14 Vict. c. 21, passed in 1850, every statute made after the commencement of the then next session of parliament is to be taken to be a public one, and judicially noticeable as such, unless the contrary be therein expressly declared. 1 *Bl.* 86; 2 *Bl.* 344; 1 *Steph. Com.* 70, 615—618.

Of private acts of parliament, properly so called, some are printed and others not printed. [ACT OF PARLIAMENT; BILL, 4; LOCAL AND PERSONAL ACTS; PRIVATE BILLS.]

PRIVATE BILLS are bills brought into Parliament on the petition of parties interested, and on payment of fees. Such bills are brought in generally in the interest of individuals, parishes, cities, counties, or other localities, and are distinguished from measures of public policy in which the whole community are interested. [ACT OF PARLIAMENT; BILL, 4; LOCAL AND PERSONAL ACTS; PRIVATE ACT OF PARLIAMENT.]

PRIVATE CHAPELS are chapels owned by noblemen and other privileged persons, and used by themselves and their families. They are thus opposed to *public chapels*, otherwise called *chapels of ease*, which are built for the accommodation of particular districts within a parish, in *ease* of the original parish church. 2 *Steph. Com.* 745.

PRIVATE WAY. A way in which one man may have an interest and a right, though another is the owner of the soil. 1 *Steph. Com.* 658. [RIGHT OF WAY.]

PRIVATEERS are defined as armed ships fitted out by private persons, commissioned in time of war by the Lords of the Admiralty, or other lawful authority acting for the Crown in that behalf, to cruise against the enemy. These commissions, when granted, have been usually denominated "letters of marque." 2 *Steph. Com.* 494. [DECLARATION OF PARIS; LETTERS OF MARQUE AND REPRISAL.]

PRIVATION. [DEPRIVATION.]

PRIVIES. [PRIVIES TO A FINE; PRIVITY OF CONTRACT; PRIVITY OF ESTATE.]

PRIVIES TO A FINE were such as were bound by a fine, though they might not have consented thereto; as the issue in tail, when the fine was levied by a tenant in tail. 2 *Bl.* 355, 356; 1 *Steph. Com.* 564. [FINE, 1.]

PRIVILEGE. That which is granted or allowed to any person, or any class of persons, either against or beyond the course of the common law; as, for instance, the non-liability of a member of the legislature to any court other than the Parliament itself, for words spoken in his place in Parliament. *T. L.; Cowel;* 1 *Bl.* 164, 272; 3 *Bl.* 289; 2 *Steph. Com.* 341. [See also the following Titles, especially PRIVILEGIUM.]

PRIVILEGE, WRIT OF. A writ formerly in use whereby a member of Parliament, when arrested in a civil suit, might claim his deliverance out of custody by virtue of his parliamentary privilege. 1 *Bl.* 165, 166.

PRIVILEGED COMMUNICATION. 1. A communication which, though *primâ facie* libellous or slanderous, yet, by the reason of the circumstances under which it is made, is protected from being made the ground of proceedings for libel or slander; as in the case of confidential communications without malice, &c. 3 *Steph. Com.* 379.

2. A communication which is protected from disclosure in evidence in any civil or criminal proceeding; as in the case of confidential communications between a party and his legal adviser in reference to the matter before the court. 3 *Steph. Com.* 586; *Lush's Pr.* 263.

PRIVILEGED COPYHOLDS are estates having most of the incidents of copyholds, but in which the holding is not said to be at the will of the lord. They are otherwise called *customary freeholds.* [COPYHOLD; CUSTOMARY FREEHOLD.]

PRIVILEGED DEBTS. Debts payable before other debts; as parochial and other local rates, and clerks' and servants' wages, payable under the 32nd section of the Bankruptcy Act, 1869, in priority to the general debts due by a bankrupt to his creditors. *Robson, Bkcy.*

As to Scotland, see stat. 38 & 39 Vict. c. 26.

PRIVILEGED VILLENAGE, otherwise called villein-socage, is a tenure described by Bracton, in which the services were *base* as in villenage, but were *certain*, as in free and common socage. It seems principally to have prevailed among the tenants of the king's demesnes; and is supposed by some to be the same as the tenure in *antient demesne*. 2 *Bl.* 98, 99; 1 *Steph. Com.* 188, 223. [ANCIENT DEMESNE; FREEHOLD; SOCAGE; VILLENAGE.]

PRIVILEGIUM. A *privilegium*, in the Roman law, was an act of legislation by which the supreme legislature, whether senate or emperor, conferred on some single person some anomalous or irregular right, or imposed upon some single person some anomalous or irregular obligation, or inflicted on some single person some anomalous or irregular punishment. When such *privilegia* conferred anomalous rights they were styled *favorable*. When they imposed anomalous obligations or inflicted anomalous punishments they were styled *odious*. An act of the British Parliament giving to the inventor of a machine an exclusive right of selling it would be styled, in the language of the Roman law, "a favorable privilege." An act of attainder would be styled "an odious privilege." *Privilege* in English denotes rather the anomalous right than the law giving the anomalous right; and in common and loose talk the word *privilege* seems to be merely synonymous with right. *Austin's Jur., Lect. XXVIII.*

PRIVILEGIUM CLERICALE. [BENEFIT OF CLERGY.]

PRIVITY OF CONTRACT is the relation subsisting between the parties to the same contract. Thus if A., B. and C. mutually contract, there is privity of contract between them; but if A. contract with B., and B. make an independent contract with C. on the same subject matter, there is no privity of contract between A. and C.

PRIVITY OF ESTATE between two persons is where their estates are so related to each other that they make but one estate in law, being *derived at the same time* out of the *same original seisin*. Thus if A., the owner of an estate, convey it to B. for a term of years, with remainder to C. for his life, there is privity of estate between B. and C. But if A. conveys to B. for his life, and B. makes a lease for years to C., there is no privity between A. and C. 1 *Steph. Com.* 519, 520.

PRIVITY OF TENURE is the relation subsisting between a lord and his immediate tenant. *T. L.; Cowel.*

PRIVY. A partaker; he that hath an interest in any action or thing. *Cowel.* [See the several Titles immediately preceding this Title.]

PRIVY COUNCIL is the principal council belonging to the sovereign. Privy councillors are made such by the sovereign's nomination, without either patent or grant; and, on such nomination, they become privy councillors, with the title of Right Honorable during the life of the sovereign who has chosen them, but subject to removal at his discretion. The Privy Council has power to inquire into all offences against the Government, and to commit the offenders to take their trial. The Privy Council has also the judicial authority of a court of justice in colonial causes; in appeals from the ecclesiastical courts; in applications to prolong the term of patents for new inventions; and in certain cases arising out of the Copyright Acts. These functions are exercised through the Judicial Committee. There are also other committees of the Privy Council charged with various matters. 1 *Bl.* 229—232; 2 *Steph. Com.* 457—463. The jurisdiction exercised by the Judicial Committee of the Privy Council upon appeals from the High Court of Admiralty, and from orders in lunacy made by the Lord Chancellor or other person having jurisdiction in lunacy are, by sect. 18 of the Judicature Act, 1873, transferred to the Court of Appeal established by that Act. Provision is also made by sect. 55 of that Act for the hearing of all appeals to the Queen in Council before the Court of Appeal, constituted as mentioned in the same section. The operation of this section, however, is by sect. 2 of the Judicature Act, 1875, postponed to the 1st of November, 1876, and even then an Order in Council will be necessary to give effect to it. [COMMITTEE OF COUNCIL ON EDUCATION; JUDICIAL COMMITTEE; SUPREME COURT OF JUDICATURE.]

PRIVY PURSE is that portion of the public money voted to the Queen which she may deal with as freely as any private individual may with his property. A sum of 60,000*l.* a year is assigned by Parliament for this purpose. *Stat.* 1 *& 2 Vict. c.* 2; 1 *Steph. Com.* 622; 2 *Steph. Com.* 580.

PRIVY SEAL (Lat. *Privatum sigillum*). The seal used for such grants from the

PRIVY SEAL—*continued.*

Crown, or other things, as pass the Great Seal; first they pass the privy signet, then the privy seal, and, lastly, the Great Seal of England. The Privy Seal is also used in matters of small moment which never pass the Great Seal. *Cowel;* 2 *Bl.* 347; 1 *Steph. Com.* 619. [LORD PRIVY SEAL.]

PRIVY VERDICT is when the judge hath left or adjourned the Court, and the jury being agreed, in order to be delivered from their confinement, obtain leave to give their verdict privily to the judge out of Court. A privy verdict is of no force unless afterwards affirmed in open Court; and at the present day it is wholly disused. 3 *Bl.* 377; 3 *Steph. Com.* 551, *n.*

PRIZE COMMISSION. A commission issued in every war under the great seal, requiring the Court of Admiralty to adjudicate upon all and all manner of captures, seizures, prizes and reprisals, and determine the same according to the law of nations. 3 *Bl.* 108, *note by Coleridge;* 3 *Steph. Com.* 343. [ADMIRALTY, THE HIGH COURT OF; INSTANCE COURT OF ADMIRALTY.]

PRIZE COURT. The Admiralty Court sitting under a Prize Commission to adjudicate on captures by land and sea. 2 *Steph. Com.* 18; 3 *Steph. Com.* 343. [See preceding Title.]

PRIZE OF WAR. Things captured in time of war. As opposed to *booty of war*, it signifies prize taken *at sea.* 3 *Steph. Com.* 343,

PRO CONFESSO. Taking a bill *pro confesso* is a procedure whereby a plaintiff in Chancery, on a defendant's refusal or neglect to appear or answer, or persistence in answering insufficiently, has been enabled to obtain the same advantage as if the defendant had put in an answer admitting all the allegations of the bill. It was a tedious and expensive process. *T. L.; Cowel;* 3 *Bl.* 444; *Hunt. Eq., Part II. ch. 7, s.* 2. It is superseded under the Judicature Acts by the provisions of Order XXIX., which follow in the main the course of procedure hitherto adopted in actions at common law.

PRO FALSO CLAMORE SUO. For his false claim; an expression used in reference to a plaintiff who brought an action without sufficient cause, and was accordingly liable to be fined at the mercy of the king for his false claim (*in misericordiâ domini regis pro falso clamore suo*). 3 *Bl.* 274—5, 376.

PRO FORMA. For form's sake.

PRO HAC VICE. For this occasion. An appointment *pro hâc vice* is an appointment for a particular occasion, as opposed to a permanent appointment. 4 *Bl.* 261; 4 *Steph. Com.* 302.

PRO INDIVISO. For an undivided part; a phrase used in reference to lands, the occupation of which is in joint tenancy, in coparcenary, or in common. *Cowel.* [COMMON, TENANCY IN; COPARCENARY; JOINT TENANCY.]

PRO INTERESSE SUO. For his own interest. These words are used, especially of a party being admitted to intervene *for his own interest* in a suit instituted between other parties.

PRO LÆSIONE FIDEI. [LÆSIONE FIDEI.]

PRO PARTIBUS LIBERANDIS was an ancient writ for the partition of lands between co-heirs. *Cowel; Reg. Orig.* 316.

PRO RATA. Proportionately. *Cowel.*

PRO RE NATA. For the matter which has arisen; a phrase used especially to denote an unprecedented course, adopted to serve the exigencies of a given occasion.

PRO SALUTE ANIMÆ. For the salvation of his soul; a phrase used to denote that the judgments and monitions in the Ecclesiastical Courts are intended for the reformation of the offender, being given in respect of matters unconnected with private injuries. 3 *Bl.* 87; 3 *Steph. Com.* 309, *and n.* (*f*).

PRO TANTO. For so much, or so far as it will go; as if a tenant for life make a lease for 100 years, the lease is good *pro tanto*, that is, for such an estate or interest as the tenant for life may lawfully convey.

PROBATE. The exhibiting and proving wills, which formerly took place before the ecclesiastical judge, upon which the original is deposited in the registry of the Court, and a copy in parchment is made out under the seal of the Court, and delivered to the executor, together with a certificate of its having been proved. *Cowel;* 2 *Bl.* 508. This jurisdiction was transferred in 1857 to the Court of Probate, when the testamentary jurisdiction of the Ecclesiastical Courts was abolished. 2 *Steph. Com.* 190—193. [SOLEMN FORM; see also next Title.]

PROBATE COURT. The Court established in 1857 by the stat. 20 & 21 Vict. c. 77,

PROBATE COURT—*continued.*

to be held in such place in London or Middlesex as her Majesty in Council might appoint. To this Court was transferred by sect. 23 of the Act, the testamentary jurisdiction which up to that time had been exercised by the Ecclesiastical Courts. 2 *Steph. Com.* 185, 193, 213. It was, however, expressly provided by the same section that no suits for legacies, or for the distribution of residues, should be entertained either by the Probate Court or by the Ecclesiastical Court, these being matters for the Court of Chancery; and, in general, questions of the *genuineness* and *due execution* of wills have been decided by the Court of Probate; those of the *construction* of wills by the Court of Chancery, except where the legal estate in land has been in question, in which case the matter (in the absence of special circumstances) has been tried by action of ejectment at common law. The Probate Court is one of the courts which is consolidated into the Supreme Court of Judicature by sect. 16 of the Judicature Act, 1873 (stat. 36 & 37 Vict. c. 66); and its jurisdiction is now exercised by the Probate, Divorce and Admiralty Division of that Court.

PROBATE DUTY. The duty payable on proving a will. No stamp duty is payable where the effects do not exceed 100*l.* If the amount of the effects is between 100*l.* and 200*l.*, the duty is 2*l.*; if between 200*l.* and 300*l.*, the duty is 5*l.*; if between 300*l.* and 450*l.*, the duty is 8*l.*, &c. Where the value of the effects amounts to a million pounds and upwards, the duty is 1,500*l.* for every 100,000*l.*, and any fractional part of 100,000*l.* The proportion, therefore, which the probate duty bears to the estate and effects in respect of which the probate is granted varies between 1 and 2 per cent. See *Coote's Probate Pract.* 492; *Tilsley on Stamps*, 539.

PROBATOR. An approver. 4 *Bl.* 329, 330; 4 *Steph. Com.* 394. [APPROVER.]

PROCEDENDO. 1. The writ of *procedendo ad judicium* is a writ which issues when the judge of any subordinate court doth delay the parties in refusing to give judgment. The writ commands him, in the name of the Crown, to proceed to judgment, but without specifying any particular judgment. 3 *Bl.* 109, 110; 3 *Steph. Com.* 629, 630.

2. A writ whereby a cause which has been removed on insufficient grounds from an inferior to a superior court by *certiorari* or otherwise is removed back again to the inferior court. *T. L.; Cowel;* 3 *Bl.* 130; 3 *Steph. Com.* 630; *Lush's Pr.* 1021. [CERTIORARI.]

3. *Procedendo in loquela*, or *aid prayer.* When any defendant, sued in respect of the title to any property, prayed in aid of the king [AID PRAYER], the judges, on being satisfied that the king had an interest in the property, stayed the action until they received from the king a writ called a *procedendo in loquela*, by which they were authorized to proceed in the plea, and to give judgment. *Toml.*

4. A writ to revive a commission of the peace which has been superseded by writ of *supersedeas.* 1 *Bl.* 353; 2 *Steph. Com.* 647, 648. [COMMISSION OF THE PEACE; CONSERVATOR OF THE PEACE; JUSTICE OF THE PEACE.]

PROCEDURE. The steps taken in an action or other legal proceeding.

PROCES VERBAL, in France, is a phrase applied to those acts by which public officials render attestation to anything done in their presence. *Ferrière.*

PROCESS. 1. The writ commanding the defendant's appearance in an action. This is sometimes called *original* process. 3 *Bl.* 279; 3 *Steph. Com.* 489.

2. The various writs formerly issued in the course of an action. *T. L.; Cowel.* Those issued subsequently to the first or original writ, and prior to the writs of execution, were called the *mesne process*, and the writs of execution were called the *final process.* 3 *Bl.* 279; 3 *Steph. Com.* 489, *n.*

3. The steps taken upon an indictment or other criminal proceeding. 4 *Bl.* 318; 4 *Steph. Com.* 381.

4. The word *process* does not seem to have any technical meaning under the Judicature Acts.

PROCESSUM CONTINUANDO. A writ for the continuance of a process after the death of the chief justice, or other justices, in the writ of *oyer and terminer. Reg. Orig.* 128; *Cowel.* [ASSIZE, COURTS OF; OYER AND TERMINER.]

PROCHEIN AMY. [NEXT FRIEND.]

PROCHEIN AVOIDANCE. A right of presentation to a church on the next avoidance; in other words, a next presentation. *Toml.*

PROCLAMATION. A notice publicly given of any thing, whereof the king thinks

PROCLAMATION—*continued.*

fit to advertise his subjects. *T. L.; Cowel;* 1 *Bl.* 270; 2 *Steph. Com.* 507. [See also the following Titles.]

PROCLAMATION OF COURTS is used particularly in the beginning or calling of a court, and at the discharge or adjourning thereof, for the attendance of persons, and dispatch of business. Proclamation is made in courts baron for persons to come in and claim vacant copyholds, of which the tenants died seised since the last courts. *Toml.*

PROCLAMATION OF FINES. The proclamation of a fine was a notice openly and solemnly given at all the assizes held in the county where the lands lay, within one year after engrossing the fine. These proclamations were upon transcripts of the fine, sent by the justices of the Common Pleas to the justices of assize and the justices of the peace. *Cowel.* See also 2 *Bl.* 352; 1 *Steph. Com.* 562—566. [FINE, 1.]

PROCLAMATION OF NUISANCES. A proclamation for the removal of nuisances under stat. 12 Rich. 2, c. 13. *Toml.*

PROCLAMATION OF REBELLION. A public notice that a man not appearing upon a subpœna, or an attachment in Chancery, shall be reputed a rebel, unless he render himself up by a day assigned in the writ. *Cowel;* 3 *Bl.* 444. Now abolished. [REBELLION.]

PROCLAMATION OF RECUSANTS was a proclamation whereby recusants were formerly convicted, on non-appearance at the assizes. *Toml.* [CONVICT RECUSANT; RECUSANT.]

PROCONSULES. A name applied to justices in eyre. *Toml.* [EYRE.]

PROCTOR. 1. One chosen to represent a cathedral or collegiate church, or the clergy of a diocese, in the Lower House of Convocation. *Cowel.*

2. One who prosecutes or defends a suit for another; especially certain officers who formerly were exclusively entitled to conduct suits in the Ecclesiastical and Admiralty Courts. *Cowel;* 3 *Bl.* 25; 3 *Steph. Com.* 270, *and n.* (*m*). All such officers are now, by sect. 87 of the Judicature Act, 1873, entitled to be called solicitors of the Supreme Court.

3. An executive officer of the University. 4 *Steph. Com.* 326, *n.*

PROCTORS OF THE CLERGY. [PROCTOR, 1.]

PROCURATION generally signifies agency, or the acting by one man in the affairs of another by the latter's instructions. The word is especially used with reference to the drawing, &c. of bills of exchange by an agent on behalf of his principal. [PER PROCURATIONEM.] For procurations payable by the clergy, see PROCURATIONS.

PROCURATION FEE. The fee which a scrivener or broker was allowed to take for making a bond. 4 *Bl.* 157.

PROCURATIONS are certain sums of money which parish priests pay yearly to the bishop or archdeacon for his visitation. They were anciently paid in necessary victuals for the visitor and his attendants, but afterwards turned into money. Procuration is defined by Vallensis, writing in 1290, to be the furnishing of the necessary expenses, which is due from the church or monastery to him upon whom is incumbent, by virtue of his office, the right and the burden of visitation, whether he be bishop, or archdeacon, or dean, or legate of the most high Pontiff. Thus we read that "on Wednesday, on the feast of St. Luke the Evangelist, the Lord Bishop took his *procuration* in meat and drink at Bordesley, and passed the night there." *Cowel.*

Provision is made by stat. 23 & 24 Vict. c. 124, s. 2, passed in 1860, for the payment of procurations and similar fees to the Ecclesiastical Commissioners.

PROCURATOR. 1. He that gathereth the fruits of a benefice for another man. *Cowel.*

2. An agent, generally.

3. A proctor. [PROCTOR.]

PROCURATOR FISCAL, in Scotland, is the public prosecutor for the district.

PROCURATORIUM. The instrument by which a proctor is appointed. *Toml.* [PROCTOR, 2.]

PROCURATORY OF RESIGNATION is a mandate or commission whereby a tenant of land in Scotland empowers a person whose name is left blank to appear in presence of the superior lord, and resign the lands to him, either that the lands may remain the property of the superior, in which case it is said to be a resignation *ad remanentiam*, or for the purpose of the superior's giving out the feu (*i. e.*, making a fresh grant of the land) to a new vassal, or to the former vassal and a new series of heirs, which is said to be a resignation *in*

PROCURATORY OF RESIGNATION—*cont.*

favorem. Bell. A procuratory of resignation thus corresponds to the surrender of an English copyhold. *Paterson.*

PROCUREUR. An attorney; one who has received a commission from another to act on his behalf. There were in France two kinds of *procureurs*:—

1. *Procureurs ad negotia*, appointed by an individual to act for him in the administration of his affairs, corresponding to persons who, in England, are invested with a power of attorney.

2. *Procureurs ad lites*, being persons appointed to act for a party in a court of justice. These corresponded to English attorneys-at-law, now called solicitors of the Supreme Court. The order of *procureurs* was abolished in 1791, and that of *avoués* established in their place. *Ferrière.*

PRODES HOMINES. The barons of the realm, or other military tenants, who were summoned to the king's council. *Toml.*

PRODITORIE. Traitorously; a word essential in indictments for treason.

PROFER. 1. The time appointed for the production of the accounts of sheriffs and other officers in the Exchequer. *T. L.; Cowel.* Abolished by stat. 3 & 4 Will. 4, c. 99, s. 2.

2. The offer or endeavour to proceed in an action by a person concerned so to do. *Cowel.*

PROFERT IN CURIA. The production of a deed in court, which was formerly demandable in certain cases. *Lush's Pr.* 836. [OYER OF DEEDS AND RECORDS.]

PROFITS À PRENDRE, also called *rights of common*, are rights exercised by one man in the soil of another, accompanied with participation in the profits of the soil thereof, as rights of pasture, or of digging sand. *Profits à prendre* differ from easements in that the former are rights of profit, and the latter are mere rights of convenience without profit. *Gale on Easements, p.* 1; *Hall on Profits à Prendre, p.* 1. [COMMON; EASEMENT.]

PROHIBITION. A writ to forbid an inferior court from proceeding in a cause there depending, upon suggestion that the cognizance belongeth not to the same court. *Cowel; 3 Bl.* 112—114.

Now, by 1 Will. 4, c. 21, an application for a writ of prohibition is made by motion, supported by affidavits. But if the point be too nice and doubtful to be decided upon motion, then the party applying for the prohibition is directed to *declare* in prohibition; that is, to deliver a concise statement of the proceedings in respect of which he applies for a prohibition, and praying that a writ of prohibition may issue. "Declaration in prohibition" was formerly based on the fiction that the party against whom the declaration was filed had proceeded in the suit, notwithstanding the writ of prohibition. 3 *Bl.* 113, 114; 3 *Steph. Com.* 635—638.

Prohibition differs from injunction, in that prohibition is directed to a court as well as to the opposite party, whereas an injunction is directed to the party alone.

By the Judicature Act, 1873, sect. 24, sub-sect. 5, no cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction.

PROHIBITIO DE VASTO DIRECTA PARTI. A writ judicial formerly directed to a tenant in a real action, prohibiting him from making waste upon the land in controversy during the suit. It was sometimes also directed to the sheriff. *Reg. Judic.* 21; *Cowel.*

PROLOCUTOR. The officer who, in each House of Convocation, is chosen to preside over the deliberations of that House. As there be two Houses of Convocation, so there are two Prolocutors; one of the Lower and one of the Higher House. He of the Lower House, presently upon the first assembly, being chosen by the members of the Lower House, is presented to the Bishops for Prolocutor; that is, the person by whom the Lower House intend to deliver their resolutions to the Higher House. *Cowel.*

PROMISE. A voluntary engagement by one man to another for the performance or non-performance of some particular thing. A promise is in the nature of a verbal covenant; and in strictness it differs from a contract, in that a contract involves the idea of mutuality, which a promise does not. 3 *Bl.* 158; 2 *Steph. Com.* 54. [CONTRACT; COVENANT.]

PROMISSORY NOTE, otherwise called a *note of hand*, is an open letter of engagement from one man to another, promising him to pay a certain sum of money therein specified, sometimes to the person therein named, sometimes to his order, and some-

PROMISSORY NOTE—*continued.*

times to the bearer. If payable to order or bearer, it is capable of assignment, and by various acts of parliament is placed generally on the same footing as an inland bill of exchange. It differs, however, from a bill of exchange, in that the maker stands in the place of drawer and acceptor. 2 *Bl.* 467, 468; 2 *Steph. Com.* 123, 124. [BILL OF EXCHANGE; INLAND BILL OF EXCHANGE.]

PROMOTERS. 1. Those who, in popular and penal actions, prosecute offenders in their own name and the king's. *Cowel.* [ACTIONS, CIVIL AND PENAL; ACTIONS POPULAR.]

2. Persons or corporations at whose instance private bills are introduced into, and passed through, parliament. *May's Parl. Pract. ch.* 24. [BILL, 4.]

3. Especially those who press forward bills for the taking of land for railways and other public purposes; who are then called *promoters of the undertaking.*

4. Persons who assist in establishing joint stock companies.

PROMOTING THE OFFICE OF JUDGE. Prosecuting a criminal suit in the Ecclesiastical Court. [OFFICE OF A JUDGE.]

PROMOTION MONEY. Money paid to the promoters of a joint stock company for their services in launching the concern. [PROMOTERS, 4.]

PROMULGATION OF A LAW, according to *Cowel,* is the publication of a law already made. But the meaning originally annexed to the expression *promulgare legem* in the time of the Roman Commonwealth was "to submit a proposed law to the legislature," or, as we should say, "to introduce a bill." *Austin's Jur., Lect. XXVIII.*

PROOF, in Scotch law, corresponds to *evidence* in English law; and *to lead proof* is to produce evidence. *Paterson.* [See also the following Titles.]

PROOF BEFORE ANSWER, in Scotland, is where an issue of fact is tried before an issue in law. *Paterson.*

PROOF OF DEBT means generally the establishment by a creditor of a debt due to him from an insolvent estate, whether of a bankrupt, a deceased person, or a partnership or company in liquidation. See *Bankruptcy Rules,* 1870, *rules* 67—77; *Robson, Bkcy. ch.* 11. [PROVE, 2.]

PROOF OF WILL. [PROBATE.]

PROPER FEUDS. The genuine or original feuds in the hands of military persons, and held by military services. 2 *Bl.* 58; 1 *Steph. Com.* 180. [FEE; FEUDAL SYSTEM; HONORARY FEUDS; IMPROPER FEUD.]

PROPERTY. 1. The highest right a man can have in any thing; which right, according to *Cowel,* no man can have in any lands and tenements, save only the king in right of his Crown.

2. Any interest in lands and tenements. *Cowel.*

3. The free use, enjoyment, and disposal by a man of all acquisitions without any control, save only by the laws of the land. 1 *Bl.* 138.

4. The sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. 2 *Bl.* 1, 2.

The five following applications (5 to 9) of the term are enumerated by Austin in his 47th Lecture.

5. A right indefinite in point of user —unrestricted in point of disposition— and unlimited in point of duration. In this sense, it is nearly synonymous with the first meaning of the term given above, and is distinguished from a life interest or an interest for years on the one hand, and from a servitude or easement on the other.

6. The subject of such a right: as when we say, that horse or that field is my property.

7. A right indefinite in point of user, but limited in duration; as, for instance, a life interest.

8. Right as opposed to possession.

9. A right availing against the world at large, as opposed to rights arising out of contract or quasi-contract.

10. The assets of a bankrupt available for distribution among his creditors.

PROPERTY IN ACTION, as opposed to property in immediate possession, is the right to recover any thing (if it should be refused) by suit or action at law. 2 *Steph. Com.* 11. [CHOSE.]

PROPOSITUS. An expression sometimes used of a person from whom, dying intestate, descent is to be traced, so as to ascertain who is to inherit his land. 2 *Bl.* 224.

PROPOUNDER. 1. A monopolist. *Cowel.*

2. The person who, as executor under a will, or claiming administration with a will annexed, proposes it as genuine in the Court of Probate, or other court having jurisdiction for the purpose. [ADMINISTRATOR; EXECUTOR; PROBATE.]

PROPRIETARY. 1. He that hath a property in anything. 2. He that had the fruits of a benefice to himself, his heirs or successors. *T. L.; Cowel.*

PROPRIETARY CHAPELS. Chapels of ease, which are the property of private persons, who have purchased or erected them with a view to profit or otherwise. 2 *Steph. Com.* 746, 747. [PRIVATE CHAPELS; PUBLIC CHAPELS.]

PROPRIETARY GOVERNMENTS. This expression is used by Blackstone to denote governments granted out by the Crown to individuals, in the nature of feudatory principalities, with inferior regalities and subordinate powers of legislation, such as formerly belonged to the owners of counties palatine. 1 *Bl.* 109. [HERITABLE JURISDICTIONS.]

PROPRIETATE PROBANDA. A writ which lay for a person upon whom a distress was made, where the distrainor claimed that the goods distrained were his own property. *Cowel;* 3 *Bl.* 148; 3 *Steph. Com.* 423, *n.* (*x*). [DISTRESS.]

PROPTER AFFECTUM. PROPTER DEFECTUM. PROPTER DELICTUM. PROPTER HONORIS RESPECTUM. [CHALLENGE.]

PROROGATION OF PARLIAMENT. A putting off by the Crown of the sittings of Parliament, the effect of which is to put an end to the session. It differs from an *adjournment*, in that an adjournment is effected by each House separately (though it may be at the instigation of the Crown); and after it all things continue as they were at the time of the adjournment made; whereas, after a *prorogation*, bills introduced and not passed are as if they had never been begun at all. *Cowel;* 1 *Bl.* 186, 187; 2 *Steph. Com.* 390, 391; *May's Parl. Pract. ch.* 2.

PROSECUTION. 1. The proceeding with, or following up, any matter in hand.

2. The proceeding with any suit or action at law. By a caprice of language, a person instituting *civil* proceedings is said to prosecute *his action or suit;* but a person instituting *criminal* proceedings is said to prosecute *the party accused.*

3. The party by whom criminal proceedings are instituted; thus we say, such a course was adopted by the prosecution, &c.

PROSECUTOR means properly any person who prosecutes any proceeding in a court of justice, whether civil or criminal; but the caprice of language has confined the term so as to denote in general a party who institutes criminal proceedings on behalf of the Crown.

PROTECTION. 1. The benefit or safety which is secured to every subject by the laws.

2. A special exemption or immunity given to a person by the king, by virtue of his prerogative, against suits in law or other vexations, in respect of the party being engaged in the king's service. *T. L.; Cowel.*

[See also the following Titles.]

PROTECTION ORDER is an order for the protection of a wife's property, granted by the Divorce Court or by a magistrate, under the Divorce Act of 1857, to a wife whose husband has deserted her without reasonable cause. By virtue of the protection order she becomes entitled, during the continuance of such order, to enjoy her own property and to bring actions as if unmarried. The occasions for such an order are now very much fewer since the passing of the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), by section 1 of which the wages and earnings of a wife, and any money or property acquired by her through the exercise of any literary, scientific, or artistic skill, is to be deemed her separate property. 2 *Steph. Com.* 267.

PROTECTION, WRIT OF. The writ whereby the king's protection is secured. [PROTECTION, 2.] It is very rarely granted. 3 *Bl.* 289.

PROTECTOR OF SETTLEMENT. The person or persons whose consent, under the Fines and Recoveries Abolition Act, 1833 (3 & 4 Will. 4, c. 74), is necessary to enable a tenant in tail in remainder to bar the subsequent estates in remainder or reversion. The protector is generally the prior tenant for life, but the author of the settlement may, in lieu of such prior tenant, appoint any number of persons, not exceeding three, to be together protector of the settlement. A protector is under no restraint in giving or withholding his consent. 1 *Steph. Com.* 251; *Wms. R. P., Pt. I. ch.* 2; *Hunt Eq., Pt. III. ch.* 3, *sect.* 1, *subsect.* 3. [ESTATE.]

PROTECTORATE. 1. The period in English history during which Cromwell was protector.

2. A relation sometimes adopted by a strong country towards a weak one, in the nature of a feudal sovereignty,

PROTECTORATE—*continued.*

whereby the former protects the latter from hostile invasion, and interferes more or less in its domestic concerns.

PROTEST. 1. A caution, by which a person declares that he does either not at all, or only conditionally, yield his consent to any act to which he might otherwise be deemed to have yielded an unconditional assent. *Cowel.*

2. The dissent of a peer to a vote of the House of Peers, entered on the journals of the House, with his reasons for such dissent. 1 *Bl.* 168; 2 *Steph. Com.* 346; *May's Parl. Pract.*

3. A formal declaration by the holder of a bill of exchange, or by a notary public at his request, that the bill of exchange has been refused acceptance or payment, and that the holder intends to recover all the expenses to which he may be put in consequence thereof. In the case of a foreign bill, such a protest is essential to the right of the holder to recover from the drawer or indorsers. *Cowel;* 2 *Bl.* 468, 469; 2 *Steph. Com.* 121, 122. [BILL OF EXCHANGE.]

PROTESTANDO. [PROTESTATION.]

PROTESTATION. 1. A protestation, in pleading, was the interposition of an oblique allegation or denial of some fact, by protesting (*protestando*) that such a matter did or did not exist, and at the same time avoiding a direct affirmation or denial. The use of it was to save the party from being concluded by some fact which could not be directly affirmed or denied without duplicity of pleading. *Cowel;* 3 *Bl.* 311, 312; *Steph. Pleading,* 2*nd ed.* 256—259. [DOUBLE PLEA.] Abolished by rules of Hilary Term, 1834. *Toml.*

2. A proceeding taken by a defender in a Scotch court where the pursuer neglects to proceed. *Bell.*

PROTHONOTARY. [PROTONOTARY.]

PROTOCOL (Fr. *Protocole;* Gr. πρωτόκολλον).

1. A Byzantine term applied to the first sheet pasted on a MS. roll, stating by whom it was written, &c. Gr. κολλάω, to glue, paste. *Wedgwood.*

2. The first or original copy of anything. *Toml.*

3. The entry of any written instrument in the book of a notary or public officer, which, in case of the loss of the instrument, may be admitted as evidence of its contents. *Toml.*

4. A document serving as the preliminary to, or opening of, any diplomatic transaction. *Latham.*

PROTONOTARY. A chief scribe in a court of law. 1 *Bl.* 71, 72; 1 *Steph. Com.* 49. There were formerly three of such officers in the Court of Common Pleas, and one in the Court of King's Bench. He of the King's Bench recorded all civil actions in that court. Those of the Common Pleas entered all declarations, &c., and made out judicial writs. *Cowel.* These officers were abolished in 1837, by stat. 7 Will. 4 & 1 Vict. c. 30.

PROUT, &c., short for **PROUT PATET PER RECORDUM,** "as appears by the record;" a statement formerly inserted in pleadings, but now rendered wholly unnecessary, (1) in civil cases by stat. 15 & 16 Vict. c. 76, s. 50, and (2) in criminal cases by stat. 14 & 15 Vict. c. 100, s. 24.

PROVE. 1. To establish by evidence; but specially,

2. To establish a debt due from an insolvent estate, and to receive a dividend thereon. To prove a debt differs on the one hand from receiving the full benefit thereof, as where a debtor of a bankrupt is allowed *to set off* a counter-claim of his own, or an execution creditor is allowed the benefit of the judgment; and on the other hand from being deprived of all benefit thereof. [See next Title; see also PROVING A WILL.]

PROVEABLE DEBT. A debt which may be proved in bankruptcy, comprising debts of all kinds generally, with the two following exceptions: 1. Debts contracted by a person having notice of an act of bankruptcy committed by the debtor. [ACT OF BANKRUPTCY.] 2. Demands in the nature of unliquidated damages arising from a tort committed by the debtor. *Bankruptcy Act,* 1869, *s.* 31.

PROVER. The same as *approver. Cowel.* [APPROVER.]

PROVINCE. 1. Among the Romans, was a country without the limits of Italy, gained to their subjection by the sword. *Cowel.*

2. The circuit of an archbishop's jurisdiction. *Cowel;* 1 *Bl.* 112; 1 *Steph. Com.* 116; 2 *Steph. Com.* 667.

3. A colony or dependency.

PROVINCIAL. A chief governor of a religious order of friars. *Cowel.*

PROVING A WILL. 1. Procuring probate of a will. [PROBATE.]

2. Proving a will in Chancery. This was where a devisee of real estate under a will filed a bill in Chancery against the heir of the testator, or person claiming under a prior will, for perpetuating the evidence of the testator's soundness of

PROVING A WILL—*continued.*

mind, and of his due execution of the will; lest the heir or other person interested should lie by until evidence of the will had been lost by death or otherwise. 3 *Bl.* 450; *Haynes' Eq., Lect. VI.*

The expression, however, does not seem to be applied to the establishment of the validity of the will upon an issue of *devisavit vel non*. [DEVISAVIT VEL NON.] And proceedings in Chancery for this purpose are now less frequently necessary than in former times, since, by sect. 62 of the Probate Act, 1857 (20 & 21 Vict. c. 77), the Court of Probate has jurisdiction to make the probate of the will binding on the parties interested in the real estate.

PROVISION was a word applied to the providing a bishop or any other person with an ecclesiastical living by the Pope, before the incumbent were dead. The word was subsequently applied to any right of patronage usurped by the Pope. The purchasing "provisions" at Rome or elsewhere exposed the offender to the penalties of *præmunire*. *T. L.; Cowel.; 1 Bl.* 60, 61; 4 *Bl.* 107; 4 *Steph. Com.* 174. [PRÆMUNIRE.]

PROVISIONAL ASSIGNEE was an assignee formerly appointed provisionally by the Court of Bankruptcy until regular assignees should be appointed by the creditors. Under the Bankruptcy Act, 1869, s. 17, the registrar of the court is to be the trustee until a trustee is appointed.

PROVISO. 1 A condition inserted into a deed, upon the observance whereof the validity of the deed depends. *T. L.; Cowel.*

2. A covenant. *T. L.*

3. A clause in an act of parliament whereby a condition or limitation is imposed upon its operation.

[See also the next Title.]

PROVISO, TRIAL BY, is where a defendant, being apprehensive of delay on the part of the plaintiff, himself undertakes to bring on the cause for trial, giving proper notice thereof to the plaintiff. It is called the trial by proviso by reason of the clause formerly inserted in the sheriff's *venire facias*, namely, "provided (*proviso*) that if two writs come to your hands" (one from the plaintiff and another from the defendant), "you shall execute only one of them." *T. L.; Cowel;* 3 *Bl.* 356, 357; 3 *Steph. Com.* 518; *Lush's Pr.* 652.

By the Judicature Act, 1875, Order XXXVI. rule 4, a defendant may give notice of trial if the plaintiff fails to do so. But the phrase "trial by proviso" is not mentioned in the Rules, and will doubtless soon become obsolete.

PROVISOR. He that sued to the Court of Rome for a provision. *T. L.; Cowel.* [PROVISION.]

PROVOST (Lat. *Præpositus*). 1. The head of a college or collegiate church. 2. The chief magistrate of a Scotch burgh. 3. A provost marshal.

PROVOST COURT. The local court of civil jurisdiction for the city of Exeter.

PROVOST MARSHAL. 1. An officer in the king's navy having charge of prisoners at sea. *Cowel.*

2. An officer appointed in time of martial law to arrest and punish offenders. Execution parties are placed under his orders. *Simmonds on Courts Martial, s.* 759.

PROXIES. 1. Payments made to a bishop by a religious house, or by parish priests, for the charges of his visitation. *T. L.; Cowel.* [PROCURATIONS.]

2. By *a proxy* we generally understand a person deputed to vote in the place or stead of the party so deputing him. As in the House of Lords (*May's Parl. Pract. ch.* 12); at meetings of creditors of a bankrupt (*Robson's Bkcy. ch.* 11, *s.* 2); at meetings of the shareholders of a company; and on various other occasions.

PRYK. A spur. Hence a kind of tenure *in capite* by the service of finding a spur for the king. *Cowel.* [IN CAPITE.]

PUBLIC ACT OF PARLIAMENT. An Act to be judicially noticed, which is now the case with all Acts of Parliament, except the very few in which a declaration is inserted to the contrary. 1 *Bl.* 85, 86; 1 *Steph. Com.* 69, 70; 13 & 14 *Vict. c.* 21. Public Acts which have been passed as public bills have, in general, been ranked among the Public General Acts; but of late years various public acts of parliament which, though of a local character, have been passed as public bills (being for the most part Acts for confirming provisional orders of some government department) have been, under the name of "Public Local Acts," classed among the Local and Personal Acts. The public acts which have been passed as private bills form the main body of the "Local and Personal Acts." [ACT OF PARLIAMENT; BILL, 4; LOCAL AND PERSONAL ACTS; PUBLIC LOCAL ACTS.]

PUBLIC BILL IN PARLIAMENT. [See the preceding Title, and references thereunder.]

PUBLIC CHAPELS are chapels of ease designed for the benefit of particular districts within a parish. They are opposed to *private chapels*, which are erected for the use of persons of rank, to whom the privilege has been conceded by the proper authorities; also to *proprietary chapels*, which are the property of private persons, and are erected with a view to profit or otherwise. 2 *Steph. Com.* 745—747.

PUBLIC FUNDS. Shortly after the Revolution of 1688, when the new connexions of the country with the Continent introduced a new system of foreign politics, the expenses of the nation increased to an unusual degree, so that it was not thought advisable to raise all the expenses of any one year by taxes to be levied within that year, lest the unaccustomed weight of them should create murmurs among the people. Immense sums were accordingly borrowed for the current service of the State. Thus the principal debt was converted into a new species of property, transferable from one man to another at any time and in any quantity. The example thus set has been followed in more modern times, and the capital of the unredeemed funded debt of Great Britain and Ireland amounted, on the 31st of March, 1873, to 726,584,423*l.* 11*s.* 2*d.*, independently of an outstanding unfunded debt to the extent of 4,829,100*l.* or more. The form of the security held by the public creditors in respect of the funded debt is that of annuities granted by Parliament to those who originally advanced the money. The annuitants have no right to call for payment of the principal; but, on the other hand, the public has a right to insist on making that payment, and thereby redeeming the annuities. These annuities are called the *public funds*, and are not only transferable by the holder, but pass by law to his representatives. 1 *Bl.* 328, 329; 2 *Steph. Com.* 574—576. [CONSOLIDATED FUND.]

PUBLIC HEALTH ACTS. 1. Stat. 11 & 12 Vict. c. 68, passed in 1848, for the establishment of General and Local Boards of Health for the purpose of improving the sanitary condition of towns and populous places in England and Wales, and the sewerage, drainage, cleansing, and paving thereof. Repealed by stat. 38 & 39 Vict. c. 55 (see next column).

2. Stat. 35 & 36 Vict. c. 79, passed in 1872, by which England is divided into urban and rural sanitary districts, which are placed under the jurisdiction of local authorities, to be called urban and rural sanitary authorities respectively. To these authorities are transferred the powers exercised by the local authorities under the Local Government Acts, the Sewage Utilization Acts, the Nuisances Removal Acts, the Common Lodging Houses Acts, &c. This Act, except so far as relates to the metropolis, is repealed by stat. 38 & 39 Vict. c. 55.

3. Stat. 38 & 39 Vict. c. 55, passed in 1875. This Act repeals the Acts above mentioned or referred to, so far as relates to England and Wales beyond the metropolitan limits, and substitutes other provisions, which are embodied in 343 sections and five schedules.

PUBLIC LOCAL ACTS is a phrase applied to local Acts of Parliament of a public nature, which, though they have been passed as public bills, are nevertheless, for the ease of the volume of Public General Statutes, placed among the "Local and Personal Acts." [PUBLIC ACT OF PARLIAMENT, and references thereunder.]

PUBLIC SCHOOLS ACTS. 1. Stat. 27 & 28 Vict. c. 92, passed in 1864, for the purpose of preventing impediments being created to the free action of the legislature by the acquisition of vested interests in the property of certain colleges and schools by persons who might be appointed to offices in the governing bodies thereof (including masterships) after the date of the passing of the Act (29th July, 1864). By sect. 2 it is provided that every person thenceforth so appointed should hold his office subject to any provisions and regulations which might thereafter be enacted respecting the same. The schools to which the Act applies are—(1) Eton; (2) Winchester; (3) Westminster; (4) Charterhouse; (5) St. Paul's School in the City of London; (6) Merchant Taylors; (7) Harrow; (8) Rugby; (9) Shrewsbury.

2. Stat. 31 & 32 Vict. c. 118, passed in 1868, and applying to all the schools above mentioned except St. Paul's School and Merchant Taylors. This Act, by sects. 5—11, gives to the governing body of each of the schools to which it applies power to make statutes determining and establishing the constitution of the governing body of each of such schools in any manner which might be deemed expedient; also to make statutes

PUBLIC SCHOOLS ACTS—*continued.*

with reference to boys on the foundation, scholarships, exhibitions, &c., tenable at the school, or tenable after quitting the school by boys educated thereat; with respect to the number, position, rank in the school, and salaries and emoluments of masters receiving any salary or emolument out of property belonging to or held in trust for the school; and some other matters. None of such statutes to be of force until approved by her Majesty in Council. By sect. 12 certain powers are granted to the *new governing bodies* to make regulations as therein mentioned. By sect. 13 the head master of every school to which the Act applies is to be appointed by, and hold his position at the pleasure of, the new governing body; and all other masters are to be appointed by and hold their offices at the pleasure of the head master. No candidate for any mastership is to be entitled to preference by reason of his having been a scholar at, or educated at, the school at which he desires to be master. The Act goes on to appoint special commissioners, and empowers them to require production of documents and accounts from the school authorities. Section 27 preserves the vested interests (1) of boys, scholars, &c., acquired before the passing of the Act; (2) of masters and members of governing bodies acquired before the passing of the Act of 1864.

3. Stat. 32 & 33 Vict. c. 58, passed in 1869, to empower the governing body of each school, subject to the Act of 1868, to constitute a governing body for the school (including boys whether on the foundation or not) either wholly or partially distinct from the existing governing body.

4. Stat. 33 & 34 Vict. c. 84, passed in 1870, to extend the powers of the new governing bodies and of the special commissioners.

5. Stat. 34 & 35 Vict. c. 60, passed in 1871, with a similar object, and with special provisions relating to Eton and Winchester.

6. Stat. 35 & 36 Vict. c. 54, passed in 1872, being a statute similar to the last two, with special provisions in reference to the property of Rugby School.

PUBLIC, TRUE AND NOTORIOUS. The old form of words in which the allegations in the Ecclesiastical Courts were concluded. [ALLEGATION.]

PUBLIC WORSHIP REGULATION ACT, 1874. This is the brief but inappropriate title of the stat. 37 & 38 Vict. c. 85. From this it might be inferred that the Act was one prescribing the details of public worship: instead of being, as is properly expressed in its longer title, "An Act for the better Administration of the Laws respecting the Regulation of Public Worship."

PUBLICATION. 1. The declaration by a testator that a given writing is intended to operate as his last will and testament. This was formerly necessary to give legal effect to a will. But, by sect. 13 of the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), no publication is necessary beyond the execution attested by two witnesses as required by sect. 9 of that Act. 1 *Steph. Com.* 596, 599.

2. The opening of depositions in Chancery for the inspection of the parties, which took place under the old practice, before the year 1852, by a *rule to pass publication*, after the time for taking evidence had closed. 3 *Bl.* 450; *Hunt. Eq., Pt. I. ch.* 5, *s.* 2.

3. The communication of a libellous statement to any person or persons other than the party of whom it is spoken.

PUBLISH. [PUBLICATION.]

PUERITIA. The age from seven to fourteen years. 4 *Bl.* 22; 4 *Steph. Com.* 23.

PUFFER. A person employed to bid at a sale by auction on behalf of the owner of the goods sold. The employment of a puffer is illegal, unless a right to bid is reserved to the owner by the conditions or particulars of sale. *Stat.* 30 *&* 31 *Vict. c.* 48, *ss.* 3—6.

PUIS DARREIN CONTINUANCE (since the last continuance). A plea *puis darrein continuance* is a plea alleging some matter of defence which has arisen since the last "*continuance*" or *adjournment* of the court. 3 *Bl.* 316; 3 *Steph. Com.* 508, 509. [CONTINUANCE.]

Under the Judicature Act, 1875, a ground of defence arising after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be pleaded by the defendant in his statement of defence. And any ground of defence arising after the defendant has delivered his statement of defence, or after the time limited for his doing so has expired, may be pleaded within eight days after such ground of defence has arisen. 1*st Sched. Order XX. rules* 1, 2.

PUISNE. Younger; thus, *mulier puisné* is the younger legitimate brother. *Cowel.* [MULIER PUISNE.] So, the judges in the courts at Westminster, other than the three chiefs, are called the *puisne* judges. 3 *Bl.* 41, 44.

PUR AUTER VIE, or **PUR AUTRE VIE.** For another's life; thus a tenant *pur autre vie* is a tenant whose estate is to last during another person's life.

PURCHASE, besides its ordinary meaning, has a more extensive technical meaning in reference to the law of real property. This meaning is twofold:—

1. The word signifies any lawful mode of coming to an estate by the act of the *party* as opposed to the act of *law;* that is to say, in any manner except by descent, escheat, curtesy, and dower. 1 *Steph. Com.* 386.

2. Any mode, other than descent, of becoming seised of real estate. 2 *Bl.* 201, 241—245; 1 *Steph. Com.* 385. [PURCHASER.]

PURCHASER. 1. One who acquires real or personal estate by the payment of money.

2. One who acquires real estate by his own act and not by act of law.

3. One who acquires real estate otherwise than by descent. Thus, in sect. 1 of the Inheritance Act (3 & 4 Will. 4, c. 106), the "purchaser" is defined as the person who last acquired the land otherwise than by descent. 2 *Bl.* 241; 1 *Steph. Com.* 385, 391.

PURE VILLENAGE. Villenage in which the service was base in its nature and uncertain. 2 *Bl.* 93; 1 *Steph. Com.* 188. [COPYHOLD; FREEHOLD; PRIVILEGED VILLENAGE.]

PURGATION was a word applied to the methods by which, in former times, a man cleared himself of a crime of which he was accused. This was either *canonical,* by the oaths of twelve neighbours that they believed in his innocence; or *vulgar,* by fire or water ordeal, or by combat. *Cowel;* 4 *Bl.* 342, 368; 4 *Steph. Com.* 407, 440, *n.* (*o*). [BENEFIT OF CLERGY; COMPURGATORS.]

PURGING. Atoning for an offence. Thus *purging a contempt of court* is atoning for a contempt. The party then ceases to be "in contempt," that is to say, liable to the disabilities of one who refuses to obey the orders of the court. So, in Scotch law, *purging an irritancy* is atoning for an act of irritancy or forfeiture, so that the court allows the forfeiture to be remitted. *Bell.* [FORFEITURE; IRRITANCY.]

PURLIEU. A word variously derived from *pur lieu* (exempt place), or *pourallée* (perambulation), and signifying all that ground which, having been made forest by Henry I., Richard I., or John, was by Henry III. *disafforested,* so as to remit to the former owners their rights. *T. L.; Cowel;* 1 *Steph. Com.* 667. [CARTA DE FORESTA.]

PURLIEUMAN was he that had ground within a purlieu, and was able to dispend forty shillings by the year of freehold; and was on those two grounds licensed to hunt in his own purlieu. *Cowel.*

PURPARTY. [POURPARTY.]

PURPRESTURE. [POURPRESTURE.]

PURPRISE (Fr. *Pourpris*). An enclosure. [POURPRESTURE.]

PURSUER. The Scotch name for a plaintiff or prosecutor.

PURVEYANCE. [POURVEYANCE.]

PURVEYANCE AND PRE-EMPTION, PREROGATIVE OF. [PRE-EMPTION.]

PURVIEW. 1. That part of an Act of Parliament which begins with the words, *Be it enacted. Cowel.*

2. The scope of an Act of Parliament.

PUT. An option which a party has of delivering stock at a certain time, in pursuance of a contract, the other party to the contract being bound to take the stock at the price and time therein specified. *Keyser; Fenn.*

PUTATIVE FATHER. The man who is supposed to be the father of a bastard child; and, especially, one who is adjudged to be so by an order of justices, under the Bastardy Acts. See 2 *Steph. Com.* 297.

PUTNEE. A tenure of land in India, by which an occupant of land holds it of a zamindar in perpetuity. *Wilson's Gloss. Ind.* [ZAMINDAR.]

PUTTING IN URE. Putting in practice. [URE.]

PUTURA. A custom claimed by keepers in forests, and sometimes by bailiffs of hundreds, to take man's meat, horsemeat, and dog's meat of the tenants, *gratis,* within the perambulation of the forest, liberty, or hundred. *Cowel.*

PYX. An ancient mode of inquisition before a jury of the Goldsmiths' Company, to try whether coin was of the proper standard. 2 *Steph. Com.* 523, *n.* [PIXING THE COIN.]

Q. B. An abbreviation for Queen's Bench. [COURT OF QUEEN'S BENCH.]

Q. C. [QUEEN'S COUNSEL.]

Q. V. (*Quod vide*, Latin for "which see"). This abbreviation directs a reader to consult some passage referred to.

QUADRIENNIUM UTILE is the period of four years allowed by the law of Scotland to a minor after attaining his majority, within which "he may pursue for reduction of any deed to his prejudice granted during his minority;" that is, he may, within this period, take legal proceedings to set aside any deed which, during his minority, he may have executed to his prejudice. Within this period, also, he must bring his action for damages against his tutors and curators for any misconduct in their office. *Bell.*

QUÆ EST EADEM. [QUE EST LE MESME.]

QUÆ PLURA (what more). A writ which lay where an inquisition had been made by an escheator in any county of such lands or tenements as any man died seised of, and it was supposed that there were more lands belonging to him in the county than were "found by the office," *i. e.*, were specified in the finding on the inquisition. By this writ the escheator was directed to inquire further what lands such persons held in the county on the day he died; of whom holden, and by what service, and what was their value, &c. [OFFICE FOUND.]

It differed from the writ of *melius inquirendum*, because the latter was granted where the escheator found the first office by virtue of the writ *diem clausit extremum*, whereas the writ *quæ plura* was granted where the escheator had originally proceeded by virtue of his office, without any writ. *F. N. B.* 255; *T. L.; Cowel.* [DIEM CLAUSIT EXTREMUM; ESCHEATOR; INQUEST, 1; MELIUS INQUIRENDO.]

QUÆ SERVITIA. [PER QUÆ SERVITIA.]

QUÆRENS NON INVENIT PLEGIUM (seeking he has not found the pledge). A sheriff's return signifying that the plaintiff hath not found pledge. When a writ was directed to a sheriff with this clause, "*si fecerit te securum*" (if he shall have made you secure, *i. e.*, if he shall have furnished you with security), and the plaintiff failed to find security, the sheriff's return endorsed on the writ would be in the above words. *Cowel; Toml.* [RETURN.]

QUÆSTUS. That which a man hath by purchase. [PURCHASE; QUESTUS.]

QUALE JUS (what right). A writ judicial, that lay where an abbot, prior, or other man of religion, had judgment to recover land by default of the tenant against whom the land was demanded; then this writ lay for the escheator to inquire what right he had to recover, or whether the judgment were not obtained by collusion between the demandant and the tenant, for the purpose of defrauding the lord claiming by escheat. *T. L.; Cowel.* [ESCHEAT; ESCHEATOR.]

QUALIFICATION OF JUSTICES ACT, 1875. Stat. 38 & 39 Vict. c. 54, passed to amend stat. 18 Geo. 2, c. 20.

QUALIFIED FEE is equivalent to a base fee, being one which hath a qualification subjoined thereto, and which must be determined (*i. e.*, put an end to) whenever the qualification annexed to it is at an end. 2 *Bl.* 109; 1 *Steph. Com.* 239.

QUALIFIED INDORSEMENT, on a bill of exchange or promissory note, is an endorsement which restrains, limits, or enlarges the liability of the indorser, in a manner different from that which the law generally imports as his true liability, deducible from the nature of the instrument. *Story on Bills.* [BILL OF EXCHANGE; INDORSEMENT; PROMISSORY NOTE.] A particular species of this indorsement is one whereby the indorser repudiates liability, which may be made by annexing in French the words *sans recours*, or in English, "without recourse to me," or other equivalent expression. *Byles on Bills.*

QUALIFIED PROPERTY. A limited right of ownership; as, for instance—

1. Such right as a man has in animals *feræ naturæ*, which he has reclaimed. 2 *Bl.* 391; 2 *Steph. Com.* 5, 10, 19. [FERÆ NATURÆ; INDUSTRIAM, PER.]

2. Such right as a bailee has in the chattel transferred to him by the bailment. 2 *Bl.* 452, 453; 2 *Steph. Com.* 82. [BAILMENT.]

QUAMDIU BENE SE GESSERIT (as long as he shall behave himself well). These words imply that an office or privilege is to be held during good behaviour, and therefore is not to be lost otherwise than by the misconduct of the occupant; except of course by his death or voluntary resignation. *Cowel; Toml.*

This is otherwise expressed by the phrase *ad vitam aut culpam.* [AD VITAM AUT CULPAM.]

QUANDO ACCIDERINT (when they shall fall in). A judgment by which the creditor of a deceased person, who, having

QUANDO ACCIDERINT—*continued.*

brought an action against the executor or administrator, has been met with a plea of *plene administravit*, is entitled to any assets which may in future fall into the hands of the defendant as legal representative of the deceased. 2 *Steph. Com.* 204; *Lush's Pr.* 135. [PLENE ADMINISTRAVIT.]

QUANTUM MERUIT (how much he has deserved). An action on a *quantum meruit* is an action of *assumpsit* grounded on a promise, express or implied, to pay the plaintiff for work and labour so much as his trouble is really worth. *Cowel;* 3 *Bl.* 162, 163. [ASSUMPSIT.]

QUANTUM VALEBAT (as much as it was worth). A phrase applied to an action on an implied promise to pay for goods sold as much as they were worth. 3 *Bl.* 163.

QUARANTINE. Forty days. 1. The space of forty days after the death of a husband seised of land, during which his widow was entitled to remain in her husband's capital mansion-house, and during which time her dower was to be assigned. *T. L.; Cowel;* 2 *Bl.* 135; 1 *Steph. Com.* 271. [ASSIGNMENT OF DOWER; DOWER, 2.] 2. Forty days' probation for ships coming from infected countries, or such other time as may be directed by Order in Council. 4 *Bl.* 161, 162; 3 *Steph. Com.* 169.

QUARE CLAUSUM FREGIT (wherefore he broke the close). A phrase applied to an action for trespass in breaking and entering the plaintiff's close, which includes every unwarrantable entry on another's soil. 3 *Bl.* 209, 210; 3 *Steph. Com.* 398.

QUARE EJECIT INFRA TERMINUM (wherefore he ejected him within the term). A writ which lay for a lessee who had been ejected from his farm before the expiration of his term. It differed from the writ of *ejectment* in being brought, not against the original wrongdoer, but against a feoffee or other person in possession claiming under the wrongdoer, for keeping out the lessee during the continuance of the term. In this action the plaintiff was entitled to recover the residue of the term, together with damages. But this action had fallen into disuse a century ago, when Blackstone wrote. *T. L.; Cowel;* 3 *Bl.* 207. [EJECTMENT.]

QUARE IMPEDIT (wherefore he hinders). A writ which lay for him whose right of advowson was disturbed. [ADVOWSON.] If the disturbance consisted simply (as it generally does) in the bishop refusing to institute the clerk presented by the plaintiff, on grounds independent of any rival claim, the writ lay against the bishop alone. But if the refusal were based on the assertion of a rival claim, the proper course would be to bring the writ against the bishop, the rival patron, and his presentee. The writ of *quare impedit* commanded the defendants to permit the plaintiff to present a proper person to the vacant church, or to appear in court to show the reason why they hindered him.

A *quare impedit* differed from an *assize of darrein presentment* in that the latter was based on the fact that the *last presentation* to the living was made by the plaintiff or his ancestors, through whom he claimed by descent. But a *quare impedit* could always be brought where an *assize of darrein presentment* was available, and the latter had fallen into disuse when Blackstone wrote. *T. L.; Cowel;* 3 *Bl.* 244—250; 3 *Steph. Com.* 415—420, 608—613.

The writ of *quare impedit*, which survived the general abolition of real actions in 1833, was finally extinguished by sects. 26 and 27 of the C. L. Proc. Act, 1860, by which it was provided that in the cases where such a writ would lie, an action should be commenced by writ of summons issuing out of the Court of Common Pleas, in the same manner and form as the writ of summons in an ordinary action, there being indorsed upon such writ a notice that the plaintiff intends to claim in *quare impedit.* 3 *Steph. Com.* 609; *Kerr's Act. Law.* The practice in this respect is not altered under the Judicature Acts. *Stat.* 38 & 39 *Vict. c.* 77, 1*st Sched. App.* (*A*), *Pt. II. s.* 4.

QUARE INCUMBRAVIT (wherefore he has incumbered). On the suing out of a *quare impedit*, if the plaintiff suspected that the bishop would admit some other clerk, he might have a prohibitory writ, called a *ne admittas;* and if the bishop, after receiving the same, nevertheless admitted any person other than the presentee of the plaintiff, then the plaintiff, having obtained judgment in the *quare impedit*, was entitled to a special action against the bishop, called a *quare incumbravit*, to recover the presentation, and also satisfaction in damages for the injury done. *Cowel;* 3 *Bl.* 248.

Abolished by stat. 3 & 4 Will. 4, c. 27, s. 36. 3 *Steph. Com.* 609, *n.* [NE ADMITTAS; QUARE IMPEDIT.]

QUARE INTRUSIT MATRIMONIO NON SATISFACTO (wherefore he has intruded, the marriage not being satisfied). A writ that lay for a lord against his tenant, being his ward, who, after suitable marriage offered him, married another and entered nevertheless upon the land, without agreement first made with his lord and guardian. Abolished in 1660 by 12 Car. 2, c. 24. *Cowel.* [MARRIAGE; WARDSHIP.]

QUARE NON ADMISIT (wherefore he has not admitted him). A writ by which a patron might recover damages against a bishop for not admitting the plaintiff's clerk, in obedience to a writ *ad admittendum clericum*, ordering him to admit such clerk. *T. L.; Cowel;* 3 *Bl.* 250; 3 *Steph. Com.* 613, *n.* [ADMITTENDO CLERICO.]

QUARE NON PERMITTIT (wherefore he does not permit). A writ that lay for one who had a single turn of presentation to a living, against the proprietor of the advowson, for interfering with the plaintiff's right of presentation. *T. L.; Cowel.*

QUARE OBSTRUXIT (wherefore he has obstructed him). A writ which lay for one who, having a lawful right to pass through his neighbour's ground, could not enjoy it because the owner obstructed the enjoyment of his right. *T. L.; Cowel.*

QUARENTINE or **QUARENTAINE.** [QUARANTINE.]

QUARREL. A word anciently used for an action. *T. L.; Cowel.*

QUARTER DAYS are the four following days:—

I. In England.
1. The 25th of March, being the Feast of the Annunciation of the Blessed Virgin Mary, commonly called Lady Day. [LADY DAY.]
2. The 24th of June, being the Feast of St. John the Baptist, otherwise called Midsummer Day.
3. The 29th of September, being the Feast of St. Michael and All Angels, commonly called Michaelmas Day.
4. The 25th of December, being the Feast of the Nativity of Christ, commonly called Christmas Day.

II. In Scotland.
1. The 2nd of February, being the Feast of the Purification of the Blessed Virgin Mary, otherwise called Candlemas Day.
2. The 15th of May, called for this purpose Whitsunday. It must not, of course, be confounded with the ecclesiastical festival of that name. [WHITSUNDAY.]
3. The 1st of August, otherwise called Lammas Day. [LAMMAS DAY.]
4. The 11th of November, otherwise called St. Martin's Day, or Martinmas. [MARTINMAS. See also TERM, 3.]

QUARTER SESSIONS are the General Sessions of the peace held quarterly before the justices of the peace in counties, and before the recorder in boroughs. [BOROUGH SESSIONS; COUNTY SESSIONS; JUSTICE OF THE PEACE; RECORDER.]

In stat. 5 & 6 Vict. c. 38, s. 1, various offences are mentioned as not being within the jurisdiction of the quarter sessions. Among other offences so enumerated we may mention treason, murder, perjury, forgery, bigamy, abduction, and bribery. See *Oke's Mag. Syn.* 914, 915.

QUARTO DIE POST. The fourth day after the day named in the writ for appearance, within which it was formerly sufficient for a defendant to appear. 3 *Bl.* 277, 278; *Lush's Pr.* 1021—22. [DAYS OF GRACE, 1.]

QUASH (Lat. *Cassum facere*) signifies to make void or annul. *T. L.; Cowel;* 3 *Bl.* 303; 4 *Bl.* 320; *Lush's Pr.* 665. [CASSATION.] As when we say that an order of justices, or a conviction in an inferior court, is *quashed* by the judgment of a superior court.

QUASI-CONTRACT is an act or event from which, though not a consensual contract, an obligation arises *as if* from a contract (*quasi ex contractu*). Thus, for instance, an executor or administrator is bound to satisfy the liabilities of the deceased to the extent of his assets received, *as if* he had contracted to do so. The case of an heir, bound to make a conveyance to a purchaser under a contract of sale entered into by the deceased, is even a stronger illustration. For the obligation incumbent on the executor or administrator has been voluntarily undertaken, and is so far in the nature of a contract: but the heir has the obligation thrown upon him by an event wholly independent of his own will, namely, the death of the deceased intestate. [IMPLIED.]

QUASI ENTAIL is an estate *pur autre vie* granted to a man and the heirs of his body. 1 *Steph. Com.* 450; *Wms. R. P. ch.* 2. [PUR AUTER VIE.]

QUE EST EADEM. [QUE EST LE MESME.]

QUE EST LE MESME (Lat. *Quæ est eadem*, which is the same thing). Words formerly used in pleas of justification for trespass, to indicate that the thing justified was the same thing as that of which the plaintiff complained. *Cowel.*

QUE ESTATE (Lat. *Quem statum*) was an expression formerly used in pleading to avoid prolixity in setting out titles to land; as if B., claiming a lawful title to land, pleads a conveyance of the land to A., which estate (*quem statum*) B. hath, without setting out at length how the estate came from A. to B. *T. L.; Cowel.* Hence the expression came to signify an estate acquired otherwise than by descent. Such an estate enabled a man, at common law, to acquire by prescription such rights as were appendant or appurtenant to lands enjoyed by himself and those whose estate he had. 2 *Bl.* 264; 1 *Stephen's Comm.* 687. [PRESCRIPTION.]

QUEEN. 1. A queen regent, regnant, or sovereign, is one who holds the crown in her own right.

2. A queen consort is the wife of a reigning king.

3. A queen dowager is the widow of a deceased king. *Cowel;* 1 *Bl.* 219—225; 2 *Steph. Com.* 444—449.

QUEEN ANNE'S BOUNTY. A perpetual fund for the augmentation of poor livings, created by a charter of Queen Anne, out of the tenths and first fruits formerly payable by the beneficed clergy to the Pope, and, after the Reformation, to the English sovereigns. 1 *Bl.* 285; 2 *Steph. Com.* 535. [FIRST FRUITS.]

QUEEN CONSORT. [QUEEN, 2.]

QUEEN DOWAGER. [QUEEN, 3.]

QUEEN GOLD (Lat. *Aurum Reginæ*). [AURUM REGINÆ.]

QUEEN'S ADVOCATE. [ADVOCATE, QUEEN'S.]

QUEEN'S BENCH. [COURT OF QUEEN'S BENCH; QUEEN'S BENCH PRISON.]

QUEEN'S BENCH PRISON was formerly a prison in Southwark, for persons confined by order of the Court of Queen's Bench. By stat. 5 Vict. c. 22, passed in 1842, this prison was consolidated with the Fleet and Marshalsea prisons, under the name of the Queen's Prison. [FLEET PRISON.] By stat. 25 & 26 Vict. c. 104, passed in 1862, the Queen's Prison was abolished, and it was enacted that Whitecross Street Prison should for all purposes of law be deemed and regarded as the Queen's Prison. *Lush's Pr.* 749. Whitecross Street Prison has now been pulled down, and the prisoners removed to the City Prison in Holloway.

QUEEN'S CORONER AND ATTORNEY. An officer of the Court of Queen's Bench, usually called "The Master of the Crown Office," whose duty it is to file informations at the suit of a private subject by direction of the court. 4 *Bl.* 308, 309; 4 *Steph. Com.* 374, 378. [CROWN OFFICE; INFORMATION, 5.]

QUEEN'S COUNSEL is a name given to barristers and serjeants appointed by letters patent to be her Majesty's counsel learned in the law. Their selection and removal rests in practice with the Lord Chancellor. 3 *Bl.* 27; 3 *Steph. Com.* 273. A Queen's Counsel has various privileges. He is generally made a bencher of his Inn. [BENCHERS; INNS OF COURT.] He may not, except by licence from the Crown, take a brief against the Crown in any civil or criminal case; but such licence will generally be given on payment of the usual fee. A Queen's Counsel, in taking that rank, renounces the preparation of written pleadings, and other chamber practice.

QUEEN'S EVIDENCE. Evidence for the Crown. When we say that an accused person turns queen's evidence, we mean that he confesses his guilt, and proffers himself as a witness against his accomplices. His admission, however, in that capacity requires the sanction of the justices of gaol delivery; and, unless his statements be corroborated in some material part by unimpeachable evidence, the jury are usually advised by the judge to acquit the prisoner notwithstanding. 4 *Steph. Com.* 395. [APPROVER.]

QUEEN'S PRISON. [QUEEN'S BENCH PRISON.]

QUEEN'S PROCTOR is the proctor or solicitor representing the Crown in the Courts of Probate and Divorce. In petitions for dissolution of marriage, or for declarations of nullity of marriage, the Queen's Proctor may, under the direction of the Attorney-General, and by leave of the Court, intervene in the suit for the purpose of proving collusion between the parties. *Stat.* 23 & 24 *Vict. c.* 144, *s.* 7; *Stat.* 36 & 37 *Vict. c.* 31.

QUEEN'S REMEMBRANCER. [REMEMBRANCERS.]

QUEM REDDITUM REDDAT, or **QUEM REDDITUM REDDIT,** is described as a writ that lies for him to whom a rent-seck or rent-charge is granted, by fine levied in the king's court, against the tenant of the land that refuseth to attorn

QUEM REDDITUM REDDAT—*continued.*

to him, thereby to cause to attorn. That is to say, A., being entitled to the rent, conveyed the same to B. by "fine levied." [FINE, 1]; then B. became entitled to the rent, but C., the tenant, refused to pay any rent or acknowledge any liability to B. [ATTORN, 1.] The above writ accordingly issued to compel him to do so. Fines were abolished in 1833 by stat. 3 & 4 Will. 4, c. 74.

QUERELA. An action preferred in a court of justice. *Toml.* [DUPLEX QUERELA.]

QUERELA CORAM REGE ET CONSILIO DISCUTIENDA ET TERMINANDA. A writ whereby a plaintiff was called upon to specify and substantiate the wrongs, of which he complained, before the king and his council. *Reg. Orig.* 124.

QUERELA FRESCÆ FORTIÆ. A complaint of fresh force. [FRESH FORCE.]

QUEST. Inquest or inquiry. [INQUEST.]

QUESTION. This word, besides its ordinary signification, is sometimes used to indicate the rank or torture. 4 *Bl.* 325.

QUESTMAN. A churchwarden or sidesman.

QUESTUS. An acquisition; especially of land purchased or acquired, as opposed to land descending by hereditary right. *Cowel.*

QUESTUS EST NOBIS (he hath complained to us) was a writ of nuisance, which, by stat. 13 Edw. 1, c. 24, lay against a person to whom house or land occasioning a nuisance was alienated. Before that statute, the writ lay only against the person himself who first "levied" (or erected) the thing to the annoyance of his neighbour. *Cowel.*

QUI TAM ACTIONS are actions brought by a person, under a penal statute, to recover a penalty, partly for the king or the poor, or some other public use, and partly for himself; so called because it is brought by a person who, as well for our lord the king as for himself, sues in this behalf: "*Qui tam pro domino rege, &c., quam pro se ipso in hâc parte sequitur.*" 3 *Bl.* 161, 162; 4 *Bl.* 308; 3 *Steph. Com.* 436.

QUIA DOMINUS REMISIT CURIAM (because the lord hath put off his court). Words applied to a writ of right brought originally in the king's court instead of the court baron, because the lord held no court or had waived his right to try the same. 3 *Bl.* 195. [COURT BARON; WRIT OF RIGHT.] Abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

QUIA EMPTORES. The stat. 18 Edw. 1, c. 1, which was passed in 1290, to put a stop to the practice of subinfeudation. That statute provided that it should be lawful for every freeman to sell at his own pleasure his lands and tenements, or part thereof, so nevertheless that the feoffee (or purchaser) should hold the same lands or tenements of the same chief lord of the fee, and by the same services and customs, as his feoffee held them before. 2 *Bl.* 91, 116; 1 *Steph. Com.* 234, 235; *Wms. R. P.*

The corresponding statute for Scotland was stat. 2, c. 24, of Robert I. But whereas the English Act produced the full effect intended by the Legislature, so as to render the purchaser of a vassal's interest in lands himself the vassal of his vendor's superior, in Scotland no such effect was produced without a *charter of confirmation*, expressing the consent of the superior to the conveyance. *Bell.* [CONFIRMATION, 2.]

QUIA IMPROVIDE. A writ mentioned in Dyer, 33 b (18), sued out by a clerk of the Court of Chancery for the purpose of superseding a writ issued against him in the Court of Common Pleas. Such writ recited the defendant's appearance in court by attorney, and was therefore held to be a waiver of any privilege he might have had as a clerk of Chancery to be exempted from actions in the Common Pleas. *Dyer*, 33, *n.* 18; *Cowel.*

QUIA TIMET (because he fears). A *quia timet* bill was a bill filed in Chancery for guarding against a future injury of which a plaintiff was apprehensive; as by a person entitled to property in remainder, for the purpose of securing it against any accident which might befal it previously to the time when it should fall into possession; or by a person who feared that some instrument really void but apparently valid might hereafter be used against him, and which he wished to be cancelled. *Sm. Man. Eq.; Goldsmith's Eq.* [BILL, 2; FILING BILL IN EQUITY.] The jurisdiction to entertain questions of this kind, so far as it consists in the rectification, setting aside, or cancellation of deeds and other written instruments, is, by sect. 34 of the Judicature Act, 1873 (stat. 36 & 37 Vict. c. 66), assigned to the Chancery Division of the High Court. So far as it consists in the granting of a mandamus or injunction, it may, by sect. 25, sub-sect. 8, be exercised in any division.

QUID JURIS CLAMAT (what right he claims). A writ judicial issuing out

QUID JURIS CLAMAT—*continued.*

of the record of a fine, which lay for the grantee of a reversion or remainder to compel the particular tenant to attorn. *T. L.; Cowel.* For instance, if A., who had leased lands to B., "levied a fine" of the same to the use of C., the above writ would be available to C., the new landlord, to compel the tenant B. to attorn to him. [ATTORN, 1; FINE, 1; PARTICULAR TENANT. Compare QUEM REDDITUM REDDAT.]

QUID PRO QUO. A compensation, or the giving of one thing of value for another thing of like value. *Cowel; 2 Steph. Com.* 59.

QUIET ENJOYMENT is a phrase applied especially to the undisturbed enjoyment, by a purchaser of landed property, of the estate or interest so purchased. A general covenant, by a vendor or lessor, for quiet enjoyment by the purchaser or lessee, extends only to secure the covenantee against the acts of persons claiming under a *lawful* title, for the law will never adjudge that a lessor (or vendor) covenants against the wrongful acts of strangers, unless his covenant is express to that purpose. The construction, however, is different where an individual is named, for there the covenantor is presumed to know the person against whose acts he is content to covenant, and may therefore be reasonably expected to stipulate against any disturbance from him, whether by lawful title or otherwise. *Fawcett, L. & T.* 233.

QUIETANTIA. An acquittance.

QUIETUS. 1. Acquitted or discharged; a word used especially of the sheriffs and other accountants to the Exchequer, when they had given in their accounts. *Cowel.*

2. An acquittance or discharge.

QUIETUS REDDITUS. Quit rent. [QUIT RENT.]

QUINQUE PORTUS. The Cinque Ports. [CINQUE PORTS.]

QUINTO EXACTUS. The fifth and last call of a defendant sued for outlawry, when, if he appeared not, he was declared outlawed. *Cowel; 4 Bl.* 319. [EXIGENT; OUTLAWRY.]

QUINZIME. 1. A tax raised upon the fifteenth part of lands and goods. [FIFTEENTH.]

2. The fifteenth day after any church festival. *Cowel.*

QUIT CLAIM. A release or acquitting of a man of any action or claim which might be had against him. *T.L.; Cowel.*

QUIT RENT. Rent paid by the freeholders and copyholders of a manor in discharge or acquittance of other services. *Cowel; 2 Bl.* 42; *1 Steph. Com.* 676. [RENT.]

QUO ANIMO (with what intention). A phrase often used in criminal trials, where there is no question of certain overt acts having been committed by the accused, and the only question is with what intention (*quo animo*) they were done. As if a man have taken his neighbour's horse out of the stable, and the question arises whether he did so intending to steal the horse, or merely for a joke. [FURANDI ANIMUS.]

QUO JURE (by what right). A writ that lay for him in whose lands another claimed common of pasture time out of mind, calling on the iatter to show by what title he claimed. *T. L.; Cowel.* [COMMON, I.]

QUO MINUS. 1. A writ that lay for him who had a grant of housebote or haybote in another man's woods, to prevent the grantor making such waste that the grantee could not enjoy his grant. *T.L.; Cowel.* [HAYBOTE; HOUSEBOTE.]

2. The allegation formerly made in civil actions in the Exchequer, that the plaintiff was the king's lessee or debtor, and that the defendant had done him the injury complained of, *quo minus sufficiens existeret, &c.*, "by reason whereof he was the less able to pay the king his rent or debt." *T. L.; Cowel; 3 Bl.* 46, 286; *3 Steph. Com.* 339, *n.* (*q*). [COURT OF EXCHEQUER.]

QUO WARRANTO. 1. A writ that lay against him that usurped any franchise or liberty against the king; also against him that intruded himself as heir into any land. *T. L.; Cowel; 3 Bl.* 262, 263. This writ is now quite obsolete.

2. An information in the nature of a writ of *quo warranto* was originally a criminal information for the wrongful use of a franchise, but is now the usual method of trying the existence of the civil right, and is regarded practically as a civil proceeding. *1 Bl.* 485; *3 Bl.* 263, 264; *4 Bl.* 311, 441; *3 Steph. Com.* 30, 638—642. [INFORMATION, 3, 5.]

QUOAD. In respect of.

QUOAD HOC (in respect of this matter). A term used in law reports to signify, *as to this matter* the law is so. *Toml.*

QUOD CLERICI BENEFICIATI DE CANCELLARIA. An ancient writ to exempt a clerk of the Chancery, being a beneficed clergyman, from contribution towards the proctors of the clergy in Parliament. *Reg. Orig.* 261. [PROCTOR, 2.]

QUOD CLERICI NON ELIGANTUR IN OFFICIO BALLIVI. A writ that lay for a clerk who was apprehensive that, by reason of some land he had, he might be elected to be bailiff or such like officer. *Cowel.*

QUOD COMPUTET. A rule to compute damages, now abolished. *Lush's Pr.* 793. [COMPUTE, RULE TO.]

QUOD EI DEFORCEAT. A writ that lay for a tenant in tail, or for life or for other particular estate [PARTICULAR ESTATE], who had lost his possession through his default or non-appearance in an action, to recover the possession of the land. This writ was given by the statute of Westminster the Second, 13 Edw. 1, c. 4. *Cowel;* 3 *Bl.* 193. It was abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

QUOD PERMITTAT. 1. A writ that lay for the heir of him who was disseised of a common of pasture, against the heir of the disseisor. *Cowel.* According to Blackstone, the writ lay for any one entitled to common of pasture against any person, whether the owner of the land or a stranger, who disturbed the right. 3 *Bl.* 240.

2. See also next Title.

QUOD PERMITTAT PROSTERNERE. A writ in the nature of a writ of right, calling upon the defendant to permit the plaintiff to abate a nuisance. This writ was in the nature of a writ of right, and was liable to great delays. It was available to the alienee of the party first injured, and against the alienee of the party first injuring; and was the only writ available against the alienee, prior to the statute Westminster the Second, 18 Edw. 1, c. 24. It lay against the alienee only after request made to him to reform the nuisance. It was quite obsolete in Blackstone's time. 3 *Bl.* 221, 222. It was abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

QUOD PERSONA NEC PREBENDARII, &c. A writ that lay for spiritual persons that were distrained in their spiritual possessions for the payment of a *fifteenth* with the rest of the parish. *Cowel.* [FIFTEENTH.]

QUOD RECUPERET (that he recover). The old form of a judgment for a plaintiff.

QUORUM. 1. A word used in commissions of the peace, by which it is intended to indicate that some particular justices, or some or one of them, are always to be included in the business to be done, so that no business can be done without their presence; the words being "*quorum aliquem vestrum*, A. B. C. D., &c., *unum esse volumus.*" The particular justices so named are called justices of the *quorum.* Formerly it was the custom to appoint only a select number of such justices; but even in Blackstone's time it had become the custom to advance all of them to that dignity, except perhaps only some one inconsiderable person, for the sake of propriety. 1 *Bl.* 351, 352; 2 *Steph. Com.* 645.

2. The *minimum* number of persons necessarily present in order that business may be proceeded with, at any meeting for the despatch of business, in the Houses of Parliament, or elsewhere. *May's Parl. Pract.; Bell; Robson, Bkcy.*

QUORUM NOMINA. A writ which lay for the king's collectors and other accountants of the Crown (*i.e.*, persons liable to account to the Crown), for suing out their *quietus* at their own charge. *Toml.* [QUIETUS.]

QUOT. The proportion of moveable estate in Scotland of a deceased person, formerly due to the bishop in whose diocese he resided. This quot was a twentieth part of the moveables, without deducting the debts, and was accordingly paid to the injury of the creditors. This injustice was remedied by an Act of 1669; and in 1701 the quot was altogether prohibited. *Bell.*

QUOUSQUE. A word implying a temporary state of things. Thus the lord of a manor, after making due proclamation at three consecutive courts of the manor for a person to come in as heir or devisee of a deceased tenant, is entitled to seize the lands *quousque*, that is, until some person claims admittance. 1 *Steph. Com.* 637; *Wms. R. P., Part III. ch.* 2. So, a prohibition *quousque* is a prohibition which is to take effect until some act be performed, or event happen, or time be elapsed, according as is specified in the prohibition.

R. G. An abbreviation for *regulæ generales*, signifying general rules. [GENERAL RULES AND ORDERS.]

RACHET or **RACHETUM** (from the French *Racheter*, to redeem) is the same as *theft-bote*. *Cowel.* [THEFT-BOTE.]

RACK. Torture for the purpose of extorting confession from an accused person. It is also called *question*. *Cowel;* 4 *Bl.* 325, 326; 4 *Steph. Com.* 392, *n.*

RACK-RENT. Rent of the full annual value of the tenement on which it is charged, or as near to it as possible. 2 *Bl.* 43; 1 *Steph. Com.* 676.

RACK VINTAGE. Wines cleansed and drawn from the lees. *Cowel.*

RAD KNIGHTS. [REDMANS.]

RAGEMAN, corrupted apparently from the word *regimen*, signifying rule, is the name given to a statute passed in the fourth year of Edward I., whereby justices were assigned by the king and his council, to hear and determine all complaints of injuries done throughout the realm within the five years preceding. *Cowel; Toml.*

RAGMAN'S ROLL. An old record of the true value of the benefices in Scotland; so called from Ragimund, a papal legate in Scotland, who, calling before him all the beneficed clergymen in Scotland, caused them to give in on oath the true value of their benefices, according to which they were afterwards taxed by the Court of Rome. This roll was taken from the Scotch by Edward I., and redelivered to them by Edward III. *Cowel.*

RAILWAY ACTS. Besides the numerous special acts of parliament passed for particular railways, about fifty acts have been passed during the last half century applicable to railways generally. Of these we may notice the following:—

1. Stat. 1 & 2 Vict. c. 98, passed in 1838, to provide for the conveyance of the mails by railways.

2. Stat. 3 & 4 Vict. c. 97. This Act, which is called the Regulation of Railways Act, 1840, provides that no railway shall be opened without notice to the Board of Trade; also for returns of goods and passenger traffic to be delivered to the Board of Trade; for the punishment of railway servants guilty of drunkenness or other misconduct, &c.

3. Stat. 5 & 6 Vict. c. 55. This Act, which is called the Regulation of Railways Act, 1842, gives power to railway companies to enter upon adjoining lands to repair accidents; also to take land compulsorily where the Board of Trade shall think such taking of land necessary for giving security to the railway. Provision is also made for the conveyance of the military and police by the railway companies.

4. Stat. 5 & 6 Vict. c. 79, passed in 1842, for regulating the stamp duties in respect of passengers conveyed by hire.

5. Stat. 7 & 8 Vict. c. 75, passed in 1844, empowering the Treasury to purchase any future railway any time after the expiration of twenty-one years from its establishment, upon the terms and conditions therein mentioned. This Act also requires the railway companies to provide one cheap train each way daily.

6. Stat. 8 & 9 Vict. c. 16, is the Companies Clauses Consolidation Act, 1845. This Act has reference to the capital, &c. of companies, the transfer, transmission and forfeiture of shares, the meeting of companies, the appointment and qualification of directors, &c.

7. Stat. 8 & 9 Vict. c. 17, is a similar Act for Scotland.

8. Stat. 8 & 9 Vict. c. 18, being the Lands Clauses Consolidation Act for England and Ireland. [LANDS CLAUSES CONSOLIDATION ACTS.]

9. Stat. 8 & 9 Vict. c. 19, is a similar Act for Scotland.

10. Stat. 8 & 9 Vict. c. 20, is the Railways Clauses Consolidation Act, 1845, containing provisions usually inserted in acts of parliament authorizing the making of railways in England and Ireland. It has reference to the construction of railways, the working of mines under or near them, the use of the railways for goods and passenger traffic, with penalties on passengers practising frauds on railway companies, &c.

11. Stat. 8 & 9 Vict. c. 33 is a similar Act for Scotland.

We may briefly summarize the effect of the six Acts last mentioned as follows:—They are all Acts containing provisions intended for incorporation in future acts of parliament; none of them, therefore, can have any effect except by virtue of some subsequent act or acts of parliament. The first two (chapters 16 and 17) have reference to the constitution of companies to be incorporated by the legislature. The next two (chapters 18 and 19) have reference to the taking of lands for public undertakings, with or without the consent of the owners or occupiers, or parties having interest therein. The last two (chapters 20 and 33) have reference to the making and safe working of railways,

RAILWAY ACTS—*continued.*

and the use of the same for goods and passenger traffic. The last two are the only ones of the six *exclusively* applicable to railways. They are amended by stat. 26 & 27 Vict. c. 92, passed in 1863.

12. Stat. 9 & 10 Vict. c. 57, passed in 1846, for regulating the gauge of railways. That gauge is in general defined to be 4 ft. 8½ in. for Great Britain, and 5 ft. 3 in. for Ireland. It is provided, however, by sect. 4, that the gauge of existing railways is not to be altered.

13. Stat. 9 & 10 Vict. c. 105, passed the same year, for taking away the control of railways from the Board of Trade, and vesting it in a new department to be called the "Commissioners of Railways." This Act was repealed in 1851.

14. Stat. 13 & 14 Vict. c. xxxiii. is the Railway Clearing Act, 1850. This Act was passed for the regulation of the clearing-house system, and especially for regulating legal proceedings taken by and against the committee of the Clearing-house. [CLEARING-HOUSE.]

15. Stat. 14 & 15 Vict. c. 64, passed in 1851, repealing stat. 9 & 10 Vict. c. 105, and revesting the control of railways in the Board of Trade.

16. Stat. 17 & 18 Vict. c. 31, being the Railway and Canal Traffic Act, 1854. This Act makes it the duty of every railway and canal company to afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon the several railways and canals belonging to them, without delay or undue preference in favour of any particular person or company. By sect. 3, any party aggrieved by any contravention of the above provisions may apply by motion or summons to the superior courts for an injunction or interdict against such proceedings. Moreover, by sect. 7, the companies are to be liable for loss occasioned by the neglect or default of themselves or their servants in the forwarding of goods, notwithstanding any notice to the contrary; and no special contract shall bind any party delivering goods to any company, unless the same be signed by him. On the other hand, the companies are not to be liable beyond a certain limited amount for goods of a certain character defined by the Act, unless the value of the same be declared, and extra payment made.

17. Stat. 30 & 31 Vict. c. 126 and c. 127, passed in 1867. These Acts deal with the following matters:—(1) The protection of the rolling stock and plant of railway companies from execution (a provision at first temporary, but now made perpetual by stat. 38 & 39 Vict. c. 31); (2) Power to directors of a railway company unable to meet its engagements to prepare a scheme of arrangement with its creditors, and to submit the same to the Court of Chancery; (3) Loan capital and the issue of debenture stock; (4) Share capital and the audit of railway accounts; (5) The abandonment of railways.

Each of these Acts contains thirty-seven sections, and each section of each Act corresponds as to subject-matter with the numerically corresponding section of the other. The first Act applies to railways having their principal office in Scotland, and the second to railways having their principal office in England or Ireland.

18. Stat. 31 & 32 Vict. c. 119, is called the Regulation of Railways Act, 1868. This Act, among various other matters of which it treats, requires every railway company (except the Metropolitan Railway Company) to provide smoking carriages for each class of passengers, unless exempted by the Board of Trade; and, in the case of trains which travel more than twenty miles without stopping, such efficient means of communication between the passengers and the guard of the train as the Board of Trade may direct.

19. Stat. 36 & 37 Vict. c. 48. The subject-matter of this important Act is admirably expressed in its heading: "An Act for making better provision for carrying into effect the Railway and Canal Traffic Act, 1854, and for other purposes connected therewith." Hence it may properly be referred to as "The Railway and Canal Traffic Act, 1873." But by sect. 1 it is also provided that the Act may be cited as "The Regulation of Railways Act, 1873." [REGULATION OF RAILWAYS ACTS.] The object of this Act is to transfer a jurisdiction previously exercised under sect. 3 of the Railway and Canal Traffic Act, 1854 (*ante*, No. 16), by the superior courts in England, Scotland and Ireland, to certain Commissioners appointed under the Act, called Railway Commissioners. The Act is mainly taken up with defining the duties and powers of these Commissioners, and directing the method of their appointment.

RAILWAY AND CANAL TRAFFIC ACTS. [RAILWAY ACTS, 16, 19.]

RAILWAYS CLAUSES CONSOLIDATION ACTS. [RAILWAY ACTS, 10, 11.]

RAISING. This word imports the idea of calling or bringing anything into existence, or of inferring the existence of anything from the proper construction of a legal document. It is used in various ways.

1. *Fire-raising*, in Scotland, is the setting fire to any house or building.

2. *Raising an action*, in Scotland, is the institution of an action or suit.

3. *Raising a use.* When it is said that the law "raises a use," it is meant that the existence of a "use" is to be inferred by proper legal construction from the words of a written instrument.

4. *Raising a promise.* When it is said that the law "raises a promise" or "raises an assumpsit" upon any given transaction, it is meant that a promise, for breach of which an action may be brought, is legally involved in, or to be inferred from, the transaction in question.

5. *Raising money.* To raise money is to realize a sum of money, either by subscription or by loan.

6. *Raising portions.* When a landed estate is settled on an eldest son, it is generally burdened with the payment of specific sums of money in favour of his brothers and sisters. A direction to this effect is called a direction for "raising portions for younger children;" and for this purpose it is usual to demise or lease the estate to trustees for a term of years, upon trust to raise the required portions by a sale or mortgage of the same.

RAJ. A kingdom or principality (cf. Lat. *Regnum*). *Wilson's Gloss. Ind.* [RAJA.]

RAJA or **RAJAH.** A king or prince (cf. Lat. *Rex, Regis*); a title given by the native Indian Governments, and in later times by the British Government, to Hindus of rank; it is also assumed by petty chiefs, and not uncommonly by zamindars. *Wilson's Gloss. Ind.* [ZAMINDAR.]

RAJAPUTRAS or **RAJPOOT.** The son of a Rajah (cf. Lat. *Regis puer*). [RAJA.]

RAN. A Saxon word, signifying open or public theft. *T. L.; Cowel.*

RANGER. A sworn officer of the forest, whose duties were to walk daily through his charge; to see, hear, and inquire of trespasses and trespassers within his jurisdiction; to drive beasts of the forest out of the disafforested into the forested lands, and to present all trespasses of the forest at the next court holden for the forest. *T. L.; Cowel.* [FOREST; FOREST COURTS.]

RANK MODUS. Every *modus* of tithes is presumably based on a composition on fairly equitable terms, by which the *modus* is substituted for the payment of tithe. [MODUS DECIMANDI; TITHES.] If, then, a *modus* be so large that it, beyond dispute, exceeds the value of the tithes in the time of Richard I. (the date of legal memory), the *modus* is called a *rank modus*, and will not be accepted as a legal *modus*. For, as it would be destroyed by any direct evidence proving its non-existence at any time since that era, so also it is destroyed by carrying in itself this internal evidence of a much later origin. 2 *Bl.* 30, 31; 2 *Steph. Com.* 729.

RANKING OF CREDITORS is the Scotch term for the arrangement of the property of a debtor according to the claims of the creditors, in consequence of the nature of their respective securities. *Bell.* The corresponding process in England is the marshalling of securities in a suit or action for redemption or foreclosure. *Paterson.* [FORECLOSURE; REDEMPTION.]

RANSOM. 1. The sum paid for the redeeming of one taken prisoner. *T. L.; Cowel;* 2 *Bl.* 402. 2. A fine in the king's court, or the redemption of corporal punishment due by law for any offence. *T. L.; Cowel;* 4 *Bl.* 380.

RANSOM-BILL. A security given by the master of a captured vessel to the captor for the ransom of the vessel, or any goods therein. By stat. 22 Geo. 3, c. 25, passed in 1782, it is declared unlawful for any of his Majesty's subjects to enter into any contract for ransoming any ship or vessel, or any merchandize or goods on board the same, which shall be captured by the subjects of any State at war with his Majesty, or by any persons committing hostilities against his Majesty's subjects. Every person offending against the Act is to forfeit and lose 500*l.*, to be recovered, with full costs of suit, by any person or persons who shall sue for the same.

RAPE. 1. Part of a county, being in a manner the same with a hundred. The county of Sussex is divided into six rapes: those of Chichester, Arundel, Bramber, Lewes, Pevensey, and Hastings; each of which, besides their hundreds, hath a castle, river, and forest belonging to it. *T. L.; Cowel;* 1 *Bl.* 117. They seem to have been military governments in the time of the Conqueror. 1 *Steph. Com.* 127, *n.*

RAPE—*continued.*

2. Trespass committed in the forest by violence. This is called *rape of the forest. Cowel.*

3. The ravishment of a woman without her consent. *Stat. Westm.* 2 (13 *Edw.* 1, *st.* 1), *c.* 34; *T. L.; Cowel;* 4 *Bl.* 210—215. Under stat. 24 & 25 Vict. c. 100, s. 48, this offence is punishable with penal servitude for life. 4 *Steph. Com.* 85—91; *Oke's Mag. Syn.* 1086—7; *Cox & Saunders' Cr. Law,* 218.

RAPE OF THE FOREST. [RAPE, 2.]

RAPE REEVE. An officer of the rape, acting in subordination to the shire-reeve or sheriff. 1 *Bl.* 117; 1 *Steph. Com.* 127. [RAPE, 1; SHERIFF.]

RAPINE. Robbery, *i.e.*, the unlawful taking of property from the owner by violence, or putting him in fear. *Cowel;* 4 *Bl.* 241; 4 *Steph. Com.* 125. [ROBBERY.]

RAPTU HÆREDIS. A writ which lay for the taking away of an heir holding in socage. *Cowel.* [SOCAGE.]

RASTALL. A judge of the Court of Common Pleas in the reign of Queen Mary. *Cowel.*

William Rastall was born in London in 1508. He was grandson of Sir Thomas More, the Chancellor, and son of John Rastall, who was a printer in London. He was admitted a student of Lincoln's Inn, on September 12, 1532, and was appointed reader in 1547, within a few months after Edward VI. came to the Crown. Being a zealous Catholic, and feeling that one of his religion was not then safe in England, he retired to Louvain, where he remained during Edward's life; but, on the accession of Queen Mary, he returned to England, and resumed his professional practice. In October, 1555, he was raised to the degree of serjeant-at-law; and on October 27, 1558, was made a judge of the Court of Queen's Bench. On Queen Mary's death, in November, 1558, all the judges were re-appointed by Elizabeth, and three months afterwards Mr. Justice Rastall was appointed one of the justices of assize in Durham. He sat on the Bench until about the end of the year 1562, and then he retired to Louvain, where he died on August 27, 1565, and was buried there in the church of St. Peter. *Foss' Judges of England.*

He was the original author of *Les Termes de la Ley,* a work from which we have made frequent extracts in these columns.

RASURE. An erasure or obliteration in a deed or other instrument.

RATE. The generic name for local taxes. The principal of these are the *county rate,* the *borough rate,* and the *poor rate.*

1. The *county rate* is levied by the justices assembled at general or quarter sessions, who are authorized and empowered by law to assess and tax every parish, township and other place, whether parochial or extra-parochial, within the respective limits of their commissions, according to the annual value of the property, messuages, lands, tenements, and hereditaments rateable to the relief of the poor therein. All business at sessions relating to the county rate must be transacted publicly, pursuant to public notice, to be given in two newspapers generally circulating in the county, at least two weeks before the time of holding the sessions. Such notice must specify the day and hour at which the business relating to the assessment, application, or management of the county stock or rate will commence at such sessions.

When the rate is made, a printed list of the parishes and places assessed to the rate, and the amount of the rateable value upon which each parish and place shall have been respectively assessed, is to be sent to the overseers of the poor, constables, or other persons charged with the collection of the rate, in every parish and place within the county; and a precept, signed by the clerk of the peace, is to be sent to the guardians of the several parishes and unions within the county, requiring them to pay or cause to be paid out of the moneys received by the treasurer of their parish or union the sum charged upon such parish, or upon the several parishes, townships or places comprised in such union, into the hands of the treasurer of the county.

2. A *borough rate* is levied by the town council: and the town council may direct the churchwardens and overseers of each parish or place, within which the rate may be levied, to pay the same out of the poor rate, or to collect a pound rate for the purpose from the occupiers and possessors of rateable property within such parish or place. *Archbold's Justice of the Peace; Oke's Mag. Syn.* 1227, 1228.

3. The *poor rate* is levied by the churchwardens and overseers within each parish. [OVERSEERS.]

RATE-TITHE. Tithe paid *pro ratâ*, according to the custom of the place, for sheep or other cattle kept in a parish for less time than a year. *T. L.; Cowel.*

RATIHABITION. Ratification. The general maxim applicable to ratification is, *Omnis ratihabitio retrotrahitur et mandato priori æquiparatur* ("every ratification relates back and is held equivalent to a prior mandate"). Thus, where an act is done by A., professing to act for B., but without his authority, B.'s subsequent ratification of the act will render him civilly liable as if he has originally sanctioned it. See *Broom's Legal Maxims, 5th ed. pp.* 867—877.

RATIO DECIDENDI. The ground of a decision; a phrase often used in opposition to *obiter dictum.* [OBITER DICTUM.]

RATIONABILE ESTOVERIUM. Reasonable estovers or alimony. [ESTOVERS.]

RATIONABILIBUS DIVISIS. A writ that lay where two lords, in divers towns, had seigniories joining together, for the rectification of their boundaries. *T. L.; Cowel.*

RATIONABILI PARTE. [DE RATIONABILI PARTE.]

RATIONES. Accounts.

RAVISHMENT DE GARD. A writ that lay for a guardian by knight's service, or in socage, against him that took from him the body of his ward. *T. L.; Cowel; 3 Bl.* 141. [RAPTU HÆREDIS.]

RE. In the matter of. [IN RE.]

RE. FA. LO. [RECORDARI FACIAS LOQUELAM.]

READER. 1. The chaplain of the Temple. 2. A lecturer in law in the Inns of Court.

READING IN is a phrase used to denote the reading of the Thirty-nine Articles of Religion, and repeating the Declaration of Assent prescribed by stat. 28 & 29 Vict. c. 122, which is required of every incumbent on the first Lord's Day on which he officiates in the church of his benefice, or such other Lord's Day as the ordinary shall appoint and allow. 2 *Steph. Com.* 687.

RE-AFFORESTED is where a forest hath been disafforested, and again made forest, as the Forest of Dean, by stat. 20 Car. 2, c. 3. *Cowel.*

REAL, besides its ordinary meaning, has, in law, two special meanings:—

First, as being applicable to a thing in contradistinction to a person:

Secondly as applicable to land, and especially freehold interests therein, as opposed to other rights and interests. [See the following Titles.]

REAL AND PERSONAL PROPERTY. By *real property*, or *real estate*, we understand such interests in land as, on the death of their owner intestate, descend to his heir-at-law; or, if the land be copyhold or customary freehold, to the heir or heirs pointed out by the custom. By *personal property*, or *personal estate*, we understand such property as, on the owner's death, devolves on his executor or administrator, to be distributed (in so far as the owner has not made any disposition thereof by will) among his next of kin according to the Statutes of Distributions.

The origin of the names *real property* and *personal property* is explained as follows by Mr. Joshua Williams in the introduction to his treatise on the Law of Real Property:—Land of which the owner was deprived could always be restored, but goods could not. As to the one, the *real* land could be recovered; but, as to the other, proceedings must be had against the *person* who had taken them away. The remedies for the recovery of land were accordingly in old times called *real* actions, and those for the loss of goods were called *personal* actions.

Real property is not, however, precisely synonymous with property in land, nor is personal property synonymous with moveable property. Thus, a title of honour, though annexed to the person of its owner, is real property, because in ancient times such titles were annexed to the ownership of various lands. On the other hand, shares in canals and railways are in general made personal property by the different acts of parliament under the authority of which they have originated. And a lease for years is personal property, because, in ancient times, an ejected lessee could not recover his lease by real action: but he could bring a personal action for damages against his landlord, who was bound to warrant him possession. [ACTIONS REAL AND PERSONAL; CHATTEL INTEREST IN LAND; EJECTIONE FIRMÆ; EJECTMENT.]

REAL REPRESENTATIVE. The representative (whether heir or devisee) of a deceased person in respect of his real property. 2 *Steph. Com.* 198.

REALTY. Real estate; that is, freehold interests in land; or, in a larger sense (so as to include chattels real), things substantial and immoveable, and the rights and profits annexed to or issuing out of these. 2 *Bl.* 16; 1 *Steph. Com.* 167.

REASONABLE AND PROBABLE CAUSE is a phrase often used in connection with the usual ground of defence to an action for false imprisonment, that the defendant had reasonable and probable cause for arresting the plaintiff. The question of reasonable and probable cause is, in England, a question for the judge, but in Scotland for the jury. *Lister* v. *Perryman*, L. R., 4 Eng. & Ir. App. 521; 39 L. J., Ex. 177; 23 L. T., N. S. 360; 19 W. R. 9.

RE-ASSURANCE POLICY is a contract whereby an insurer seeks to relieve himself from a risk which he may have incautiously undertaken, by throwing it upon some other underwriter. Re-assurance was, except in certain specified cases, forbidden by stat. 19 Geo. 2, c. 37, s. 4, but this Act was repealed in 1867, by stat. 30 & 31 Vict. c. 23. 2 *Bl.* 460; 2 *Steph. Com.* 130.

RE-ATTACHMENT. A second attachment of him that was formerly attached and dismissed the court without day, as by the not coming of the justices, or some such casualty. *Cowel.* [EAT INDE SINE DIE.]

REBELLION signifies:—1. A second resistance of persons who have been overcome in battle. *Cowel.* 2. The taking up of arms traitorously against the king. *Cowel.* 3. The wilful breach of any law. *Cowel.* 4. Disobedience to a writ of attachment, issued under the old practice of the Court of Chancery. Where a defendant was summoned, upon his allegiance, personally to appear and answer, and he neglected to do so, a *commission of rebellion* was awarded against him, for not obeying the king's proclamation according to his allegiance. 3 *Bl.* 444. 5. Disobedience to "letters of horning" in Scotland. *Bell.* [LETTERS OF HORNING.]

REBELLIOUS ASSEMBLY. A gathering together of twelve persons or more, going about of their own authority to change any laws or statutes of the realm; or to destroy any park or ground enclosed, or the banks of any fish-pond, pool, or conduit, or to destroy any deer, or burn stacks of corn, or to abate rents, or prices of victuals, &c. *Cowel.*

REBUTTER. 1. A plea to an action founded on a deed of grant or warranty executed by the plaintiff in the action. *T. L.; Cowel.*

2. The pleading by the defendant in answer to the plaintiff's surrejoinder. The rebutter is thus the sixth stage of pleading in the action, and the third pleading by the defendant. 3 *Bl.* 310; 3 *Steph. Com.* 507; *Steph. on Pleading; Kerr's Act. Law.* [REJOINDER.]

REBUTTING EVIDENCE is evidence adduced to *rebut* a presumption of fact or law, that is, to avoid its effect. But the word is also used in a larger sense to include any evidence adduced to destroy the effect of prior evidence, not only in explaining it away while admitting its truth, but also by direct denial, or by an attack upon the character of the witness who has given it. 3 *Steph. Com.* 539.

RECALL. The Scotch term for reversing a judgment. *Paterson.*

RECAPTION signifies:—1. A second distress of one formerly distrained for the same cause. 2. A writ that lay for the party thus distrained twice over for the same thing. *T. L.; Cowel;* 3 *Bl.* 151; 3 *Steph. Com.* 617. 3. A reprisal taken by one man against another, who hath deprived him of his property, or wrongfully detained his wife, child, or servant. 3 *Bl.* 4; 3 *Steph. Com.* 242.

RECEIPT. 1. That branch of the Exchequer in which the royal revenue is managed. 2 *Steph. Com.* 528; 3 *Steph. Com.* 339. [COURT OF EXCHEQUER.]

2. A written acknowledgment of the payment of money.

RECEIVER. 1. One who receives stolen goods, knowing them to be stolen. *Cowel;* see also 4 *Steph. Com.* 136.

2. An officer appointed by the Court of Chancery to receive the rents and profits of a trust or mortgaged estate, and to account for the same to the Court. 1 *Steph. Com.* 308, *n.; Hunter's Eq.; Chute's Eq. ch.* 8; *Kerr on Receivers.* [See also the following Titles.]

RECEIVERS AND TRIERS OF PETITIONS. Officers appointed to examine petitions presented to the Parliament. The appointment of these officers at the opening of every Parliament has been continued

RECEIVERS, etc.—*continued.*

by the House of Lords without interruption; but their functions have now long since given way to the immediate authority of Parliament at large. *May's Parl. Pract. ch.* 19.

RECEIVERS OF WRECK. Officers appointed by the Treasury in different districts to summon as many men as may be necessary, to demand help from any ship near at hand, or to press into their service any waggons, carts, or horses, for the purpose of preserving or assisting any stranded or distressed vessel, or her cargo, or for the saving of human life. 2 *Steph. Com.* 544. [WRECK.]

RECITAL. That part of a deed which recites the deeds, arguments, and other matters of fact, which may be necessary to explain the reasons upon which it is founded. 2 *Bl.* 298; 1 *Steph. Com.* 486; *Wms. R. P., Pt. I. ch.* 9.

Recitals are not essential to the validity of a deed, and are often dispensed with.

RECLAIMED ANIMALS. Wild animals made tame by art, industry and education. 2 *Bl.* 391, 393; 2 *Steph. Com.* 5, 6. [FERÆ NATURÆ.]

RECLAIMING. Appealing. The reclaiming days in Scotland are the days allowed to a party, dissatisfied with the judgment of the Lord Ordinary, to appeal therefrom to the Inner House; and the petition of appeal is called the *reclaiming note.* The note concludes with a short prayer, craving the alteration of the judgment reclaimed against. *Bell; Shand.* [LORD ORDINARY.]

RECLUSE. One that, by reason of his order in religion, is shut up, and may not stir out of his house or cloister. *T. L.; Cowel.*

RECOGNISANCE. [RECOGNIZANCE.]

RECOGNITORS. A word formerly used of a jury empannelled upon an assize or real action. *Cowel.* [ASSIZE, WRIT OF.]

RECOGNIZANCE. 1. An obligation of record, which a man enters into before some court of record, or magistrate duly authorized, binding himself under a penalty to do some particular act; as to appear at the assizes, to keep the peace, to pay a debt, or the like. *T. L.; Cowel;* 2 *Bl.* 341; 4 *Bl.* 252, 253; 4 *Steph. Com.* 290—297.

2. The word was also formerly used for the verdict of twelve men impannelled upon an assize or real action.

RECOGNIZEE. He to whom another is bound in a recognizance. *Cowel;* 2 *Bl.* 341.

RECOGNIZOR. A person bound in a recognizance. 2 *Bl.* 341.

RE-COMPENSATION, in Scotland, is where a set-off has been pleaded by a defendant, and the plaintiff alleges on his part a set-off against the defendant's set-off. *Bell; Paterson.*

RECORD. An authentic testimony in writing, contained in rolls of parchment, and preserved in a court of record. *T. L.; Cowel;* 2 *Bl.* 344; 1 *Steph. Com.* 615. [COURT OF RECORD.]

RECORD AND WRIT CLERKS were four officers of the Court of Chancery whose duty it was to file bills brought to them for that purpose. Business was distributed among them according to the initial letter of the surname of the first plaintiff in a suit. *Hunt. Eq.* These officers are now transferred to the High Court of Justice under sect. 77 of the Judicature Act, 1873.

RECORD, CONVEYANCES BY, are conveyances evidenced by the authority of a court of record. [COURT OF RECORD.] The principal conveyances by matter of record, are conveyances by private act of parliament and royal grants. The now abolished assurances by fine and recovery were also by matter of record. 2 *Bl.* 344; 1 *Steph. Com.* 615.

RECORD, COURT OF. [COURT OF RECORD.]

RECORD, DEBT OF. A sum of money which appears to be due by the evidence of a court of record. 2 *Bl.* 465; 2 *Steph. Com.* 143.

RECORD, TRIAL BY, was where some matter of record was alleged by one party, which the opposite party denied; then the party pleading the record had a day given him to bring in the record, which if he failed to do, judgment was given for his antagonist. 3 *Bl.* 330, 331; 3 *Steph. Com.* 513, *n.*

RECORDARI FACIAS LOQUELAM (that you cause the plaint to be recorded) was an old writ directed to the sheriff to make a record of the proceedings of a cause depending in an inferior court, and to remove the same to the King's Bench or Common Pleas. *T. L.; Cowel;* 3 *Bl.* 34, 37, 195.

RECORDER. The principal legal officer of a city or borough. The Recorder of

RECORDER—*continued.*

London is appointed by the Lord Mayor and aldermen. He is judge of the Lord Mayor's Court, and one of the commissioners of the Central Criminal Court. In other cities and boroughs the Recorder (where there is one) is appointed by the Crown, under sect. 103 of the Municipal Corporations Act (stat. 5 & 6 Will. 4, c. 76). He is the judge of the Court of Quarter Sessions, and of the Borough Court of Record. *Cowel;* 3 *Steph. Com.* 37; 4 *Steph. Com.* 316.

RECOUPE. To discount, set-off or compensate. *Cowel.*

RECOVEREE. A person from whom lands are recovered; especially the tenant to the *præcipe* in a common recovery. [RECOVERY.]

RECOVEROR. A person who recovers lands; especially the demandant in a common recovery. 1 *Steph. Com.* 569. [RECOVERY.]

RECOVERY is either a true or a feigned recovery.

1. A true recovery is an actual or real recovery of a thing, or its value thereof, by judgment.

2. A feigned recovery, otherwise called a *common recovery*, was a proceeding formerly resorted to by tenants in tail for the purpose of barring their entails, and all remainders and reversions consequent thereon, and making a conveyance in fee simple of the lands held in tail. [ESTATE.] The common recovery was a supposed real action carried on through every stage of the proceeding, and was as follows:—

Let us suppose Daniel Edwards, tenant in tail in possession of land, to be desirous of suffering a common recovery for the purpose of conveying the land to Francis Golding in fee simple. Golding then sued out a writ against him called a *præcipe quod reddat* (command that he restore), alleging that Edwards had no legal title to the land. The tenant Golding then appeared, and called on one Jacob Morland, who was supposed to have warranted the title to the tenant; and thereupon the tenant prayed that Jacob Morland might be called in to defend the title which he had so warranted. This was called *vouching to warranty*, and Morland was called the *vouchee*. Morland appeared and defended the title, whereupon Golding desired leave of the Court to *imparl* or confer with the vouchee in private, which was allowed him; but the vouchee disappeared, and made default, whereupon judgment was given for the demandant Golding, and the tenant Edwards had judgment to recover from Jacob Morland lands of equal value in recompense for the land warranted by him, and lost by his default; which was called the recompense or recovery in value. But this recompense was only nominal, as Jacob Morland was a person having no land of his own, being usually the crier of the Court. The land was then, by judgment of law, vested in the recoveror, Golding, in fee simple.

In later times it was usual to have a recovery with *double voucher*, by first conveying an estate of freehold to any indifferent person against whom the *præcipe* was brought (which was called making a tenant to the *præcipe*); and then the tenant in *præcipe* vouched the tenant in tail, who vouched over the common vouchee.

In reference to this fiction, many of our readers will doubtless be reminded of the passage in Hamlet, Act V. sc. 1, "This fellow might in his time be a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries."

This cumbrous fiction was abolished in 1833 by stat. 3 & 4 Will. 4, c. 74, called "An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance," by which a tenant in tail is now, in all cases, empowered to convey lands in fee simple by deed, enrolled within six months in the Court of Chancery. 2 *Bl.* 357—361; 1 *Steph. Com.* 568—576; *Wms. R. P., Pt. I. ch.* 2.

RECREANT. Cowardly, faint-hearted. *Cowel.* A champion in wager of battle was said to prove recreant when he yielded to his adversary by pronouncing the word *craven.* 3 *Bl.* 338—340; 4 *Bl.* 348; 4 *Steph. Comm.* 413. [WAGER OF BATTEL.]

RECTA PRISA REGIS. The king's right to prisage of wines. *Toml.* [PRISAGE.]

RECTATUS. Suspected or arraigned (*ad rectum vocatus*). *Cowel.*

RECTO. Writ of right. [WRIT OF RIGHT. See also the following Titles, and references thereunder.]

RECTO DE ADVOCATIONE ECCLESIÆ (writ of right of advowson) was a writ of right which lay for a man who, having a right of advowson, had allowed a stranger to usurp the presentation, with-

RECTO DE ADVOCATIONE, etc.—*contd.*
out bringing an action of *quare impedit* or *darrein presentment* within six months. *Cowel.* Abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36. [ASSIZE OF DARREIN PRESENTMENT; QUARE IMPEDIT.]

RECTO DE DOTE. [DOTE.]

RECTO DE DOTE UNDE NIHIL HABET. [DOTE UNDE NIHIL HABET.]

RECTO DE RATIONABILI PARTE. [DE RATIONABILI PARTE.]

RECTO QUANDO DOMINUS REMISIT CURIAM. [QUIA DOMINUS REMISIT CURIAM.]

RECTO SUR DISCLAIMER. A writ that lay where a tenant disclaimed to hold of his lord; that is to say, denied the title of his lord as lord to the land held by him (the tenant); then the lord had this writ; and if he proved that the land was holden of him, he recovered back the land from the tenant for ever. *Cowel;* 3 *Bl.* 233. Abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36. [DISCLAIMER, 4.]

RECTOR. 1. He that hath full possession of the rights of a parochial church. As opposed to a *vicar*, a rector is an incumbent of an unappropriated church. A rector (or parson) has for the most part the whole right to all the ecclesiastical dues in his parish: whereas, in theory of law, a vicar has an appropriator over him, entitled to the best part of the profits, to whom the vicar is, as it were, a perpetual curate, with a standing salary. *Cowel;* 1 *Bl.* 384—386; 2 *Steph. Com.* 677—683. Where the appropriator is a layman, he is called lay impropriator or lay rector. [APPROPRIATION, 1; IMPROPRIATION; VICAR.] 2. In some of the colleges in Oxford, the head is called by the title of rector. [See also the following Titles.]

RECTOR SINECURE. A rector without cure of souls; an anomaly sometimes arising in former times from the appointments of vicars to perform rectors' duties. The stat. 3 & 4 Vict. c. 113, passed in 1840, provided for the abolition of all such rectories. 1 *Bl.* 386; 2 *Steph. Com.* 683. [SINECURE.]

RECTORIAL TITHES are those tithes which, in a benefice unappropriated, are paid to the rector, and, in a benefice appropriated, to the appropriator. 1 *Bl.* 388; 2 *Steph. Com.* 683. [APPROPRIATION, 1; VICAR.]

RECTORY. 1. A parish church, with its rights, glebes, tithes, and other profits. *Cowel.*
2. The rector's mansion or parsonage-house. *Toml.*

RECTUS IN CURIA. Right in court; said of a man who, having been outlawed, had obtained a reversal of the outlawry, so as to be again able to participate in the benefit of the law. *Cowel.* [OUTLAWRY.]

RECUSANTS. Those who separate from the church established by law. *T. L.*

RECUSATIO JUDICIS, by the civil and canon law, was an objection to a judge on suspicion of partiality, or for other good cause. 3 *Bl.* 361.

RED BOOK OF THE EXCHEQUER. An ancient record, being a manuscript volume of several miscellaneous treatises, kept in an office in the Exchequer. It contains some things (as the number of the hides of lands in many of our counties) relating to the times before the Conquest. *Toml.*

REDDENDO SINGULA SINGULIS. A phrase indicating that different words in one part of a deed or other instrument are to be applied respectively to their appropriate objects in another part.

REDDENDUM. That clause in a lease whereby rent is reserved to the lessor. *Cowel;* 2 *Bl.* 299; 1 *Steph. Com.* 487. It usually specifies the periods at which the rent is to be paid or rendered. No special form of words is essential. *Fawcett, L. & T.* 82, 83.

REDDIDIT SE. He hath rendered himself; words used of a person who had surrendered himself in discharge of bail. *Toml.*

REDDITION. A surrendering or restoring; also a judicial acknowledgment that the thing in demand belongs to the demandant, and not to the person so surrendering. *Toml.*

REDDITUS. Rent. [REDITUS; RENT.]

RE-DEMISE signifies a re-granting of lands demised or leased.
The old way of granting a rent-charge was by *demise* and *re-demise.* That is, A. demised land to B., and B. re-demised it to A., reserving the sum agreed upon by way of rent. *Toml.*

REDEMPTION. 1. A ransom.
2. Especially, the buying back a mortgaged estate by payment of the

REDEMPTION—*continued.*

sum due on the mortgage. [EQUITY OF REDEMPTION.]

3. Redemption of land tax; which is the payment by the landowner of such a lump sum as shall exempt his land from the land tax. 2 *Steph. Com.* 559. [LAND TAX.]

REDISSEISIN. A disseisin made by him that once before was found and adjudged to have disseised the same man of his lands and tenements. For this there lay a special writ of redisseisin; and if the demandant recovered therein the redisseisor was liable to fine and imprisonment, and to pay double damages to the party aggrieved. *T. L.; Cowel;* 3 *Bl.* 188. [DISSEISIN.]

REDITUS. Rent. [See the following Titles.]

REDITUS ALBI. Quit rents paid in silver. [ALBA FIRMA; QUIT RENT.]

REDITUS ASSISUS. Rents of assize. [ASSIZE, RENTS OF; RENT, 4.]

REDITUS CAPITALES. Chief rents. [CHIEF RENTS; RENT, 4.]

REDITUS NIGRI. Quit rents paid in grain or base money. [ALBA FIRMA; BLACK MAIL; QUIT RENT.]

REDITUS QUIETI. Quit rents. [QUIT RENT.]

REDITUS SICCUS. A rent seck or dry rent; that is to say, a rent for which the owners had no power to distrain. 2 *Bl.* 42; 1 *Steph. Com.* 675.

REDMANS or **RADMANS**, possibly the same with *radknights*, who, by the tenure or custom of their lands, were to ride with or for the lord of their manor about his business or affairs. *Cowel.*

REDUBBORS. Those who buy stolen cloth, knowing it to be such, and change it into some other form or colour, so that it may not be known. *Cowel.*

REDUCTION, in the Scotch law, is a rescissory action, by which deeds may be declared illegal and void. This action has a "certification" [CERTIFICATION, 2], by which a deed called for and not produced is declared incapable of receiving effect until it be produced. But as this keeps the party in a state of uncertainty, liable to have his peace disturbed by the production of the deed, the conclusions of the action of improbation have been joined with the action of reduction. The action of improbation is founded on an allegation of forgery; and the certification thereof has the effect of rendering the deed called for, and not produced, for ever null and void. *Bell.* [ACTIONS RESCISSORY; see also the following Titles.]

REDUCTION EX CAPITE LECTI. The challenge of any deed or disposition affecting heritage or land in Scotland, which might formerly be made by the heir, if the granter or testator, at the time of making the disposition, was on his deathbed. This presumption of "deathbed" might be rebutted by showing that he lived sixty days afterwards, or subsequently went to kirk or market unsupported. The doctrine of *reduction ex capite lecti* is now entirely abolished by stat. 34 & 35 Vict. c. 81, passed in 1871.

REDUCTION IMPROBATION. A species of rescissory action in Scotland, whereby a person, who may be injuriously affected by a writing, demands that it be produced in Court, in order to have it set aside or its effect ascertained. This action proceeds on the fictitious allegation that the deed is false and forged, or else the defendant would produce it. On this ground it was formerly necessary that the Lord Advocate should concur in it; but that necessity is abolished by stat. 31 & 32 Vict. c. 100, s. 17, passed in 1868.

REDUCTION INTO POSSESSION. The turning of a *chose in action* into a *chose in possession;* as when a man takes money out of a bank at which he has a balance, or procures the payment of a debt due. But the phrase is used especially with reference to a husband taking lawful possession of his wife's *choses in action*, as he thereupon makes them his own property to all intents and purposes, so that if he dies they go to his representatives; whereas the wife's *choses in action*, not reduced into possession, come back to her on her husband's death. *Chute's Eq. ch.* 4. [CHOSE.]

REDUNDANCY. Matter introduced into the pleadings of an action which is foreign to the scope of the action.

RE-ENTRY. The resuming or retaking of possession lately had. *Cowel.*

A *proviso for re-entry* is a clause in a deed of grant or demise providing that the grantor or lessor may re-enter on breach of condition by the grantee or lessee. A proviso for re-entry will be construed according to the letter, unless a decisive reason is shown for departing from it. Thus, a proviso in a lease for re-entry for breach of covenants "hereinafter contained" was held not to entitle

RE-ENTRY—*continued.*

the lessor to re-enter for breach of a covenant placed *before* the proviso, although there were no covenants by the lessee after the proviso. See *Fawcett, L. & T.* 88—92.

REEVE. A termination signifying an executive officer. 1 *Bl.* 117; 1 *Steph. Com.* 127. Thus we have *shire-reeve* signifying sheriff; *church-reeve* for churchwarden, &c.

RE-EXAMINATION is the examination of a witness by the counsel of the party on whose behalf he has given evidence, in reference to matters arising out of his cross-examination. 3 *Steph. Com.* 538; *Powell's Ev., 4th ed. p.* 465; *Hunt. Eq., Pt. I. ch.* 5, *ss.* 2, 3. [EXAMINATION, I.]

RE-EXCHANGE is the expense incurred by a bill being dishonoured in a foreign country where it is made payable and returned to that country in which it was drawn or indorsed. For this expense the drawer is liable. *Bouvier.* [BILL OF EXCHANGE.]

RE-EXTENT. A second extent (or valuation) made upon lands and tenements upon complaint that the former extent was but partially performed. *T. L.; Cowel.* [EXTENT.]

REFEREE. A person to whose judgment a matter is referred, whether by consent of parties or by compulsory reference under the Common Law Procedure Act, 1854. And by sect. 56 of the Judicature Act, 1873, any question arising in a civil case before the High Court of Justice may be referred to an official or special referee. 3 *Steph. Com.* 555—557. The report of such referee may be adopted wholly or partially by the Court, and may, if so adopted, be enforced as a judgment by the Court. By sect. 58 the referees are to be deemed officers of the Court, and the report of a referee upon a question of fact, unless set aside by the Court, is to be equivalent to the verdict of a jury. The duties and powers of referees are further defined in Order XXXVI. rules 30—34, in the First Sched. to the Act of 1875.

REFERENCE. Referring a matter to an arbitrator, or to a master or other officer of a court of justice, for his decision thereon. 3 *Bl.* 453; 3 *Steph. Com.* 259, 555—557. [ARBITRATION; REFEREE.]

REFERENDARY was an officer among the old Saxons, who exhibited the petitions of the people to the king, and acquainted the judges with his commands. *Cowel.*

REFERRING A CAUSE. A phrase generally used of references to arbitration under sects. 1—11 of the C. L. P. Act, 1854. [REFEREE.]

REFORM ACT, 1832. The stat. 2 Will. 4, c. 45, passed to amend the representation of the people in England and Wales. Amended by the Representation of the People Act, 1867. 2 *Steph. Com.* 351.

REFORMATIO LEGUM ECCLESIASTICARUM, called more shortly *Reformatio Legum*, was a scheme for the revision of the Canon Law, prepared under a commission from king Edward VI. In November, 1551, a commission was issued to eight persons to prepare the matter for revision by a larger body; and in February, 1552, a commission was granted to thirty-two persons, of whom the former eight were a part. This body of thirty-two consisted of eight bishops, eight divines, eight civilians, and eight common lawyers. They divided themselves into eight classes, four in a class; everyone was to prepare his corrections and communicate them to the rest; and thus the work was completed; but, before it received the royal confirmation, the king died, and the project died with him. It was printed in the reign of Queen Elizabeth, under the title "Reformatio Legum Ecclesiasticarum." In the preface it is said that archbishop Cranmer executed almost the whole volume himself. The work treats of marriages, wills, disinheriting of children, intestacy, perjury, heresy, *fidei læsio*, defamation, scandal, disturbance of divine service, ecclesiastical dues, dilapidation of churches and ecclesiastical buildings, &c. *Reeves' Hist. Eng. Law.*

REFRESHER. A fee paid to counsel for refreshing his memory as to the facts of a case before him, in the intervals of business, especially where a case is adjourned from one term or sittings to another.

REG. GEN. [REGULÆ GENERALES.]

REG. JUD. An abbreviation for "Register of Judicial Writs." [JUDICIAL WRIT; ORIGINAL WRIT.]

REG. JUDIC. [See preceding Title.]

REG. LIB. [REGISTRAR'S BOOK.]

REG. ORIG. An abbreviation for "Register of Original Writs." [ORIGINAL WRIT.]

REGAL FISHES. Whales and sturgeons. *Cowel.* [FISH ROYAL.]

REGALIA. The royal rights of a king, comprising, according to the civilians—1. Power of judicature. 2. Power of life and death. 3. Power of war and peace. 4. Masterless goods. 5. Assessments. 6. Minting of money. [MAJORA REGALIA; MINORA REGALIA.] Also the crown, sceptre with the cross, and other jewels and ornaments used at a coronation, are called the *regalia*. *Cowel.*

REGARD. This word, though it hath a general signification of any care or diligent respect, yet it hath also a special acceptation, wherein it is only used in matters of the forest; and there it is used two ways, one for the office of regarder, the other for the compass of the ground belonging to that office. Touching the former, the regarder is to go through the whole forest, to see and inquire of the trespasses therein. Touching the second signification, the compass of the regarder's charge is the whole forest, that is, all the ground which is parcel of the forest. There was also, among the Courts of the Forest, a *court of regard*, or survey of dogs, holden every third year for the lawing or expeditation of mastiffs; that is, cutting off the elaws and ball of the forefeet, to prevent them from running after the deer. *Cowel;* 3 *Bl.* 71, 72. [EXPEDITATION; FOREST; FOREST COURTS, 2; REGARDER.]

REGARDANT. A villein *regardant* was a villein *annexed to a manor*, having charge to do all base services within the same, and to see the same freed from all things that might annoy his lord. A villein *regardant* was thus opposed to a villein *in gross*, who was transferable by deed from one owner to another. *Cowel;* 2 *Bl.* 93; 1 *Steph. Com.* 216.

REGARDER. An officer of the forest, appointed to supervise all other officers; to inquire of all offences and defaults of the foresters, and of all other officers of the king's forest, concerning the execution of their offices, and to inquire of all trespasses committed within the forest. *T. L.; Cowel.* [FOREST; FOREST COURTS; REGARD.]

REGE INCONSULTO. *Without the king being consulted;* the name of a writ which issued from the king to the judges, bidding them not to proceed in a cause which might prejudice the king, without the king being advised. *Toml.* [NON PROCEDENDO AD ASSISAM REGE INCONSULTO.]

REGENT. A person appointed to conduct the affairs of State in lieu of the reigning sovereign, in the absence, disability, or minority of the latter. 2 *Steph. Com.* 477, 478.

REGIAM MAJESTATEM. A collection of ancient Scottish law, supposed to have been compiled by order of David I. king of Scotland. *Bell.* It is so similar to the treatise on English law, written by Glanvil, in the reign of Henry II., that one of them is plainly copied from the other. Mr. Serjeant Stephen considers that Glanvil's is the original work. 1 *Steph. Com.* 86, *n.*

REGICIDE. A slayer of a king; or the murder of a king.

REGIMENTAL EXCHANGES ACT, 1875. The stat. 38 Vict. c. 16, passed for the purpose of enabling her Majesty to sanction exchanges by officers from one regiment to another, subject to such conditions as to her Majesty may from time to time seem expedient.

REGIO ASSENSU. A writ whereby the king gives his royal assent to the election of a bishop or abbot. *Cowel.*

REGISTER. 1. The name of a book, wherein are mentioned most of the forms of the writs used at common law. *Cowel;* 3 *Bl.* 51, 52, 183; 3 *Steph. Com.* 324, 489. [ORIGINAL WRIT.]

2. The register of a parish church, wherein baptisms, marriages, and burials are registered. Instituted by Cromwell, vicar-general of Henry VIII., in the year 1538. *Cowel.* [REGISTRAR, 1.]

3. A record of titles to land, such as exists in Middlesex and Yorkshire, and in Scotland and Ireland. 2 *Bl.* 343. [MIDDLESEX REGISTRY; YORKSHIRE REGISTRY.]

4. The General Register and Record Office for Seamen, containing, *inter alia*, the number and date of the register of each foreign-going ship and her registered tonnage; the length and general nature of her voyage or employment; the names, ages and places of birth of the master, the crew, and the apprentices; their qualities on board their last ships or other employment; and the dates and places of their joining the ship. 3 *Steph. Com.* 155.

5. And, generally, a register signifies an authentic catalogue of names or events. [See the following Titles.]

REGISTER OF ORIGINAL WRITS. [ORIGINAL WRIT; REGISTER, 1.]

REGISTER OF PATENTS. A book of patents directed by stat. 15 & 16 Vict. c. 83, s. 34 (passed in 1852), to be kept at the Specification Office for public use. 2 *Steph. Com.* 29, *n.* (*t*). [PATENT.]

REGISTRAR. An officer appointed to register the decrees of a court of justice, or in any manner to keep a register of names and events. Of these we may mention—

1. The Registrar-General of births, deaths and marriages in England, to whom, subject to such regulations as shall be made by a principal secretary of state, the general management of the system of registering births, deaths, and marriages is entrusted. 3 *Steph. Com.* 224, 225.

2. The superintendent registrars of each parish or district union. This office is filled as of right by the clerk to the guardians of the union, in case of his due qualification and acceptance, and is held during the pleasure of the Registrar-General. 3 *Steph. Com.* 234.

3. The registrars of the several registration districts, into which every poor-law union or parish is divided. 3 *Steph. Com.* 234.

4. The Registrar of Attorneys and Solicitors, whose duty it is to keep an alphabetical list or roll of attorneys and solicitors, and to issue certificates to persons who have been duly admitted and enrolled. 3 *Steph. Com.* 217. Henceforth, under sect. 14 of the Judicature Act, 1875 (stat. 38 & 39 Vict. c. 77), this officer is to be called the Registrar of Solicitors. [ATTORNEY-AT-LAW; SOLICITOR.]

5. The Registrar of Joint Stock Companies (an officer appointed by the Board of Trade) whose business it is to certify when a company is incorporated, &c. 3 *Steph. Com.* 20, 21.

6. The Registrar of the Court of Bankruptcy, who is *ex officio* trustee of a bankrupt's estate until a trustee is appointed, and after the appointed trustee has ceased to act. These registrars are also required to exercise such judicial powers as may be delegated to them from time to time by the judge of the court; and to perform various duties in connexion with bankruptcy. 2 *Steph. Com.* 156; *Robson, Bkcy.*

7. The Registrar of a County Court, who is an officer sppointed by the judge, subject to the approval of the Lord Chancellor. 3 *Steph. Com.* 285, and *n.* (*o*). If the county court be one having jurisdiction in bankruptcy, he will be a registrar in bankruptcy.

8. The Deputy-registrar of a County Court, who is an officer appointed by the registrar, subject to the approval of the judge. 3 *Steph. Com.* 285, *n.* (*o*).

9. The Registrar of Friendly Societies; an officer whose duty it is to examine the rules of friendly societies, and, if he find them conformable to law, to certify them as being so. 3 *Steph. Com.* 88, 90.

10. The Registrar of the Privy Council, whose duty it is to summon the members of the Judicial Committee when their attendance is required, and to transact other business relating to the Privy Council.

11. The Registrar-General of Shipping and Seamen. 3 *Steph. Com.* 155, 156. [REGISTER, 4.]

REGISTRAR'S BOOK, generally referred to as "Reg. Lib.," is a book containing an authentic copy of every decree made by the Court of Chancery. Up to the year 1833 every decree was prefaced by a recital of the pleadings; and the whole formed, accordingly, a report of the case, to which appeal may be made when a doubt arises on the accuracy of the report cited from a printed volume. Since that date, the entry shows nothing but what order was made and on what evidence it was founded. At the beginning of every Michaelmas Term (or Sittings), two books are provided for the entry of the decrees to be pronounced during the year then commencing—one to contain those to be pronounced in causes where the first letter of the surname of the first plaintiff is found in the earlier half of the alphabet, and the other to contain those belonging to the other half. Any particular decree is quoted by the folio of the book in which it is found; thus, an order made in the case of *Powell* v. *Matthews* is found in Reg. Lib. 1854, f. 1423, or on the 1423rd folio of the second volume of the annual book commencing in November, 1854. *Hunt. Eq., Pt. I. ch.* 6, *s.* 2.

REGISTRY. A place where anything is laid up. *Cowel.*

Or it may be defined as a place where a register is kept.

REGIUS PROFESSOR. This title, when applied to a professor, or reader of lectures in the universities, indicates that his office was founded by the king. King Henry VIII. was the founder of five professorships in each university, namely, the professorships of Divinity, Greek, Hebrew, Law, and Physic. *Cowel.*

REGRATING. Buying wares or victuals, and selling them in or near the same place, so as to enhance their price. *T. L.; Cowel;* 4 *Bl.* 158. This was formerly an offence against the law, but, since the year 1844, it is so no longer. *Stat.* 7 & 8 *Vict. c.* 24; 4 *Steph. Com.* 266, *n.*

REGRATOR. A person guilty of regrating. [REGRATING.]

REGULÆ GENERALES. General rules issued from time to time by the authority of the judges for the regulation of procedure in the Courts. [GENERAL RULES AND ORDERS.]

REGULATION OF RAILWAYS ACTS. By the caprice of the parliamentary draftsman, the following Acts relating to railways are specially known as Acts for the Regulation of Railways:—(1) Stat. 3 & 4 Vict. c. 97, passed in 1840; (2) Stat. 5 & 6 Vict. c. 55, passed in 1842; (3) Stat. 31 & 32 Vict. c. 119, passed in 1868; (4) Stat. 34 & 35 Vict. c. 78, passed in 1871; (5) Stat. 36 & 37 Vict. c. 48, passed in 1873, and called "The Regulation of Railways Act, 1873;" (6) Stat. 36 & 37 Vict. c. 76, also passed in 1873, and called "The Railway Regulation Act (Returns of Signal Arrangements, Working, &c.), 1873." [RAILWAY ACTS, 2, 3, 18, 19.]

REHABERE FACIAS SEISINAM was a writ judicial directed to a sheriff, who had, under a writ of *habere facias seisinam*, delivered seisin to a man of more land than was his due, requiring him to restore the excess. *Cowel; Toml.* [HABERE FACIAS SEISINAM.]

RE-HEARING. A hearing again of a matter which has been decided by a judge in Chancery, either (1) by the same judge or his successor, or (2) by the Lord Chancellor or the Lords Justices. In the latter case, the hearing is spoken of as a hearing on appeal; but in strictness it is a re-hearing, being a hearing in the same Court of Chancery. 3 *Bl.* 453; 3 *Stephen's Comm.* 603; *Goldsmith's Eq., Pt. III. ch.* 17; *Hunt. Eq., Pt. II. ch.* 9.

By the Judicature Act, 1875, 1st Sched. Ord. LVIII. rule 2, all appeals to the Court of Appeal shall be by way of *re-hearing*, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary.

REIF. Rapine; robbery. *Cowel.*

RE-INSURANCE. Re-assurance. [RE-ASSURANCE POLICY.]

REJOINDER. The defendant's answer to the plaintiff's replication, and therefore the fourth stage in pleading in an action at law in cases where the pleadings reach to this stage. *T. L.; Cowel;* 3 *Bl.* 310; 3 *Steph. Com.* 507, *n.*

The rules of pleading hitherto observed in Courts of Equity do not admit of a rejoinder.

A rejoinder, though not expressly mentioned in the Judicature Acts, is implicitly recognized in Order XIX. rule 21, and in Order XXIV. rule 2. By the last-cited rule, no pleading subsequent to reply, other than a joinder of issue, can be pleaded without leave of the Court or a Judge. A party, therefore, who wishes to "rejoin" otherwise than by "joining issue" must obtain the leave of the Court or a Judge for the purpose. [JOINDER, 3.]

REJOINING GRATIS signifies rejoining without a notice from the opposite party to do so. Before the Common Law Procedure Act, 1852, if a defendant delayed his rejoinder, the plaintiff might apply for a rule requiring him to rejoin in four days; and the condition of rejoining gratis meant rejoining without the usual four-day rule. By sect. 53 of that Act, rules to rejoin are abolished, and a notice to rejoin within four days is substituted. Rejoining gratis, therefore, now signifies rejoining without notice from the plaintiff to do so. It is one of the conditions which the Common Law Courts have been accustomed to impose upon a defendant who asks for further time to plead. *Lush's Pract.* 450, 451; *Smith's Act. Law, ch.* 4. [REJOINDER.]

RELATION. 1. Relation is where, in consideration of law, two times or other things are considered as if they were one, and by this the thing subsequent is said to take its effect *by relation* at the time preceding; as when it is said that an adjudication in bankruptcy has relation back to the act of bankruptcy upon which the adjudication is made. *T. L.; Cowel;* 2 *Bl.* 485, 486; 2 *Steph. Com.* 167; *Robson, Bktcy. ch.* 23. [ACT OF BANKRUPTCY; ADJUDICATION.]

2. The act of a *relator* at whose instance an information is filed. [RELATOR.]

RELATOR. A relator is a private person at whose instance the Attorney-General allows an information to be filed—

(1) In Chancery. 3 *Bl.* 427; 3 *Steph. Com.* 72; *Hunt. Eq.* Henceforth by the Judicature Act, 1875, 1st Sched. Order I. rule 1, the proceeding for this

RELATOR—*continued.*

purpose will be by action in the High Court of Justice.

(2) In informations in the Queen's Bench in the nature of a *quo warranto*. 3 *Bl.* 264; 3 *Steph. Com.* 641, *n.*

(3) In strictly criminal cases, such person is generally called the *prosecutor* or the *private prosecutor;* but he might be called a *relator*. See 4 *Bl.* 308. [INFORMATION.]

RELEASE (Lat. *Relaxatio*). 1. A discharge or conveyance by one who has a right or interest in lands, but not the possession, whereby he extinguishes his right for the benefit of the person in possession. The former is called the *releasor*, the latter the *releasee*. 1 *Bl.* 324, 325. Mr. Serjeant Stephen defines a release as a conveyance of an ulterior interest in lands or tenements to a particular tenant, or of an undivided share therein to a co-tenant (the releasee being in either case in *privity of estate* with the releasor), or of the right to such land or tenements to a person wrongfully in possession thereof. 1 *Steph. Com.* 518. [PARTICULAR TENANT; PRIVITY OF ESTATE.]

2. An instrument whereby a party beneficially entitled to any estate held upon trust discharges his trustee for any further claim or liability in respect of the same.

RELEGATION. A temporary banishment. *Cowel.*

The words *relegate* and *relegation* are often used figuratively, to signify the adjournment of any matter under consideration.

RELICTA VERIFICATIONE (his verification abandoned) is an old phrase denoting that a defendant having pleaded withdraws his plea, and confesses the plaintiff's right of action, and thereupon judgment is given for the plaintiff. *T. L.* [PLEA; VERIFICATION.]

RELIEF. 1. A fine or acknowledgment paid by an heir who succeeded to a feud which his ancestor had possessed. It was in horses, arms, money, or the like; and was called a *relief*, because it raised up and re-established the inheritance (*incertam et caducam hæreditatem relevabat*). Reliefs, which originated while feuds were only life estates, were continued after feuds became hereditary. *T. L.; Cowel;* 2 *Bl.* 56, 65, 66, 87; 1 *Steph. Com.* 177, 197, 208, 221.

2. Assistance given by workhouse authorities to paupers in distress. This consists generally in the supply of articles of absolute necessity, and sometimes in medical attendance. Relief, in the sense we are now considering, is called parochial or workhouse relief, and is either *indoor relief*, the condition of which is, that the party relieved shall reside in the workhouse; or *outdoor relief*, to which no such condition is attached. 3 *Steph. Com.* 62, 63, 108. [OVERSEERS.]

3. The specific assistance prayed for by a party who institutes a suit in Chancery. 3 *Bl.* 438, 439; 3 *Steph. Com.* 456; *Hunt. Eq.* Under the Judicature Acts, the claim put forward by a plaintiff is indorsed in the first instance on the writ of summons, and afterwards more fully in the "statement of claim." *Stat.* 38 & 39 *Vict. c.* 77, *1st Schedule, Orders II., XIX. r.* 2, *and XXI.* [STATEMENT OF CLAIM; SUMMONS, 4.]

The word has also the following meanings in the law of Scotland:—

4. *Casualty of relief*, which is in the nature of the feudal relief first above mentioned.

5. *Relief of cautioners*, which is the right of contribution between co-sureties.

6. *Relief betwixt heir and executor*, which is a marshalling of assets in favour of an heir who has paid a personal debt (that is, a debt payable out of the personal property), or of an executor who has paid an heritable debt (that is, a debt primarily chargeable on the assets descended to the heir). *Bell.*

RELIEVING OFFICER. An overseer or other officer charged with the duty of administering immediate relief to paupers who apply for it. [OVERSEERS.]

RELIGIOUS MEN. Such as entered into a monastery or convent, there to live devoutly. *Cowel.*

RELOCATION. A reletting or renewal of a lease. *Bell.* [TACIT RELOCATION.]

REM. [IN REM; INFORMATION IN REM; JUS IN REM.]

REMAINDER is where any estate or interest in land is granted out of a larger one, and an ulterior estate expectant on that which is so granted is at the same time conveyed away by the original owner. The first estate is called the *particular estate*, and the ulterior one the *remainder*, or the *estate in remainder*. Thus, if land be conveyed to A. for life, and after his death to B., A.'s interest is called a *particular estate*, and B.'s a *remainder*. *T. L.; Cowel;* 2 *Bl.* 164; 1 *Steph. Com.* 319, 320. The word, though properly applied to estates in

REMAINDER—*continued.*

land, is also applicable to personalty. 2 *Bl.* 398; 2 *Steph. Com.* 13. [CONTINGENT REMAINDER; REVERSION; VESTED REMAINDER. See also the following Titles.]

REMAINDER, FORMEDON IN. [FORMEDON.]

REMAINDER MAN. A person entitled to an estate in remainder. [REMAINDER.]

REMAND is the recommittal of an accused person to prison, or his re-admission to bail, on the adjournment of the hearing of a criminal charge in a police court. The remand, in the case of a person charged with an indictable offence, must not exceed eight days. A remand may be granted for securing the attendance of witnesses, for making inquiries into the previous career of the accused, or other reasonable cause. *Stat.* 11 & 12 *Vict. c.* 42, *s.* 21; *Oke's Mag. Syn.* 880—882. As to the remand in cases of summary jurisdiction, see *Stat.* 11 & 12 *Vict. c.* 43, *s.* 16; *Oke's Mag. Syn.* 142—144.

REMANENT PRO DEFECTU EMPTORUM (they remain unsold for want of buyers). This is a sheriff's return to a writ of *fi. fa.* [FIERI FACIAS], when he finds himself unable to sell the goods distrained. In such case a writ of *venditioni exponas* may be sued out, ordering him to expose the goods for sale; or if in the meantime the sheriff goes out of office, then a writ called *distringas nuper vicecomitem* is issued to his successor, commanding him to distrain the late sheriff to sell the goods. *Lush's Pract.* 610. The old practice in these cases is continued under the Judicature Act, 1875 (stat. 38 & 39 Vict. c. 77), First Schedule, Order XLIII. rule 2.

REMANET. A cause put off from one sittings or assizes to another.

REMEDIAL STATUTES are such as supply some defect in the existing law, and redress some abuse or inconvenience with which it is found to be attended, without introducing any provision of a penal character; as, for instance, the Dower Act of 1833. 1 *Bl.* 86; 1 *Steph. Com.* 71.

REMEDY. The means given by law for the recovery of a right, or of compensation for the infringement thereof.

REMEMBRANCERS. I. Officers of the Exchequer, of which there were formerly three: the King's Remembrancer, the Lord Treasurer's Remembrancer, and the Remembrancer of First Fruits. Their duty was to put the Lord Treasurer and the justices of that Court in remembrance of such things as were to be called on and dealt with for the king's benefit.

1. The duty of the King's Remembrancer (now called the Queen's Remembrancer) is to enter in his office all recognizances taken for debts due to the Crown, &c.; to take bonds for such debts, and to make out process for breach of them; also to issue process against the collectors of customs and other public payments for their accounts. To this office also are now transferred the duties of the other offices. *Toml.*; 3 *Steph. Com.* 339, *n.*

2. The Treasurer's Remembrancer issued out process of *fieri facias* and *extents* [EXTENT; FIERI FACIAS] for debts due to the king, and against sheriffs, escheators, and others who failed to account. He might also issue process for discovery of tenures, and all such revenue as was due to the Crown by reason thereof. *Toml.* His office, with the offices connected therewith, was abolished in 1833, by stat. 3 & 4 Will. 4, c. 99.

3. The office of the Remembrancer of the First Fruits was to take all compositions and bonds for the payment of first fruits and tenths; and to take process against such persons as failed to pay the same. *Stat.* 37 *Edw.* 3, *c.* 4; *Stat.* 5 *Rich.* 2, *st.* 1, *c.* 14.

II. The Remembrancer of the City of London is an ancient officer of the Corporation, whose original duties were mainly ceremonial, it being his office to see to the due observance of all presentations, public processions, and other matters affecting the privileges of the Corporation. In this character he was their agent in Parliament, and at the Council and Treasury Boards; and at this day he performs the duty of parliamentary solicitor to the Corporation. He attends the Houses of Parliament, and examines bills likely to affect the privileges of the City, and reports upon the same to the Corporation. He also attends the Courts of Aldermen and Common Council, and committees, when required. *Pulling on the Laws and Customs of London.*

REMISSION. Pardon of an offence.

REMITTER is where he, who hath the true property or *jus proprietatis* in lands, but is out of possession thereof, hath afterwards the freehold cast upon him by some subsequent, and of course defective, title; in this case he is *remitted* or sent back, by operation of law, to his

REMITTER—*continued.*

ancient and more certain title. *T. L.; Cowel;* 3 *Bl.* 19—21; 3 *Steph. Com.* 264, 265; and see note (*l*) on the latter page.

As if a man dies intestate leaving two sons, A. the elder and B. the younger. B. wrongfully enters into possession and dies childless, leaving A. his heir-at-law. Then A. will be in as of his former estate, and so will take the land free of any incumbrances created or debts incurred by B.

REMITTIT DAMNA, otherwise called a *remittitur damna*, is an entry on the record of an action whereby a plaintiff remits the whole or a portion of the damages awarded to him by the verdict of the jury. A *remittit damna* may be entered by attorney. *Lamb* v. *Williams*, 1 *Salk.* 89; *Lush's Pr.* 252. It has been held that where a jury give greater damages than have been claimed by the plaintiff in his declaration, the error may be cured before judgment by entering a *remittitur* for the surplus. *Tidd's Pract.* 896.

REMITTITUR. Formerly, when judgment was given on writ of error in the House of Lords or in the Exchequer Chamber, or the writ of error abated or was discontinued, the transcript of the record was sent back to the court below, and the entry of this circumstance was called a *remittitur*. *Toml.* Proceedings in error are now abolished under the Judicature Act, 1875, by Ord. LVIII. rule 1. [For REMITTITUR DAMNA, see preceding Title.]

REMOTENESS is—1. Where an attempt is made by any instrument in writing to tie up, or to dictate the devolution of, property, or to keep the same in suspense without a beneficial owner, beyond the period allowed by law. [PERPETUITY.]

2. *Remoteness of damage.* This expression is used to denote a want of sufficiently direct connection between a wrong complained of and the injury alleged to have been sustained thereby.

RENDER. 1. To give up again; to restore.

2. A word used in connection with rents and heriots. Goods subject to rent or *heriot-service* are said to *lie in render*, when the lord may not only seize the identical goods, but may also distrain for them. *Cowel;* 3 *Bl.* 15; 1 *Steph. Com.* 672; 3 *Steph. Com.* 258. [HERIOT.]

3. For a fine *sur don, grant et render* see FINE, 1.

RENEEZ. A renegade; that is, one who apostatises from Christianity to Mahommetanism. It is related that Richard I., having taken one such person with twenty other prisoners, who were Pagans, ordered him to be shot. *Cowel.*

RENOUNCING PROBATE is where a person appointed executor of a will refuses to accept the office. 2 *Steph. Com.* 191, *n.*

RENT (Lat. *Reditus*). A compensation, or return; that is, a profit issuing periodically out of lands or tenements. It does not necessarily consist in the payment of money. Rents are of various kinds: — 1. *Rent-service*, which hath some corporeal service incident to it; for non-performance of which the lord may distrain, if he hath in himself the reversion after the lease or particular estate of the lessee or grantee is expired. 2. *Rent-charge*, which is where the owner hath no future interest in the land, but is enabled to distrain by virtue of a clause in the grant or lease reserving the rent. 3. *Rent-seek* (*reditus siccus*), or barren rent, is where there is merely a rent reserved by deed, but without any clause of distress, nor any right of distress at the common law. 4. *Rents of assise*, which are certain established rents payable by freeholders and ancient copyholders of a manor. Those of the freeholders are called *chief rents* (*reditus capitales*); and both sorts are called *quit rents* (*quieti reditus*), because thereby the tenant goes quit and free of other services. When these rents were reserved in silver or white money, they were anciently called *white* rents, or *blanch farms* (*reditus albi*); in contradistinction to rents reserved in work, grain, or baser money, which were called *reditus nigri* or black-mail. 5. *Rack-rent* is a rent of the full value of a tenement, or near it. 6. *A fee farm rent* is a rent issuing out of an estate in fee, of at least one-fourth of the value of the lands at the time of its reservation. The difference which formerly existed between the various kinds of rent is now of little practical importance; for it is provided by stat. 4 Geo. 2, c. 28, that all persons may have the like remedy by distress for rents-seck, rents of assise, and chief-rents, as in case of rents reserved upon lease. *T. L.; Cowel;* 2 *Bl.* 41—43; 1 *Steph. Com.* 672—677; *Wms. R. P., Pt. II. ch.* 4; *Fawcett, L. & T.* 109—189.

RENT ROLL. [RENTAL, 1.]

RENTAL, a word corrupted from *rent-roll*, signifies—1. A roll wherein the rents of a manor are written and set down, by

RENTAL—*continued.*

which the lord's bailiff collects the same. *Toml.* 2. The average value of rent payable on a lease.

RENTAL RIGHT, in Scotland, is a lease at a nominal rent. *Bell.*

RENTAL'D TEIND BOLLS is where the teinds (or tithes) have been liquidated and settled for so many *bolls* of corn yearly, by rental or usage. *Toml.*

RENTS OF ASSISE. [RENT, 4.]

RENTS RESOLUTE were rents anciently payable to the Crown from the lands of abbeys and religious houses; and after their dissolution, notwithstanding that the lands were demised to others, yet the rents were still reserved and made payable again to the Crown. *Cowel.*

RENUNCIATION OF PROBATE. The refusal of a person appointed executor by will to prove the will or accept the office. 2 *Steph. Com.* 191, *n.*

REPARATIONE FACIENDA. A writ which lay in divers cases for the repair of a house fallen into decay; as, for instance, when three be tenants in common of a house falling out of repair, and one be willing to repair it, but the other two will not. *Cowel.*

REPEAL (Fr. *Rappel*). A calling back. The word is used to signify:—

1. The revocation of one statute, or a part of it, by another. *Cowel.*

2. Recall from exile (in this sense quite obsolete). *Latham's Dict.*

REPETITUM MAMIUM. A term which implies a second or reciprocal distress. 3 *Bl.* 149; 3 *Steph. Com.* 423, *n.* (*e*). [REPLEVIN; WITHERNAM.]

REPETUNDARUM CRIMEN. The crime of receiving a bribe to pervert judgment. *Bell.*

REPLEADER is an order of the Court that the parties *replead;* which is granted when the parties in the course of pleading have raised an issue which is immaterial or insufficient to determine the true question in the case. When a repleader is granted, then the pleadings must begin *de novo* at that stage of them wherein there appears to have been the first defect or deviation from the regular course.

It is obvious that the occasion for a repleader cannot arise without the default of both parties, and therefore, in such cases, neither party is entitled to the costs of the proceedings. Nor will a repleader be granted in favour of the party making the first fault. *Cowel;* 3 *Bl.* 395.

A repleader is not granted in any case except where complete justice could not otherwise be done. Repleaders accordingly have not of late been usual, especially as the Courts have almost unlimited power of allowing amendments for the purpose of determining the real question in controversy between the parties. 3 *Steph. Com.* 565; *Judicature Act*, 1875, *First Sched. Ord. XXVII. r.* 1.

REPLEGIARE. To replevy; that is, to redeem a thing detained or taken by another, by putting in legal sureties. *Cowel.* [See the following Titles.]

REPLEGIARE DE AVERIIS. A writ for the replevying of live cattle, unjustly distrained. *F. N. B.* 68. [REPLEVIN.]

REPLEGIARI FACIAS. A writ of replevin which issued out of Chancery, commanding the sheriff to deliver the distress (*i. e.* the thing taken by way of distress) to the owner, and afterwards to do justice in respect of the matter in dispute in his own county court. This was a tedious method of proceeding; and it was accordingly directed by the Statute of Marlbridge, 52 Hen. 3, c. 21, passed in 1267—8, that without suing a writ out of the Chancery, the sheriff immediately, upon plaint to him made, should proceed to replevy the goods. 3 *Bl.* 147; 3 *Steph. Com.* 423, *n.* [REPLEGIARE; REPLEVIN.]

REPLEVIABLE. Capable of being replevied. [REPLEGIARE; REPLEVIN.]

REPLEVIN is defined as a re-delivery to the owner of his cattle or goods distrained upon any cause upon surety that he will prosecute the action against him that distrained; which action is thence denominated an action of replevin. *Bacon's Abridgment; Lush's Pract.* 1013. The "replevisor," or party who is said to replevy, is not, however (as might be inferred from the above definition), the party who *delivers* back, but the party who *takes* back his goods. The word "replevin" is derived from *replegiare*, to deliver to the owner upon pledges. In ancient times the only mode of disputing the right of distress was by writ of replevin [REPLEGIARI FACIAS], but, by the statute of Marlbridge, the sheriff was authorized to replevy goods without the writ: and by 1 Ph. & M. c. 12, passed in 1554, he was to appoint four deputies at least to act for different parts of the county for making replevins. Pledges

REPLEVIN—*continued.*

were put in by the party replevying to prosecute his action, and to return the goods if the action were decided against him. [PLEGII DE PROSEQUENDO; PLEGII DE RETORNO HABENDO.] Under stat. 11 Geo. 2, c. 11, in case of distress of rent, a bond was given to prosecute the action, called the *replevin bond*. The action might be brought in the old County Court, if no right of freehold came into question. Now, by the County Court Act, 1846 (9 & 10 Vict. c. 95), ss. 119, 120; the County Court Act, 1856 (19 & 20 Vict. c. 108), ss. 63—71; and by the C. L. P. Act, 1860, ss. 22—24, the practice is altered. The registrar of the County Court now grants the replevin, approves of the replevin bonds, and issues all necessary process in relation thereto, which is executed by the high bailiff of the County Court. The replevin is granted at the instance of the party whose goods are distrained, who is called the *replevisor*, who must give security for prosecuting the action. The security must be of sufficient amount to cover the alleged rent or damage in respect of which the distress shall have been made, and the probable costs of the cause; and to make a return of the goods, if a return shall be adjudged. The action, if intended to be commenced in a County Court, must, according to the condition of the bond, be commenced within a month; if in a Superior Court, then within a week. In the latter case the replevisor further undertakes to prove before the Court in which the action is brought that he had good ground for believing that the title to some corporeal or incorporeal hereditament, or to some toll, fair, market or franchise was in question, or that the rent or damage exceeded 20*l.*; in other words, that the facts were such as to exclude the jurisdiction of the County Court. When the action is brought, the defendant must appear to the writ, as in ordinary cases. The plaintiff's declaration states in general terms the taking of the goods. If the defendant insists that the goods were lawfully taken by him in his own right, the pleading is called an *avowry;* if in the right of another, it is called a *cognizance*. He may claim also a return of the goods; so that both parties are regarded as *actors*, or claimants seeking redress. The plaintiff's next pleading is called a *plea in bar*, and that of the defendant a *replication*, and so on. The judgment, if for the plaintiff, awards damages for the unlawful taking; if for the defendant, it is that he have a return of the goods taken, and, if the distress was for rent, he recovers the amount of arrears in damages. If the action be in the County Court, it is tried in the same way as other actions in County Courts. *T. L.; Cowel;* 3 *Bl.* 145—151; 3 *Steph. Com.* 420—423; *Lush's Pract.* 1013—1026; *Fawcett, L. & T.* 176—178.

REPLEVISABLE. That which can be replevied. [REPLEVIN.]

REPLEVISH. To let one to mainprise on surety. *Cowel.* [MAINPRISE.]

REPLEVISOR. [REPLEVIN.]

REPLEVY. [REPLEGIARE; REPLEVIN.]

REPLICATION signifies generally a pleading of the plaintiff whereby he replies (otherwise than by a legal or formal objection) to a defendant's plea or answer. The meaning of the term (according to the practice prior to the Judicature Acts) was more limited in equity than at law. In equity, a plaintiff, by filing a replication, signified his intention of *joining issue* with the defendant as to the statements of fact contained in his plea or answer, or as to the denial of the plaintiff's case implied in the defendant's not answering when he has not been required to answer. In law, however, a replication might be made by way of *confession and avoidance* [CONFESSION AND AVOIDANCE], in which case it might be followed by rejoinder, surrejoinder, rebutter, surrebutter, and so on, if the parties choose so to prolong their pleadings. In the action of replevin [REPLEVIN], the replication was the *defendant's* second pleading; the plaintiff's second pleading being called his *plea. T. L.; Cowel;* 3 *Bl.* 309, 448; 3 *Steph. Com.* 506, *n.* 607; *Lush's Pr.* 479-485; *Hunt. Eq.*

The word "replication" does not occur in the Judicature Acts. [See next Title.]

REPLY. 1. Under the Judicature Act, 1875 (stat. 38 & 39 Vict. c. 77) 1st Sched. Ord. XIX. rule 21, the *reply* of a plaintiff is that statement in his pleading whereby he *replies* to the defence. [STATEMENT OF CLAIM.]

2. The speech of counsel for the plaintiff in a civil case, or for the prosecution in a criminal case, in answer in either case to the points raised by the defence, is generally called the *reply*.

REPORT. 1. An official statement of facts in respect of which an inquiry has been ordered by Parliament or by a Court of Justice, or by any other lawful authority.

REPORT—*continued.*

Of this nature were the Master's Reports in the Court of Chancery. *Cowel;* 3 *Bl.* 453. [MASTER'S REPORT.]

2. A public relation of cases judicially argued, debated, resolved or adjudged in any of the Courts of Justice, with the causes of the same delivered by the judges. *Cowel;* 1 *Bl.* 71—73; 1 *Steph. Com.* 49—51. [REPORTS.]

REPORTS. 1. Histories of legal cases, with the arguments used by counsel and the reasons given for the decision of the Court.

2. The reports of Chief Justice Coke are especially styled The Reports, and are in general cited without the author's name. *Cowel;* 1 *Bl.* 71—73; 1 *Steph. Com.* 49—51.

The following is a catalogue of the Reports which have appeared up to the present time, together with the periods over which they extend and the abbreviations by which they are usually referred to. In the first column we give the names of the Reports in alphabetical order; in the second the abbreviation or abbreviations by which they are or may be referred to; in the third the period over which the Reports extend, or, in some cases, the date of publication; and, in the fourth, the courts or jurisdictions whose decisions are embraced in the several series of Reports respectively.

Reports.	Abbreviations.	Date.	Court.
Acton (Prize Causes) ..	Acton	1809—1811	Privy Council.
Addams	Add.	1822—1826	Ecclesiastical.
Adolphus & Ellis ..	Ad. & Ell. *or* A. & E.	1834—1842	King's (*or* Queen's) Bench.
Adolphus & Ellis, New Series	Ad. & Ell., N. S. *or* Q. B. (for Queen's Bench)	1841—1852	Queen's Bench.
Alcock's Registry Cases..	Alc.	1837 ..	Common Law, Ireland.
Alcock & Napier.. ..	Alc. & N. ..	1831—1833	Common Law, Ireland.
Aleyn	Aleyn	1646—1649	King's Bench.
Ambler	Amb. *or* Ambl..	1737—1783	Chancery.
Anderson, Sir E... ..	And.	16th century	Common Pleas.
Andrews, George.. ..	Andr.	1737—1738	King's Bench.
Annaly	Ann.	.. ..	King's Bench.
Anstruther	Anst.	1792—1796	Exchequer.
Arkley	Arkl.	1846—1848	Court of Justiciary, Scotland.
Armstrong, MacArtney & Ogle	Arm. Mac. & O.	1840—1842	Civil and Criminal Courts, Ireland.
Arnold	Arn.	1838—1839	Common Pleas.
Arnold & Hodges ..	Arn. & H. ..	1839—1841	Queen's Bench.
Atkyns	Atk.	1736..1754	Chancery.
Bail Court Reports, by Lowndes & Maxwell, and by Saunders & Cole (*infra*).			
Ball & Beatty	Ball & B. *or* B. & B.	1807—1814	Chancery, Ireland.
Bankruptcy and Insolvency Reports	.. .. ..	1853—1855	Bankruptcy, &c.
Barnardiston (Ch.) ..	Barnard. (Ch.) .	1740—1741	Chancery.
Barnardiston (K. B.) ..	Barnard. (K.B.)	1726—1734	King's Bench.
Barnes' Notes of Cases ..	Barnes.. ..	1733—1756	Common Pleas.
Barnewall & Adolphus ..	Barn. & Ad. *or* B. & Ad.	1830—1834	King's Bench.
Barnewall & Alderson ..	Barn. & Ald. *or* B. & A.	1817—1822	King's Bench.
Barnewall & Cresswell ..	Barn. & Cress. *or* B. & C.	1822—1830	King's Bench.
Barron & Arnold ..	Bar. & Arn. ..	1843—1846	Election Committees.
Barron & Austin.. ..	Bar. & Aust. ..	1842 ..	Election Committees.

REPORTS—*continued.*

Reports.	Abbreviations.	Date.	Court.
Batty	Batty	1825—1826	King's Bench, Ireland.
Beatty	Beat.	1827—1830*	Chancery, Ireland.
Beavan	Beav.	1838—1866	Rolls.
Bell (Crown Cases) ..	Bell	1858—1860	Crown Cases Reserved.
Bell (Scotch Appeals) ..	Bell	1841—1850	House of Lords.
Bell (Scotch Decisions) ..	Bell	1790—1792 1794—1795	Court of Session.
Bellew's Reports (published 1585).	Bellew	1377—1400	Common Law.
Belt's Supplement to Vesey, sen.	Belt	1746—1756	Chancery.
Benloe	Benl.	1535—1627	Common Law.
Benloe & Dalison ..	Ben. & D. ..	1440—1574	Common Pleas.
Best & Smith	B. & S. ..	1861—1870	Queen's Bench.
Bingham	Bing.	1822—1834	Common Pleas.
Bingham's New Cases ..	Bing. N. C. ..	1834—1840	Common Pleas.
Blackham, Dundas and Osborne.	B., D. & O. ..	1846—1848	Exchequer, Ireland.
Blackstone, Henry ..	H. Bl.	1788—1796	Common Pleas.
Blackstone, Sir W. ..	W. Bl.	1746—1779	Common Law.
Bligh	Bligh	1819—1821	House of Lords.
Bligh's New Series ..	Bligh, N. S. ..	1827—1837	House of Lords.
Bluett's Notes of Cases ..	Blu.	1720—1847	Isle of Man Courts.
Bosanquet & Puller ..	Bos. & Pull. *or* B. & P.	1796—1804	Common Pleas.
Bosanquet & Puller's New Reports	B. & P. N. R. ..	1804—1807	Common Pleas.
Bridgman, Sir John ..	J. Bridg. ..	1615—1620	Common Law.
Bridgman, Sir Orlando ..	O. Bridg. ..	1660—1667	Common Pleas.
Broderip & Bingham ..	Bro. & B. *or* B. & B.	1818—1822	Common Pleas.
Brooke's New Cases ..	Brooke, N. C. *or* B. N. C.	1514—1557	Common Law.
Broun	Broun	1842—1845	Court of Justiciary, Scotland.
Brown's Reports of Cases in Chancery	Bro. C. C. ..	1778—1794	Chancery.
Brown's Reports of Cases in Parliament	Bro. P. C. ..	1702—1800	House of Lords.
Browning & Lushington .	B. & L. ..	1863—1865	Admiralty and Privy Council.
Brownlow & Goldesborough	B. & G. ..	1608—1625	Common Pleas.
Bruce's Reports	Bruce	1714—1715	Court of Session.
Buck's Cases in Bankruptcy	Buck	1816—1820	Bankruptcy, &c.
Bulstrode	Bulstr.	1609—1626	King's Bench.
Bunbury	Bunb.	1713—1741	Exchequer.
Burrow's Reports ..	Burr.	1756—1772	King's Bench.
Burrow's Settlement Cases	Burr. S. C. ..	1732—1776	King's Bench.
Caldecott'sSettlementCases	Cald. S. C. ..	1776—1785	King's Bench.
Calthrop's Cases on the Customs of London	Calthrop ..	Published 1670	King's Bench.
Campbell	Camp.	1809—1816	Nisi Prius.
Carpmael's Patent Cases .	Carp. P. C. ..	1602—1844	All the Courts.
Carrington & Kirwan ..	Car. & K. *or* C. & K.	1843—1853	Nisi Prius and Criminal Courts.

* Including also some earlier cases.

REPORTS—*continued.*

Reports.	Abbreviations.	Date.	Court.
Carrington & Marshman .	Car. & M. *or* C. & M.	1841—1842	Nisi Prius and Criminal Courts.
Carrington & Payne ..	Car. & P. *or* C. & P.	1823—1840	Nisi Prius and Criminal Courts.
Carrow, Hamerton & Allen's New Sess. Cases	C. H. & A. *or* New Sess. Cas.	1844—1847	All the Courts.
Carter	Cart.	1664—1675	Common Pleas.
Carthew	Carth.	1688—1700	King's Bench.
Cary	Cary	1471—1603	Chancery.
Cases in Chancery ..	Ch. Ca. ..	1660—1679	Chancery.
Cases in Equity Abridged.	Cas. Eq. Ab. ..	Published 1756	Chancery.
Cases in the time of Finch	Cas. temp. Finch	1673—1680	
Cases in the time of Lord Hardwicke	Cas. temp. Hardwicke	1733—1737	Chancery.
Cases in the time of Lord Talbot	Cas. temp. Talbot	1733—1737	Chancery.
Cases of Practice, King's Bench	Cas. Pra. K. B.	1558—1774	King's Bench.
Chitty	Chit.	1819—1820*	King's Bench.
Choice Cases in Chancery	Cho. Ca. Ch. ..	1558—1605	Chancery.
Clark & Finnelly	Cl. & Fin. ..	1831—1846	House of Lords.
Clayton	Clay.	1631—1651	York Assizes.
Cockburn & Rowe ..	C. & R. ..	1833 ..	Election Committees.
Coke, Sir Edward ..	Co. Rep. *or* Rep.	1579—1615	Common Law.
Colles	Colles	1697—1713	House of Lords.
Collyer	Coll.	1844—1846	Chancery.
Comberbach	Comb.	1685—1698	King's Bench.
Common Bench Reports ..	C. B.	1845—1856	Common Pleas.
Common Bench Reports, New Series	C. B., N. S. ..	1856—1865	Common Pleas.
Common Law Reports ..	C. L. R. ..	1853—1855	Common Law Courts.
Comyns	Com.	1695—1740	Common Law Courts.
Connor & Lawson ..	Conn. & Law. *or* C. & L.	1841—1843	Chancery, Ireland.
Cooke	Cook.	1706—1740	Common Pleas.
Cooke & Alcock	C. & A. ..	1833—1834	King's Bench, Ireland.
Cooper, George	G. Coop. ..	1814—1815	Chancery.
Cooper's Cases in Chancery	Coop.	1833—1834	Chancery (Lord Brougham).
" " "	"	1837—1838	Chancery.
" " "	"	1846—1848	Chancery (Lord Cottenham).
Corbett & Daniell ..	Corb. & D. ..	1819 ..	Election Committees.
County Courts Cases ..	C. C. Cas. ..	1847—1852	Common Law Courts.
Couper	Coup.	1868 to present time	Court of Justiciary, Scotland.
Court of Session Cases ..	Court Sess. Ca.	1821 to present time	Court of Session, Scotland.
Cowell's Indian Appeals (Law Rep. vol. ii.)	L. R., 2 Ind. App.	Publication commenced March, 1875	Privy Council.
Cowper	Cowp.	1774—1778	King's Bench.
Cox & Atkinson's Registration Appeals	Cox & Atk. ..	1843—1845	Common Pleas.
Cox (Chancery)	Cox	1783—1797	Chancery.
Cox (Criminal Law) ..	Cox's C. L. ..	1843—1857	Criminal Courts.
Craig & Phillips	Cr. & Ph. ..	1840—1841	Chancery.

* Including also some earlier cases.

REPORTS — *continued.*

Reports.	Abbreviations.	Date.	Court.
Craigie, Stewart & Paton's Scotch Appeals	Cr. St. & P. ..	1727—1757 (publ. 1849)	House of Lords.
Crawford & Dix	Cr. & D. ..	1837—1846	Irish Courts.
Cresswell's Insolvent Cases	.. .. ..	1827—1829	Insolvency.
Cripps' Church Cases ..	.. .. ..	1847—1850	All the Courts.
Croke, time of Charles I...	Cro. Car. ..	1625—1641	Common Law.
Croke, time of Elizabeth..	Cro. Eliz. ..	1581—1603	Common Law.
Croke, time of James I...	Cro. Jac. ..	1603—1625	Common Law.
Crompton & Jervis ..	Cr. & J. *or* C. & J.	1830—1832	Exchequer.
Crompton & Meeson ..	Cr. & M. ..	1832—1834	Exchequer.
Crompton, Meeson & Roscoe	Cr. M. & R. ..	1834—1836	Exchequer.
Cunningham	Cunn.	1734—1735	King's Bench.
Curties	Curt.	1834—1844	Ecclesiastical.
Dalrymple, Sir Hew. ..	Dalr.	1698—1718	Court of Session, Scotland.
Daniell	Dan.	1817—1823	Exchequer, Equity.
Danson & Lloyd	D. & L. ..	1828—1829	Common Law.
Davies' Patent Cases ..	D. P. C. ..	Publd. 1866	Common Law Courts.
Davis, Sir John	Davis	1604—1611	Common Law, Ireland.
Davison & Merivale ..	D. & M. ..	1843—1844	Queen's Bench.
Deacon	Deac.	1835—1840	Bankruptcy, &c.
Deacon & Chitty	Deac. & Chit...	1832—1835	Bankruptcy.
Deane's Reports, completed by Swabey	Deane *or* Dea. & Sw.	1855—1857	Ecclesiastical.
Dearsley	Dears.	1852—1856	Criminal Courts.
Dearsley & Bell	Dearsl. & B. *or* D. & B.	1856—1858	Criminal Courts.
Deas & Anderson ..	Deas & And. ..	1829—1833	Court of Session, Scotland.
De Gex	De G.	1844—1848	Bankruptcy.
De Gex & Jones	De G. & Jo. *or* D. & J.	1857—1862	Chancery (Appeals).
De Gex & Smale ..	De G. & Sm. ..	1846—1852	Chancery.
De Gex, Fisher & Jones	De G., F. & Jo. *or* D. F. & J.	1859—1862	Chancery (Appeals).
De Gex, Jones & Smith..	De G., J. & Sm. *or* D. J. & S.	1862—1865	Chancery (Appeals).
De Gex, Macnaghten & Gordon	De G., Mac. & G. *or* D. M. & G.	1851—1857	Chancery (Appeals).
Delane	Delane ..	1832—1836	Revising Barristers.
Denison	Den. C. C. ..	1844—1852	Criminal Courts.
Dickens	Dick.	1559—1792	Chancery.
Dodson	Dods.	1811—1822	Admiralty.
Douglas' Election Cases..	Doug.	1775—1776	Election Committees.
Douglas' King's Bench ..	Doug.	1778—1785	King's Bench.
Dow	Dow	1812—1818	House of Lords.
Dow & Clarke	Dow & Cl. ..	1827—1832	House of Lords.
Dowling's Practice Reports	Dowl. *or* D. P. C.	1830—1841	Common Law.
Dowling's Practice Reports, New Series	Dowl., N. S. ..	1841—1843	Common Law.
Dowling & Lowndes ..	Dowl. & L. *or* D. & L.	1843—1849	Common Law.
Dowling & Ryland, King's Bench	Dowl. & Ry. *or* D. & R.	1822—1827	King's Bench.
Dowling & Ryland, Nisi Prius	D. & R., N. P.	1822 ..	Nisi Prius Cases.
Dowling & Ryland, Magistrates' Cases	D. & R. M. C. ..	1822—1827	King's Bench.

REPORTS—*continued.*

Reports.	Abbreviations.	Date.	Court.
Drewry	Drew.	1852—1859	V.-C. Kindersley.
Drewry & Smale	Dr. & Sm. ..	1859—1865	V.-C. Kindersley.
Drinkwater	Drink.	1840—1841	Common Pleas.
Drury	Dru.	1843—1844	Chancery, Ireland.
Drury & Walsh	Dru. & Wal. ..	1837—1840	Chancery, Ireland.
Drury & Warren	Dru. & War. ..	1841—1843	Chancery, Ireland.
Dunlop, Bell & Murray ..	.. .. ..	1834—1840	Court of Session.
Durie	Durie	1621—1642	Court of Session.
Durnford & East's Term Reports	Durn. & E., *or* T. R.	1785—1800	King's Bench.
Dyer	Dy.	1512—1582	Common Law.
Eagle & Young's Collection of Tithe Cases	E. & Y. ..	1204—1825	All the Courts.
East	East	1801—1812	King's Bench.
Eden	Eden	1757—1766	Chancery.
Edgar	Edg.	1724—1725	Court of Session.
Edwards	Edw.	1808—1812	Admiralty.
Elchie	Elch.	1733—1754	Scotch Courts.
Ellis & Blackburn ..	Ell. & Bl., *or* E. & B.	1852—1858	Queen's Bench.
Ellis & Ellis	Ell. & E.	1858—1862	Queen's Bench.
Ellis, Blackburn & Ellis ..	Ell. Bl. & Ell., *or* E. B. & E.	1858 ..	Queen's Bench.
Equity Cases Abridged ..	Eq. Cas. Abr. ..	Publd. 1756	Chancery.
Equity Reports	Eq. R.	1853—1855	Chancery.
Espinasse	Esp.	1793—1810	Nisi Prius.
Exchequer Reports ..	Exch.	1847—1856	Exchequer.
Faculty Decisions ..	Fac. Dec. ..	1805—1841	Court of Session.
Falconer	Falc.	1744—1751	Court of Session.
Falconer & Fitzherbert ..	Falc. & F. ..	1837—1839	Election Committees.
Ferguson	Ferg.	1738—1752	Court of Session.
Ferguson's Consistorial Reports	Ferg.	1811—1817	Consistorial Court, Scotland (now abolished).
Finch	Finch	1673—1680	Chancery.
Finch's Precedents ..	Prec. Ch. ..	1689—1722	Chancery.
Finlason's Leading Cases	Finl. L. C. ..	Publd. 1847	Common Law.
Fitzgibbons	Fitzg.	1727—1732	King's Bench.
Flanagan & Kelly ..	Fl. & K. ..	1840—1842	Rolls Court, Ireland.
Fonblanque	Fonb.	1849—1852	Bankruptcy.
Forbes	Forb.	1705—1713	Court of Session.
Forester's Cases t. Talbot	Cas. temp. Talbot	1733—1737	Chancery.
Forrest	Forr.	1800—1801	Exchequer.
Fortescue	Fort.	1711—1731	All the Courts.
Foster (Crown Law) ..	Fost. C. L. ..	1746—1760	Criminal Courts.
Foster & Finlason ..	F. & F. ..	1856—1867	Nisi Prius and Criminal Courts.
Fountainhall	Fount	1678—1712	Scotch Courts.
Fox & Smith	Fox & S. ..	1822—1824	King's Bench, Ireland.
Fraser	Fras.	1790—1791	Election Committees.
Freeman	Freem.	1660—1706	Chancery.
Freeman	Freem.	1670—1704	Common Law.
Gale	Gale	1835—1836	Exchequer.
Gale & Davison	G. & D. ..	1841—1843	Queen's Bench.
Gibson	Gibs.	1621—1642	Court of Session.
Giffard	Giff. *or* Gif. ..	1857—1865	V.-C. Stuart.

REPORTS—*continued.*

Reports.	Abbreviations.	Date.	Court.
Gilbert	Gilb.	1706—1725	Chancery, &c.
Gilmour	Gilm.	1661—1666	Court of Session.
Glascock	Glasc.	1831—1832	Irish Courts.
Glyn & Jameson	G. & J. ..	1821—1823	Bankruptcy, &c.
Godbolt	Godb.	1574—1638	Queen's *or* King's Bench.
Gouldsborough	Gouldsb. ..	1586—1597	Common Law.
Gow	Gow	1818—1820	Nisi Prius.
Gwillim	Gwill.	1285—1800	All the Courts.
Haggard (Adm.)	Hagg. Adm. ..	1822—1838	Admiralty.
Haggard's Consistorial Reports	Hagg. Cons. ..	1789—1802	Ecclesiastical Courts.
Haggard's Ecclesiastical Reports	Hagg. Eccl. ..	1827—1833	Ecclesiastical.
Hailes	Hail.	1766—1791	Scotch Courts.
Hall & Twells	Hall & Tw. *or* H. & Tw.	1849—1850	Chancery.
Hanmer's Lord Kenyon's Notes	Ld. Ken. ..	1753—1759	King's Bench, &c.
Harcarse	Harc.	1681—1691	Scotch Courts.
Hardres	Hardr.	1655—1669	Exchequer.
Hare	Hare *or* Ha. ..	1841—1853	Vice-Chancellors' Courts.
Harrison & Rutherfurd ..	Har. & Ruth. ..	1865—1866	Common Pleas.
Harrison & Wollaston ..	Har. & W. ..	1835—1836	King's Bench.
Hayes	Hayes	1830—1832	Exchequer, Ireland.
Hayes & Jones	Hayes & J. ..	1832—1834	Exchequer, Ireland.
Hemming & Miller ..	Hem. & Mill. *or* H. & M.	1862—1865	V.-C. Wood.
Hetley	Het.	1627—1631	Common Pleas.
Hobart	Hob.	1613—1625	Common Law.
Hodges	Hodg.	1835—1837	Common Pleas.
Hogan	Hog.	1816—1834	Rolls Court, Ireland.
Holt (L. C. J.)	Holt	1688—1710	King's *or* Queen's Bench.
Holt's Nisi Prius	Holt	1815—1817	Nisi Prius.
Holt, Wm.	Holt, Eq. ..	1845 ..	Vice-Chancellors' Courts.
Home	Home	1735—1744	Court of Session.
Hopwood & Coltman ..	Hop. & C. ..	1868 to the present time	Common Pleas.
Hopwood & Philbrick ..	Hop. & Ph. ..	1863—1867	Common Pleas.
Horn & Hurlstone ..	H. & H. ..	1838—1839	Exchequer.
House of Lords Cases ..	H. L. Cas. ..	1847—1866	House of Lords
Hovenden's Supplement to Vesey, junr.	Hov. Suppl. ..	.. ..	Chancery.
Howell's State Trials ..	How. St. Tr. ..	1163—1820	All the Courts.
Hudson & Brooke ..	H. & B. ..	1827—1831	Common Law, Ireland.
Hume	Hume	1781—1822	Scotch Courts.
Hunt's Annuity Cases ..	Hunt	1777—1794	All the Courts.
Hurlstone & Coltman ..	H. & C. ..	1862—1865	Exchequer.
Hurlstone & Gordon ..	Included in Exch. Reports	1854—1856	Exchequer.
Hurlstone & Norman ..	H. & N. ..	1856—1861	Exchequer.
Hurlstone & Walmsley ..	H. & W. ..	1840—1841	Exchequer.
Hutton	Hutt.	1616—1639	Common Pleas.
Irish Chancery	Ir. Ch.	1850—1867	Chancery.
Irish Circuit Cases ..	Ir. Cir. Ca. ..	1841—1843	Assize Courts, Ireland.
Irish Common Law Reports	Ir. C. L. R. ..	1850—1866	Common Law, Ireland.
Irish Equity Reports ..	Ir. Eq. R. ..	1838—1850	Chancery, Ireland.

REPORTS—*continued.*

Reports.	Abbreviations.	Date.	Court.
Irish Jurist	Ir. Jur.	1848—1866	Irish Courts.
Irish Law Recorder	Ir. L. Rec.	1827—1838	Irish Courts.
Irish Law Reports	Ir. L. Rep.	1838—1850	Common Law Courts, Ireland.
Irish Reports, Common Law	I. R., C. L.	1867 to the present time	Common Law Courts, Ireland.
Irish Reports, Equity	I. R., Eq.	1867 to the present time	Chancery, Ireland.
Jacob	Jac.	1821—1822	Chancery.
Jacob & Walker	Jac. & W. *or* J. & W.	1819—1821	Chancery.
Jebb	Jebb C. C.	1822—1840	Criminal Courts, Ireland.
Jebb & Bourke	J. & B.	1841—1842	Queen's Bench, Ireland.
Jebb & Symes	J. & S.	1838—1841	Queen's Bench, Ireland.
Jenkins' Centuries (*i. e.* Hundreds) of Reports	Jenk. Cent.	1220—1623	Exchequer Chamber.
Johnson	Johns. *or* Jo.	1859—1860	Chancery, V.-C. Wood.
Johnson & Hemming	Jo. & H. *or* J. & H.	1860—1862	Chancery, V.-C. Wood.
Jones	Jon. Ex. R.	1834—1838	Exchequer, Ireland.
Jones & Carey	Jones & C.	1838—1839	Exchequer, Ireland.
Jones & Latouche	Jo. & Lat.	1844—1846	Chancery, Ireland.
Jones, Sir T.	Jo.	1670—1683	Common Law.
Jones, Sir W.	Jo.	1620—1651	Common Law.
Jurist Reports	Jur.	1837—1854	All the Courts.
Jurist Reports, New Series	Jur., N. S.	1855—1866	All the Courts.
Jurist (Scottish)	Sc. Jur.	1829—1873	Scotch Courts.
Justice of the Peace	J. P.	1837 to the present time	All the Courts.
Kay	Kay	1853—1854	Chancery, V.-C. Wood.
Kay & Johnson	Kay & J.	1854—1858	Chancery, V.-C. Wood.
Keane & Grant		1854—1862	Registration Cases in the Common Pleas.
Keble	Keb.	1661—1678	King's Bench.
Keen	Keen *or* Kee.	1836—1838	Rolls Court.
Keilwey	Keil.	1496—1530	Common Law.
Kelynge	Kel.	1739—1745	Chancery.
Kenyon's Notes of Cases	Ld. Ken.	1753—1759	King's Bench.
Knapp	Knapp	1829—1836	Privy Council.
Knapp & Ombler	Knapp & O.	1834—1835	Election Committees.
Lane	Lane	1605—1612	Exchequer.
Latch	Latch	1624—1627	King's Bench.
Law Journal	L. J.	1822—1831	All the Courts.
Law Journal, New Series	L. J., N. S. *or* L.J.Rep., N.S.*	1832 to the present time	All the Courts.
Law Recorder (Ireland)	Ir. L. Rec.	1827—1838	All the Courts, Ireland.

* (1) As the Old Series of the Law Journal Reports consisted of but nine volumes, it is not necessary to append the initials "N. S." to the references to volumes of the New Series later than the ninth, and in fact they are often omitted in such references, the omission not involving any risk of confusion.

(2) As the Law Journal Reports consist of several sections, according to the jurisdiction in which any given case is heard, the abbreviations representing the section or

REPORTS—*continued.*

Reports.	Abbreviations.	Date.	Court.
Law Reports*	Law Rep. *or* L. R.	1866 to the present time	All the Courts.
Law Times Reports ..	L. T.	1846—1859	All the Courts.
Law Times, New Series ..	L. T., N. S. ..	1859 to the present time	All the Courts.
Leach	Leach	1730—1814	Criminal Courts.
Lee	Lee	1752—1758	Ecclesiastical.
Lee's Cases, tempore Hardwicke	Lee	1733—1738	King's Bench.
Legal Observer	Leg. Ob. ..	1830—1856	All the Courts.
Leigh & Cave	L. & C. ..	1861—1865	Crown Cases Reserved.
Leonard	Leon.	1553—1615	Common Law.
Levinz	Lev.	1660—1696	Common Law.
Lewin's Crown Cases ..	Lewin	1822—1838	Criminal Courts (Northern Circuit).
Ley	Ley	1608—1629	Common Law.
Lilly's "Cases in Assise" ..	Lil.	Publd. 1719	Common Law.
Littleton	Littleton ..	1626—1632	Common Pleas and Exch.
Lloyd & Goold, tempore Plunkett	L. & G. *or* Ll. & G. *t.* Pl.	1834—1839	Chancery, Ireland.
Lloyd & Goold, tempore Sugden	L. & G. *or* Ll. & G. *t.* Sugd.	1835 ..	Chancery, Ireland.
Lloyd & Welsby	Ll. & Wel. ..	1829—1830	Common Law.
Lofft	Lofft	1772—1774	King's Bench.
Longfield & Townsend ..	L. & T. ..	1841—1842	Exchequer, Ireland.
Lowndes & Maxwell ..	L. & M. ..	1852 ..	Bail Court.
Lowndes, Maxwell & Pollock	L. M. & P. ..	1850—1851	Bail Court, &c.
Luders	Luders ..	1784—1787	Election Committees.
Lumley's Poor Law Cases	Lumley ..	1834—1839	All the Courts.
Lushington	Lush.	1859—1862	Admiralty.
Lutwyche	Lutw.	1682—1704	Common Pleas.
Lutwyche's Registration Cases	Lutw. Reg. Cas.	1843—1853	Common Pleas.
Macfarlane	Macf.	1838—1839	Jury Court, Scotland.
Maclaurin	Macl.	1670—1773	Scotch Criminal Courts.
Maclean & Robinson ..	Macl. & R. ..	1839 ..	House of Lords (Sc. App.).
Macnaghten & Gordon ..	Macn. & Gor.	1849—1852	Chancery Appeals.
Macpherson's Court of Session Cases	Macph. ..	1862—1863	Court of Session.

jurisdiction should, in referring, be added to the initials "L. J." Thus, "L. J., Ch." is a reference to the Chancery section of the Reports; "L. J., Bank." *or* "L. J., Bkcy." to the Bankruptcy section, &c. Cases in the House of Lords and Exchequer Chamber are arranged according to the Courts from which they originally come. From the commencement of the 45th volume in January, 1876, the Queen's Bench, Common Pleas and Exchequer Reports form one section; so do the Probate, Divorce and Admiralty Reports.

* As in the case of the Law Journal, the initials representing the particular series must be added in any reference to the Law Reports. Moreover, in references to the Law Reports, the figure representing the volume is placed between "L. R." and the abbreviation representing the particular division or series; thus, a reference to the first page of the ninth volume of the Queen's Bench series should be given as "L. R., 9 Q. B. 1." Three new series of the Law Reports have commenced in 1876, of which the first (Chancery, Bankruptcy and Lunacy) series is to be cited as "Ch. D."; the second (Common Law) series is to be divided into four sections, to be cited as "Q. B. D.," "C. P. D.," "Ex. D." and "P. D." respectively; and the third (Appellate) series is to be cited as "App. Cas."

REPORTS—*continued.*

Reports.	Abbreviations.	Date.	Court.
Macpherson's Indian Appeals (in connection with the Law Reports [vol. i.])	Macph. Ind. App. *or* L. R., 1 Ind. App.	1873—1874	Privy Council (see "Cowell's Indian Appeals").
Macqueen's Scotch Appeals	Macq. Sc. App..	1851—1865	House of Lords.
Macrae & Hertslet ..	M. & H. ..	1847—1852	Insolvent Debtors Court.
Macrory's Patent Cases ..	Mac. P. C. ..	1841—1853	All the Courts.
Maddock	Madd.	1815—1822	Chancery.
Maddock & Geldart ..	Mad. & Gel. *or* 6 Mad.	1821—1822	Chancery.
Magistrate, The	Mag.	1848—1849	All the Courts.
Manning & Granger ..	Man. & Gr. *or* M. & G.	1840—1844	Common Pleas.
Manning & Ryland ..	M. & R. ..	1827—1830	King's Bench.
Manning & Ryland's Magistrates Cases	M. & R. (M. C.)	1827—1830	King's Bench.
Manning, Granger & Scott (C. B., 1st nine volumes)	C. B. (for Common Bench)	1845—1849	Common Pleas (see "Common Bench Reports").
March's New Cases ..	Mar.	1639—1643	Common Law.
Marriot	Marr.	1776—1779	Admiralty.
Marshall	Marsh... ..	1813—1816	Common Pleas.
Maule & Selwyn	M. & S. ..	1813—1817	King's Bench.
M'Clean & Robinson's Scotch Appeals	M'C. & Rob. ..	1839 ..	House of Lords.
M'Cleland..	M'Clel. ..	1823—1824	Exchequer, Equity.
M'Cleland & Younge ..	M'Clel. & Y. ..	1824—1826	Exchequer, Equity.
Meeson & Welsby ..	Mees. & Wels. *or* M. & W.	1836—1847	Exchequer.
Merivale	Mer.	1815—1817	Chancery.
Milward	Milw.	1838—1842	Ecclesiastical Courts, Ireland.
Modern Reports (Leach's)	Mod.	1669—1700	All the Courts.
Molloy	Moll.	1827—1828	Chancery, Ireland.
Montagu	Mont.	1829—1832	Bankruptcy.
Montagu & Ayrton ..	Mont. & Ayr. *or* M. & A.	1833—1838	Bankruptcy.
Montagu & Bligh ..	Mont. & B. *or* M. & B.	1832—1833	Bankruptcy.
Montagu & Chitty ..	Mont. & Chit. *or* M. & C.	1838—1840	Bankruptcy.
Montagu & M'Arthur ..	Mont. & M'A.	1826—1830	Bankruptcy.
Montagu, Deacon & De Gex	Mont. D. & D.	1840—1844	Bankruptcy.
Moody	Mood.	1824—1844	Criminal Courts.
Moody & Malkin.. ..	Mood. & M. *or* M. & M.	1826—1830	Nisi Prius.
Moody & Robinson ..	Mood. & Rob. *or* M. & R.	1830—1844	Nisi Prius.
Moore (see also the following names)	Moor.	1485—1620	Common Law.
Moore	Moore	1817—1827	Common Pleas.
Moore & Payne	Moore & P. *or* M. & P.	1827—1831	Common Pleas.
Moore & Scott	Moo. & S. *or* M. & Scott.	1831—1834	Common Pleas.
Moore's Indian Appeals ..	Moo. Ind. ..	1836—1872	Privy Council.
Moore's Privy Council Cases	Moo. P. C. ..	1836—1862	Privy Council.
Moore's Privy Council Cases, New Series	Moo. P. C., N. S.	1862—1873	Privy Council.

REPORTS—*continued.*

Reports.	Abbreviations.	Date.	Court.
Mosely	Mos.	1726—1730	Chancery.
Murphy & Hurlstone ..	M. & H. ..	1836—1837	Exchequer.
Murray's Reports ..	Murr.	1816—1830	Jury Court, Scotland.
Mylne & Craig	My. & C. ..	1837—1841	Chancery Appeals.
Mylne & Keen	My. & K. ..	1832—1835	Chancery Appeals.
Nelson	Nels.	1625—1692	Chancery.
Neville & Macnamara's Railway and Canal Cases	Nev. & M. ..	1855—1874	All the Courts.
Neville & Manning ..	Nev. & M. ..	1832—1836	King's Bench.
Neville & Manning (Mag. Cas.)	N. & M. (M. C.)	1832—1838	King's Bench.
Neville & Perry	Nev. & P. *or* N. & P.	1836—1838	King's Bench.
New County Court Cases .	N. C. C. Cas. ..	1848—1851	Common Law Courts.
New Magistrates' Cases ..	N. M. C. ..	1844—1848	Common Law Courts.
New Practice Cases ..	N. P. C. ..	1844—1848	Common Law Courts.
New Reports	N. R.	1862—1865	All the Courts.
New Sessions Cases ..	New Sess. Cas.	1844—1851	Common Law Courts.
Nisbet	Nisb.	1665—1677	Court of Session
Nolan (Magistrates' Cases)	Nolan	1791—1793	King's Bench.
Notes of Cases	Notes of Cases	1841—1850	Ecc. & Adm. Courts.
Noy	Noy	1544—1631	Common Law.
O'Malley & Hardcastle ..	O'Mall. & H. ..	1869 to the present time	Election Judges.
Owen	Owen	1558—1615	Common Law.
Palmer	Palm.	1619—1628	King's Bench.
Parker	Park.	1743—1766	Exchequer.
Paton's Scotch Appeals ..	.. .. ..	1759—1821	House of Lords.
Peake	Peake	1790—1795	Nisi Prius.
Peake's Additional Cases	Peake, Add. Cas.	1795—1812	Nisi Prius.
Peckwell	Peckw. ..	1771—1806	Election Committees.
Peere Williams	P. Wms. ..	1695—1735	Chancery.
Perry & Davison	P. & D. ..	1838—1841	Queen's Bench.
Perry & Knapp	P. & K. ..	1833 ..	Election Committees.
Philipps	Phil. El. ..	1782 ..	Election Committees.
Phillimore	Phil. Eccl. ..	1809—1821	Ecclesiastical.
Phillips	Phill.	1841—1849	Chancery Appeals.
Pigot & Rodwell (Reg. Cas.)	Pig. & Rod. ..	1843—1845	Common Pleas.
Pitcairn's Criminal Trials	Pitc.	1488—1624	Court of Justiciary.
Plowden	Plowd... ..	1550—1579	Common Law.
Pollexfen	Pollexf. ..	1610—1683	All the Courts.
Popham	Poph.	1592—1627	Common Law.
Power, Rodwell & Dew ..	P. R. & D. ..	1848—1856	Election Committees.
Precedents in Chancery ..	Prec. Ch. ..	1689—1722	Chancery.
Price	Price	1814—1824	Exchequer.
Queen's Bench Reports ..	Q. B.	1841—1852	Queen's Bench.
Railway and Canal Cases (See also "Neville and Macnamara")	Rail. Cas. *or* Rail. & Can. Cas.	1835—1854	All the Courts.
Raymond, Lord	Ld. Raym. ..	1694—1732	Common Law.
Raymond, Sir T... ..	Raym... ..	1660—1683	Common Law.

REPORTS—*continued.*

Reports.	Abbreviations.	Date.	Court.
Rayner's Tithe Cases ..	Rayn.	1575—1753	All the Courts.
Real Property Cases ..	R. P. Cas. ..	1843—1848	All the Courts.
Reilly's Albert Arbitration	.. .. ..	1871—1873	Lord Cairns.
Reilly's European Arbitrn.	.. .. ..	1872 ..	Lord Westbury.
Reports in Chancery ..	Ch. Rep. ..	1625—1710	Chancery.
Ridgway, Lapp & Schoales	R. L. & S. ..	1793—1795	King's Courts, Ireland.
Ridgway's Cases in the time of Lord Hardwicke	Ridgw. ..	1733—1745	King's Bench & Chancery.
Ridgway's Parliamentary Reports	Ridgw. P. C. ..	1784—1796	House of Lords, Ireland.
Robertson (Eccl. Reports)	Rob. Eccl. ..	1844—1853	Ecclesiastical.
Robertson (Scotch Appeals)	Rob. Sc. App. .	1709—1727	House of Lords.
Robinson (Chr.)	Chr. Rob. ..	1798—1808	Admiralty.
Robinson, Geo. (Scotch Appeals)	G. Rob. ..	1840—1841	House of Lords.
Robinson, W.	W. Rob. ..	1838—1850	Admiralty.
Rolle, Sir H.	Roll. *or* Rolle..	1614—1625	King's Bench.
Rose	Rose	1810—1816	Bankruptcy.
Ross' Leading Cases on Commercial Law	.. .. ..	Publd. 1853	All the Courts.
Ross' Leading Cases on the Law of Scotland	.. .. ..	Publd. 1849	Scotch Courts.
Russell	Russ.	1823—1828	Chancery Appeals.
Russell & Mylne	Russ. & Myl. *or* R. & M.	1829—1833	Chancery Appeals.
Russell & Ryan	Russ. & Ry. ..	1800—1823	Criminal Courts.
Ryan & Moody	Ry. & M. ..	1823—1826	Nisi Prius.
Salkeld	Salk.	1688—1709	King's Bench (principally).
Saunders	Saund.. ..	1666—1672	King's Bench.
Saunders & Cole (Bail Court)	B. C. R. ..	1846—1848	Bail Court.
Sausse & Scully	Sau. & Sc. ..	1835—1840	Rolls Court, Ireland.
Saville	Sav.	1580—1594	Common Law.
Sayer	Say.	1751—1756	King's Bench.
Schoales & Lefroy ..	Sch. & Lef. *or* S. & L.	1802—1809	Chancery, Ireland.
Scott	Scott	1834—1840	Common Pleas.
Scott's New Reports ..	Scott, N. R. ..	1840—1845	Common Pleas.
Searle & Smith	Se. & Sm. ..	1859—1860	Probate and Divorce.
Select Cases in Chancery	Sel. Ca. Ch. ..	1724—1733	Chancery.
Sessions Cases	Sess. Ca. ..	1710—1746	King's Bench.
Shaw	Shaw	1848—1852	Court of Justiciary.
Shaw & Dunlop	S. & D. ..	1819—1831	Court of Justiciary.
Shaw, Dunlop, Napier & Bell	S., D., N. & B..	1821—1831	Court of Teinds.
Shaw & M'Clean's Scotch Appeals	Sh. & M'C. ..	1835—1838	House of Lords.
Shaw's Scotch Appeals ..	Sh. App. ..	1821—1824	House of Lords.
Shower	Show.	1678—1694	King's Bench.
Shower's Cases in Parlt...	Show. P. C. ..	1694—1699	House of Lords.
Siderfin	Sid.	1659—1670	King's Bench.
Simons	Sim.	1826—1852	Chancery.
Simons & Stuart	Sim. & Stu. *or* S. & S.	1822—1826	Chancery.
Simons, New Series ..	Sim., N. S. ..	1850—1852	Chancery.
Skinner	Skinn.	1681—1697	King's Bench.
Smale & Giffard	Sm. & Giff. ..	1852—1857	Chancery, V.-C. Stuart.
Smith	Smith	1803—1806	King's Bench.

REPORTS—*continued.*

Reports.	Abbreviations.	Date.	Court.
Smith & Batty	Sm. & Bat. ..	1824—1825	King's Bench, Ireland.
Smith's Leading Cases ..	Sm., L. C. ..	7th edition published 1875	Common Law Courts.
Smythe	Smythe ..	1839—1840	Common Pleas, Ireland.
Solicitors' Journal and Reporter	S. J., *or* Sol. Jour.	Jan. 1857 to the present time	All the Courts.
Spinks	Spinks.. ..	1853—1855	Ecclesiastical and Admiralty.
Spinks' Prize Cases ..	Spinks' Pr. Cas.	1854—1856	Admiralty.
Stair	Stair	1661—1681	Court of Session.
Starkie	Stark.	1815—1823	Nisi Prius.
State Trials (ed. Howell)	How. St. Tr. ..	1163—1820	All the Courts.
Strange	Stra.	1716—1747	King's Bench.
Stuart, Milne & Peddie ..	St. M. & P. ..	1851—1853	Scotch Courts.
Style	Sty.	1646—1655	King's *or* Upper Bench.
Swabey	Swab.	1855—1859	Admiralty.
Swabey & Tristram ..	Sw. & Tr. ..	1858—1865	Probate and Divorce.
Swanston	Swanst. ..	1818—1819	Chancery.
Swinton	Swint.	1835—1841	Court of Justiciary.
Syme	Sym.	1826—1829	Court of Justiciary.
Tamlyn	Taml.	1829—1830	Chancery.
Taunton	Taunt... ..	1807—1819	Common Pleas.
Temple & Mew	T. & M. ..	1848—1851	Crown Cases Reserved.
Term Reports, by Durnford & East	Term Rep., *or* T. Rep.	1785—1800	King's Bench.
Thornton's Notes of Cases	Thorn. ..	1841—1850	Eccl. and Mar. Courts.
Tothill	Toth.	1559—1641	Chancery.
Tudor's Leading Cases:—			
Mercantile and Maritime Law	Tudor L. C. Merc. Law	2nd edition, publd. 1868	All the Courts.
Real Property and Conveyancing	Tudor L. C. R. P.	Published 1863	All the Courts. (See also "White & Tudor.")
Turner & Russell ..	Turn. & Russ. *or* T. & R.	1822—1824	Chancery.
Tyrwhitt	Tyrw.	1830—1835	Exchequer.
Tyrwhitt & Granger ..	Tyr. & Gr. ..	1835—1836	Exchequer.
Vaughan	Vaugh. ..	1666—1673	Common Pleas.
Ventris	Vent.	1668—1692	All the Courts.
Vernon	Vern.	1680—1719	Chancery.
Vernon & Scriven ..	V. & S. ..	1786—1788	Common Law, Ireland.
Vesey	.. .. ..	.. ..	(See next three names.)
Vesey & Beames	V. & B. ..	1812—1814	Chancery.
Vesey junior	Ves. jun. *or*, after the first two volumes, Ves. simply	1789—1817	Chancery.
Vesey senior	Ves. sen. ..	1746—1755	Chancery.
Wallis	Wall.	1766—1791	Irish Courts.
Webster's Patent Cases ..	Webst... ..	1602—1855	All the Courts.
Weekly Notes	W. N.	1866 to the present time.	All the Courts.
Weekly Reporter ..	W. R.	1852 to the present time	All the Courts.

REPORTS—*continued.*

Reports.	Abbreviations.	Date.	Court.
Welsby, Hurlstone & Gordon	Exch. (for Exchequer)	1847—1854	Exchequer.
Welsh	Welsh	.. ..	Registry Cases, Ireland.
West (Chancery).. ..	West (Ch.) ..	1736—1739	Chancery.
West (House of Lords) ..	West (H. L.) ..	1839—1841	House of Lords.
White & Tudor's Leading Cases	Wh. & T., *or* L. C. Eq.	4th edition publd. 1872	Chancery.
Wightwick	Wightw. ..	1810—1811	Exchequer.
Willes	Willes	1737—1758	Common Pleas.
Williams (Peere).. ..	P. Wms. ..	1695—1735	Chancery.
Willmore, Wollaston & Davison	W. W. & D. ..	1837 ..	King's *or* Queen's Bench.
Willmore, Wollaston & Hodges	W. W. & H. ..	1838—1839	Queen's Bench.
Wilmot's Opinions ..	Wilm.	1757—1770	All the Courts.
Wilson, George	Wils. *or* G. Wils.	1742—1774	Common Law.
Wilson, John	Wils. Ch. ..	1818—1819	Chancery.
Wilson, John	Wils. Ex. Eq...	1817 ..	Exchequer (Equity).
Wilson & Shaw's Scotch Appeals..	Wils. & S., *or* W. & S.	1825—1834	House of Lords.
Winch	Winch.. ..	1621—1625	Common Pleas.
Wolferstan & Bristow ..	Wolf. & B., *or* W. & B.	1859—1864	Election Committees.
Wolferstan & Dew ..	Wolf. & D., *or* W. & D.	1857—1858	Election Committees.
Wollaston's Practice Cases	W. P. C. ..	1840—1841	Common Law Courts.
Wood's Tithe Causes ..	Wood	1650—1797	Exchequer.
Year Books	Y. B.	1273—1535	Common Law.
Yelverton	Yelv.	1602—1613	King's Bench.
Younge	Younge ..	1830—1832	Exchequer (Equity).
Younge & Collyer (Chancery)	You. & Coll. C. C., *or* Y. & C. C. C.	1841—1844	Chancery.
Younge & Collyer (Exchequer, Equity)	You. & Coll. Ex. Eq., *or* Y. & C. Ex.	1834—1842	Exchequer (Equity).
Younge & Jervis.. ..	Y. & J. ..	1826—1830	Exchequer.

REPOSITION OF THE FOREST signifies the re-putting to, or re-including in, the forest, of lands which had been disafforested; or the statute whereby the same was effected. *Cowel.*

REPRESENTATION. 1. For the purposes of intestate succession to anyone, the children of a deceased relative are, within certain degrees, allowed to *represent* their parent; thus, if a man die leaving a brother A., and the children of a deceased brother B., the children of B. are said to take by *representation.* 2 *Bl.* 217, 517.

2. The character borne by an heir or devisee, or an executor or administrator. An executor or administrator is called the *legal personal representative* of the deceased, and an heir or devisee is called the *real representative* of the deceased.

3. The relation of a member of parliament to his constituents.

4. The relation of an ambassador or other public minister to the sovereign who has deputed him.

5. A written pleading in a Scotch action, presented to the Lord Ordinary when his judgment is brought under review. *Bell.* [LORD ORDINARY.]

REPRESENTATION OF THE PEOPLE ACT, 1867, is the stat. 30 & 31 Vict. c. 102, for amending the representation of the people in England and Wales. The following are the principal changes made by this Act:—The number of members returnable by places of comparatively small population is reduced, and the

REPRESENTATION OF PEOPLE ACT – *cont.* number sent by the more important towns increased. On the University of London is conferred the right of sending one member to parliament. By sect. 9 it is provided that, at a contested election for any county or borough represented by three members, no person shall vote for more than two candidates; and by sect. 10, that at a contested election for the City of London (which returns four members) no person shall vote for more than three candidates. By sections 3 and 4 of the Act the franchise for towns is conferred on inhabitant occupiers of dwelling-houses and on lodgers. By sect. 12, the boroughs of Totnes, Reigate, Great Yarmouth and Lancaster are wholly disfranchised; and by section 17, boroughs having a population of less than 10,000 are to return but one member in future. Such boroughs, to the number of thirty-eight, are enumerated in Schedule (A.) to the Act. Three of these—Honiton, Thetford and Wells—together with Arundel, Ashburton, Dartmouth, and Lyme Regis, are altogether disfranchised by sect. 43 of the Scotch Act (stat. 31 & 32 Vict. c. 48), for the purpose of providing additional representation for Scotch constituencies.

REPRESENTATIVE PEERS are those who sit in the House of Lords as representing the peerage of Scotland and Ireland. [LORDS TEMPORAL; PARLIAMENT; PEERAGE.]

REPRIEVE. A temporary suspension of the execution of a criminal sentence. *T. L.; Cowel;* 4 *Bl.* 394; 4 *Steph. Com.* 466. In this sense it is contrasted with pardon; but we often use the word to signify a permanent remission of a capital sentence. In this latter sense it is contrasted with *respite.*

REPRISAL. A taking in return; that is to say, taking the goods of a wrongdoer to make compensation for the wrong he has done, or as a pledge for amends being made. *Cowel;* 1 *Bl.* 258; 3 *Bl.* 4; 2 *Steph. Com.* 492–494; 3 *Steph. Com.* 242. [LETTERS OF MARQUE AND REPRISAL; RECAPTION.]

REPRISES are duties yearly paid out of a manor and lands, such as rents, &c., which must be deducted before the clear yearly value can be ascertained. *T. L.; Cowel.* See the *Jury Act,* 1825 (9 *Geo.* 4, *c.* 50), *s.* 1.

REPROBATOR, ACTION OF. An action in the law of Scotland instituted for the purpose of convicting a witness of perjury. *Bell; Paterson.*

REPUBLICATION OF WILL. The revival of a will revoked, either by re-execution or by a codicil adapted to the purpose. [PUBLICATION, 1.]

REPUDIATION. A rejection or disclaimer; especially of a man's disclaiming a share in a transaction to which he might otherwise be bound by tacit acquiescence.

REPUGNANT. Inconsistent; generally used of a clause in a written instrument inconsistent with some other clause or with the general object of the instrument.

REPUTATION. 1. A person's good name. 1 *Bl.* 134; 3 *Bl.* 123; 1 *Steph. Com.* 144; 3 *Steph. Com.* 377.

2. That which generally hath been and many men have said and thought. *Toml.*

REPUTED OWNER. A bankrupt, in reference to goods and chattels in his apparent possession with the consent of the true owner, is called the *reputed owner* of such goods. [See next Title.]

REPUTED OWNERSHIP. The doctrine of reputed ownership, by which a bankrupt trader is deemed the reputed owner of goods in his apparent possession, was introduced into the bankrupt laws by stat. 21 Jac. 1, c. 19, s. 11, for the purpose of protecting the creditors of a trader from the consequences of the false credit which he might acquire by being suffered to have in his possession, as apparent owner, property which did not really belong to him. Such property may in general be claimed by the trustee in the bankruptcy for the benefit of the creditors. 2 *Bl.* 488; 2 *Steph. Com.* 166; *Robson's Bkcy. ch.* 20, 2*nd ed. pp.* 412—440. [ORDER AND DISPOSITION.]

REQUEST, COURTS OF. [COURT OF REQUEST.]

REQUEST, LETTERS OF. [LETTERS OF REQUEST.]

REQUISITIONS ON TITLE are written inquiries made by the solicitor of an intending purchaser of land, or of any estate or interest therein, and addressed to the vendor's solicitor, in respect of some apparent insufficiency in the abstract of title. [ABSTRACT OF TITLE.]

RERE COUNTY was some public place appointed by the sheriff for receiving the king's money after his county court was done. *T. L.*

RERE FIEF. An inferior or non-military feud. 2 *Bl.* 57, 58; 1 *Steph. Com.* 180. [FEE; FEUDAL SYSTEM.]

RES GESTÆ. The material facts of a case as opposed to mere hearsay. 3 *Steph. Com.* 544. The phrase is generally used

RES GESTÆ—*continued.*

in reference to that which is apparently hearsay, and yet is in fact immediately relevant to the matter in question. Thus proof may be received of the language used at seditious meetings, in order to show the objects and character of such meetings. *Powell's Ev., 4th ed. p.* 143.

RES INTEGRA. An affair not broached or meddled with; one on which no action has been taken, or deliberation had.

RES INTER ALIOS ACTA ALTERI NOCERE NON DEBET. *A matter litigated between two parties ought not to prejudice a third party.* This is the general rule; but it must be taken with this important qualification, that though a decision, in a case between A. and B., cannot directly prejudice C., yet if there be a legal point at issue in C.'s case identical with one which was in controversy between A. and B., the court will generally regard itself as bound by the prior decision, at least if the court which pronounced it was the same, or one of equal or superior authority.

RES IPSA LOQUITUR. The matter itself speaks; thus we say, "the thing speaks for itself."

RES JUDICATA. A matter which has been adjudicated upon. [EXCEPTIO REI JUDICATÆ.]

RESCEIT is where any action is brought against a tenant for life or term of years, and the person in remainder or reversion comes in and prays to be *received* to defend the land, and plead with the demandant. The civilians call this the admission of a third party to plead *pro interesse suo. T. L.; Cowel.*

The old real actions, to which *resceit* applied, are abolished, and the word has become obsolete. [ACTIONS REAL AND PERSONAL.]

Resceit of Homage (Lat. *Receptio homagii*) is the lord's receiving homage from his tenant on his admission to land. *Cowel.*

RESCISSORY ACTION. [ACTIONS RESCISSORY; REDUCTION.]

RESCOUS or RESCUE is a resistance against lawful authority, in taking a person or thing out of the custody of the law; as if a bailiff or other officer, upon a writ, do arrest a man, and others by violence take him away, or procure his escape; this is a *rescous in fact.* So if one distrain beasts for damage feasant [DAMAGE FEASANT] in his ground, and as he drives them, they enter the owner's house, and he will not deliver them up upon demand; this is a *rescous in law. T. L.; Cowel;* 3 *Bl.* 12, 146, 170; 4 *Bl.* 125, 131; 3 *Steph. Com.* 254; 4 *Steph. Com.* 225, *n.*, 230; *Fawcett, L. & T.* 163, 175.

RESCUSSOR. A person committing a *rescous* or *rescue.* [RESCOUS.]

RESEISER. A taking again of lands into the hands of the king, whereof a general livery, or *ouster-le-main*, was formerly mis-sued, contrary to the form and order of law. *Cowel.* [OUSTER LE MAIN.]

RESERVATION. A keeping back, as when a man lets his land, *reserving* a rent. Sometimes it signifies an exception; as when a man lets a house, and *reserves* to himself one room. *Cowel;* 1 *Steph. Com.* 683.

A reservation is, however, by some writers distinguished from an exception in this way:—An *exception* is of part of the thing granted, but a *reservation* is of a thing not in being, but newly created and reserved out of the land or tenement demised. *Fawcett, L. & T.* 77. [See also next Title.]

RESERVING A POINT OF LAW. This is where, on a trial, a judge reserves a point of law for the consideration of a Superior Court.

1. This may be done at *Nisi Prius* with the consent of the parties; and in such case it is generally agreed that the court, before which the point is argued, shall be in the same situation as the judge was before whom it was originally raised, and shall have power to order a verdict or nonsuit to be entered as they may think fit. 3 *Steph. Com.* 558, *n.*; *Smith's Act. Law, ch.* 5.

By sect. 46 of the Judicature Act of 1873 (36 & 37 Vict. c. 66) power was given to a judge to reserve points of law at his discretion for the consideration of a divisional court; but, by sect. 22 of the Act of 1875 (38 & 39 Vict. c. 77), this is not to take away or prejudice the right of any party to have the issues for trial by jury submitted and left by the judge to the jury, with a complete and proper direction upon the law and the evidence applicable to such issues.

2. It may also be done by the judge in a criminal case; in which case the point is left for the judgment of the Court for the Consideration of Crown Cases Reserved, composed of judges from the Superior Courts at Westminster.

By sect. 47 of the Judicature Act, 1873, and sect. 19 of the Judicature Act, 1875, the criminal procedure is to continue as heretofore, subject to any alteration by Rules of Court.

RESET. The receiving of a proscribed or outlawed person. *Cowel.* [See next Title.]

RESET OF THEFT is the receiving stolen goods; or harbouring the thief. *Bell.*

RESETTER. The same as reset. *Cowel.* [RESET.]

RESIANCE. A man's abode or continuance in a place; whence comes the participle *resiant*, that is, continually dwelling or abiding in a place. It is all one with *residence;* but it seems that in *Cowel's* time the terms *residence, resident,* were confined to the case of a parson or vicar residing upon his benefice. [See the following Titles.]

RESIANT ROLLS. Rolls containing the *resiants* in a tithing, &c., which were called over by the steward on holding Courts Lect. *Toml.* [COURT LEET; RESIANCE; TITHING.]

RESIDENCE. A continuance of a spiritual person upon his benefice. *T. L.; Cowel;* 1 *Bl.* 390—392; 2 *Steph. Com.* 689. [RESIANCE.] Now used generally for any person's continuance in a place, and defined for various purposes by different acts of parliament. [See next Title.]

RESIDENT. 1. A person residing in a place.

2. A public minister appointed to reside at the court of a foreign sovereign.

3. Especially, a person appointed by the Indian Government to reside at the court of any rajah or other native prince in a state of feudal dependence upon the British Crown.

RESIDUARY ACCOUNT. The account which every executor and administrator, after paying the debts and particular legacies of the deceased, and before paying over the *residuum*, must pass before the Board of Inland Revenue, setting forth the particulars of the assets of the estate and of the payments made thereout; the duty being calculated on the balance found. 2 *Steph. Com.* 208, *n.*

RESIDUARY DEVISEE. A person entitled under a will to the *residue* of the testator's lands; that is, to such as are not specifically devised by the testator's will. Before the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), all devises of real estate were deemed *specific;* and a devise which might be apparently a residuary devise was construed to be a specific devise of such lands (not otherwise expressly disposed of) as the testator had at the time of making his will. Hence, if a testator devised land specifically, and the devise for any reason failed to take effect, or if he purchased land after making his will, in neither case could the nominally residuary devisee obtain the benefit of it; but it went to the heir. 2 *Bl.* 378. Now, by statute 7 Will. 4 & 1 Vict. c. 26, s. 25, it is provided that, unless a contrary intention shall appear by the will, such real estate or interest as shall be comprised, or intended to be comprised, in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will. 1 *Steph. Com.* 607; *Wms. R. P., Pt. I. ch.* 10.

RESIDUARY ESTATE is a term used variously to mean—1. A testator's property not specifically devised or bequeathed. 2. Such part of the personal estate as is primarily liable to the payment of debts. 3. That which remains after debts and legacies have been paid.

RESIDUARY LEGATEE is one to whom the residue, or a proportionate share in the residue, of a testator's personal property is left, after debts, funeral expenses, and specific and pecuniary legacies have been satisfied. 2 *Bl.* 514; 2 *Steph. Com.* 208, 212.

RESIDUUM. The residue of the personal estate of a deceased person after payment of debts and specific and pecuniary legacies. 2 *Steph. Com.* 208.

RESIGNATION. 1. The form by which a vassal returns a fee into the hands of a superior. *Bell.*

2. The giving up of a benefice into the hands of the ordinary. *T. L.; Cowel;* 1 *Bl.* 382, 393; 2 *Steph. Com.* 675, 694, 721. [See next Title.]

3. And, generally, the giving up of any office by letter or other instrument in writing delivered to the party lawfully authorized to receive it.

RESIGNATION BOND is a bond or other engagement in writing taken by a patron from the clergyman presented by him to a living, to resign the benefice at a future period. This is allowable in certain cases under stat. 9 Geo. 4, c. 94, passed in 1828. 2 *Steph. Com.* 721, 722; *Tudor, L. C. R. P.* 230.

RESOLUTION. Any matter resolved upon, especially at a public meeting.

I. *Resolutions of Creditors.*—These

RESOLUTION—*continued.*

are resolutions passed at meetings of the creditors of a bankrupt or one whose property is in liquidation. Resolutions thus passed are of three kinds:—

1. An *ordinary resolution*, which is decided by a majority in value of the creditors present personally or by proxy at the meeting and voting upon such resolution.

2. A *special resolution*, which is decided by a majority in number and three-fourths in value of the creditors present personally or by proxy at the meeting and voting upon such resolution.

3. An *extraordinary resolution*, which is a resolution passed by a majority in number and three-fourths in value of the creditors, and confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting of which due notice has been given, held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which such resolution was first passed. An extraordinary resolution thus passed may enforce a composition upon dissentient creditors whose debts are shown in the statement of the debtor. *Bankruptcy Act*, 1869 (*stat.* 32 & 33 *Vict. c.* 71), *s.* 16, *sub-sects.* 7, 8, *and s.* 126; *Robson, Bkcy.*

II. *Resolutions of Joint-Stock Companies.*—By sect. 51 of the Companies Act, 1862 (stat. 25 & 26 Vict. c. 89), a special resolution is defined to be a resolution passed by a majority of not less than three-fourths of the members of the company present in person or by proxy, and confirmed by a majority of such members as may be present at a subsequent meeting held at an interval of not less than fourteen days, nor more than one month, from the date of the first meeting; and by sect. 129 an extraordinary resolution is one which is passed in such a manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution.

III. *Resolutions in Parliament.*—In Parliament, every question, when agreed to, assumes the form of an *order*, or a *resolution* of the House. By its *orders*, the House directs its committees, its members, its officers, the order of its own proceedings and the acts of all persons whom they concern. By its *resolutions*, the House declares its own opinions and purposes. *May's Parl. Pract.*

RESPECTU COMPUTI VICECOMITIS HABENDO. An old writ for the respiting of a sheriff's account, upon just occasion directed to the Treasurer and Barons of the Exchequer. *Cowel.*

RESPECTUM, CHALLENGE PROPTER. [CHALLENGE.]

RESPITE (Lat. *Respectus*). Delay or forbearance. *Cowel.* Thus:—

1. *Respite of homage* was the forbearing or excusing of the homage which ought first of all to be performed by the tenant that held by homage. *Cowel.* [HOMAGE.]

2. *Respite of a jury* signifies the adjournment of the sittings of the jury for defect of jurors. 3 *Bl.* 354.

3. *Respite of a sentence* signifies a delay, or putting off of the execution of the sentence. *Bell.* [REPRIEVE.]

RESPONDEAT OUSTER. Let him answer over; that is to say, when a dilatory plea put in by the defendant has been overruled by the Court, let him put in a more substantial plea, or *answer over* in some better manner. 3 *Bl.* 303, 396, 397; 4 *Bl.* 338; 3 *Steph. Com.* 569; 4 *Steph. Com.* 405. [DILATORY PLEA; PLEADING OVER.]

RESPONDEAT SUPERIOR. Let the superior be held responsible. In pursuance of this maxim, a principal is liable in damages for the act of his agent, and a master for the act of his servant: provided that in each case the act of the inferior, whether specifically authorized or not, was within the scope of the duties imposed by the superior. See *Broom's Legal Maxims, pp.* 843–867.

RESPONDENT. A party called upon to *answer* a petition or an appeal.

RESPONDENTIA. A loan upon the security of the goods and merchandise in a vessel, or upon the mere hazard of a voyage. 2 *Bl.* 458; 2 *Steph. Com.* 92, 93. [BOTTOMRY.] Such a loan is insurable. *Crump, Mar. Ins. s.* 141.

RESPONSALIS. A word used formerly to signify a person who appeared to answer for another in a court of justice. *Cowel.*

RESPONSIVE ALLEGATION. A defensive or responsive allegation in the Ecclesiastical Court is an allegation or plea by a defendant or respondent in answer to the primary allegation of the promoter of the suit. *Coote's Eccl. Practice; Phillimore's Eccl. Law.*

RESSEISER. [RESEISER.]

RESTITUTION. The restoring of anything unlawfully taken from another. It is most frequently used in the common law for the setting him in possession of lands and tenements that hath been unlawfully disseised of them. *Cowel.* [See also the following Titles.]

RESTITUTION OF CONJUGAL RIGHTS. A suit for restitution of conjugal rights is a suit which may be brought when either husband or wife lives separately from the other without any sufficient reason, to compel the party, so living separately, to return to the other. It was formerly brought in the Ecclesiastical Court; but since the Divorce Act of 1857, it has been brought in the Court for Divorce and Matrimonial Causes, now consolidated with the High Court of Justice. 3 *Bl.* 94; 2 *Steph. Com.* 238, *n.*, 279, *n.*; *Judicature Act*, 1873 (*stat.* 36 & 37 *Vict. c.* 66), *ss.* 16, 34. [COURT FOR DIVORCE AND MATRIMONIAL CAUSES.]

RESTITUTION OF MINORS is the relief of a minor on his attaining full age against a deed executed by him during his minority which may be hurtful to him. In some cases a deed so executed is absolutely null and void, and its invalidity may be pleaded in an exception to an action founded upon it. But in other cases it is merely voidable; and unless an action be brought to rescind it within four years of his attaining full age, called the *quadriennium utile*, the deed cannot be afterwards impeached. *Bell.* [QUADRIENNIUM UTILE.]

RESTITUTION, WRIT OF. 1. A writ issued in favour of a successful plaintiff in error to restore to him all that he has lost by the judgment which has been reversed on error. *T. L.*; *Lush's Pr.* 675. The technical proceeding called a writ of error is abolished by the Judicature Act, 1875, First Schedule, Order LVIII. rule 1. [ERROR.]

2. A writ issued on the conviction of a thief, for the restitution of the stolen goods to their true owner. 4 *Bl.* 362, 363. Restitution, however, may be ordered in a summary manner without writ. 4 *Steph. Com.* 437.

RESTITUTIONE EXTRACTI AB ECCLESIA. An old writ for the restoration of a man to the sanctuary of the church, from which he had been forcibly removed. In Reg. Orig. 69, an instance is given of this writ. In that case the Bishop of Lincoln certified that "one D. being detained in the prison of N. on a charge of theft, escaped from prison and took refuge in the church of the same town; whereupon certain malefactors, unmindful of their own salvation, dragged him forcibly away, and delivered him to the sheriff to be handed over to the custody of a gaol, in which he is still detained, to the manifest prejudice of the Church." The king accordingly directs the justices of gaol delivery to inquire if the facts be so, and if they be, then to cause D. to be restored to the place from which he had been forcibly removed. [SANCTUARY.]

RESTITUTIONE TEMPORALIUM. A writ directed to the sheriff to restore the temporalities of a bishop elected and confirmed. *Cowel*; 1 *Bl.* 330.

RESTRAINING ORDER is an order restraining the Bank of England, or some public company, from allowing any dealing with some stock or shares specified in the order. It is granted on motion or petition. *Hunt. Eq., Pt. III. ch.* 3, *s.* 2.

RESTRAINING STATUTES. This is a phrase used especially of the acts of parliament passed to restrain simoniacal practices in presentations to livings. 2 *Steph. Com.* 720.

RESTRICTIVE INDORSEMENT is an indorsement on a bill or note which restricts the negotiability of the bill to a particular person, or a particular purpose; as "pay to I. S. only," or "pay John Holloway for my use." It is to be distinguished from a *blank indorsement*, which consists merely of the signature of the indorser; from a *full indorsement*, which makes the bill or note payable to a given person or his order; and from a *qualified indorsement*, which qualifies the liability of the indorser. *Story on Bills*, *s.* 206. [INDORSEMENT; QUALIFIED INDORSEMENT.]

RESTS are periodical balancings of an account made for the purpose of converting interest into principal, and charging the party liable thereon with compound interest. *Smith's Man. Eq.*

RESULTING TRUST is a trust raised by implication in favour of the author of the trust himself, or his representatives. This generally happens where an intended trust fails. 1 *Steph. Com.* 375; *Sm. Man. Eq.*; *Chute's Eq.* [TRUST.]

RESULTING USE. A use returning by way of implication to the grantor himself. 2 *Bl.* 335; 1 *Steph. Com.* 361, 541. [RESULTING TRUST; USE.]

RESUMMONS. A second summons calling upon a man to answer an action, where the first summons is defeated upon any occasion, as the death of a party or such like. *T. L.; Cowel.*

RESUMPTION. The taking again into the king's hands of lands or tenements which he had been induced to grant by false suggestion or other error. *T. L.; Cowel.*

RETAINER. 1. A servant, but not menial or familiar, that is, not continally dwelling in the house of his master, but only wearing his livery, and attending sometimes upon special occasions. *Cowel.*

2. The right which an executor, who is a creditor of his testator, has to *retain* so much of the testator's assets as will pay his own debt. 2 *Bl.* 511; 3 *Bl.* 18, 19; 3 *Steph. Com.* 263.

3. A counsel's retaining fee.

4. An authority given to an attorney or solicitor to proceed in an action. This may be given verbally; but a written retainer is always preferable. A retainer of this kind is either *general* or *special.* The general attorney (or solicitor) of a person has an implied authority from his client to accept service of process, but he cannot in general commence an action for him without a special retainer. *Lush's Pr.* 248—250.

RETAINING A CAUSE. This is where, under the Judicature Act, 1873, s. 36, and the Judicature Act, 1875, s. 11, sub-sect. 2, a cause brought in a wrong division of the High Court is *retained* therein; which may be done at the discretion of the court or a judge under the authority of the above sections.

RETAINING FEE (Lat. *Merces retinens*) is the fee given to a serjeant or counsellor at law, for the transaction of any business, or at least to make sure that he shall not be on the contrary part (*quo clienti suo obligatur ne adversarii causam agat*). *Cowel.* The phrase is used generally to denote the fee by which a barrister's services are secured.

RETENTION, in the law of Scotland, is the right of withholding a debt, or retaining property, until a debt due to the person claiming the right of retention shall be paid. *Bell.* It corresponds to the *lien* of the English law. [LIEN.]

RETIRING A BILL. The word "retire," in its application to bills of exchange, is an ambiguous word. In its ordinary sense it is used of an indorser who takes up the bill by handing the amount to a transferee, and thereupon holds the instrument with all his remedies intact. But it is sometimes used of an acceptor who pays a bill at maturity, and thereby extinguishes all remedies upon it. *Byles on Bills.*

RETORNA BREVIUM. The return of writs. [RETURN, 1.]

RETORNO HABENDO. The writ *de retorno habendo* is the writ of execution for the distrainor in the action of replevin, for *returning* to him the chattel distrained. *Cowel;* 3 *Bl.* 148—150, 413; 3 *Steph. Com.* 422, *n.*, 616; *Lush's Pr.* 1024. [PLEGII DE RETORNO HABENDO; REPLEVIN.]

RETOUR SANS PROTET. A request or direction by the drawer of a bill of exchange, that, in case the bill should be dishonoured by the drawee, it be returned without protest and without expense (*sans frais*). The effect of such a request is to disable the drawer of the bill (and perhaps also the indorsers) from resisting payment of the bill on the ground that it has not been protested. *Chitty on Bills.* [BILL OF EXCHANGE; PROTEST, 3.]

RETRACTUS FEUDALIS, in the law of Scotland, is the power which a feudal superior formerly possessed of paying off a debt due by his tenant to an adjudging creditor (or judgment creditor), and taking a conveyance of the tenant's interest. *Bell.* [ADJUDICATION; EFFECTUAL ADJUDICATION.]

RETRAXIT (he has retracted). This is an open and voluntary renunciation of his suit by the plaintiff in court, by which he for ever loses his right of action upon the matter in question. A *retraxit* differs from a non-suit, in that a non-suit is properly a neglect by the plaintiff to appear when called upon to do so. *T. L.; Cowel;* 3 *Bl.* 296. [NON-SUIT.]

RETURN. 1. The return of a writ by a sheriff or bailiff, or other party to whom a writ is directed, is a certificate made to the court of that which he hath done, touching the execution of the writ directed to him. *T. L.; Cowel;* 1 *Bl.* 180, 181; 3 *Bl.* 111, 273, 372; 3 *Steph. Com.* 587, *n.* The return is made by filing the writ at the office of the masters of the court, indorsed with a statement of what has been done under it. *Lush's Pr.* 591.

2. The return of a member or members to serve in parliament for a given constituency. This is the return of the writ which directed the sheriff or other officer to proceed to the election. [RETURN BOOK; RETURNING OFFICER.]

RETURN—*continued.*

3. A certificate or report by commissioners on a matter on which they have been directed to inquire. *Cowel.* The word is especially so used in reference to matters of statistical detail; thus we say, "the returns of the census," &c.

4. The return of goods replevied. [REPLEVIN; RETORNO HABENDO.]

RETURN BOOK. The book containing the list of members returned to the House of Commons. *May's Parl. Pract.* [RETURN, 2.]

RETURN DAY. The day appointed for the return of a writ. 3 *Bl.* 275; *Lush's Pr.* 586, 591. [RETURN, 1.]

RETURN IRREPLEVISABLE was a writ allowed by the Statute of Westminster the Second, c. 2, to a defendant who had had judgment upon verdict or demurrer in an action of replevin, or after the plaintiff had, on a writ of *second deliverance*, become a second time non-suit in such action. By this writ, the goods were returned to the defendant, and the plaintiff was restrained from suing out a fresh replevin. Previously to this statute, an unsuccessful plaintiff might bring actions of replevin *in infinitum* in reference to the same matter. 3 *Bl.* 150. [REPLEVIN; SECOND DELIVERANCE.]

RETURNING OFFICER. The officer to whom a writ is directed, requiring him to proceed to the election of a member or members to serve in parliament. He is generally the sheriff in the case of a county, and the mayor in the case of a borough. 2 *Steph. Com.* 370, 378; *May's Parl. Pract. ch.* 1.

REVE or GREEVE. The bailiff of a franchise or manor. Hence Shire-reve, now called sheriff. *T. L.; Cowel.*

REVELAND. Land of the king not granted out to any, but resting in charge of the *reve* or bailiff of the manor. *Cowel.*

REVENUE signifies properly the yearly rent that accrues to every man from his lands and possessions. *Cowel.* But it is applied especially to the income which the British constitution hath vested in the royal person in order to support the regal dignity; also to the general income received by the State in taxes, &c. 1 *Bl.* 280—337; 2 *Steph. Com.* 528—581. [See next Title.]

REVENUE SIDE OF THE EXCHEQUER. That jurisdiction of the Court of Exchequer, or of the Exchequer Division of the High Court of Justice, by which it ascertains and enforces the proprietary rights of the Crown against the subjects of the realm. 3 *Steph. Com.* 339, 340. The practice in revenue cases is not affected by the Orders and Rules under the Judicature Act, 1875. *Stat.* 38 & 39 *Vict. c.* 77, *First Schedule, Ord. LXII.*

REVERSAL OF JUDGMENT is the annulling of a judgment, on appeal therefrom, by the court to which the appeal is brought. 3 *Bl.* 411; 4 *Bl.* 390; 3 *Steph. Com.* 579, 580; 4 *Steph. Com.* 463.

REVERSER. The old Scotch term for a mortgagor of land. *Bell; Paterson.* [REVERSION, 3.]

REVERSION. 1. A reversion signifies properly the residue of an estate *left in the grantor* to commence in possession after the determination of some particular estate granted out by him. *T. L.; Cowel;* 2 *Bl.* 175; 1 *Steph. Com.* 301—321; *Wms. R. P., Pt. II. ch.* 1.

2. But it is frequently, though improperly, used so as to include any future estate, whether in reversion or remainder. [ESTATE, II.; REMAINDER; see also the following Titles.]

3. In Scotch law a reversion is a right of redeeming landed property which has been either mortgaged or adjudicated to secure the payment of a debt. In the former case the reversion is called *conventional*, in the latter case it is called *legal*, and the period of seven years allowed for redemption is called *the legal. Bell; Paterson.* [ADJUDICATION; EXPIRY OF THE LEGAL; LEGAL.

REVERSIONARY INTEREST. An interest in real or personal property in remainder or reversion. 1 *Steph. Com.* 337; 2 *Steph. Com.* 266, 267. [REVERSION.]

REVERSIONER means strictly a person entitled to an estate in reversion [REVERSION, 1]; but the word is used generally to signify any person entitled to any future estate in real or personal property, as when we speak of dealings with expectant heirs, reversioners, &c. [SALE OF REVERSIONS ACT.]

REVERTER. Returning or reversion. 1 *Steph. Com.* 315, *n.* For the writ of *formedon in reverter*, see FORMEDON.

REVIEW signifies the power which a superior court has of reviewing the judgment of an inferior court. *Bell.* [See the following Titles.]

REVIEW, BILL OF. A *bill of review* was a bill sometimes brought in Chancery for the purpose of reviewing a cause already heard. This bill might be brought after the decree had been signed and enrolled, (1) if error of law appeared on the face of the decree; (2) if new evidence were discovered which could not have been used when the decree passed; but in the latter case only by leave of the Court. *Cowel;* 3 *Bl.* 454; 3 *Steph. Com.* 603; *Hunt. Eq.*

REVIEW, COMMISSION OF. [COMMISSION OF REVIEW.]

REVIEW, COURT OF. A Court, established in 1832, having an appellate jurisdiction in bankruptcy. It consisted originally of the judges, or any three of them. By stat. 5 & 6 Vict. c. 122, passed in 1842, it was thenceforth to consist of one judge only. It was abolished in 1847 by stat. 10 & 11 Vict. c. 102. See *Robson, Bkcy.*

REVIEW OF TAXATION is the reconsideration by the taxing master, or by a judge in chambers, of the items allowed or disallowed in the taxation of costs, or any of them. *Hunt. Eq., Pt. II. ch.* 10, *s.* 3; *Smith's Act. Law, ch.* 8; *Additional Rules of 12th August,* 1875, *Special Allowances and General Provisions, rules* 30—33. [TAXATION OF COSTS.]

REVISING BARRISTERS are the barristers appointed every year to revise the register of parliamentary electors in each district. They hold open courts for the purpose. 2 *Steph. Com.* 355. From their decision there is an appeal to the Court of Common Pleas (now the Common Pleas Division of the High Court). 3 *Steph. Com.* 334.

REVIVING is a word metaphorically applied to rents and actions, signifying a renewal of them after they be extinguished. *Cowel.* [See also the following Titles.]

REVIVOR was a proceeding to revive a suit or action which, according to the old practice, became abated by the death of one of the parties, the marriage of a female party, or some other cause. In Chancery this was formerly done by *bill of revivor,* in which the whole of the original bill was set forth, together with the new matter which had arisen. But, under sect. 52 of the Chancery Jurisdiction Act, 1852 (15 & 16 Vict. c. 86), this might be done by *order of revivor,* obtainable on motion or petition of course. *Cowel;* 3 *Bl.* 448; *Hunt. Eq., Pt. II. ch.* 4. [ABATEMENT, 4. For the practice in such cases under the Judicature Acts, see ORDER OF REVIVOR.]

REVIVOR, WRIT OF, was a writ to revive a judgment in an action at common law, which could not be enforced directly by writ of execution, in consequence of lapse of time or change of parties. 3 *Steph. Com.* 591—593; *Lush's Pract.* 578. [ORDER OF REVIVOR.]

REVOCATION is the reversal by any one of a thing done by himself. Thus, when it is provided in a marriage settlement or other instrument, that an appointment may be made "with or without power of revocation," it is implied that the party making the appointment may, if he think fit, reserve the power of annulling what he has done. A power granted or reserved in a deed or other instrument to revoke an appointment already made, and to make a fresh one, is called a *power of revocation and new appointment.* Any act or instrument which is capable of being annulled by its author is said to be *revocable.* Some instruments are in their nature revocable, as wills. Deeds under seal are not in general revocable, unless a power to revoke be therein expressly reserved. A will may be revoked (1) by marriage; (2) by the execution of another will or codicil; (3) by some writing of revocation executed as a will; (4) by the burning, tearing, or other destruction of the original will by the testator, or by some other person in his presence and by his direction. *Stat. 7 Will. 4 & 1 Vict. c.* 26, *ss.* 19, 20; 1 *Steph. Com.* 600, 601.

The *revocation of probate* is where probate of a will, having been granted, is afterwards recalled by the Court of Probate, on proof of a subsequent will, or other sufficient cause.

REVOCATIONE PARLIAMENTI. An ancient writ for recalling a Parliament. In the fifth year of Edward III., A.D. 1331, the Parliament being summoned, was recalled by such writ before it met. *Toml.*

RHODIAN LAW. The Rhodian law concerning jettisons (*lex Rhodia de jactu*) provided that goods thrown overboard during a storm, for the purpose of lightening the ship, should be paid for by those whose goods were saved. *Bell.* [JETTISON.]

RIDER. 1. A new clause added to a bill before Parliament on its third reading. This was formerly done by tacking a separate piece of parchment on the bill, which was called a "ryder." 1 *Bl.* 183.

RIDER—*continued.*

According to the present practice, if on the third reading of a bill material amendments are required to be made, it is usual to discharge the order for the third reading, to re-commit the bill, and to introduce the amendments in committee. *May's Parl. Pract.*

2. We now use the word "rider" in a general sense, to signify a clause proposed to be added to a motion before a meeting.

RIDING CLERK. One of the former six clerks in Chancery, who, in his turn, for one year, kept the controlment books of all grants that passed under the Great Seal. *Toml.* [SIX CLERKS.]

RIDINGS. Three divisions of the county of York, called the North, the East, and the West Riding. The word "riding" is a corruption of "trithing," a name indicating a threefold division of a county. *Cowel;* 1 *Bl.* 117; 1 *Steph. Com.* 127.

RIENS ARREAR. A kind of plea formerly used to an action of debt upon arrears of account, whereby the defendant alleged that there was nothing in arrear. *Cowel.*

RIENS PER DESCENT. A plea by an heir, sued in respect of a liability incurred by his ancestor, that he has no lands descended to him wherewith to satisfy the plaintiff's demand.

RIER COUNTY. [RERE COUNTY.]

RIGHT. A lawful title or claim to anything. The word is frequently used to denote a claim to a thing of which one is not in possession. [DROIT-DROIT; JUS, and following Titles. See also the Titles following this Title.]

RIGHT IN COURT. [RECTUS IN CURIA.]

RIGHT OF ACTION. The right to bring an action in any given case. But the phrase is frequently used in a more extended sense, as identical with *chose in action*, to mean all rights which are not rights of possession, and to include the large class of rights over things in the possession of others, which must be asserted by action in cases where the qualified or temporary possessor refuses to deliver them up. See 3 *Steph. Com.* 369. [CHOSE.]

RIGHT OF SEARCH. The right of a belligerent to examine and inspect the papers of a neutral vessel on the high seas, and the goods therein contained.

RIGHT OF WAY. A right enjoyed by one man (either in his specific character or as one of the public) of passing over another's land, subject to such conditions and restrictions as are specified in the grant, or sanctioned by the custom, by virtue of which the right exists. Rights of way are susceptible of almost infinite variety: they may be limited both as to the intervals at which they may be used (as a way to church) and as to the actual extent of the user authorized (as a footway, horseway or carriage-way). *Gale on Easements.*

RIGHT, PETITION OF. [PETITION OF RIGHT.]

RIGHT TO BEGIN. The right to commence the argument on a trial, which belongs to that side on whom the burden of proof rests. 3 *Steph. Com.* 529. The party beginning has also the right to reply to his adversary's case. *Smith's Act. Law, ch.* 5.

RIGHT, WRIT OF. [WRIT OF RIGHT.]

RIGHTS, BILL OF. [BILL OF RIGHTS.]

RING-DROPPING. A species of larceny, by which a number of accomplices offer a pretended ring or other jewel in a piece of paper to a person, offering to sell it to him. He not being able to pay at once, they request him to deposit money and goods by way of security, which he does. Then, before he has time to examine the contents of the paper, they take away the money or goods deposited. *Patch's case,* Feb. 1782, Leach, 238; *Moore's case,* April, 1784, Leach, 314—317; *Watson's case,* Dec. 1794, Leach, 640.

RINGING THE CHANGES. A trick by which a criminal, on receiving a piece of money in payment of an article, pretends that it is not good, and, changing it in such a manner as not to be seen by the buyer, returns to the latter a spurious coin. This is held to be an uttering of false money. *Frank's case,* Dec. 1794, Leach, 644. The phrase is also generally applied to fraudulent exchanges of coin, effected in the course of paying money or receiving money in payment.

RINGS GIVING. A ceremony observed by newly-created serjeants-at-law in the presentation of gold rings to the judges and other persons of rank. *Coke's Rep., Pt. X. Introd. p.* 40.

RIOT. A tumultuous disturbance of the peace by three or more persons assembling together of their own authority, mutually

RIOT—*continued.*

to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people. This is held to be a riot, whether the act be of itself lawful or unlawful. *T. L.; Cowel;* 4 *Bl.* 146; 4 *Steph. Com.* 254; *Oke's Mag. Syn.* 1092-4. [See the two following Titles.]

RIOT ACT. Stat. 1 Geo. 1, st. 2, c. 5, passed in 1715. [RIOTOUS ASSEMBLY.]

RIOTOUS ASSEMBLY. The unlawful assembling of twelve persons or more to the disturbance of the peace. In such cases it is provided by the Riot Act, 1 Geo. 1, st. 2, c. 5, that if any justice of the peace, sheriff, under-sheriff, or mayor of a town, shall command them by proclamation to disperse, then if they contemn his orders, and continue together for one hour afterwards, such contempt shall be felony. The form of the proclamation is in these words:—"Our Sovereign Lady the Queen chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably to depart for their habitations, or to their lawful business, upon the pains contained in the Act made in the first year of King George, for preventing tumultuous and riotous assemblies. God save the Queen." The Act also contains a clause indemnifying the officers and their assistants in case any of the mob should be unfortunately killed in the endeavour to disperse them. 4 *Bl.* 142, 143; 4 *Steph. Com.* 248—250; *Oke's Magist. Syn.* 1092—4, 1425—6. Parties whose property is damaged by the *felonious* acts of rioters may recover compensation from the hundred. *Stat.* 7 & 8 *Geo.* 4, *c.* 31; *Oke's Mag. Syn.* 1148—1153. By stat. 24 & 25 Vict. c. 97, s. 11, in order to constitute *felony*, the riotous act must consist in demolishing, or beginning to demolish, some house or other building. *Cox & Saunders' Cr. Law*, 104.

RIPARIAN PROPRIETORS. Proprietors of the banks of a river.

RIPARIAN STATES. States whose jurisdictions are bounded by the banks of a river.

RIVAGE. A duty formerly paid to the king on some rivers for the passage of boats and vessels. *Toml.*

RIXATRIX COMMUNIS. A common scold. [CASTIGATORY FOR SCOLDS.]

ROBBERY. The unlawful and forcible taking of goods or money from the person of another by violence or putting him in fear. But if the taking be not directly from a man's person or in his presence, it is no robbery. This violence, or putting in fear, is that which distinguishes robbery from other larcenies. *T. L.; Cowel;* 4 *Bl.* 241—243; 4 *Steph. Com.* 125—127.

ROBERDSMEN. The followers of Robert or Robin Hood, who in Richard the First's time (1189—1199) committed great violence and spoil on the borders of England and Scotland. *Cowel;* 4 *Bl.* 245. Robin Hood and Little John are said to have continued their depredations in Sherwood Forest, Notts, till 1247, when Robin Hood died. *Haydn's Dict. Dates.*

ROD KNIGHTS were otherwise called *rad knights.* [REDMANS.]

ROE, RICHARD. A fictitious personage who often appeared in actions at law prior to the passing of the Common Law Procedure Act, 1852; sometimes as one of the pledges for the due prosecution of an action, and sometimes as the casual ejector in an action of ejectment. 3 *Bl. App.* [EJECTMENT; PLEDGES.]

ROGATORY LETTERS. A commission from a judge in one country to a judge in another requesting him to examine witnesses residing in the latter country on a suit pending in the former. *Bouvier.*

ROGUE signifieth an idle sturdy beggar, who wandereth from place to place without licence, after he hath been by justices bestowed, or offered to be bestowed, on some certain place of abode. *Cowel.*

The following are deemed under various statutes to be *rogues and vagabonds:* (1) Persons convicted for a second time as idle and disorderly persons; (2) Fortune-tellers and persons using subtle arts to deceive any of her Majesty's subjects; (3) Persons wandering abroad and lodging in barns or outhouses, or in any deserted or unoccupied building, or in the open air, or in any tent, cart, or waggon, not having any visible means of subsistence, and not giving a good account of themselves; (4) Persons guilty of indecent exhibitions, or indecently exposing the person; (5) Persons exposing wounds to obtain or gather alms; (6) Persons collecting alms under fraudulent pretences; (7) Persons running away, leaving their families chargeable to the parish; (8) Women who desert

ROGUE—*continued.*

their bastard children, leaving them so chargeable; (9) Persons playing or betting in a public highway or in any place to which the public are permitted to have access, with any instrument of gaming, &c.; (10) Persons having picklocks, &c., with intent feloniously to break into a house; (11) Persons armed with a gun or other offensive weapon, or any instrument, with intent to commit a felonious act; (12) Persons found on any premises for an unlawful purpose; (13) Reputed thieves frequenting public places with intent to commit felony; (14) Persons resisting their apprehension as idle and disorderly persons. The following are deemed to belong to the class of incorrigible rogues:—(1) Vagrants breaking out of confinement; (2) Persons convicted for a second time as rogues and vagabonds; (3) Persons resisting apprehension as rogues and vagabonds. *Oke's Mag. Syn.* 724—730.

ROLE D'EQUIPAGE. A register of a ship's crew.

ROLL. A schedule of paper or parchment, which may be turned or wound up with the hand to the fashion of a pipe. *Cowel.* [See the following Titles.]

ROLL OF COURT. The court-roll of a manor, wherein the business of the court, the admissions, surrenders, names, rents, and services of the tenants are copied and enrolled. *Toml.* [COURT ROLLS; MANOR.]

ROLLS COURT. The office appointed for the custody of the rolls and records of the Chancery, the master whereof is called the Master of the Rolls. The phrase is especially used to signify the court-room in which the Master of the Rolls sits as judge. *Cowel; Haynes' Eq., Lect. II.* [DOMUS CONVERSORUM; MASTER OF THE ROLLS.] Under the Judicature Acts, the Master of the Rolls is a judge of the High Court, and an *ex officio* member of the Court of Appeal. His non-judicial duties are not affected by these Acts. Provision is, however, made for the abolition of his office when it shall become vacant, by Order in Council, on the recommendation of the council of judges: provided that such Order in Council be laid before the Houses of Parliament for thirty days, and during that time neither House of Parliament address her Majesty against it. *Stat.* 36 & 37 *Vict. c.* 66, *ss.* 5, 31, 32.

ROLLS OF PARLIAMENT. The manuscript registers of the proceedings of our old parliaments. *Toml.*

ROLLS OFFICE OF THE CHANCERY. [ROLLS COURT.]

ROMAN CATHOLIC CHARITIES ACT. Stat. 23 & 24 Vict. c. 134, passed in 1860. By this Act, estates given upon trust, for the exclusive use of Roman Catholics, but invalidated by reason of certain of the trusts being superstitious or otherwise illegal, may be apportioned in Chancery, or by the Charity Commissioners; and a declaration may be made that a fixed proportion thereof shall be subject to such trusts as are lawful, the residue to such trusts for the benefit of persons professing the Roman Catholic religion, as the Court or Commissioners may, under the circumstances, consider to be most just. 3 *Steph. Com.* 76, *n.* [SUPERSTITIOUS USES.]

ROMESCOT or **ROMESFEOH.** [ALMESFEOH.]

ROS. A kind of rushes which some tenants were bound by their tenures to furnish their lords withal. *Toml.*

ROTULUS WINTONIÆ.

1. Doomsday book was so-called because it was of old kept at Winchester. [DOMESDAY BOOK.]

2. There was another book of the same nature, made by King Alfred, in which the whole of England was mapped out into counties, hundreds and tithings. *Cowel.*

ROUSE'S CASE. A case decided in 1588, to the effect that a tenant *pur autre vie* (*i. e.* for another's life) holding over after the death of the *cestui que vie* (*i. e.* continuing in possession after the death of him for whose life he holds it), is not a disseisor, but a tenant at sufferance, on the ground that he originally came in by right. *Tudor, L. C. R. P.* 1. [AUTRE VIE; CESTUI QUE VIE; DISSEISIN; HOLDING OVER; TENANT AT SUFFERANCE.]

ROUT is where three or more meet to do an unlawful act upon a common quarrel, and make some advances towards it. *T. L.; Cowel;* 4 *Bl.* 146; 4 *Steph. Com.* 254. [RIOT.]

ROYAL ASSENT (Lat. *Regius assensus*). The assent given by the sovereign to a thing formerly done by others; as, to the election of a bishop by dean and chapter [CONGE D'ELIRE], or to a bill passed in both Houses of Parliament. The royal assent to a bill is given either in per-

ROYAL ASSENT—*continued.*

son, or by commission by letters patent under the Great Seal, signed with the Sovereign's hand, and notified to both Houses assembled together in the Upper House. *Cowel;* 1 *Bl.* 184, 185; 2 *Steph. Com.* 387, 388; *May's Parl. Pract. ch.* 18. [LE ROY LE VEULT; SOIT FAIT COMME IL EST DESIRE.]

ROYAL BURGHS. Incorporations in Scotland created by royal charter, giving jurisdiction to the magistrates within certain bounds, and vesting certain privileges in the inhabitants and burgesses. *Bell.*

ROYAL FISH. [FISH ROYAL.]

ROYAL GRANTS. Grants by letters patent from the Crown. These are always matters of record. 2 *Bl.* 346; 1 *Steph. Com.* 618, 619.

ROYAL MARINES. [MARINES.]

ROYAL MINES are, by the common law, mines of silver and gold. By the old common law, if gold or silver were found in mines of base metal, the whole, according to the opinion of some, was a royal mine, and belonged to the king; though others held that it did so only if the quantity of gold or silver was greater than the quantity of base metal. Now, by statutes 1 W. & M. stat. 1, c. 30, passed in 1689, and 5 W. & M. c. 6, passed in 1693, it is provided that no mines of copper, tin, iron or lead shall be looked upon as royal mines, notwithstanding that gold or silver may be extracted from them in any quantities. 1 *Bl.* 295.

ROYALTY. 1. The royal dignity and prerogatives.

2. A *pro ratâ* payment to a grantor or lessor, on the working of the property leased, or otherwise on the profits of the grant or lease. The word is especially used in reference to mines, patents and copyrights.

RUBRIC. 1. The title of a statute. *Bell.*

2. The directions in the body of the Book of Common Prayer are called *rubrics*, being, in the authorized edition of 1662, printed in red letters, as they are not unfrequently in prayer books at the present day.

RULE. 1. A regulation for the government of a society agreed to by the members thereof.

2. A rule of procedure made by lawful judicial authority for some court or courts of justice. In this sense we have Bankruptcy Rules, County Court Rules, Chancery Rules and Orders (the rules in this case being sub-divisions of an order), the General Rules of such a term, in such a year, for the Courts of Common Law, the Orders and Rules under the Judicature Acts, &c. [GENERAL RULES AND ORDERS.]

3. An order made by a superior court upon motion in some matter over which it has summary jurisdiction. A rule is not in general granted absolutely in the first instance, but is a *rule nisi*, or a *rule to show cause*, that is, a rule that the thing applied for be granted, *unless* the opposite party show sufficient reason against it, on a day assigned for that purpose. The rule is *served* upon the opposite party, and when it comes on for argument, the Court, having heard counsel, *discharges* the rule or makes it *absolute*. 3 *Steph. Com.* 628; *Lush's Pr.* 940—46; *Judicature Act*, 1875, 1*st Sched. Ord. LIII. r.* 2. [RULE OF COURT; RULE TO PLEAD.]

4. A rule obtained, as of course, on the application of counsel.

5. A rule obtained at chambers without counsel's signature to a motion paper, on a note of instructions from an attorney; such a rule is called a *side-bar rule*. *Lush's Pr.* 940.

6. A point of law settled by authority; as when we speak of the *Rule in Shelley's case*, &c. [See next Title.]

RULE IN SHELLEY'S CASE, so called from having been quoted and insisted on in *Shelley's case*, is the following rule:—That wherever a man by any gift or conveyance takes an estate of freehold, and in the same gift or conveyance an estate is limited, either mediately or immediately, to his *heirs* in fee or in tail, the word *heirs* is a word of *limitation*, and not of *purchase*. In other words, it is to be understood as expressing the quantity of estate which the party is to take, and not as conferring any distinct estate on his heirs, or the heirs of his body, as the case may be. 1 *Steph. Com.* 334; *Wms. R. P., Pt. II. ch.* 1. [SHELLEY'S CASE.]

RULE NISI. [RULE, 3.]

RULE OF COURT. 1. An order made on motion, generally in open Court, or else made generally to regulate the practice of the Court. [RULE, 2, 3.]

2. A submission to arbitration, or the award of an arbitrator, is said to be made a *rule of court*, when a court of law or equity makes a rule that such submission or award shall be conclusive. 3 *Steph. Com.* 261.

RULE TO PLEAD was a rule of Court requiring a defendant to plead within a given time. It is abolished by sect. 62 of the Common Law Procedure Act, 1852 (stat. 15 & 16 Vict. c. 76), which provides that the notice to plead, indorsed on the declaration, or delivered separately, shall be sufficient. *Lush's Pr.* 422. [RULE, 3.] By the Judicature Act, 1875, 1st Sched. Order XXII. rule 1, a defendant has eight days for his defence after the delivery of the statement of claim, unless the time be extended by the Court or a judge.

RULES OF THE KING'S BENCH PRISON. Certain limits without the walls, within which prisoners in custody were sometimes allowed to live, on giving security to the marshal not to escape. *Toml.* [QUEEN'S BENCH PRISON.]

RUNNING DAYS. [LAY DAYS.]

RUNNING DOWN CASE. An action against the driver of one vehicle for running down another; or of a ship or boat for damaging another by a collision.

RUNNING WITH THE LAND. A covenant is said to *run with the land*, when each successive owner of the land is entitled to the benefit of the covenant, or liable (as the case may be) to its obligation. 1 *Steph. Com.* 491; *Fawcett, L. & T.* 246—8.

RUNRIG LANDS are lands in Scotland where the ridges of a field belong alternately to different proprietors. *Bell.*

RUPEE. A silver coin, which is of several varieties, the lowest of which is equivalent to 2*s.* 0½*d.*, and the highest (called the *sicca rupee*) to 2*s.* 2*d.* of our money. *Wilson's Gloss. Ind.*

RURAL DEAN. An officer of the church, generally a parochial clergyman, appointed to act under the bishop or archdeacon; his proper duty being to inspect the conduct of the parochial clergy, to inquire into and report dilapidations, and to examine candidates for confirmation. *Cowel;* 1 *Bl.* 353; 2 *Steph. Com.* 676, 677. [See next Title.]

RURAL DEANERY. The circuit of the jurisdiction of a rural dean. Every diocese is divided into archdeaconries, each archdeaconry into rural deaneries, and each rural deanery into parishes. *Cowel;* 1 *Bl.* 112; 1 *Steph. Com.* 116, 117. [RURAL DEAN.]

RURAL SANITARY AUTHORITY. [URBAN SANITARY AUTHORITY.]

RUSTICI. The churls, clowns, and inferior country tenants, who held cottages and lands by the services of ploughing and other agricultural labours for the lord. *Toml.*

RYDER. [RIDER.]

S. C. An abbreviation frequently used for "same case," in giving a second reference to any case which may be cited.

S. J. [SOLICITORS' JOURNAL.]

S. L. This abbreviation is sometimes used for "serjeant-at-law;" sometimes for "student of law."

S. P. *Sine prole*, without issue.

S. S. C. [SOLICITOR OF THE SUPREME COURT.]

S. V. *Sub voce*, under the word; an abbreviation used in reference to a word in a dictionary or alphabetical glossary.

SAC signifies the liberty of holding pleas (*i. e.* assuming jurisdiction) in the court of a lordship or manor, and of imposing mulcts and forfeitures upon transgressors. *T. L.; Cowel.* [LIBERTY TO HOLD PLEAS.]

SACABURTH or **SACABERE.** He that is robbed of his goods, and puts in surety to prosecute the felon. *Cowel; Toml.*

SACCULARII. Cutpurses; that is, those who privately steal from a man's person, as by picking his pocket. 4 *Bl.* 241.

SACCUS CUM BROCHIA was a service or tenure of finding a sack and a broach to the king, for the use of his army. *Cowel.*

SACK OF WOOL (Lat. *Saccus lanæ*). A quantity of wool containing twenty-six stone, and every stone fourteen pounds. *Cowel.*

SACRAMENT PENNIES. [DOMINICALS.]

SACRAMENTUM DECISIONIS (the oath of decision) was the oath, in the Roman civil law, taken when one of the parties to a suit, not being able to prove his charge, referred the matter to the oath of his adversary. 3 *Bl.* 342.

SACRILEGE. 1. Stealing things dedicated to the offices of religion. *T. L.; Bell.* 2. Breaking into a church, chapel, meeting house, or other place of divine worship, and committing a felony therein; or, being in such place, committing a felony therein, and breaking out of the same. *Stat.* 24 & 25 *Vict. c.* 96, *s.* 50; 4 *Steph. Com.* 111; *Oke's Mag. Syn.* 1094; *Cox & Saunders' Cr. Law*, 52, 53.

SAEMEND. An umpire, arbitrator; from *seman*, to adjudicate. *Anc. Inst. Eng.*

SAFE CONDUCT. A security given by the Sovereign, under the Great Seal of England, for enabling a foreigner of a nation at war with us quietly to come in and pass out of the realm. *Cowel;* 1 *Bl.* 259—261; 2 *Steph. Com.* 494—496.

SAFE GUARD. An old writ in the form of a circular letter addressed by the king to all stewards, constables and other executive officers within his dominion, committing to their special protection certain persons therein mentioned. *Reg. Orig.* 26.

SAFE PLEDGE. A surety given for a man's appearance at a day assigned. *Cowel.*

SAGIBARO (Lat. *Vir causarum*). A man who decides causes; a judge. From *sac* or *sag*, signifying a cause, and *baro*, a man. *Cowel.*

SAILING INSTRUCTIONS are written or printed directions delivered by the commanding officer of a convoy to the masters of ships under his care, by which they are enabled to understand and answer his signals, and also to know the place of rendezvous in case of dispersion. Without these sailing instructions, no vessel can have the full protection and benefit of a convoy. *Marshall on Insurance, 4th ed. p.* 291.

SAILING RULES. [STEERING AND SAILING RULES.]

SAINT MARTIN LE GRAND. Now the site of the General Post Office. On this site formerly stood the church of St. Martin le Grand, where justices sat, appointed by the king's commission, to hear appeals from the Sheriffs' Courts and the Court of Hustings in London. From the judgment of those justices, a writ of error lay immediately to the House of Lords. 3 *Bl.* 80, *n.* (*i*). [COURT OF HUSTINGS.]

SAIO. A tipstaff or sergeant-at-arms, for the arrest of offenders. It may be derived from the Saxon *sagol*, a staff, because he carries a rod or staff of silver. *Cowel.*

SAISIE ARRET, in the French law, is the seizure by a creditor of the goods of his debtor in the hands of a third person. *Littré.* It thus corresponds to the *attachment* of the English law and the *arrestment* of the Scotch law. [ARRESTMENT; ATTACHMENT, FOREIGN.]

SAISINE. The French for *seisin* or *sasine.* [SASINE; SEISIN.] The word is also applied to the taking possession by executors of the property of the deceased. *Littré.*

SALE. A transmutation of property from one man to another, in consideration of a price paid in money. 2 *Bl.* 446; 2 *Steph. Com.* 68.

SALE BY AUCTION ACT, 1867. By this Act, the particulars or conditions of any intended sale by auction must state whether the sale is without reserve, or subject to a reserved price, and whether a right to bid is reserved. And if the sale is stated to be without reserve, or to that effect, the seller may not employ any person to bid at the sale, and the auctioneer may not knowingly take a bidding from any such person. The Act also abolishes the practice of opening biddings in sales under the authority of the Court of Chancery, except in cases of fraud or mismanagement of the sale. *Stat.* 30 & 31 *Vict. c.* 48; *Wms. R. P.; Hunter's Eq.* [OPENING BIDDINGS; PUFFER; WITHOUT RESERVE.]

SALE OF REVERSIONS ACT is the stat. 31 Vict. c. 4, passed in December, 1867. It was a strict rule in Courts of Equity to set aside sales of reversions, unless the purchaser (on whom the burden of proof rested) could show that a full consideration was paid, or that the bargain was fully made known to and approved by the person to whose estate the expectant heir hoped to succeed; it being the policy of Equity to prevent designing men from taking advantage of persons whose interests are future, and are therefore apt to be under-estimated or improvidently disposed of, and to discourage transactions by which the expectations of the ancestor or person in possession might be disappointed. Now the object of the above Act is to prevent any sale of a reversion from being set aside merely on the ground of *undervalue.* The burden of proof is, however, still on the purchaser, to show that he has acted fairly, and has not made any improper use of personal influence. *Smith's Man. Eq.; Chute's Eq.* [REVERSION, 2.]

SALIC or SALIQUE LAW. An ancient law of Pharamund, King of the Franks, excluding women from inheritances. *Cowel.* The Salic law was derived from the ancient customs of the Gauls. The greater part of it consists in the infliction of pecuniary penalties for crimes. *Ferrière.* But, in speaking of the Salic law, we intend particularly to denote the disposition of French law

SALIC or SALIQUE LAW—*continued.*

which excludes women from the succession to the Crown. *Littré.* Various derivations have been given of the word. Some say that "Salic" is the same as "Gallic;" others that Pharamund was at first called "Salicus;" others that the law was made for the "Salic lands," that is, the lands bestowed on the Salians, or great lords who attended the *salle*, or court of the King; others derive the word from the Salians, a tribe of Franks who settled in Gaul in the reign of Julian. *Encycl. Brit.*

SALLE DES PAS PERDUS. A large hall in the Palais de Justice in Paris, out of which the different law courts open.

SALMON PIPE. An engine to catch salmon, mentioned in stat. 25 Hen. 8, c. 7. *Cowel.*

SALT SILVER. One penny paid on St. Martin's day by the tenants of some manors as a commutation for the service of carrying their lord's salt from market to his larder. *Toml.*

SALVAGE or **SALVAGE MONEY.** A reasonable reward payable by owners of goods saved at sea from pirates, enemies, or the perils of the sea, to those who have saved them. *Cowel;* 1 *Bl.* 293, 294; 2 *Steph. Com.* 18, 134, 544; *Crump, Mar. Ins. ss.* 417, 418.

Claims for salvage may be made in the Admiralty Court (now the Probate, Divorce, and Admiralty Division of the High Court of Justice), or in the county courts having admiralty jurisdiction. 3 *Steph. Com.* 291, 342; *Stat.* 36 *&* 37 *Vict. c.* 66, *s.* 34.

SALVOR. A person who saves goods at sea. [SALVAGE.]

SANCTUARY. A place privileged by the prince for the safeguard of men's lives that are offenders, being founded upon the law of mercy, and upon the great reverence, honour and devotion to the place whereto he granted such a privilege. The sanctuary was allowed to shelter the party accused, if within forty days he acknowledged his fault, and submitted himself to banishment. *T. L.; Cowel;* 4 *Bl.* 332, 333. [RESTITUTIONE EXTRACTI AB ECCLESIA.]

The privilege of sanctuary was abolished in 1623 by stat. 21 Jac. 1, c. 28. 4 *Bl.* 333; 4 *Steph. Com.* 227, 397, *n.*

SAND GAVEL. A payment made by the tenants of the manor of Redeley, in Gloucestershire, for liberty granted to them to dig up sand for their use. *Cowel.*

SANGUIS was that right or power which a chief lord of the fee had to determine in cases where blood was shed. *Toml.*

SANS CEO QUE (Lat. *Absque hoc*). "Without this that," *i. e.*, without its being so. A phrase formerly used in a *special traverse.* [SPECIAL TRAVERSE.]

SANS FRAIS. Without incurring any expense. [RETOUR SANS PROTET.]

SANS NOMBRE. Without stint. A term sometimes applied to the case of common for cattle *levant et couchant.* But a common *sans nombre* generally means a common of pasture without any limit to the number of beasts which may be turned on it to feed there; which can only happen if it be a common in gross. 1 *Steph. Comm.* 653, *and note* (*h*). [COMMON; LEVANT AND COUCHANT; SURCHARGE OF COMMON.]

SANS RECOURS. Without recourse; meaning "without recourse to me." These words are appended to an indorsement on a bill or note to qualify it, so as not to make the indorser responsible for any payment thereon. This is the proper mode of indorsing a bill where an agent indorses on behalf of his principal. *Chitty on Bills,* 166; *Byles on Bills.* [BILL OF EXCHANGE; QUALIFIED INDORSEMENT.]

SARCULATURA. The weeding of corn. *Una sarculatura* was the tenant's service of one year's weeding for the lord. *Toml.*

SARKELLUS. An unlawful net or engine for destroying fish. *Toml.*

SASINE. Scotch for seisin, signifying feudal possession. [INSTRUMENT OF SASINE; PRECEPT, 7; SEISIN.]

SASSE. A lock on a river or canal. *Cowel.*

SASSONS. A corruption of the word "Saxons." *Toml.*

SATISFACTION. 1. The acceptance by a party injured of a sum of money, or other thing, in bar of any action he might otherwise have had in respect of such injury. 3 *Bl.* 15, 16, *and note by Coleridge;* 3 *Steph. Com.* 258. [ACCORD; SATISFACTION ON THE ROLL.]

2. The making of a donation with the express or implied intention that it shall be taken as an extinguishment of some claim which the donee has upon the donor. *Sm. Man. Eq.* This generally happens under one of the two following states of circumstances:—(1) When a

SATISFACTION—*continued.*

father, or person *in loco parentis*, makes a double provision for a child, or person standing towards him in a filial relation; (2) When a debtor confers, by will or otherwise, a pecuniary benefit on his creditor. In the first case the question arises whether the later provision is *in satisfaction* of the former, or intended to be added to it. In the second, the question is whether the benefit conferred is intended *in satisfaction* of the debt, or whether the creditor is to be allowed to take advantage of it, and nevertheless claim independently against other assets of the debtor.

Satisfaction differs from *performance*, in that satisfaction implies the substitution of something different from that agreed to be given, while in cases of performance the thing agreed to be done is in truth wholly or in part performed. *Haynes' Eq., Lecture on Satisfaction and Performance.* See also *Chute's Eq. ch.* 5.

SATISFACTION ON THE ROLL is the entry on the roll or record of a Court that a judgment is satisfied, whether by the voluntary payment of the judgment debtor, or the compulsory process of law. *T. L.;* 3 *Steph. Com.* 589. By the rules of Easter Term, 1857, no roll shall be required to be carried in for the purpose of entering satisfaction on a judgment. [See next Title.]

SATISFACTION PIECE is a memorandum to the effect that satisfaction is acknowledged between plaintiff and defendant in an action. The satisfaction piece must be signed by the party or parties acknowledging the same, or their personal representatives; and such signature or signatures must be witnessed by a practising attorney of one of the superior courts at Westminster (now, by a solicitor of the Supreme Court), expressly named by the party for the purpose. The satisfaction piece is presented to the proper officer, who duly files the same among the records of the Court, and enters satisfaction in the judgment book against the entry of the judgment. *Lush's Pract.* 623-4. [See preceding Title.]

SATISFIED TERMS ACT. The stat. 8 & 9 Vict. c. 112, passed in 1845, for abolishing satisfied outstanding terms of years in land. It has been for some time the practice of conveyancers, in drafting provisions, in deeds affecting real estate, for the purpose of raising money for temporary objects, (as in marriage settlements, where it is desired to raise portions for younger children, or to apply money for the maintenance and education of children out of real estate intended to be settled,) to demise such estate to trustees for 200, 500, or other fictitious and imaginary term of years for this purpose; and subject thereto, the term is to be "in trust to attend the inheritance," in other words, after the purposes of raising portions, &c., or whatever the object of the term might be, had been fulfilled, the land is to be enjoyed beneficially as if the term had never been created. But, prior to the above Act, the *legal estate* in the term of years still continued in the trustees; and, if it were disposed of by them to a *bonâ fide* purchaser for valuable consideration, and without notice of the claim of those who would otherwise be entitled thereto, such purchaser would have the priority, during the remainder of the term of 200 or 500 years, over the eldest son intended to be benefited by the settlement. To avoid this result, provision was generally made for the "cesser of the term" when its purposes should be accomplished.

By the Satisfied Terms Act, terms which shall henceforth become attendant upon the inheritance, either by express declaration or by construction of law, are to cease and determine. This, in effect, abolishes outstanding terms. 1 *Steph. Com.* 380—382; *Wms. R. P. Pt. IV. c.* 1. [OUTSTANDING TERM; TERM, 2.]

SATURDAY'S STOP. A space of time between evensong on Saturday and sunrising on Monday, in which it was not lawful to take salmon in Scotland and the north of England. *Cowel.*

SAUNKEFINE signifies *the end of the blood;* that is, the extinction of a family. *Cowel.*

SAVER DEFAULT. To excuse a default. This was when a man, having made a default in any legal proceeding, came afterwards and alleged a reason why he did so. *T. L.; Cowel.*

SAVING THE STATUTE OF LIMITATIONS signifies the keeping a right of action alive notwithstanding the Statute of Limitations. This may be done by commencing an action and getting the writ of summons from time to time renewed. 3 *Steph. Com.* 481; *Lush's Pr.* 369. By the Judicature Act, 1875, 1st Sched. Ord. VIII., the first renewal may, by leave of the judge or district registrar, be made within twelve months of the date

SAVING STATUTE OF LIMITATIONS—*con.* of the original writ. The renewed writ is in force for six months; and any subsequent renewal must take place within six months of the previous renewal.

SAVINGS BANKS are banks for the receipt of small deposits of money, the produce of which is to accumulate at compound interest, and the principal and interest to be paid out to the depositors as required, deducting only the necessary expenses of management. 3 *Steph. Com.* 82. [POST OFFICE.]

SAXON LAGE. The laws of the West Saxons. *Cowel.* [DANE LAGE; MERCEN LAGE; WEST SAXON LAGE.]

SCACCARIUM. The Exchequer. 3 *Steph. Com.* 339. [COURT OF EXCHEQUER.]

SCANDAL. 1. A report or rumour, or action whereby one is affronted in public. *Toml.*

2. An irrelevant and abusive statement introduced into a bill, or any pleading in an action. Prior to the Judicature Acts, the word was especially used in reference to bills and answers *in equity*. 3 *Bl.* 442. By the Judicature Act, 1875, 1st Sched. Ord. XXVII., the Court or a judge may order scandalous statements to be struck out of the pleadings.

SCANDALUM MAGNATUM. Words spoken in derogation of a peer, judge, or other great officer of the realm; which are subjected to peculiar punishments by stat. 3 Edw. 1, c. 34, passed in 1275, and by divers other ancient statutes. *T. L.; Cowel;* 1 *Bl.* 402; 2 *Steph. Com.* 610, 611; 3 *Steph. Com.* 378, *n.*

SCAVAGE or **SHEWAGE.** A kind of toll or custom formerly exacted by mayors, sheriffs, &c. of merchant strangers, for wares *shewed* or offered for sale within their precincts. *T. L.; Cowel.*

SCAVAIDUS. The officer who collected the scavage-money. [SCAVAGE.]

SCAVENGERS. Persons chosen to hire rakers and carts to cleanse the streets, and carry the dirt and filth thereof away. *Cowel.* In London the scavenging of the streets of the city is done by contract, the scavengers being appointed by the Commissioners of Sewers. The scavengers are required to remove dust and ashes from inhabitants' houses on penalty of 40*s*. *Stat.* 57 *Geo.* 3, *c.* xxix. *ss.* 59—61; *Pulling on the Laws and Customs of London*, 305, 313. See also *Stat.* 14 *&* 15 *Vict. c.* xci. *ss.* 3, 4; and, for towns generally, *Stat.* 10 *&* 11 *Vict. c.* 34, *ss.* 95, 96.

SCEITHMAN. A pirate or thief. *Toml.*

SCHAVALDUS. [SCAVAIDUS.]

SCHEDULE. 1. A little roll, or long piece of paper or parchment, in which are contained particulars of goods in a house let by lease. *Toml.*

2. An appendix to an act of parliament or instrument in writing, for the purpose of facilitating reference in the act or instrument itself. *Toml.*

SCHETES. An ancient name for usury. *Toml.*

SCHIREMAN. An officer of the county or shire; applied in ancient times to—

1. An earl. 1 *Bl.* 398; 2 *Steph. Com.* 603; *Toml.* [EARL.]
2. A sheriff. *Toml.* [SHERIFF.]

SCHIRRENS GELD. A tax anciently paid to sheriffs for keeping the shire or county court. *Toml.*

SCIENTER. Knowingly; a word applied especially to that clause in a declaration in certain classes of actions in which the plaintiff alleged that the defendant *knowingly* did or permitted that from whence arose the damage of which the plaintiff complained. The word may equally be applied to similar clauses (wherever they may occur) in pleadings under the Judicature Acts.

SCILICET. "That is to say;" or, as it is sometimes expressed, "to wit." See also VIDELICET.

SCINTILLA JURIS. 1. The kind of spark or shadow of right which subsists in a feoffee or grantee to uses since the passing of the Statute of Uses (27 Hen. 8, c. 10). 1 *Steph. Com.* 369, *n.* (*u*); and see *Statute* 23 *&* 24 *Vict. c.* 38, *s.* 7. [USE; USES, STATUTE OF.]

2. A pretence or shadow of authority for a point of law or procedure. 4 *Bl.* 360; 4 *Steph. Com.* 431.

SCIRE FACIAS (that you cause him to know). A *scire facias* is a judicial writ, founded upon some matter of record, and requires the person against whom it is brought to show cause why the party bringing it should not have advantage of such record, or (as in the case of a *scire facias* to repeal grants of the Crown and letters patent) why the record should not be annulled and vacated. A *scire facias* may be issued against a shareholder of a company on a judgment against the company, and in various other cases. *T. L.; Cowel;* 1 *Steph. Com.* 622; 2 *Steph. Com.* 33; *Lush's Pr.* 579—583.

SCIRE FIERI INQUIRY is a writ issued against an executor. Where a sheriff, on a writ of *fieri facias de bonis testatoris* returns *nulla bona*, without also returning *devastavit*, the above writ may issue, by which the sheriff is commanded to inquire whether there are any goods of the testator in the hands of the executor, and whether the latter has committed a *devastavit*, so as to charge his own goods. *Wms. Exors., 7th ed., p.* 1984. [DEVASTAVIT; EXECUTOR; FIERI FACIAS; NULLA BONA; RETURN.]

SCIREWYTE. The annual tax formerly paid to the sheriff for holding the assizes and county courts. *Toml.*

SCOLD. A troublesome and angry woman, who, by brawling and wrangling amongst her neighbours, breaks the public peace, increases discord, and becomes a public nuisance to the neighbourhood. *Toml.* [CASTIGATORY FOR SCOLDS.]

SCOT. A contribution formerly paid to the use of the sheriff or his bailiffs. *Cowel.* Also, to be quit of such custom. *T. L.* [SCOT AND LOT.]

SCOT AND LOT. A customary contribution laid upon all subjects according to their ability. *Cowel.* In some boroughs, the *scot and lot inhabitants* (that is, such as paid the poor's rate as inhabitants) were allowed to vote in parliamentary elections for the borough; and these rights were reserved by the Reform Act of 1832, so far as regarded the persons who then enjoyed them, the number of whom must now have become much diminished by death. 2 *Steph. Com.* 360. [POTWALLOPERS.]

SCOTALE. Payment for ale. This was, where an officer of a forest kept an alehouse, to the intent that he might have the custom of the inhabitants of the forest, to come and spend their money with him, on the understanding that he was to wink at their offences against the forest. It was prohibited by ch. 7 of the Charter of the Forest. *T. L.; Cowel.* [CARTA DE FORESTA; FIELD-ALE.]

SCOTCH PEERS. 1. The ancient peers of Scotland.

2. The sixteen representative peers elected to represent the peerage of Scotland in the House of Lords. 1 *Bl.* 96, 169; 4 *Bl.* 117; 1 *Steph. Com.* 88; 2 *Steph. Com.* 331, 847; 4 *Steph. Com.* 184. [LORDS TEMPORAL; PARLIAMENT.]

SCOTCH REFORM ACTS. The stat. 2 & 3 Will. 4, c. 65, passed in 1832, and 31 & 32 Vict. c. 48, passed in 1868, for amending the representation of the people in Scotland. 1 *Steph. Com.* 88, *n.*; 2 *Steph. Com.* 351, *n.* [REPRESENTATION OF THE PEOPLE ACT, 1867.]

SCOTS. The name given to the rates assessed by the Commissioners of Sewers. 3 *Bl.* 74; 3 *Steph. Com.* 296.

SCOTTARE. To hold lands subject to pay scot. *Toml.* [SCOT.]

SCRIP. Certificates of shares in a public company. A scrip certificate is a certificate entitling the holder to apply for shares in a public company, either absolutely or on the fulfilment of specified conditions. It does not, however, necessarily imply a contract to take shares, or a liability to contribute to the assets of the company in the event of its being wound up. *McIlwraith v. Dublin Trunk Connecting Rail. Co., L. R.*, 7 *Ch. App.* 134; 41 *L. J., Ch.* 262; 25 *L. T., N. S.* 776; 20 *W. R.* 156.

SCRIPT. A testamentary document of any kind, whether a will, codicil, draft of a will or codicil, or written instructions for the same. In testamentary causes, the plaintiff and defendant must, within eight days of the entry of an appearance on the part of the defendant, file their affidavits of scripts. Every script which has at any time been made by or under the direction of the testator, of which deponent has any knowledge, is to be specified in his affidavit of scripts, and every script in the custody or control of the party making the affidavit is to be annexed thereto, and deposited therewith in the registry. See the *Probate Rules and Orders of* 1862 *as to Contentious Business, Rules* 30, 31; *Coote's Probate Practice, 5th ed., pp.* 253, 455. The form of an affidavit of scripts under the Judicature Acts is given in the Act of 1875, 1st Schedule, Appendix (B), Form 16.

SCRIVENER. An old word, signifying—

1. One who receives money to place it out at interest, and who supplies those who want to raise money on security. *Toml.*

2. One who draws contracts. *Latham.*

SCROOP'S INN. A place opposite St. Andrew's Church, Holborn. This Inn was one of those formerly occupied by serjeants-at-law. 3 *Steph. Com.* 272, *n.*

SCUTAGE. The payment made by tenants in chivalry, in lieu of personal service. *Cowel;* 1 *Bl.* 310; 2 *Bl.* 74; 1 *Steph. Com.* 201; 2 *Steph. Com.* 556, 557. [ESCUAGE; KNIGHT-SERVICE. See also next Title.]

SCUTAGIO HABENDO. A writ that lay for the king or other lord against a tenant holding land by knight-service, requiring him to serve personally, or to send a sufficient man to serve in his place, or else to make payment in lieu thereof. *Cowel.* [ESCUAGE; KNIGHT-SERVICE; SCUTAGE.]

SCYLDWIT. A mulct for any fault. *Toml.*

SCYRA. A fine imposed upon such as neglected to attend the scyre-gemote courts. *Toml.* [See next Title.]

SCYRE GEMOTE is a Saxon word signifying a court held twice a year, in ancient times, by the bishop of the diocese and the ealdorman in shires that had ealdormen, and in others by the bishop and sheriffs; wherein both the ecclesiastical and temporal laws were given in charge to the country. *Cowel.*

SE DEFENDENDO (in defending himself). A plea for one charged with the slaying of another, that he did so in his own defence. *T. L.*; 4 *Bl.* 183, 184; 4 *Steph. Com.* 54. [HOMICIDE, 2.]

SEA BIRDS PROTECTION ACT. Stat. 32 & 33 Vict. c. 17, passed in 1869, by which penalties are imposed upon any person who shall, between the 1st of April and the 1st of August, kill or wound, or attempt to kill or wound, or take, any sea bird, or shall use any boat, gun, net, or other engine or instrument for the purpose, or shall have in his possession any sea bird recently killed, wounded or taken. Offenders refusing their names and addresses, or giving wrong ones, may be fined 2*l.* in addition to other penalties. See *Oke, Mag. Syn.* 642—3.

SEA MARKS. Lighthouses, buoys and beacons. 1 *Bl.* 264, 265; 2 *Steph. Com.* 502; 3 *Steph. Com.* 159—161.

SEA REEVE. An officer in maritime towns and places who took care of the maritime rights of the lord of the manor, and watched the shore and collected wrecks for the lord. *Toml.*

SEAL. Wax impressed with a device, and attached as a mark of authenticity to letters and other instruments in writing. *Cowel*; 2 *Bl.* 305; 1 *Steph. Com.* 492. A contract under seal is called a *specialty contract* or *covenant*. It needs no valuable consideration to support it, as a contract not under seal does. An instrument under seal is necessary to pass all freehold and leasehold interests in land, except in the case of leases for periods not exceeding three years, where the rent reserved amounts at least to two-thirds of the full improved value of the land. See 1 *Stephen's Comm.* 512, 513. [CONSIDERATION; CONTRACT; GREAT SEAL; PRIVY SEAL.]

SEAL DAYS. Motion days in the Court of Chancery. *Hunt. Eq., Pt. II. ch. 5, s. 1.*

SEALER OF THE WRITS was an officer appointed by the Lord Chancellor to seal the writs in his presence. *Cowel.* This office was abolished in 1852 by stat. 15 & 16 Vict. c. 87, s. 23, and its duties transferred to the Pursebearer to the Lord Chancellor. Provision is made by stat. 37 & 38 Vict. c. 81, s. 7, for the abolition of this latter office, and the transfer of its duties to the Gentleman of the Chamber attending the Great Seal.

SEARCH WARRANT is a warrant granted by a judge or magistrate to search a house, shop, or other premises. Such a warrant may be granted by a justice under stat. 5 Geo. 4, c. 83, s. 13, for vagrants; under the Larceny Act, 1861 (stat. 24 & 25 Vict. c. 96), s. 103, for the purpose of searching for stolen goods or other property in respect of which any offence punishable under that Act has been committed; also under the Malicious Injuries Act (stat. 24 & 25 Vict. c. 97), s. 55, for gunpowder or other noxious thing kept for the purpose of doing a malicious injury; also under the Forgery Act, 1861 (stat. 24 & 25 Vict. c. 98), s. 46, for implements employed in the making of forged paper, and for forged instruments; under the Stamp Duties Management Act, 1870 (stat. 33 & 34 Vict. c. 98), s. 13, for forged stamps and implements for making the same, and under sect. 23, for stamps fraudulently obtained; under the Petroleum Act, 1871 (stat. 34 & 35 Vict. c. 105), s. 13, for petroleum; under the Gunpowder Act (stat. 23 & 24 Vict. c. 139), s. 25, for gunpowder kept contrary to the Act; and under the Nitro-Glycerine Act, 1869 (stat. 32 & 33 Vict. c. 113), s. 6, for nitro-glycerine; and under sect. 17 of the Licensing Act, 1874 (stat. 37 & 38 Vict. c. 49), for liquors kept contrary to law. 4 *Steph. Com.* 347; *Oke's Mag. Syn.*; *Cox & Saunders' Cr. Law*, 85, 127—8, 168—9. Moreover by sect. 16 of the Prevention of Crime Act, 1871 (stat. 34 & 35 Vict. c. 112) power is given to a constable, under certain circumstances therein mentioned, to search for stolen property as if he had a search warrant.

[See also WARRANT, I. 4.]

SEAWORTHY. A ship is said to be seaworthy when it is in a fit condition to perform the voyage on which it is sent. *2 Steph. Com.* 132; *3 Steph. Com.* 154, 155, 188; *Oke's Mag. Syn.* 1066—7. By stat. 38 & 39 Vict. c. 88, s. 4 (repealing and re-enacting stat. 34 & 35 Vict. c. 110, s. 11), every person who sends, or who is party to any attempt to send, any ship to sea in an unseaworthy state, so as to endanger the life of any person, is guilty of a misdemeanour, unless he can prove that he used all reasonable means to keep the ship seaworthy and was ignorant of such unseaworthiness; or that the going to sea of such ship in an unseaworthy state was, under the circumstances, reasonable and justifiable.

SECK RENT. [RENT.]

SECOND DELIVERANCE. A judicial writ that lay for a plaintiff when nonsuited in an action of replevin, issuing out of the original record, in order to have the same distress delivered to him a second time on his giving the like security as before. Prior to the Statute of Westminster the Second (13 Edw. 1), c. 2, a plaintiff in replevin might do this as often as he pleased; but that statute prohibited his doing it more than once after the first defeat. *T. L.; Cowel;* 3 *Bl.* 150; *Lush's Pr.* 1024. [REPLEVIN; RETURN IRREPLEVISABLE.]

SECOND SURCHARGE. A writ directed to the sheriff to inquire whether a defendant surcharged a common contrary to a previous admeasurement of pasture. 3 *Bl.* 239. [ADMEASUREMENT OF PASTURE; SURCHARGE OF COMMON.]

SECONDARY. 1. An officer who is second or next to the chief officer. *Cowel.*

2. An under-sheriff of London, so called especially in reference to his jurisdiction in the assessment of damages under writs of inquiry upon interlocutory judgments. *2 Steph. Com.* 628, *n.* (i); *Pulling on the Customs of London*, 200. [INTERLOCUTORY JUDGMENT; WRIT OF INQUIRY.]

SECONDARY CONVEYANCES. The same as derivative conveyances. [DERIVATIVE CONVEYANCE.]

SECONDARY EVIDENCE is evidence not of the best and most direct character; which is admissible in certain cases where the circumstances are such as to excuse a party from giving the proper or primary proof. Thus a copy of a deed is secondary evidence of its contents. See *3 Stephen's Comm.* 541—543. Secondary evidence is receivable whenever its substitution for primary evidence does not create a reasonable presumption of fraud. *Powell on Evidence, 4th ed. p.* 64. There are no degrees in secondary evidence. The testimony of a witness is as sufficient secondary evidence of the contents of a written instrument as a copy of such instrument would be, although the latter would be more satisfactory. *Ibid. p.* 65.

Secondary evidence must not be confounded with secondhand evidence. [SECONDHAND EVIDENCE.]

SECONDARY USE. The same as a shifting use. [SHIFTING USE.]

SECONDHAND EVIDENCE is the same as *hearsay evidence*, the ordinary meaning of which is the oral or written statement of a person who is not produced in Court, conveyed to the Court either by a witness or by the instrumentality of a document. The general rule is that hearsay or secondhand evidence is not admissible; but there are certain exceptions to this rule. Thus, in matters of public or general interest, popular reputation or opinion, or the disinterested statements of deceased witnesses, will be received as evidence. And on charges of homicide the declarations of the deceased, made in expectation of death, are admissible in evidence for or against the accused. *Powell on Evidence.*

SECRETARY OF DECREES AND INJUNCTIONS was an officer of the Court of Chancery. The office was abolished in 1852 by stat. 15 & 16 Vict. c. 87, s. 28, and the duties thereof transferred to the Record and Writ Clerks. [CLERK OF RECORDS AND WRITS.]

SECRETARY OF STATE. There are now five principal secretaries of state; the Secretary for the Home Department, for Foreign Affairs, for the Colonies, for the War Department, and for India. There are also several under-secretaries. *2 Steph. Com.* 459.

SECTA or **SUIT.** By these words were anciently understood the witnesses or followers of the plaintiff, which he brought to support his case. Hence the declaration in an action, until the passing of the Common Law Procedure Act, 1852, concluded with the words, "and thereupon he brings suit" (*inde producit sectam*), though the actual production of the witnesses or followers has been disused since the reign of Edward III. 3 *Bl.* 295, 344.

SECTA AD CURIAM. Suit at court. A writ that lay against him who refused to perform his suit either to the county court or the court baron. *Cowel.* [COUNTY COURT; COURT BARON; SECTA CURLÆ.]

SECTA AD MOLENDINUM. Suit at a mill. A writ that lay to compel a person to do suit at a mill (that is, to grind his corn at a mill), who was bound by tenure, or by custom, to do so. *Cowel;* 3 *Bl.* 235; 3 *Steph. Com.* 410, *n.* Abolished in 1833 by 3 & 4 Will. 4, c. 27, s. 36. [MULTURE; SUCKEN; THIRLAGE.]

SECTA CURIÆ. Suit of court; that is to say, the attendance at the lord's court, to which the tenant was bound in time of peace. 2 *Bl.* 54; 1 *Steph. Com.* 180; *Wms. R. P., Pt. I. ch.* 5.

SECTA FACIENDA PER ILLAM QUÆ HABET ENICIAM PARTEM. A writ which was formerly in use to compel the co-heir that had the elder's part of the inheritance to perform service for all the co-parceners. *Cowel.* [COPARCENARY; COPARCENERS.]

SECTA REGALIS. Suit royal: which was a service or suit by which all persons were bound twice in a year to attend the sheriff's tourn or king's leet. *Toml.* [COURT LEET; SHERIFF'S TOURN.]

SECTIS NON FACIENDIS (for not making suit) was a writ which lay for a dowress, or one in wardship, to be free from suit of court. *Cowel.* [DOWER, 2; SECTA CURLÆ; WARDSHIP.]

SECUNDA SUPERONERATIONE PASTURÆ. A writ of second surcharge of pasture. [SECOND SURCHARGE.]

SECURED CREDITOR. A creditor who holds some special security for his debt, as a mortgage or lien. A creditor who has levied execution by seizure of the goods of his debtor is held to be a secured creditor, except in the case of an execution for 50*l.* or upwards levied on the goods of a trader. *Robson's Bkcy.*

SECURITATE PACIS is an old writ for one threatened with death or danger, against him that so threatened. It was taken out of Chancery, and directed to the sheriff. *Cowel.* [SURETY OF THE PEACE.]

SECURITY is a word especially applied to a claim upon any property created for the purpose of securing the repayment of a debt or the discharge of any other liability. The word is also applied to any document by which any claim may be enforced, or by which a person's title may be evidenced. *Stat.* 24 *&* 25 *Vict. c.* 96, *s.* 1. [VALUABLE SECURITY.]

SECURITY FOR COSTS. In actions at common law, where the plaintiff has been a person residing out of the jurisdiction of the court, or where, being himself in a state of insolvency or extreme poverty, he has sued as a nominal plaintiff for the benefit of some other person, the courts have been in the habit, on the application of the defendant, of ordering proceedings to be stayed until security be given, to the satisfaction of the master, for payment of all such costs as may in the event become due to the defendant in respect of the cause. *Lush's Pr.* 928–932. In Chancery it has been the practice to require security for costs from a plaintiff whose address as given on the bill is false, or shows that the plaintiff resides out of the kingdom, and that not in any official capacity. *Hunt. Eq.* Under the Judicature Act, 1875, 1st Sched. Ord. LVIII. r. 15, security for the costs of an appeal may under special circumstances be required from an appellant by the Court of Appeal. Otherwise the practice as to security for costs seems not to be affected by the Act and Rules.

SECURITY FOR GOOD BEHAVIOUR. [GOOD ABEARING; GOOD BEHAVIOUR; SURETY OF THE PEACE.]

SECURITY FOR KEEPING THE PEACE. [SURETY OF THE PEACE.]

SECUS. Otherwise; not so.

SED PER CURIAM (but by the Court). An expression sometimes used in reports to indicate that such was the opinion of the Court. [PER CURIAM.]

SEDERUNT. [ACTS OF SEDERUNT.]

SEDITION consists in attempts made, by meetings or speeches, or by publications, to disturb the tranquillity of the State, which do not amount to treason. In the Scotch law sedition is distinguished from *leasing making*, in that leasing making consists of libellous attacks upon the private character of the Sovereign, while sedition is directed against the government and constitution. *Bell.*

SEE (Lat. *Sedes*). The circuit of a bishop's jurisdiction; or his office or dignity as being bishop of a given diocese. 1 *Bl.* 111, 380, 381; 1 *Steph. Com.* 116, 125; 2 *Steph. Com.* 671.

SEIGNIOR. The lord of a fee, or of a manor. *Cowel.* [See the following Titles.]

SEIGNIOR IN GROSS. A lord whose seigniory has been severed from the demesne lands of the manor to which it was anciently appendant, and exists as a separate subject of property. *T. L.; Cowel.* [DEMESNE; GROSS.]

SEIGNIORAGE. An ancient royalty or prerogative of the king, whereby he claimed an allowance of gold and silver brought in the mass to be exchanged for coin. Upon every pound weight of gold the king had for his coin five shillings, out of which he paid to the Master of the Mint sometimes one shilling, sometimes eighteenpence. Upon every pound weight of silver the seigniorage in the time of King Edward III. amounted to eighteen pennyweight, which at that time amounted to one shilling, out of which he paid sometimes eightpence, sometimes ninepence to the master. In the time of Henry V. the king's seigniorage on every pound weight of silver amounted to fifteen pence. *Cowel.* [MASTER OF THE MINT; MINT.]

SEIGNIORY. A lordship or manor. *Cowel; 1 Steph. Com.* 284; *Wms. R. P., Pt. II. ch.* 4.

SEISED. Feudally possessed of a freehold. [See the following Titles.]

SEISED IN HIS DEMESNE AS OF FEE. This technical expression describes a tenant in fee simple in possession of a corporeal hereditament. The expression means that the land to which it refers is a man's *dominicum*, or property, since it belongs to him and his heirs for ever; yet this *dominicum*, property, or demesne is strictly not absolute or allodial, but qualified or feudal; it is his demesne, *as of fee*, that is, it is not purely and simply his own, since it is held of a superior lord, in whom the ultimate property resides. 2 *Bl.* 105; 1 *Steph. Com.* 233, 284. [FEE; FEUDAL SYSTEM.]

SEISIN (Scotch, *Sasine;* French, *Saisine*) is the feudal possession of a freehold estate in land. It is opposed—(1) To a merely beneficial or equitable title; (2) To the possession of a mere leasehold estate.

Seisin is of two kinds,—*seisin in deed*, and *seisin in law*. Seisin in deed is where an actual possession is taken. Seisin in law is where lands descend, and one hath not actually entered on them; or where one is by wrong disseised of them. *T. L.; Cowel*; 2 *Bl.* 131, 132, 209; 1 *Steph. Com.* 265, 281. [See the following Titles.]

SEISIN, LIVERY OF. The delivery of feudal possession. [FEOFFMENT; LIVERY OF SEISIN.]

SEISIN OX. A perquisite formerly due to the sheriff in Scotland when he gave possession to an heir holding Crown lands. It has now for a long time been converted into a payment in money, proportioned to the value of the estate. *Bell.*

SEISINA FACIT STIPITEM. Seisin makes the stock of descent. This was the maxim of law by which, before the Inheritance Act, 1833 (3 & 4 Will. 4, c. 106), the title by descent was traced from the person who died last seised. 2 *Bl.* 209. Now, by sect. 2 of that Act, descent is traced from the last person entitled who did not inherit. See 1 *Steph. Com.* 396. [DESCENT; SEISIN.]

SEISINA HABENDA QUIA REX HABUIT ANNUM, DIEM ET VASTUM. A writ formerly in use for delivery to the lord of seisin of the lands or tenements of a tenant attainted of felony, after the king, in right of his prerogative, had had his year, day and waste. *Cowel.* [YEAR, DAY AND WASTE.]

SEIZING OF HERIOTS is when the lord of a manor, on the death of a tenant, seizes the beast or other chattel due by way of heriot. 2 *Bl.* 422; 3 *Bl.* 15; 1 *Steph. Com.* 628—631; 3 *Steph. Com.* 257, 258. [HERIOT.]

SELECT COMMITTEE. A parliamentary committee, composed of certain members appointed by the House, to consider or inquire into any matters, and to report their opinion for the information of the House. *May's Parl. Pract. ch.* 14.

SELECT VESTRY. [VESTRY.]

SEMAYNE'S CASE, decided in 1604, is the leading case on the question when a sheriff is entitled to break doors, and how far the maxim "Every man's house is his castle" is applicable in English law. *Smith's Leading Cases.*

SEMBLE. It appears; an expression often used in reports, to indicate that such was the opinion of the court on a point not directly before them.

SEMI-NAUFRAGIUM. Half-shipwreck; a term used by Italian lawyers, by which they understood the casting merchandise into the sea to prevent shipwreck. The

SEMI-NAUFRAGIUM—*continued.*

word is also used to signify the state of a vessel which has been so much injured by a tempest or accident, that to repair the damage would cost more than the ship is worth. *Bouvier.* [TOTAL LOSS.]

SEMIPLENA PROBATIO. [SUPPLETORY OATH.]

SENESCHAL. 1. A steward. *T. L.; Cowel.* 2. Also, one who hath the dispensing of justice. *Toml.*

SENESCHALLO ET MARESCHALLO QUOD NON TENEANT PLACITA DE LIBERO TENEMENTO, &c. A writ directed to the steward and marshal of England, prohibiting them from taking cognizance, in their Court of Marshalsea, of any action concerning freehold, debt, or covenant. *Cowel.* [COURT OF MARSHALSEA.]

SENTENCE OF A COURT. A definitive judgment pronounced in a civil or criminal proceeding. *Bell; Toml.*

SENTENCE OF DEATH RECORDED. This is the recording of a sentence of death not actually pronounced, on the understanding that it will not be executed. Under stat. 4 Geo. 4, c. 48, s. 1, it is competent for the judge to do this in capital felonies other than murder. By sect. 2, such a record is to have the same effect as if the judgment had been pronounced, and the offender reprieved by the Court. The number of capital felonies has, however, been so much reduced by the Criminal Law Consolidation Acts of 1861, that it is seldom we hear now of a sentence of death recorded, and not actually pronounced.

SEPARATE ESTATE. Such estate (if any) as is enjoyed by a married woman to her *separate use*, independently of her husband, so that she may dispose of it by will, and bind it by her contracts in writing, as if she were unmarried, provided she be not, by any instrument under which she takes it, restrained from anticipating the income thereof. The wife's separate estate may arise—(1) By custom; (2) By a deed or instrument in writing, whereby property is settled to her sole and separate use, or by other sufficient words to that effect; (3) By the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93). A wife's separate personal estate, on her death intestate, will go to the husband surviving, except in cases where, in the instrument under which it arises, provision is made to the contrary. 2 *Steph. Com.* 272, 274; *Sm. Man. Eq.; Chute's Eq.*

SEPARATE MAINTENANCE. Maintenance provided by a husband for his wife on the understanding that she is to live separate from him. 2 *Steph. Com.* 277.

SEPARATE USE. [SEPARATE ESTATE.]

SEPARATION DEED signifies a deed of separation between husband and wife, whereby each covenants not to molest the other, and the husband agrees to pay so much to trustees for her separate maintenance, the trustees covenanting to indemnify him against his wife's debts.

Though the law allows provision to be made for a separation already determined on, yet it will not sanction any agreement to provide for the contingency of a future separation. 2 *Steph. Com.* 277.

SEPARATISTS. 1. A sect of dissenters, allowed by stat. 3 & 4 Will. 4, c. 82, to make affirmation in lieu of oaths. *Toml.; 2 Steph. Com.* 338, *n.; 3 Steph. Com.* 536, *n.; 4 Steph. Com.* 242, *n.;* 336, *n.*

2. Dissenters generally.

SEPTENNIAL ACT. The stat. 1 Geo. 1, stat. 2, c. 38, passed in 1715, for prolonging the period of a parliament to seven years from the day on which, by the writ of summons, it was appointed to meet, unless sooner dissolved by the pleasure of the Crown. At the time of the passing of this Act the period of a parliament was three years. 1 *Bl.* 189; 2 *Steph. Com.* 394; *May's Parl. Pract.*

SEQUATUR SUB SUO PERICULO (let him follow at his own peril). This was an old writ which issued in certain cases against an alleged warrantor of land who had been summoned to make good his warranty, and who had three several times disobeyed the summons. [VOUCHER.]

SEQUELA CAUSÆ. The process and issue of a cause. *Toml.*

SEQUELA CURIÆ. Suit of court. *Cowel.* [SECTA CURIÆ.]

SEQUELA MOLENDINI. Suit at a mill. [SECTA AD MOLENDINUM.]

SEQUELA VILLANORUM. The family retinue and appurtenances to the goods and chattels of villeins, which were at the absolute disposal of the lord. In former times, when any lord sold his villein, it was said *dedi B. nativum meum cum totâ sequelâ suâ* (I have given my slave B. with all his appurtenances), which included all the villein's offspring. *Toml.*

SEQUESTER. A term used in the civil law for renouncing. *Cowel.* The word also signifies the setting apart of a man's property, or a portion thereof, for the benefit of his creditors. [See the following Titles.]

SEQUESTRARI FACIAS DE BONIS ECCLESIASTICIS. A writ of execution in an action against a beneficed clergyman, commanding the bishop to enter into the rectory and parish church, and take and sequester the same, until of the rents, tithes and profits thereof, and of the other ecclesiastical goods of the defendant, he have levied the plaintiff's debt. This writ is in the nature of a *levari facias. Lush's Pract.* 617; *Kerr's Act. Law.* [LEVARI FACIAS.]

This writ is retained by the Judicature Act, 1875, First Schedule, Order XLIII. rule 2. The form of it will be found in App (F)., Form 6, in the same schedule.

SEQUESTRATION. 1. The separation of a thing in controversy from the possession of those that contend for it. *T. L.; Cowel.*

2. The setting apart by the ordinary, under his (now abolished) testamentary jurisdiction, of the goods and chattels of a deceased person, to whom no one was willing to take out administration. *T. L.; Cowel.*

3. The gathering of the fruits of a vacant benefice for the use of the next incumbent. *T. L.; Cowel.*

4. The order sent out by a bishop in execution of the writ of *sequestrari facias*, whereby the bishop directs the churchwardens to collect the profits of the defendant's benefice, and pay the same to the plaintiff, until the full sum be raised. 3 *Bl.* 418. [See preceding Title.]

5. A writ directed by the Court of Chancery to commissioners, usually four in number, commanding them to enter the lands and seize the goods of the person against whom it is directed. This may be issued against a defendant who is in contempt by reason of neglect or refusal to appear or answer, or to obey a decree of the court. 3 *Bl.* 444; *Hunt. Eq., Part II. ch.* 7. This writ may be issued under the Judicature Acts, in whatever division of the High Court the action may be brought. *Stat.* 38 & 39 *Vict. c.* 77, *First Sched. Ord. XLII. r.* 6, *and App.* (*F.*) *Form* 10.

6. An order of the Court of Session, in Scotland, entrusting the management of a bankrupt's estate to an interim factor, until a trustee can be elected by the creditors. *Bell.*

SEQUESTRO HABENDO was an old judicial writ for dissolving or discharging a sequestration.

When the king had commanded the bishop to make a sequestration of the fruits of a benefice, in order to compel the parson thereof to appear in an action at the suit of another; then the parson might, on his appearance, have the above writ to discharge the sequestration. *Cowel.*

SEQUI. To prefer an action; to prosecute a suit or cause, as attorney or proctor in a court of justice. *Cowel.*

SERGEANT. [SERJEANT.]

SERIATIM. Individually, separately.

SERJEANT or **SERGEANT** (Lat. *Serviens*) is a word used variously as follows:—

1. *Serjeants at arms*, whose office is to attend the person of the sovereign; to arrest traitors and persons of quality offending, and to attend the Lord High Steward of England sitting in judgment upon any traitor. By stat. 13 Ric. 2, c. 6, there may not be above thirty of such serjeants in the realm. Two of them, by allowance of the sovereign, attend on the two Houses of Parliament. Their duties are to execute the commands of the House in arresting offenders. *Cowel; May's Parl. Pract.* Another attends the Court of Chancery for a similar purpose. *Hunter's Eq., Pt. II. ch.* 7.

2. *Serjeant at Law.* This is the highest degree in the legal profession. A serjeant at law is so made by the royal mandate or writ, commanding him to take that degree by a certain day. The judges of the courts at Westminster, having themselves been hitherto by law required to take or to have taken the degree of serjeant, address the serjeants at law as *brothers.* But by sect. 8 of the Judicature Act of 1873, judges are not henceforth to be required to take the degree of serjeant at law. Prior to the year 1846 the serjeants at law had the Court of Common Pleas to themselves. *Cowel;* 1 *Bl.* 24; 3 *Bl.* 27; 1 *Steph. Com.* 17; 3 *Steph. Com.* 272, 275, *n.* This privilege was abolished by stat. 9 & 10 Vict. c. 54, by which the Court of Common Pleas was thrown open to all barristers.

A serjeant, on being so created, retires from the Inn of Court by which he was called to the bar, and becomes a member of Serjeants' Inn.

3. The *serjeants of the mace* are inferior officers attending upon the mayor

SERJEANT or **SERGEANT**—*continued.*

or other chief officer in London and other towns.

4. Sergeants of police are inferior officers of police.

5. Sergeants in the army are the highest non-commissioned officers.

SERJEANT AT LAW. [SERJEANT, 2.]

SERJEANTS' INN, formerly called Faryndon Inn, near Chancery Lane, is the Inn to which the serjeants belong. In the hall of this Inn, during term, the judges and serjeants dine together; and there the judges sit as visitors of the Inns of Court. 3 *Steph. Com.* 272, *n.*

SERJEANTY. An ancient tenure. [GRAND SERJEANTY; PETIT SERJEANTY.]

SERVAGE was where each tenant, besides payment of a certain rent, found one or more workmen for his lord's service. *Toml.*

SERVANT. Servants are of two kinds:—1. Menial servants; being persons retained by others to live within the walls of the house, and to perform the work and business of the household. 2. Persons employed by men of trades and professions under them, to assist them in their particular callings. The following points may be mentioned in connection with the law of master and servant:—1st. A master may *maintain*, that is, abet and assist his servant in any action at law against a stranger; whereas in general to do this is an offence against the law. [MAINTENANCE, 1.] 2ndly. A master may bring an action against any man for beating or maiming his servant; but in such case he must allege his own damage by the loss of his servant, and such damage must be proved at the trial. 3rdly. If a servant by his negligence does any damage to a stranger, the master is liable for his neglect, provided the damage be done while the servant is acting in his master's employment. 1 *Bl.* 423—432; 2 *Steph. Com.* 225—237; *Toml.*; *Manley Smith's Law of Master and Servant.*

SERVI. Bondmen, or servile tenants.

SERVICE (*Servitium*). 1. That duty which a tenant, by reason of his fee, oweth unto his lord. *Cowel*; 2 *Bl.* 54; 1 *Steph. Com.* 180.

2. The duty which a servant owes to his master.

3. *Service of Process.*—This is the delivery of a notice of any action or suit being instituted, or of any step or process therein, to the party to be affected thereby, or his solicitor, or other party having an interest in the subject-matter of the suit. So, an *address for service* is an address at which such notice may be served, so as to bind the party whom it is thereby intended to serve. See the *Judicature Act*, 1875, *1st Sched. Ord. IV. r.* 2, *and Ord. XII. r.* 7.

4. *Service under Articles.*—This is the employment in which an articled clerk is engaged for a solicitor to whom he is articled. [ARTICLED CLERK.]

5. *Service of an Heir.*—This is an old form of the law of Scotland, fixing the right and character of an heir to the estate of his ancestor. *Bell.* It is enacted, however, by stat. 37 & 38 Vict. c. 94, s. 9, passed in 1874, that the personal right shall vest in the heir without service or other procedure.

SERVIENT TENEMENT. A tenement subject to an easement or servitude. [DOMINANT TENEMENT; EASEMENT; SERVITUDE, 4.]

SERVITIUM FORINSECUM. [FORINSECUM SERVITIUM; see also next Title.]

SERVITIUM INTRINSECUM. That service which was due to a chief lord from his tenants within the manor, as opposed to the service done by them to the king, which was called *servitium forinsecum.* [FORINSECUM SERVITIUM.]

SERVITIUM LIBERUM. Free service, such as to find a man and horse, or to go with the lord into the army, or to attend his court; as opposed to base services, such as ploughing the lord's land, or hedging his demesnes, which a freeman would be unwilling to perform. *Toml.* [FREEHOLD.]

SERVITIUM REGALE. Royal service, or the prerogatives that within a royal manor belonged to the lord of it: such as power of judicature, of life and death in cases of felony and murder; the right to waifs and estrays, &c. *Toml.*

SERVITOR. 1. A servant. *Toml.*

2. The name of certain scholars in the University of Oxford.

3. A servitor of bills, whose duty was to serve processes under the direction of the marshal of the King's Bench; now more ordinarily called a tipstaff. *Cowel.*

SERVITORS OF BILLS were process servers in the King's Bench. [SERVITOR, 3.]

SERVITUDE signifies—1. A state of slavery. 2. Penal servitude. [PENAL SERVITUDE.] 3. Apprenticeship. 4. The name in the Roman law for an *easement.* The property subject to the easement

SERVITUDE—*continued.*

was called the *servient tenement*; and, in the case of an easement appurtenant, the property to which the enjoyment of the easement was attached was called the *dominant tenement*. [EASEMENT.]

SESS. A tax. *Latham.*

SESSEUR, in stat. 25 Edw. 3, c. 6, signifies the assessing or rating of wages. *Cowel.*

SESSION. 1. The sitting of parliament from its meeting to its prorogation, of which there is in general but one in each year. See 2 *Steph. Com.* 390—1.

2. The sitting of justices in court upon commission. [SESSIONS.]

SESSION, COURT OF. The highest court of civil jurisdiction in Scotland. It was first established in the year 1425. *Toml.* [COURT OF SESSION.]

SESSIONAL ORDERS. Certain orders agreed to by both Houses of Parliament at the commencement of each session, which are renewed from year to year, and not intended to endure beyond the existing session. *May's Parl. Pract.*

SESSIONS is a sitting of justices in court upon commission, as the Sessions of Oyer and Terminer, the Quarter Sessions, the Petty Sessions, Special Sessions, &c. *T. L.; Cowel.* The Sessions of Oyer and Terminer are held before the justices of assize, the Quarter Sessions are held in counties before the justices of the peace, and in boroughs before the recorder. Special and Petty Sessions are held before justices of the peace. Petty Sessions are held periodically. [BOROUGH SESSIONS; COUNTY SESSIONS; OYER AND TERMINER; PETTY SESSIONS; SPECIAL SESSIONS.]

SESSIONS OF THE PEACE. The name given to sessions held by justices of the peace, whether general, quarter, special, or petty sessions. *Toml.* [SESSIONS.]

SET. A lease. [See also SETS OF BILLS.]

SET-OFF may be defined generally to be the merging (wholly or partially) of a claim of one person against another in a counter-claim by the latter against the former. Thus, a plea of set-off is a plea whereby a defendant acknowledges the justice of the plaintiff's demand, but sets up another demand of his own, to counterbalance that of the plaintiff, either in whole or in part. 3 *Bl.* 304; *Lush's Pr.* 860; *Smith's Man. Eq., Tit. III. ch.* 6, *s.* 3.

By the Judicature Act, 1875, 1st Sched. Ord. XIX. r. 3, a defendant in an action may set off or set up any right or claim by way of counter-claim against the claims of the plaintiff, and such set-off or counter-claim is to have the same effect as a statement of claim in a cross-action.

SETS OF BILLS are exemplars or parts of a bill of exchange made on separate pieces of paper; each part referring to the other parts, and containing a condition that it shall continue payable only so long as the others remain unpaid. *Byles on Bills.*

SETTER. A lessor.

SETTING DOWN. 1. *Setting down a cause for hearing.* This is done by entering the name of the cause at the bottom of a list of matters ready to come on for hearing in court, together with the stage at which it is ready to come on for hearing. This has been a familiar expression in courts of equity. And, similarly, in the Judicature Act, 1875, 1st Schedule, Ord. XL. rules 3, 7, it is provided that a party may, under the circumstances mentioned in those Rules, *set down* the action on motion for judgment.

2. *Setting down a plea for hearing.* This phrase, in the hitherto received Chancery practice, indicates that a plaintiff considers a defendant's plea insufficient in point of law; as in this case it has been the proper course for the plaintiff to set down the plea for hearing; a course answering to a demurrer in an action at law. *Hunt. Eq.*

SETTLED ESTATES. [SETTLEMENT, 2.]

SETTLEMENT. 1. Such residence of any person in a parish, or other circumstance relating thereto, as would enable him, if in need of parochial relief, to apply for it in that parish rather than in any other. A settlement may under the present law be gained—(1) By birth. (2) By parentage. (3) By marriage, in the case of a female. (4) By renting a tenement, coupled with residence in the same for forty days. (5) By being bound apprentice, and inhabiting for forty days under such binding. (6) By having an estate of one's own there, of whatever value, whether the interest be legal or equitable, by a person residing within ten miles thereof. (7) By being charged to and paying the public taxes, and levies of the parish. When the settlement is acquired in right of another person, as in the cases 2 and 3 abovementioned, it is called a *derivative settlement.*

SETTLEMENT—*continued.*

The Law of Settlement has been altered from time to time by various statutes, as to which see 3 *Steph. Com.* 44—55 (*Bk. IV. Pt. III. ch.* 2). As to the settlement of lunatics, see *Oke's Mag. Syn.* 1314—1319.

2. A deed whereby property is *settled*, that is, subjected to a string of limitations. [DEED; LEASES AND SALES OF SETTLED ESTATES ACT; LIMITATION OF ESTATES.] In this sense we speak of *marriage settlements* and *family settlements.*

3. A deed whereby a joint stock company is associated, which is often called a *deed of settlement*, but more frequently *articles of association.*

4. The termination of a disputed matter by the adoption of terms agreeable to the parties thereto.

5. A colony or plantation.

SETTLEMENT, ACT OF. [ACT OF SETTLEMENT.]

SETTLING DAYS, on the Stock Exchange, are the days appointed for the settlement of accounts arising from speculative purchases and sales of stock. The settling days for English and Foreign stocks and shares occur twice in every month, the middle and the end. The settling days for Consols are once in every month, generally near the commencement of the month. *Keyser; Fenn.*

SETTLING ISSUES signifies the deciding the forms of the issues to be determined in a trial. 3 *Steph. Com.* 510, 511. It is provided by the Judicature Act, 1875, First Schedule, Order XXVI., that where in any action it appears to the judge that the statement of claim or defence, or reply, does not sufficiently define the issues of fact between the parties, he may direct the parties to prepare issues; and such issues shall, if the parties differ, be settled by the judge. [ISSUE, 5.]

SETTLOR. A person who makes a settlement of his land or personal property. [SETTLEMENT, 2.]

SEVER. [SEVERANCE.]

SEVERAL ACTIONS is a phrase often used to denote separate actions brought against different defendants in respect of the same subject matter: as in the case where the different partners of a firm are sued separately in respect of a partnership debt. See *Lush's Pract.* 89, 215, 417. [CONSOLIDATION RULE.]

SEVERAL COVENANTS are covenants entered into with several persons in such a manner or under such circumstances that they are construed as separate. If the interest of several parties in a deed appears to be separate, the covenants will be construed as separate, unless the language expressly and unequivocally indicates a joint covenant. *Fawcett, L. & T.* 87.

SEVERAL FISHERY. A fishery of which the owner is also the owner of the soil, or derives his right from the owner of the soil. 2 *Bl.* 39, 40; 1 *Steph. Com.* 671, *n.* [FISHERY.]

SEVERAL ISSUES. This is where there is more than one issue involved in a case. 3 *Steph. Com.* 560. [SETTLING ISSUES.] Thus, if a plaintiff sues on a contract which the defendant alleges he has performed, but, even if he had not, the contract is void by the Statute of Frauds, and further that the plaintiff's claim, if any ever existed, is barred by the Statute of Limitations; here we have three several issues raised by the defendant.

SEVERAL PLEAS are different pleas disclosing independent grounds of defence to an action. This is allowed by stat. 4 & 5 Anne, c. 16. *Smith's Act. Law, ch.* 4. Under the Judicature Act, 1875, First Schedule, Order XIX. rules 18 and 20, a defendant in an action, having several grounds of defence to an action, must combine them in his statement of defence.

SEVERAL TAIL. This expression is used to denote a limitation whereby land is given and entailed severally to two. For example, land is given to two men and their wives, and the heirs of their bodies begotten; the donees have a joint estate for their two lives, and yet they have several inheritances, because the issue of the one shall have his moiety and the issue of the other his moiety. *Cowel.* [ENTAIL; ESTATE; JOINT TENANCY; LIMITATION OF ESTATES.]

SEVERALTY, or SEVERAL TENANCY, is the holding of lands by a person in his own right only, without any other person being joined or connected with him in point of interest during his estate therein. It is thus opposed to holding in joint tenancy, in coparcenary, and in common. 2 *Bl.* 179; 1 *Steph. Com.* 338. [COMMON, TENANCY IN; COPARCENARY; JOINT TENANCY.]

SEVERANCE. 1. The singling or severing of two or more that are joined in one

SEVERANCE—*continued.*

writ, action or suit. *T. L.; Cowel.* As when two persons made defendants in a suit in respect of the same interest *sever* their defences, that is, adopt independent defences.

2. The dissolution or termination of a joint tenancy, or a tenancy in coparcenary or in common. A severance of a joint tenancy may be effected by any of the tenants disposing of his share. 1 *Bl.* 185, 186; 1 *Steph. Com.* 344, 345.

SEWERS. Drains and gutters to carry water into the sea or a river. *T. L.; Cowel.* [COMMISSIONERS OF SEWERS OF THE CITY OF LONDON; COURT OF COMMISSIONERS OF SEWERS.]

SEXTERY LANDS. Lands given to a church or religious house for the maintenance of the sexton or sacristan. *Toml.*

SHACK. *Common of shack* is the right of persons, occupying lands lying together in the same common field, to turn out their cattle after harvest to feed promiscuously in that field. *T. L.; Cowel;* 1 *Steph. Com.* 651, 652. Hence *to go at shack* is to go at large. *Cowel.*

SHAM PLEA. A plea manifestly frivolous and absurd, pleaded for the purpose of vexation and delay; as, for instance, a plea of judgment recovered in a court of piepoudre. *Kerr's Act. Law, Pt. III. ch.* 1. Under the Judicature Act, 1875, First Schedule, Order XXVII. rule 1, the Court or a judge may order to be struck out or amended any matter in the pleadings which may tend to prejudice, embarrass or delay the fair trial of the action.

SHEADING. A riding, tithing or division in the Isle of Man, of which there are six in the island. *Toml.*

SHEEP SILVER. Money paid by tenants in lieu of the service of washing the lord's sheep. *Toml.*

SHELLEY'S CASE was a very celebrated case decided by all the judges of England, in Easter Term in the year 1581. The facts found by the jury were that Edward Shelley being, on the 25th of September, 1554, tenant in special tail of the manor of Barhamwich, covenanted with Cowper and Martin to suffer a recovery of the said manor; and that the said recovery should be to the use of the said Edward Shelley for life without impeachment of waste; and, after his decease, to the use of Mr. Caril and others for twenty-four years, then to the use of the heirs male of the body of the said Edward Shelley lawfully begotten, and of the heirs male of the body of such heirs male lawfully begotten; and, for default of such issue, to the use of the heirs male of the body of John Shelley, of Michael Grove, &c. Edward Shelley had two sons, Henry Shelley, who predeceased him, and Richard, who survived him. Edward Shelley died on the 9th of October, being the first day of term, between the hours of five and six in the morning, and afterwards the recovery passed the same day, with voucher over; and immediately after judgment given, a *habere facias seisinam* was awarded, and on the 19th of October the recovery was executed, and Richard Shelley, the younger but sole surviving son of Edward Shelley, entered and leased the premises to Nicholas Wolfe. On the 4th of December was born Henry Shelley, a posthumous son of Henry, the elder son of Edward Shelley. Henry Shelley the younger having entered upon Nicholas Wolfe, the latter brought an *ejectione firmæ* against him. [EJECTIONE FIRMÆ.] It was decided by the judges:—(1) that execution might issue against the issue in tail, the estate tail being bound by the judgment; (2) that the reversion was not in the recoverors immediately by the judgment before execution; (3) that Richard took quasi by descent till the birth of the son, who then became entitled; (4) that the recovery was good, notwithstanding the death of the tenant in tail on the morning of the day on which it was suffered. [RECOVERY; TALTARUM'S CASE.] And it was resolved by all the judges except one that the defendant's right was good, and his entry lawful; and judgment was given accordingly.

The so-called "Rule in Shelley's Case" is of much greater antiquity than that case, where no question arose upon it for the decision of the Court; but it is only stated in the arguments, though in such precise and clear terms, that it has derived its name, though not its origin, from that case. *Tudor's L. C., R. P.* 517. [RULE IN SHELLEY'S CASE.]

SHEPWAY, COURT OF. A court held before the Lord Warden of the Cinque Ports, from whence a writ of error lay to the Court of King's Bench. 3 *Bl.* 79. [CINQUE PORTS.]

SHERIFF, or **SHIRE-REVE,** is the chief bailiff or officer of the *shire;* an officer of great antiquity in the kingdom. He is called in Latin *vice-comes,* as being

SHERIFF, or **SHIRE-REVE**—*continued.*

the deputy of the earl, or *comes*, to whom the custody of the shire is said to have been committed at the first division of the kingdom into counties. But the earls gradually withdrew from the county administration, and now the sheriff is the chief officer of the Crown in the county, and does all the king's business therein; the Crown committing the custody of the county to the sheriff, and to him alone.

Sheriffs were formerly chosen by the inhabitants of the several counties, in confirmation of which it was enacted in 1300, by stat. 28 Edw. 1, c. 8, that the people should have election of sheriffs in every shire where the shrievalty is not of inheritance; for anciently, in some counties, the sheriffs were hereditary. The city of London had the election of the sheriffs of London and Middlesex vested in their body by a charter of Henry I.; and this right they still exercise. But, throughout England generally, it is provided by stat. 9 Edw. 2, st. 2, passed in 1316, that the sheriffs should thenceforth be assigned by the chancellor, treasurer, and the judges, as being persons in whom the same trust might with confidence be reposed. And the custom now is, that all the judges, together with the great officers and privy councillors, meet in the Exchequer on the morrow of St. Martin, and then and there the judges propose three persons for each county, to be reported (if approved of) to the Crown, who afterwards appoints one of them to be sheriff. [POCKET SHERIFF; PRICKING FOR SHERIFFS.] And by stat. 8 & 9 Vict. c. 11, passed in 1845, the manner of assigning and appointing sheriffs in Wales is to be the same as in England. *Cowel;* 1 *Bl.* 117, 339—345; 2 *Steph. Com.* 623—634.

The Scotch sheriff differs considerably from the English sheriff. The Scotch sheriff is only a sheriff-depute, like the English under-sheriff; but his position is far higher and his jurisdiction far more extensive than that of the English under-sheriff. The Scotch sheriff is properly a judge; and by the 20 Geo. 2, c. 43, passed in 1747, he must be a lawyer of three years' standing. The sheriff-deputes have a power of appointing substitutes; and both receive stated salaries for performing the duties of their office. The sheriff has a general civil and criminal jurisdiction, the latter extending even to cases of murder, though in practice the jurisdiction in such cases is exercised by the judges on their circuits.

The Crown may still appoint a high sheriff for a Scotch county, but such appointment must not be made for a longer time than for a year. *Bell.*

SHERIFF CLERK is a clerk to the sheriff's court. *Bell.*

SHERIFF-DEPUTE. The judge of a Scotch county. *Bell.* [SHERIFF.]

SHERIFF IN THAT PART, in Scotland, is a person appointed by the Crown to supply the place of sheriff; he is termed *sheriff in that part* from being appointed to execute a particular duty which previously had been in use to be performed by the sheriff. *Bell.*

SHERIFF SUBSTITUTES, in Scotland, are persons appointed by a sheriff-depute, to assist him in performing the duties of his office. [SHERIFF.]

SHERIFF TOOTH signifies—1. A tenure by the service of providing entertainment for the sheriff at his county courts. 2. A tax of 6*d.* for every bovate of land in Derbyshire, anciently paid to the king's bailiffs. 3. A common tax levied for the sheriff's diet. *Cowel; Toml.*

SHERIFFALTY. The time of a man's being sheriff. *Cowel.* [SHRIEVALTY.]

SHERIFFS' COURT. 1. The ancient name of the City of London Court, which is now the county court for the City of London. 3 *Bl.* 80, *n.* (*i*); 3 *Steph. Com.* 293, *n.* (*w*). [CITY OF LONDON COURT.] 2. The court held by the sheriff of a county, or his deputy, either in virtue of a writ of inquiry, to assess the damages which the plaintiff has sustained in an undefended action, or to try issues sent to him for that purpose by a writ of trial. This latter jurisdiction was granted by stat. 3 & 4 Will. 4, c. 42, ss. 17, 18 and 19; but it has been abolished by sect. 6 of the County Courts Act, 1867 (30 & 31 Vict. c. 142). *Kerr's Act. Law.* See also *Lush's Pr.* 796.

SHERIFFS' POUNDAGE. [POUNDAGE, 2.]

SHERIFFS' TOURN was a court of record, appointed to be held twice in every year, within a month after Easter and Michaelmas, before the sheriff in different parts of the county; being, indeed, only the *turn* of the sheriff to keep a court leet, in each respective hundred. This was the great court leet of the county; and out of it, for the ease of the sheriff, was taken the court leet, or view of frank-

SHERIFFS' TOURN—*continued.*

pledge. 4 *Bl.* 273, 411, 424; 4 *Steph. Com.* 321, 323. It is now fallen into desuetude. [COURT LEET; FRANK PLEDGE.]

SHERIFFWICK. The jurisdiction of a sheriff.

SHEW CAUSE. [RULE.]

SHIFTING USE is a use in land, limited in derogation of a preceding estate or interest, as when land is limited to A. and his heirs to the use of B. and his heirs, with a proviso that when C. returns from Rome, the land shall be to the use of C. and his heirs, in derogation of the use previously vested in B. 2 *Bl.* 334, 335; 1 *Steph. Com.* 546; *Wms. R. P., Part II. ch.* 8.

SHIP MONEY. An ancient imposition that was charged upon the ports, towns, cities, boroughs and counties of the realm. Having lain dormant for many years, it was revived by king Charles I. in 1635 and 1636; and by stat. 17 Car. 1, c. 14, passed in 1641, was declared to be contrary to the laws and statutes of the realm. *Cowel;* 4 *Bl.* 437; 4 *Steph. Com.* 514.

SHIPPER. 1. The master of a ship. *Cowel.* 2. Any common seaman. *Cowel.* 3. A consignor of goods to be sent by sea. 2 *Steph. Com.* 49. And this last is now the usual sense of the word.

SHIPPING BILL. A memorandum of goods intended to be shipped, delivered by the exporter of the goods to the officer of customs. *Stat.* 16 *&* 17 *Vict. c.* 107, *s.* 121.

SHIP'S HUSBAND is the general agent of the owners of a vessel in its use and employment. His duty is in general to exercise an impartial judgment in the employment of tradesmen and the appointment of officers; to see that the ship is properly repaired, equipped and manned; to procure freights and charter-parties; to preserve the ship's papers, make the necessary entries, adjust freight and averages, disburse and receive moneys, and keep and make up the accounts as between all parties interested. *Abbott on Shipping.*

SHIP'S PAPERS. The papers or documents required for the manifestation of property in a ship or cargo.

They are of two kinds:—

1. Those required by the law of a particular country.

2. Those required by the law of nations to be on board neutral ships, to vindicate their title to that character. *Toml.*

SHIRE, derived from the Saxon *scyran,* to divide, is a portion of land called a county. *Cowel;* 1 *Bl.* 116; 1 *Steph. Com.* 126.

Also, suit at the court of the sheriff of a county. *Cowel.*

SHIRE CLERK. 1. The under-sheriff.

2. A clerk in the old county court, who was deputy to the under-sheriff. *Cowel.*

SHIRE MAN or **SCYRE MAN** was, before the Conquest, the judge of the county, by whom trials for land, &c. were determined. *Toml.*

SHIRE MOTE. The assizes of the shire in Saxon times. *Cowel.* [SCYRE-GEMOTE.]

SHIRE REEVE. [SHERIFF.]

SHORT BILL. A bill of exchange deposited with a banker on the understanding that it is not to be considered as cash. [ENTERING BILLS SHORT.]

SHORT CAUSE IN CHANCERY. If a plaintiff in Chancery desires to accelerate the suit, and if the hearing will probably not occupy more than ten minutes, he may have the cause heard as a *short cause,* for which purpose he must obtain from his counsel a certificate that the matter is, in his opinion, proper to be heard as a short cause. On this certificate being produced to the registrar, he will mark the cause as "short" in the cause-book. This may be done without the consent of the defendant, but notice must be given him that the cause has been so marked. One day in each week during the sittings of the court (generally Saturday) is appointed for hearing short causes. *Hunt. Eq., Pt. I. ch.* 4, *s.* 4.

The practice in this respect is not affected by the Judicature Acts.

SHORT ENTRY. [ENTERING BILLS SHORT.]

SHORT FORD. An ancient custom in the city of Exeter, by which a lord of a tenement was entitled, when unable to obtain rent or distrain for the same, to claim the tenement for a year and a day; and subsequently, if rent was not paid, to claim it in fee. There was a like custom in London, under the title of *gavelet. Toml.* [GAVELET.]

SHORT NOTICE OF TRIAL is four days' notice of trial; the ordinary notice to which a defendant is entitled being ten days. 3 *Steph. Com.* 518, *n.*; *Lush's Pract.* 451, 494; *Judicature Act,* 1875, *First Sched. Ord. XXXVI. r.* 9.

SHOWERS. [VIEW.]

SHRIEVALTY. 1. The sheriff's office.

2. As used with reference to any given person, it means the period during which he was sheriff.

SI FECERIT TE SECURUM (if he shall have secured you, *i. e.* given you security). An original writ directing the sheriff to cause a defendant to appear in court, without any option given him, provided the plaintiff gave the sheriff sufficient security to prosecute his claim effectually. This writ was in use, where nothing was specifically demanded, but only a satisfaction by way of damages to be assessed by a jury. The security had become a mere matter of form when Blackstone wrote; John Doe and Richard Roe being always returned as the standing pledges for this purpose. 3 *Bl.* 274. [ORIGINAL WRIT.]

SI NON OMNES (if not all). A writ, on association of justices, by which, if all in commission cannot meet at the day assigned, it is allowed that two or more of them may finish the business. *Cowel.*

SI RECOGNOSCAT (if he should acknowledge). This was a writ that formerly lay for a creditor against his debtor, who had acknowledged before the sheriff in the county court that he owed his creditor such a sum received of him. The writ directed the sheriff to distrain the debtor for the amount so acknowledged to be due. *Cowel.*

SICCA RUPEE. [RUPEE.]

SICUT ALIAS (in full, *præcipimus tibi, sicut alias præcepimus*, "we command you, as we have on another occasion commanded you") was a second writ sent out where the first was not executed. *T. L.; Cowel.*

SIDE BAR RULE. [RULE, 5.]

SIDESMEN, also called *questmen*, were persons yearly chosen, according to the custom of every parish, to assist churchwardens in inquiring into offences, and presenting to the ordinary such offenders as were punishable in the Ecclesiastical Court. *Cowel.* [SYNODSMEN.]

SIGN MANUAL. The signature of the sovereign. 1 *Steph. Com.* 619; see also 2 *Bl.* 347; 4 *Bl.* 89.

SIGNET. One of the king's seals with which his private letters are sealed. *Cowel;* see also 2 *Bl.* 347; 1 *Steph. Com.* 619. [WRITER TO THE SIGNET.]

The signet is also used for the purpose of civil justice in Scotland. *Bell.*

SIGNIFICAVIT. A name by which the writ *de excommunicato capiendo* was known, because it expressed that the bishop *signified* to the sovereign in Chancery the contempt committed by the party to whom the writ referred. *Cowel;* 3 *Bl.* 102; 3 *Steph. Com.* 316. [EXCOMMUNICATO CAPIENDO.]

SIGNING JUDGMENT. This is done by a party in whose favour judgment has been given in an action. It consists in the party's obtaining the certificate of the proper officer of the court that judgment is given in his favour. 3 *Steph. Com.* 566; *Kerr's Act. Law;* see also *Lush's Pr.* 815.

SIGNUM. A cross prefixed as a sign of assent and approbation to a charter or deed; used by the Saxons. *Toml.*

SILENTIARIUS. 1. An old name for a member of the privy council, as being bound to keep the king's counsel secret. *Toml.;* see also 1 *Bl.* 230, 231; 2 *Steph. Com.* 459.

2. An usher who is appointed to keep silence in court. *Toml.*

SILK GOWN. A phrase used especially of the silk gowns worn by Queen's Counsel; hence, "to take silk" means to attain the rank of Queen's Counsel.

SIMILITER (in like manner). A phrase indicating that when a defendant puts himself upon the country, that is, upon trial by jury (by plea of not guilty or otherwise), the plaintiff or Crown prosecutor *doth the like.* 4 *Steph. Com.* 406.

SIMONY is the corrupt presentation of any person to an ecclesiastical benefice for money, gift or reward, and is generally committed in one of the two following ways:—1. By the purchase of the next presentation to a living actually vacant. 2. By a clergyman purchasing, either in his own name or another's, the next presentation to a living, and afterwards presenting, or causing himself to be presented, thereto. But the purchase by a clergyman of an entire advowson, or even of a limited interest therein, is not simony, though the purchaser afterwards present himself. *T. L.; Cowel;* 1 *Bl.* 389, 393; 2 *Bl.* 278—281; 2 *Steph. Com.* 719—722.

SIMPLE CONTRACT. A contract, express or implied, which is created by verbal promise, or by writing not under seal. 2 *Bl.* 465, 466; 2 *Steph. Com.* 54, 55, 143. [CONTRACT.]

SIMPLE CONTRACT DEBT. A debt arising out of a simple contract. [ASSETS; SIMPLE CONTRACT.]

SIMPLE LARCENY. Larceny which is not accompanied by such circumstances of aggravation as would constitute the offence mixed or compound larceny. 4 *Bl.* 229; 4 *Steph. Com.* 112, 123; *Oke's Mag. Syn.* [LARCENY.]

SIMPLE TRUST is a trust which requires no act to be done by the trustee except conveyance or transfer to his *cestui que trust* on request by the latter. [CESTUI QUE TRUST.]

SIMPLE WARRANDICE. [WARRANDICE.]

SIMPLEX BENEFICIUM. A minor ecclesiastical benefice in a cathedral or collegiate church to which no cure of souls is attached. *Toml.*

SIMPLEX JUSTICIARIUS. The title anciently used for a *puisne* judge who was not chief in any court. *Toml.* [PUISNE.]

SINE ASSENSU CAPITALI (without the assent of the chapter). A writ which lay when a dean, bishop, prebendary, abbot, prior or master of an hospital aliened the land holden in right of his house without the consent of the chapter, convent, or fraternity; in which case his successor should have this writ. *Cowel.* This writ, being a real action, is abolished by stat. 3 & 4 Will. 4, c. 27, s. 36, passed in 1833.

SINE DIE. Without day; that is to say, without any day appointed for the resumption of the business on hand. Thus, an adjournment *sine die* is an adjournment without appointing any day for meeting again. [EAT INDE SINE DIE.]

SINE PROLE. Without issue; frequently abbreviated into "s. p."

SINECURE. Without cure of souls; a word used in former times of a rector who by custom was relieved from residence, and had no spiritual duties, these being performed by the vicar. 1 *Bl.* 386. Now, by stat. 3 & 4 Vict. c. 113, passed in 1840, provision is made for the abolition of sinecure rectories. 2 *Steph. Com.* 683. [RECTOR; VICAR.] And a sinecure office is generally understood to mean a nominal office, with no duties attaching to it.

SINGLE AVAIL OF MARRIAGE. The single sum payable by a ward for refusing a suitable marriage offered him by his lord. [MARRIAGE; VALOR MARITAGII.]

SINGLE BOND (Lat. *Simplex obligatio*). A bond whereby a party obliges himself to pay to another a certain sum of money on a day specified, without any condition for making void the obligation. This hardly ever occurs in practice. 2 *Bl.* 340; 2 *Steph. Com.* 108.

SINGLE COMBAT. A species of trial. [WAGER OF BATTEL.]

SINGLE ENTRY is a system of book keeping, according to which each entry in the day-book, invoice-book, cash-book and bill-book is posted or entered *once* to some account in the ledger; whereas, in *double entry* each entry is posted to *two* different accounts. *Chambers' Bookkeeping, p.* 12. [DOUBLE ENTRY.]

SINGULAR. Each, individual; various things or objects regarded individually. [See the two next Titles.]

SINGULAR SUCCESSOR is a purchaser or transferee of a specific chattel or specific land, as opposed to a universal successor, such as the trustee of a bankrupt's estate, or the executor or administrator of a deceased person. *Bell.*

SINGULAR TITLE. The title by which a party acquires property as a *singular successor.* [SINGULAR SUCCESSOR.]

SINKING FUND. A fund for the reduction of the National Debt, regulated by various acts of parliament. 1 *Bl.* 332; 2 *Steph. Com.* 579, *n.*; *Toml.*

SIST ON A SUSPENSION, in Scotland, is an order of the Lord Ordinary staying proceedings in an action. *Bell.* [STAY OF PROCEEDINGS.]

SIST PARTIES, in Scotland, is to join parties in a suit or action, and to serve them with process. *Paterson.*

SITTINGS AFTER TERM are the sittings which have hitherto taken place in London and Middlesex, after the close of the respective terms, for the trial of issues of fact before a judge and jury. See *Lush's Pr.* 548. The "sittings after term" are now superseded by new provisions as to London and Middlesex sittings. *Judicature Act,* 1875, *First Sched. Ord. LXI. r.* 1. [LONDON AND MIDDLESEX SITTINGS; TERM, 1.

SITTINGS AT NISI PRIUS. [NISI PRIUS.]

SITTINGS IN BANC. [BANC; BAR, 6.]

SITTINGS IN CAMERA are sittings in a judge's private room, as opposed to sittings in open court. This course is often adopted for the hearing of cases which it is not desired to bring before the public.

SITTINGS in LONDON and WESTMINSTER. The sittings in and after every term,

SITTINGS in LONDON, etc.—*continued.*
before the chief or other judge of the superior courts, for the trial of issues of fact arising for the most part in London and Middlesex. 3 *Steph. Com.* 349. [SITTINGS AFTER TERM.]

SIX ARTICLES. The law of the Six Articles, otherwise called "An Act for abolishing diversitie of opinions in certaine Articles concerning Christian Religion" (stat. 31 Hen. 8, c. 14), was passed on the 20th of April, 1540. By this statute six of the strongest points in the Roman Catholic religion were enforced under the severest penalties, it being enacted: (1) That if anyone by word, writing, printing, ciphering or any otherwise, should teach, preach, dispute or hold opinion against the real presence, he should suffer death by burning, and forfeit as in cases of high treason; (2) If anyone preached or obstinately affirmed that communion in both kinds was necessary; or (3) that priests might marry; or (4) that vows of chastity might be broken; or (5) that private masses were not to be used; or (6) that auricular confession was not expedient; it should be felony. It was also enacted that any priest or other person, man or woman, who, having vowed chastity or widowhood, should, after the 12th of July, 1540, contract matrimony, should suffer death as a felon. See *Reeves' History of Eng. Law, ch.* 29. This law was, with many other laws, repealed in 1547 by stat. 1 Edw. 6, c. 12, s. 3.

SIX CARPENTERS' CASE was an action of trespass brought by one John Vann, tavern keeper, against Thomas Newman, carpenter, and five other carpenters, for having, on the 1st September, 1609, broken into his house. It was admitted that they had *primâ facie* a right to enter the house; but as they subsequently ordered bread and wine which they refused to pay for, the plaintiff contended that this made the original entry unlawful; or, in other words, that they thus became trespassers *ab initio*. It was decided (1) that if a man abuse an authority given to him by the law, he becomes a trespasser *ab initio;* otherwise if the authority be given by a private party; but (2) that mere non-feasance (as in the Six Carpenters' Case) does not amount to such abuse as makes a man a trespasser *ab initio*. *Smith's Leading Cases, 7th ed. p.* 133. As to the modification of the law of distress in reference to the first point above mentioned, see IRREGULARITY, 2.

SIX CLERKS were six officers in the Court of Chancery, whose duties were to receive and file all bills, answers, replications and other records in all causes on the equity side of the Court of Chancery, and to enter memoranda of them in books, from which they might certify to the Court, as occasion might require, the state of the proceedings in causes. They signed all copies of pleadings made by the sworn clerks and waiting clerks, after seeing that the originals had been regularly filed. They were formerly ecclesiastics. Their office was abolished in 1842, by stat. 5 & 6 Vict. c. 103, sect. 1, and their functions were thenceforth discharged by the Record and Writ Clerks. 3 *Bl.* 443; *Toml.; Goldsmith's Eq. Introd. p.* XXXIV. [CLERK OF RECORDS AND WRITS.]

SIXHINDI were servants of the same nature as *rad-knights*, being bound to attend their lord wherever he went; but they were accounted among the English Saxons as freemen, because they had lands in fee subject only to such tenure. *Toml.* [REDMANS.]

SKILLED WITNESS, also called an *expert* or *professional witness*, is a person called to give evidence in a matter relating to his own trade or profession, as when a medical man is called to give evidence on the effects of poison.

SLAINS, LETTERS OF, were letters subscribed by the relations of a person who had been slain, declaring that they had received an "assythment" (that is, an indemnity), and concurring in an application to the Crown for the pardon of the murderer. *Bell.*

SLANDER. Defamatory language used of another. 3 *Bl.* 123—126; 3 *Steph. Com.* 377—381. [DEFAMATION; LIBEL, 5.]

SLAVE GRACE'S CASE was the case of a slave who, in 1822, came from Antigua with her mistress to England, and afterwards voluntarily accompanied her mistress on her return to Antigua. It was held by Lord Stowell, that, though during the residence in England no coercion could have been exercised over her person, yet, on her return to her place of birth and servitude, the right to exercise such dominion revived. *Haggard's Admiralty Reports, Vol. II. p.* 94. [SOMERSETT'S CASE.]

SLEEPING RENT. A phrase used, especially in leases of coal mines, to denote a fixed rent, as opposed to a rent varying with the profits. *Jones* v. *Shears*, 2 Harrison & Wollaston, 43.

SLIP. An unstamped memorandum of an intended marine insurance policy. Such a document, even where, under stat. 30 Vict. c. 23, s. 7, it is invalid as a legal contract, is admissible in evidence for certain collateral purposes. Thus it has been held that the non-disclosure of facts material to the risk, discovered subsequently to the execution of the "slip," does not vitiate a policy afterwards executed. *Cory* v. *Patton*, L. R., 7 Q. B. 304; 26 L. T. Rep., N. S. 161; 20 W. R. 364; *Ionides* v. *Pacific Insurance Company*, L. R., 7 Q. B. 517; 41 L. J., Q. B. 190; 26 L. T. Rep., N. S. 738; *Crump, Mar. Ins. s.* 373.

As to the exceptions from the operation of stat. 30 Vict. c. 23, s. 7, see stat. 25 & 26 Vict. c. 63, ss. 54, 55.

SLUICE (Lat. *Exclusa*). A frame to let or keep water out of a ground. *Cowel.*

SMALL DEBTS COURTS. Courts of requests or of conscience for the recovery of small debts. 3 *Bl.* 81. Superseded now by the modern county courts, under stat. 9 & 10 Vict. c. 95. 3 *Steph. Com.* 284, *n.* [CONSCIENCE, COURTS OF; COUNTY COURT; COURT OF REQUEST.]

SMALL TITHES are the tithes which generally vest in the *vicar* as opposed to the *rector* or *appropriator*. They include tithes mixed and personal; that is, tithes of wool, milk, pigs, of manual occupations, trades, and fisheries, and other fruits of the personal industry of the inhabitants. 1 *Bl.* 388; 2 *Steph. Com.* 722, 726. [APPROPRIATION, I; RECTOR; TITHES; VICAR.]

SMITH'S LEADING CASES. Two volumes of leading cases at common law, published first by Mr. John William Smith. The third and fourth editions were by the late Justices Willes and Keating; the fifth and sixth by Messrs. Maude and Chitty; and the seventh edition was published in the latter end of the year 1875 by Messrs. Collins and Arbuthnot. [LEADING CASES.]

SMOKE-FARTHINGS. 1. The customary oblations made by dispersed inhabitants within a diocese, when they made their procession to the mother cathedral church, came by degrees into an annual rent called "smoke-farthings." *Towl.*

2. A duty formerly payable upon chimneys, otherwise called "fumage" or "fuage." 1 *Bl.* 324, 325. [CHIMNEY-MONEY; FUAGE.]

SMUGGLING is the offence of importing or exporting prohibited goods, or importing or exporting goods not prohibited without paying the duties imposed thereon by the laws of the customs and excise. 4 *Bl.* 154, 155; 4 *Steph. Com.* 262.

By stat. 16 & 17 Vict. c. 107, s. 232, the penalty for this offence is the forfeiture of treble the value of the goods, or 100*l.*, at the election of the Commissioners of Customs, to be recovered before one or more justices of the peace. For offences connected with smuggling which are directed to be dealt with summarily before magistrates, see *Oke's Mag. Syn.* 760—763. For indictable offences connected therewith, see *ibid.* 1096—1099.

SOC, SOCA, SOCNA. A word signifying a power or liberty of jurisdiction; whence our law-Latin word *soca*, for a seigniory enfranchised by the King, with liberty of holding a court of his *sockmen*, or *socagers*, that is, of his tenants, whose tenure is hence called *socage*. It is also used to signify liberty in the sense of immunity from punishment; as in the laws of Henry I., "Nullus *socnam* habet impune peccandi" (none hath liberty of sinning without punishment). *T. L.; Cowel.* [See next Title.]

SOCAGE in its most general signification denotes a tenure of land by a certain and determinate service, as opposed to chivalry or knight-service, where the render was precarious and uncertain. It was of two kinds: *free-socage*, where the services were not only certain but honorable; and *villain socage* or *privileged villenage*, where the services, though certain, were of a baser nature. All tenures (with a few exceptions) were by stat. 12 Car. 2, c. 24, passed in 1660, turned into free and common socage. *T. L.; Cowel;* 2 *Bl.* 79, 98; 1 *Steph. Com.* 187, 206; *Wms. R. P., Pt. I. ch.* 5. [FREEHOLD; KNIGHT-SERVICE.]

SOCAGERS, SOCMANS, SOKEMANS or **SOCMEN** (Lat. *Socmanni*). Tenants in socage. *T. L.; Cowel.* [SOC; SOCAGE.]

SOCCAGE. [SOCAGE.]

SOCNA. A liberty or privilege. [SOC.]

SOCOME. A custom of grinding corn at the lord's mill. It is of two kinds:—*bond-socome*, where the tenants are bound to it; and *love-socome*, where they do it freely out of love to their lord. *Cowel.* [MULTURE; THIRLAGE.]

SOIT FAIT COMME IL EST DESIRE ("Let it be as it is desired"). This is the form by which the royal assent is given to private acts of parliament. 1 *Bl.* 185; 2 *Steph. Com.* 387; *May's Parl. Pract.*

SOKE. The lord's right of administering justice in his court; also freedom from customary burdens and impositions. *Cowel; Toml.* [SOC.]

SOKE REEVE. The lord's rent-gatherer within his *soke*, or jurisdiction. *Cowel.*

SOKEMANRIES. The tenures of socagers. *Toml.*

SOLD NOTE. [BOUGHT AND SOLD NOTES.]

SOLE CORPORATION. [CORPORATION.]

SOLE TENANT (Lat. *Solus tenens*). One that holds in severalty; that is, in his own sole right, and not with another. *Cowel.* [SEVERAL TENANCY.]

SOLEMN FORM. There are two kinds of probate, namely, probate in *common form*, and probate in *solemn form*. Probate in common form is granted in the registry, without any formal procedure in court, upon an *ex parte* application made by the executor. Probate in solemn form is in the nature of a final decree pronounced in open court, all parties interested having been duly cited. The difference between the effect of probate in common form and probate in solemn form is, that probate in common form is revocable, whereas probate in solemn form is irrevocable as against all persons who have been cited to see the proceedings, or who can be proved to have been privy to those proceedings, except in the case where a will of subsequent date is discovered, in which case probate of an earlier will, though granted in solemn form, would be revoked. *Coote's Probate Practice, 5th ed. pp.* 237—239. [PROBATE.]

SOLET ET DEBET. [DEBET ET SOLET.]

SOLICITATION. Incitement or inducement to commit an offence.

Solicitation to murder is punishable under stat. 24 & 25 Vict. c. 100, s. 4, with penal servitude for ten years. And, in general, the solicitation to the commission of an offence is a misdemeanor at common law, and punishable by fine and imprisonment. *Oke's Mag. Syn.* 1068—9, 1098—9; *Cox & Saunders' Cr. Law*, 199.

SOLICITOR. A man employed to take care of and follow suits depending in courts of law or equity. *Cowel.* Solicitors have hitherto been regarded as officers of the Court of Chancery; and it has been the usual course that, as soon as anyone has been admitted an attorney, he should apply to be admitted a solicitor, which is done by the Master of the Rolls as a matter of course. *Hunt. Eq., Pt. III. ch.* 6, *s.* 1. But now, by sect. 87 of the Judicature Act, 1873 (stat. 36 & 37 Vict. c. 66), all solicitors, attorneys and proctors are to be henceforth called solicitors of the Supreme Court. [See the following Titles.]

SOLICITOR-GENERAL. The second law officer of the Crown, next to the Attorney-General. 3 *Bl.* 27; 3 *Steph. Com.* 273, 274, *n.*

SOLICITOR OF THE SUPREME COURT.

1. The Solicitors before the Supreme Courts, in Scotland, are a body of solicitors entitled to practise in the Court of Session, &c. They received their charter of incorporation on the 10th of August, 1797. *Bell; Shand.*

2. The title of attorneys, solicitors and proctors practising in the Supreme Court of Judicature. *Stat. 36 & 37 Vict. c.* 66, *s.* 87. [SOLICITOR; SUPREME COURT OF JUDICATURE.]

SOLICITORS' JOURNAL. 1. A department of the *Law Times*, devoted to matters affecting solicitors. [LAW TIMES.]

2. The *Solicitors' Journal and Reporter* is a weekly journal of the law, published at No. 12, Cook's Court, Carey Street, Lincoln's Inn Fields. This journal commenced in January, 1857. It is made up into yearly volumes, commencing in November of each year. At the same office there is also issued a series of reports, called the *Weekly Reporter*. [WEEKLY REPORTER.]

SOLIDUM. To be bound *in solidum* is to be bound for a whole debt jointly and severally with others, as opposed to being bound, *pro ratâ*, for a proportionate part only. *Toml.*

SOLVENDO ESSE. To be in a state of solvency; or, as we say, to be solvent. *Cowel.*

SOLVIT AD DIEM. A plea, in answer to an action of debt or bond, that the money claimed in the action was paid on the day appointed. *Toml.*

SOMERSETT'S CASE, decided June 22, 1772, was the case of a negro slave, who had been brought from Africa in the course of the slave trade; and, having been purchased by a Mr. Steuart, in Virginia, was brought to England, where he left his master's service; and his master caused him to be detained and placed in irons on board a ship lying in the Thames, bound for Jamaica, to the intent that he might be taken to Jamaica, and there sold as a slave. On behalf of Somersett, application was

SOMERSETT'S CASE—*continued.*

made to the Court of King's Bench for a writ of *habeas corpus*, which was granted; and Lord Mansfield, being of opinion that the act of dominion contemplated by the master was not sanctioned by the law of England, directed the black to be discharged. *Howell's State Trials, Vol. XX. pp.* 1—82, *Case* 548. [SLAVE GRACE'S CASE.]

SON ASSAULT DEMESNE. His own assault; a plea by a defendant, sued for an assault, that it was the plaintiff's own assault which occasioned it. 3 *Bl.* 306; 3 *Steph. Com.* 374, 503, 510, *n.*

SOPHIA, PRINCESS OF HANOVER. [PRINCESS SOPHIA OF HANOVER.]

SORCERY (*Sortilegium*, divination by lots) was made felony by stat. 33 Hen. 8, c. 8, and stat. 1 Jac. 1, c. 12; repealed in 1736 by 9 Geo. 2, c. 5. *Cowel;* 4 *Bl.* 60—62; 4 *Steph. Com.* 210—212. [WITCHCRAFT.]

SOUGH. A subterraneous drain or watercourse. *Latham.*

SOUL-SCOT. An ecclesiastical heriot. [HERIOT.] In many parishes, on the death of a parishioner, after the lord's heriot or best chattel was taken out, the second best chattel was reserved to the church as a mortuary. This mortuary was, in the laws of Canute, called *soul-scot.* 2 *Bl.* 425; 2 *Steph. Com.* 742. [MORTUARY, 1.]

SOUNDING IN DAMAGES. This phrase is used of an action which is brought in point of form for damages, as in the ordinary case of an action at law. 3 *Steph. Com.* 570.

SOWNE. A word corrupted from the French *souvenu*, remembered. Estreats that *sowne not* are such as the sheriff by his industry cannot get, and estreats that *sowne* are such as he may gather. *Cowel.* [ESTREAT, 2.]

SPEAKERS OF THE HOUSES OF PARLIAMENT. The Speaker is the officer who is, as it were, the common mouth of the rest; and as there are two Houses, so there are two Speakers. The one the Lord Speaker of the House of Peers, who is most commonly the Lord Chancellor, or Lord Keeper of the Great Seal of England. The other, being a member of the House of Commons, is called the Speaker of the House of Commons. *Cowel.* It is the duty of the Speaker to preside over the debates of the House, and manage the formality of business. The Speaker of the House of Commons may not give his opinion or argue any question in the House; but the Speaker of the House of Lords, if he be a lord of parliament (which is generally but not necessarily the case), may do so. In the House of Commons the Speaker never votes, except when the votes are equal; but in the House of Lords the Speaker has a vote with the rest of the House. 1 *Bl.* 181; 2 *Steph. Com.* 382; *May's Parl. Pract. ch.* 7.

SPEAKING DEMURRER is a phrase which has been used to denote a demurrer to a bill in Chancery which is not so framed as to rely solely on the facts stated in the bill, but alleges new matter as a ground for demurrer. Such a demurrer would be overruled. *Hunt. Eq., Pt. I. ch.* 3, *s.* 1. [DEMURRER.]

SPEAKING WITH PROSECUTOR. This is in the nature of an imparlance by a defendant convicted of a misdemeanor immediately affecting an individual, as a battery, imprisonment, or the like; in which case the Court may permit the defendant to speak with the prosecutor, before any judgment is pronounced; and, if the prosecutor declares himself satisfied, may inflict but a trivial punishment. 4 *Bl.* 363, 364; 4 *Steph. Com.* 234, 235.

SPECIAL ACCEPTANCE OF A BILL OF EXCHANGE means the acceptance of a bill as payable at some specified place, and not elsewhere. 2 *Steph. Com.* 118. [ACCEPTANCE OF A BILL; BILL OF EXCHANGE.]

SPECIAL ADMINISTRATION is the administration of certain specific effects of a deceased person; otherwise called a *limited* administration. 2 *Bl.* 506; 2 *Steph. Com.* 198. [ADMINISTRATION.]

SPECIAL AGENT. An agent empowered to act as such in some particular matter, and not generally. 2 *Steph. Comm.* 66. [GENERAL AGENT.]

SPECIAL BASTARD. One born of parents who afterwards intermarry. 3 *Bl.* 335.

SPECIAL BAIL. A phrase formerly used to denote substantial sureties, as opposed to the imaginary beings John Doe and Richard Roe, who did duty as *common bail*, both for the plaintiff's prosecution of the suit, and for the defendant's attendance and obedience. 3 *Bl.* 287; 3 *Steph. Com.* 498, *n.*; *Smith's Act. Law, ch.* 12. See also *Lush's Pr.* 713. [BAIL.]

SPECIAL BAILIFFS. 1. The same as bound bailiffs. 1 *Bl.* 345; 2 *Steph. Com.* 633. [BOUND BAILIFFS.]

2. Persons named by a party in a civil suit for the purpose of executing some particular process therein, and appointed by the sheriff on the application of such party. For the conduct of such officers the sheriff is not responsible. 2 *Steph. Com.* 633.

SPECIAL CASE. 1. A statement of facts agreed to on behalf of two or more litigant parties, and submitted for the opinion of a court of justice as to the law bearing upon the facts so stated. 3 *Bl.* 378; 3 *Steph. Com.* 552, 567; *Lush's Pr.* 957—966; *Hunt. Eq., Pt. III. ch.* 1; *Stat.* 13 & 14 *Vict. c.* 35; 15 & 16 *Vict. c.* 76, *s.* 46.

By the Judicature Act, 1875, 1st Sched. Ord. XXXIV. r. 1, the parties 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. Every such special case must be divided into paragraphs numbered consecutively, and must concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby.

2. A case stated under stat. 12 & 13 Vict. c. 45, s. 11, in cases where notice has been given of appeal to the quarter sessions. Such a case is stated by consent of the parties, and with the leave of a judge, for the opinion of a superior court, and has the effect of intercepting the appeal to the sessions. 4 *Steph. Com.* 338, *n.*; *Oke's Mag. Syn.* 213.

3. A case stated by justices or by a police magistrate for the opinion of a superior court, under stat. 20 & 21 Vict. c. 43. 4 *Steph. Com.* 39; *Oke's Mag. Syn.* 217.

SPECIAL COMMISSION is an extraordinary commission of oyer and terminer and gaol delivery, confined to certain offences which stand in need of immediate inquiry and punishment. 4 *Bl.* 271; 4 *Steph. Comm.* 315. [ASSIZE, COURTS OF.]

SPECIAL CONSTABLES. [CONSTABLE, 6.]

SPECIAL COUNTS. Counts in a plaintiff's declaration specially framed to meet the particular case, as opposed to the *common counts* which express the ordinary causes of action. [COMMON COUNTS.]

These phrases do not occur in the system of pleading introduced by the Judicature Acts.

SPECIAL DAMAGE. Damage which in a given case may be shown to have arisen to the plaintiff from the conduct of the defendant. In some cases, as for instance in cases of assault and false imprisonment, an action will lie without showing special damage; in others it is necessary to show special damage in order to maintain the action. 3 *Steph. Com.* 379.

SPECIAL DEMURRER. A demurrer showing the special grounds on which the party demurs to the pleading of his adversary. By stats. 27 Eliz. c. 5, and 4 & 5 Ann. c. 16, if a party excepts to the *form* or *manner* of his adversary's pleading, he must set forth the specific fault of which he complains; in other words, he must do so by special demurrer. But by sect. 51 of the C. L. P. Act, 1852, no pleading is to be deemed insufficient for any defect which could theretofore only be objected to by special demurrer. 3 *Bl.* 315; 3 *Steph. Com.* 501, *n.* (*i*), 563.

By the Judicature Act, 1875, 1st Sched. Ord. XXVIII. r. 2, it is provided that a demurrer shall state specifically whether it is to the whole or to a part, and, if so, to what part of the pleading of the opposite party. It shall state some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated.

SPECIAL EXAMINER is some person, not one of the Examiners of the Court of Chancery, appointed to take evidence in a particular suit. This may be done when the state of business in the Examiner's office is such that it is impossible to obtain an appointment at a conveniently early day, or when the witnesses may be unable to come to London. *Hunt. Eq., Pt. I. ch.* 5, *s.* 2.

By the Judicature Act, 1875, First Schedule, Order XXXVII. rule 4, the Court or a judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make an order for the examination upon oath before any officer of the Court, *or any other person or persons*, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court.

SPECIAL FINDING is where a jury find specially a particular fact which, though presumably material to the general question submitted to them, does not involve the whole of that question. [SPECIAL VERDICT.]

SPECIAL INDORSEMENT. 1. A special indorsement on a writ of summons is one which may be made where a plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract express or implied (as for instance a bill, promissory note, cheque, &c.), or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt; or on a guaranty (whether under seal or not) where the claim against the principal is in respect of a debt or liquidated demand. In short, a special indorsement may be made in all cases where a definite sum of money is claimed. When the writ is thus specially indorsed, and the defendant does not appear within the time appointed, the plaintiff may then sign final judgment for any sum not exceeding the sum indorsed on the writ. See 3 *Steph. Com.* 495; *Lush's Pr.* 366; *Judicature Act*, 1875, *First Sched. Ord. III. r.* 6, *and Ord. XIII. rr.* 3, 4. Moreover, under Order XIV. rule 1, the plaintiff may in such cases, on filing an affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, call on the defendant to show cause, before the Court or a judge, why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs; and the Court or judge may, unless the defendant, by affidavit or otherwise, satisfy the Court or judge that he has a good defence to the action on the merits, or disclose such facts as the Court or judge may think sufficient to entitle him to defend the action, make an order empowering the plaintiff to sign judgment accordingly.

2. A special indorsement on a bill of exchange or other negotiable instrument is one which specifies the person who is to have the benefit of the indorsement. This is otherwise called an indorsement *in full*, as opposed to an indorsement *in blank*. 2 *Stephen's Comm.* 49, 116. [INDORSEMENT.]

SPECIAL INJUNCTION is such an injunction as, prior to the Chancery Procedure Act, 1852 (15 & 16 Vict. c. 86), did not issue as of course. A common injunction (which, prior to that enactment, issued as of course) was an injunction to restrain a defendant, who was in contempt for not appearing or not answering to a bill, or who had obtained further time to answer, from proceeding at law in respect of the same matter. All other injunctions were called special injunctions, and the granting or refusing them was considered to be a matter resting within the discretion of the judge. *Sm. Man. Eq., Tit. IV. ch.* 3, *s.* 3. [INJUNCTION.] And the phrase "special injunction" has been applied especially to injunctions to restrain injuries about to be inflicted upon the property of another, as opposed to injunctions to restrain proceedings at law. *Goldsmith's Eq., 6th ed. p.* 139. [INJUNCTION.]

SPECIAL ISSUE. A plea to an action which denies some particular material allegation upon which the right of action depends or is alleged to depend. It is opposed to the *general issue*, which traverses or denies generally the declaration or indictment, &c. *Bouvier.* [GENERAL ISSUE, PLEA OF.]

SPECIAL JURORS' LIST. A list annually made out by the sheriff of persons qualified to serve on special juries. 3 *Steph. Com.* 517. [JURY; SPECIAL JURY.]

SPECIAL JURY is a jury consisting of persons who (being on the jurors' book) are of a certain station in society: namely, esquires or persons of higher degree, or bankers, or merchants, or persons who occupy a house or premises of a certain rateable value. 3 *Bl.* 357, 358; 3 *Steph. Com.* 517; 4 *Steph. Com.* 308, *n.*, 419; *Oke's Mag. Syn.* 1154; *Stat.* 33 *&* 34 *Vict. c.* 77, *s.* 6. See also *Lush's Pr.* 542—547.

SPECIAL MATTER IN EVIDENCE. This phrase is used to denote a special ground of defence not specially pleaded, but given in evidence under plea of the general issue. *Cowel;* 3 *Bl.* 306. This is the usual course in criminal cases, and it may be done in civil cases where the defendant is entitled to plead not guilty by statute. [NOT GUILTY BY STATUTE.] But, in ordinary civil cases, the defendant in his defence, and the plaintiff in his reply, must each deal specifically with each allegation of fact of the opposite party of which he does not admit the truth. *Judicature Act*, 1875, *First Sched. Ord. XIX. rules* 16, 20.

SPECIAL OCCUPANT. [OCCUPANT.]

SPECIAL PAPER. A list, kept in each of the courts, of the causes to be argued on particular days specially set apart for arguments on points of law. *Kerr's Act. Law.*

SPECIAL PLEA. A plea in bar, not being the plea of the general issue. A special plea is either (1) a plea by way of justification or excuse, to show that there was never any right of action; or (2) a plea of discharge, which, admitting that the cause of action once existed, alleges that it has been barred by matter subsequent. 3 *Bl.* 305, 306; 3 *Steph. Com.* 503; 4 *Steph. Com.* 401. [PLEA; SPECIAL MATTER IN EVIDENCE.]

SPECIAL PLEADER. A lawyer whose professional occupation it is to give verbal or written opinions upon statements submitted to him, and to draw pleadings, civil and criminal, and such practical proceedings as may be out of the usual course. 2 *Chitty's Gen. Pract.* 42.

Special pleaders are not necessarily at the bar; but those that are not are required to take out annual certificates under stat. 33 & 34 Vict. c. 97, ss. 60, 63, 64. [See also the next Title.]

SPECIAL PLEADING. The science of pleading, which, until the passing of the C. L. P. Act, 1852 (stat. 15 & 16 Vict. c. 76), constituted a distinct branch of the law, with treatises and professors of its own. It had the merit of developing the points in controversy with the severest precision. But its strictness and subtlety were a frequent subject of complaint; and one object of the above Act was to relax and simplify its rules. 3 *Bl.* 305, 306; 3 *Steph. Com.* 498, *n.*

SPECIAL PROPERTY. A limited or qualified right in any subject of property. Thus, one who hires a horse to ride has a special property in the horse.

SPECIAL RULES, as opposed to General Rules, are rules granted in individual cases, and not rules for the general practice of the Court. As opposed to side bar rules, and rules granted on motions of course, they are rules granted in court on argument. [RULE.]

SPECIAL SESSIONS is a sessions held by justices acting for a division of a county or riding, or for a borough, for the transaction of special business, such as licensing alehouses or appointing overseers of the poor, or surveyors of highways. A special sessions is generally held by virtue of a provision of some act of parliament. Due notice of it is usually given to all the justices resident within the division for which it is held; and in some cases this is required by act of parliament. A special sessions is sometimes called a *special petty session;* and a special sessions held for the purpose of licensing alehouses is sometimes called a *Brewster Sessions.* 4 *Bl.* 272, 273, *note by Coleridge;* 2 *Steph. Com.* 649; *Oke's Mag. Syn.* 63. 64, 1112—1169. [SESSIONS.]

SPECIAL TAIL. [TAIL SPECIAL.]

SPECIAL TRAVERSE. A form of traverse formerly in use in an action by which a party sought to explain or qualify his denial of his opponent's pleading, instead of putting his denial in a direct form. Every special traverse consisted:—*first,* of an affirmative part, alleging some new matter, called an *inducement; secondly,* of a negative part, denying certain parts of the opponent's pleading, called an *absque hoc* (without this); and *lastly,* of a "conclusion to the country," introduced by Rules of Court of Hilary Term, 1834.

One instance of a special traverse given by Mr. Serjeant Stephen, in his work on Pleading, is as follows:—The heir of a lessor has sued a lessee for non-payment of rent, and the lessee wishes to contend that the lessor had only a life estate in the land, so that the heir has no right to sue for the rent. The defendant proceeds in this manner:—First he states, in proper legal form, that E. B. (the lessor) was seised as of freehold for the term of his natural life, of and in the premises, and that he died before the expiration of the term of the lease, whereupon the lease came to an end. Then he goes on as follows:—"*Without this, that,* after the making of the said indenture, the reversion of the said demised premises belonged to the said E. B. and his heirs, in manner and form as the plaintiff hath in his said declaration alleged. And of this the defendant puts himself upon the country." The reason given by Mr. Serjeant Stephen for the adoption of the special traverse in this particular case is, that a tenant is estopped (or precluded) from denying generally his landlord's title, but is not estopped from saying that the landlord had only a particular estate which has since expired. *Stephen on Pleading, 5th ed. pp.* 193—218.

Special traverses are abolished by sect. 65 of the C. L. P. Act, 1852.

SPECIAL TRUST. A trust imposing active duties on the trustee; otherwise called an *active trust.* 1 *Steph. Com.* 371.

SPECIAL VERDICT is a verdict in which the jury state the facts of a case, as they find them to be proved, leaving it to the court to draw the proper legal inferences therefrom. 3 *Bl.* 377; 4 *Bl.* 361; 3 *Steph. Com.* 552; 4 *Steph. Com.* 433; *Lush's Pr.* 957.

SPECIAL VERT. A species of "vert" in a forest, protected against injury by laws of special severity. [VERT.]

SPECIALTY, or SPECIALTY DEBT, is an obligation contracted by matter of record, or by bond or other instrument under seal. *Cowel;* 2 *Bl.* 465; 3 *Bl.* 155; 1 *Steph. Com.* 432; 2 *Steph. Com.* 54, 143. [BOND; CONTRACT; SIMPLE CONTRACT.]

SPECIE. 1. A word applied to genuine coin, as opposed to paper money or debased coinage. *Latham.*

2. The word is also used to denote the identity of a particular chattel, or of the subject-matter of a particular contract.

SPECIFIC DEVISE. A devise of specific land. [RESIDUARY DEVISEE.]

SPECIFIC LEGACY. A legacy of a specific fund or of a specific chattel. 2 *Bl.* 512; 2 *Steph. Com.* 205—207.

If the subject of such a legacy be sold or otherwise made away with in the testator's lifetime, the legacy is gone. *Chute's Eq.* 99.

SPECIFIC PERFORMANCE. A bill for specific performance is a bill filed in the Court of Chancery by a person with whom another has made a contract praying that the latter may be deemed specifically to perform it. The specific performance of a contract has in general been decreed in Equity, where the contract is not a positive contract of a personal nature (as to sing at a theatre), nor one for the non-performance of which damages would be a sufficient compensation (as to pay a liquidated sum of money). 1 *Stephen's Comm.* 82; 3 *Stephen's Comm.* 461; *Sm. Man. Eq., Tit. II. ch.* 8; *Chute's Eq., ch.* 6.

Now, by the Judicature Act, 1873, s. 34, sub-s. 3, actions for the specific performance of contracts between vendors and purchasers of real estates, including contracts for leases, are assigned to the Chancery Division of the High Court. In all other cases in which a plaintiff desires a specific performance of any act, he may add an application for a mandamus to the endorsement on his writ of summons; and he may also apply for an interlocutory order of the court to grant a mandamus. *Judicature Act,* 1873, *s.* 25, *sub-s.* 8; *Judicature Act,* 1875, *1st Sched., Appendix (A), Part II. s.* 4.

SPECIFICATION is the particular description of an invention in respect of which a patent is sought. 2 *Steph. Com.* 28—31. [PATENT.]

SPEEDY EXECUTION. By stat. 1 Will. 4, c. 7, s. 2, passed in 1830, a judge may *certify for speedy execution;* that is, may, by his certificate after verdict or nonsuit at a trial, accelerate the arrival of judgment and execution. Now, by the 120th section of the C. L. P. Act, 1852, and R. 57, H. T. 1853, where a plaintiff or defendant has obtained a verdict, or a plaintiff has been nonsuited, judgment may be signed and execution issued thereon in fourteen days, unless the Court or a judge orders execution to issue at an earlier or later period; and in these cases no certificate is necessary. *Lush's Pr.* 556.

By the Judicature Act, 1875, 1st Sched. Ord. XLII. rule 15, every person to whom any sum of money or any costs shall be payable under a judgment, will in general be entitled to sue out one or more writs of *fieri facias,* or one or more writs of *elegit,* to enforce payment thereof immediately after the time when judgment was duly entered, unless the Court or a judge shall otherwise order.

SPENCER'S CASE is a leading case on the subject of covenants running with the land; in which it was decided—

1. That a covenant by a lessee or grantee of land, in reference to the land or something actually upon it, bound his assignees (that is, anyone who might take an assignment of the land from the grantee or lessee), though the covenant did not purport to bind the assignees.

2. That a covenant having reference to the land, but not to anything as yet existing thereon (as a wall to be built), bound assignees if expressly mentioned, but not otherwise.

3. That a covenant independently of the land could not bind assignees, though purporting to do so. *Smith's Leading Cases, 7th ed. p.* 60.

SPIGURNEL was the name given to the officer who sealed the writs in Chancery, and was by degrees adopted as the surname of the family by which the duty continued, probably during many successions, to be executed in the thirteenth or fourteenth centuries. *Foss' Judges of England.*

SPINSTER. The addition usually given to all unmarried women, from the viscount's daughter downward. Yet Sir Edward Coke says that *generosa* is a good addition for a gentlewoman, and that if she be named *spinster* in any original writ, appeal, or indictment, she may abate and quash the same. *Cowel.*

SPIRITUAL CORPORATIONS (otherwise called Ecclesiastical Corporations). [CORPORATION; ECCLESIASTICAL CORPORATION.]

SPIRITUAL COURTS are the courts otherwise called the Ecclesiastical Courts. [ECCLESIASTICAL COURTS.].

SPIRITUAL LORDS. [LORDS SPIRITUAL.]

SPIRITUALITIES OF A BISHOP are those profits which he receives as a bishop, and not as a baron of Parliament, as the duties of his visitation, &c. *Cowel.* By stat. 23 & 24 Vict. c. 124, s. 2, passed in 1860, provision is made for the payment of these duties to the Ecclesiastical Commissioners.

SPITTLE-HOUSE is a corruption from hospital, and signifies the same thing; or it may be taken from the Teutonic *spital*, which denotes a hospital or alms-house. *Cowel.*

SPLITTING A CAUSE OF ACTION signifies the bringing of separate actions for the different parts of a claim; or otherwise bringing several actions where one would suffice.

SPOKEN TO ON THE MINUTES. After a decree has been pronounced in the Court of Chancery, the Registrar of the Court takes down the heads of it in his book: and the counsel on each side do the same, according to their understanding of it. Immediately after the hearing, the plaintiff, or other party who may be moving in the proceeding, takes to the Registrar's office his senior counsel's brief, with its indorsement, and also all the papers which were or might have been used as evidence at the hearing: the party who takes this proceeding is said to have the *carriage of the decree.* The Registrar then, after comparing his note of the decree with that endorsed on the brief, draws up the minutes of the decree, of which copies are delivered out to all parties that apply, and a day is fixed for settling them. On the day appointed, the solicitors of the parties attend before the Registrar, and he proceeds to settle the minutes; if any question arise as to the proper form, the cause is put in the paper *to be spoken to on the minutes*, and the question is then again submitted to the judge, who thereupon explains what was the exact decree pronounced. *Hunt. Eq. 6th ed. pp.* 85—87.

SPOLIATION. 1. An injury done by one clerk or incumbent to another, in taking the fruits of his benefice without any right thereunto, but under a pretended title; which, when the right of advowson doth not come into debate, is cognizable in the spiritual court. 3 *Bl.* 90, 91; 3 *Steph. Com.* 312.

2. Also the writ that lies in such case for the one incumbent against the other. *T. L.; Cowel.*

SPONGING HOUSES. [SPUNGING HOUSES.]

SPRINGING USE. A use limited to commence *in futuro*, independently of any preceding estate; as if land be conveyed to A. and his heirs, to the use of B. and his heirs on the death of C. In this case, while C. lives, the use limited to B. and his heirs is still *in futuro.* Such a use is also called an *executory use* or *executory interest.* 2 *Bl.* 334; 1 *Steph. Com.* 545; *Wms. R. P., Pt. II. ch.* 3. [ESTATE, II.; USE.]

SPULZIE, in the law of Scotland, is the taking away of moveable goods in the possession of another, without the consent of the person or the order of law.

SPUNGING HOUSES. Houses for the temporary reception of insolvent debtors, where bailiffs *sponge* upon them, or riot at their cost. *Latham.* They correspond to messengers-at-arms' offices or lock-up houses in Scotland. *Paterson.* The power of arresting debtors is very much diminished by sect. 4 of the Debtors Act, 1869 (stat. 32 & 33 Vict. c. 62).

STABLE STAND (Lat. *in stabili statione*) was where a man was found with a cross-bow or long-bow bent ready to shoot at any deer, or else standing close by a tree with greyhounds in a leash, ready to slip. It was one of the four evidences or presumptions whereby a man might be convicted of an intention to steal the king's deer in the forest. The other three were *dog-draw, back-bear* and *bloody-hand. T. L.; Cowel.* [BLOODY-HAND; DOG-DRAW.]

STADIUM, in Domesday Book, is a furlong, or an eighth of a mile. *Cowel.*

STAG, in the language of the Stock Exchange, is a person who is not a member of that body but deals outside of it. He is otherwise called an "outsider." *Fenn on the Funds.*

STAGNES (Lat. *Stagna*). Ponds, pools or standing waters. *Cowel.*

STALE AFFIDAVIT. An affidavit which has been sworn above a year. *Parke, B. in Ramsden* v. *Maugham*, 2 Cr. M. & R. 634—5.

STALLAGE. Money paid for pitching stalls in fairs or markets; or the right to do so. *T. L.; Cowel;* 1 *Steph. Com.* 664.

STAMP ACTS. The principal of these are stat. 55 Geo. 3, c. 184, passed in 1815, and the stat. 33 & 34 Vict. c. 97, passed in 1870. [See next Title.]

STAMP DUTIES are taxes imposed upon all parchment and paper, whereon any legal proceedings or private instruments of almost any nature whatsoever was written; and also upon licences for retailing wines, letting horses to hire and for certain other purposes; and upon newspapers, cards and dice. 1 *Bl.* 323; 2 *Steph. Com.* 571.

Where a stamp is essential to the legal validity of a writing, that writing cannot be given in evidence in civil proceedings if it be unstamped, or be insufficiently stamped; nor, in such case, can secondary evidence be received of its contents. But this rule does not apply to criminal proceedings. *Powell on Evidence*, 4*th ed. p.* 591; *Oke's Mag. Syn.* 89, 90.

By sect. 15 of the Stamp Act, 1870 (stat. 33 & 34 Vict. c. 97), any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of 10*l.*, and also, by way of further penalty, where the unpaid duty exceeds 10*l.*, of interest on such duty at the rate of five per cent. per annum. And the Commissioners of Inland Revenue may remit the penalty at any time within twelve months after the first execution of the instrument. This section, however, does not affect those cases where there is otherwise express provision by law to the contrary. Bills of exchange and promissory notes, bills of lading, letters of attorney and proxies cannot be stamped after they are signed, and, in general, policies of sea insurance cannot be stamped after they are underwritten. Nor can receipts be stamped after a month from the date thereof, nor, even within that period, without a penalty. *Tilsley on the Stamp Laws.*

STANDING MUTE. [MUTE; PEINE FORTE ET DURE.]

STANDING ORDERS are orders framed by each House of Parliament for the permanent guidance and order of its proceedings. Such orders, if not vacated or repealed, endure from one Parliament to another, and are of equal force in all. They occasionally fall into desuetude, but by the law and custom of Parliament they are binding as bye-laws until their operation is concluded by another vote of the House upon the same matter. 2 *Steph. Com.* 383; *May's Parl. Pract. ch.* 7.

STANNARIES. The mines and works where tin metal is digged and purified. *T. L.; Cowel.* [STANNARY COURTS.]

STANNARY COURTS. Courts in Devonshire and Cornwall for the administration of justice among the tinners therein, held before the Lord Warden of the Stannaries or his substitutes. 3 *Bl.* 79, 80; 2 *Steph. Com.* 298, 299. [COURT OF STANNARIES OF CORNWALL AND DEVON.]

STAPLE signifies this or that town or city, whither the merchants of England were, by act of parliament, to carry their *staple commodities* for the purpose of disposing of them wholesale. *Cowel;* 2 *Bl.* 160; 1 *Stephen's Comm.* 309. [STAPLE COMMODITIES; STATUTE, 2.]

STAPLE COMMODITIES. Wool, skins, and leather were formerly called the *staple* commodities of the kingdom, because they were obliged to be brought to those ports where the king's staple was established, in order to be there first rated, and then exported. 1 *Bl.* 314; 2 *Stephen's Comm.* 560. According to other authorities, the number of staple commodities includes wool, leather, wool fells (or skins), lead, tin, butter, cheese, cloth, &c. *Stat.* 14 *Ric.* 2, *c.* 1; *Cowel.*

Sometimes by *staple goods* are meant goods vendible, and not subject to perish. *Toml.*

STAPLE INN. One of the Inns of Chancery, between Holborn Bars and Southampton Buildings, Chancery Lane. 1 *Stephen's Comm.* 19, *n.* [INNS OF CHANCERY.]

STAR. [STARR.]

STAR-BOARD. [LARBOARD.]

STAR-CHAMBER. A court of very ancient origin, but new-modelled by stats. 3 Hen. 7, c. 1, and 21 Hen. 8, c. 20. It consisted of divers lords spiritual and temporal, being privy counsellors, together with two judges of the Courts of Common Law, without the intervention of any jury. Their jurisdiction extended legally over riots, perjury, misbehaviour of sheriffs, and other notorious misdemeanors contrary to the laws of the land.

This Court, according to Lord Clarendon, in his History of the Rebellion, extended its authority to the asserting of all proclamations and orders of State; to the vindicating of illegal commissions, and the granting of monopolies; becoming both a court of law to determine civil rights, and a court of revenue to enrich the Treasury. It was abolished in 1641 by stat. 16 Car. 1, c. 10.

The "star-chamber" is conjectured to have been so called because *haply* the

STAR CHAMBER—*continued.*

roof thereof was at first garnished with gilded stars. And this derivation must be correct, unless the Latin *camera stellata*, and the French *la chambre des esteilles*, are mere translations of the English, or founded on conjecture. But Blackstone conjectures that these phrases were not introduced until the original meaning of the word was forgotten; and that the star-chamber really derived its name from the *starrs* or Jewish contracts which (according to his supposition) were kept there. 4 *Bl.* 266, 267; 4 *Stephen's Comm.* 308—310; *Goldsmith's Equity, Pt. I. ch.* 1. [See next Title.]

STARR, STARRA, or **STARRS.** A contract or obligation among the Jews: being a corruption from the Hebrew word *shetar*, a covenant. By an ordinance of Richard I., no starr was allowed to be valid, unless deposited in one of certain repositories established by law, the most considerable of which was in the King's Exchequer at Westminster; and Blackstone conjectures that the room in which these chests were kept was thence called the *starr-chamber.* 4 *Bl.* 266, 267, *n.* (*a*); 4 *Steph. Com.* 309, *n.* (*g*). [See preceding Title.]

STARRUM. A schedule on inventory. See 4 *Steph. Com.* 309, *n.*

STATE TRIAL. This phrase may be used to denote any trial in which the prosecution is conducted by the Government or by the attorney-general *ex officio.* It is, however, only the most important of such trials which are generally called by that name. The most celebrated collection of published state trials is that which is known as Howell's State Trials, consisting of thirty-four volumes, and continued to the reign of George IV. Mr. Howell's name, however, does not appear till the eleventh volume, the ten previous volumes being entitled "Cobbett's Complete Collection of State Trials." The first case recorded in this collection is that of certain proceedings taken at a council held at Northampton in the year 1163, against Thomas à Becket, Archbishop of Canterbury, for high treason; and the last is that of the trial of Davidson and others at the Old Bailey in the year 1820 for high treason. The thirty-fourth volume contains the index to the entire series.

STATEMENT OF CLAIM, otherwise called a *statement of complaint,* is the statement by the plaintiff, in an action brought in the High Court of Justice, of the ground of his complaint and of the relief or remedy to which he claims to be entitled. This statement must be delivered within six weeks from the time of the defendant's entering an appearance in the action, unless the defendant, at the time of his so entering appearance, has stated that he does not require it. [ENTERING APPEARANCE.] In cases where the plaintiff's writ has been specially indorsed [SPECIAL INDORSEMENT,] and the defendant has not dispensed with a statement of claim, the statement of claim may consist merely of a notice to the defendant that the plaintiff's claim is that which appears by the indorsement upon his writ. In other cases, as the indorsement on the writ (so far as it refers to the plaintiff's ground of complaint and the relief claimed) will have consisted merely in a general statement of the nature of his claim, the plaintiff will be required, in his "statement of claim," to enter more specifically into the facts upon which his action is based. *Judicature Act,* 1875, 1*st Sched. Ord. II. r.* 1; *Ord. III. r.* 6; *Ord. XIX. rules* 2, 8; *Ord. XXI.; Appendix* (*A.*), *Pt. II., and Appendix* (*C.*) [See the following Titles.]

STATEMENT OF COMPLAINT. [STATEMENT OF CLAIM.]

STATEMENT OF DEFENCE is the statement delivered by a defendant in answer of the plaintiff's statement of claim. It must be delivered within eight days after the plaintiff's delivery of his statement of claim. The defendant may, in his statement of defence, adduce any facts on which he seeks to rely as supporting a right of set-off or counter-claim; in which case he must state specifically that he does so by way of set-off or counter-claim. *Ord. XIX. r.* 10; *and Ord. XXII.* [STATEMENT OF CLAIM.]

STATEMENT OF NATURE OF CLAIM must be indorsed on writ of summons. This "statement" must not be confounded with the plaintiff's "statement of claim." [STATEMENT OF CLAIM.]

STATEMENT OF REPLY. [REPLY.]

STATHAM. Nicholas Statham was an old legal writer, of whom very little is known. On the 30th of October, 1467, he received a patent for the grant of the office of second baron of the Exchequer

STATHAM—*continued.*

in reversion on the death or surrender of John Clarke. Statham was elected reader of Lincoln's Inn in Lent 1471. An abridgment of cases reported in the Year Books to the end of the reign of Henry the Sixth goes under his name. 1 *Bl.* 72; *Foss' Judges of England.*

STATING PART OF A BILL IN CHANCERY. The statement of the plaintiff's case in a bill in Chancery, so far as related to the facts *known* by him to be true, was formerly called the *stating part of the bill;* as opposed to *charges* which the plaintiff merely suspected to be true; and also to *pretences* which were used for the purpose of negativing an anticipated defence. *Hunter's Eq., Pt. I. ch.* 2. [CHARGE, 4.]

STATIONERS' HALL. The hall of the Stationers' Company, at which every person claiming copyright in a book must register his title in order to be able to bring actions against persons infringing it. 2 *Steph. Com.* 37—39.

STATUS DE MANERIO. The state of a manor. All the tenants within a manor, met in the court of their lord to do their customary suit, were called *status de manerio. Toml.* [MANOR.]

STATUS QUO. The state in which any thing is already. Thus, when it is said that, provisionally, matters are to remain *in statu quo,* it is meant that, for the present, matters are to remain as they are. Sometimes, however, the phrase is used retrospectively; and, if so, this will generally be indicated by the context; as when, on a treaty of peace, matters are to *return* to the *status quo,* this means the *status quo ante bellum,* their state prior to the war.

STATUTE. 1. An Act of Parliament made by the King and the three estates of the realm. *Cowel;* 1 *Bl.* 48, 85; 1 *Steph. Com.* 68—80.

A *statute,* in the ancient sense of the word, means the legislation of a session; the various Acts of Parliament passed in it being so many *chapters* of the entire statute. Thus, when we speak of the Statute of Gloucester, the Statute of Merton, &c., we mean a body of legislation comprising various chapters on different subjects. But, in reference to modern legislation, we, in general, use the word *statute* to denote a *chapter* of legislation, or what is otherwise called an *Act of Parliament.*

2. A short writing called a *statute merchant* or *statute staple,* which are in the nature of bonds, and are called *statutes,* because made according to the forms expressly provided by statutes, which direct both before what persons, and in what manner, they ought to be made. *Cowel.*

A statute merchant is a bond acknowledged before the chief magistrate of some trading town, pursuant to stat. 13 Edw. I. *De mercatoribus,* and thence called a *statute merchant.* A statute staple is acknowledged, pursuant to stat. 27 Edw. 3, c. 9, before the mayor of the staple. [STAPLE.] Both are securities for debts acknowledged to be due, and were originally permitted only among traders, for the benefit of commerce, whereby not only the body of the debtor might be imprisoned and his goods seized in satisfaction of his debt, but also his lands might be taken by the creditor, till out of the rents and profits of them the debt was satisfied; and, during such time as the creditor so held the lands, he was called *tenant by statute merchant* or *statute staple.* In the year 1522, the benefit of this mercantile transaction was, by statute 13 Hen. 8, c. 16, extended to all the king's subjects, whether traders or not. But such a recognizance in the nature of a statute staple, otherwise called a statute staple improper, is directed by the Act to be acknowledged before either of the chief justices, or (out of term) before their substitutes, the mayor of the staple at Westminster and the Recorder of London; and to be enrolled and certified into Chancery. Estates by statute merchant and statute staple are chattel interests, and pass to the personal representatives of those who hold them. They are now practically superseded by other remedies for the benefit of creditors. *T. L.; Cowel;* 2 *Bl.* 160—162; 1 *Steph. Com.* 309—312.

STATUTE MERCHANT. [STATUTE, 2].

STATUTE OF ACTON BURNEL, GLOUCESTER, MARLBRIDGE, &c. [ACTON BURNEL, &c.]

STATUTE OF DISTRIBUTIONS. [DISTRIBUTION.]

STATUTE OF FRAUDS, LABOURERS, LIMITATIONS, USES, &c. [FRAUDS, STATUTE OF, &c.]

STATUTE RUNNING. A statute of limitations is said *to run* from the time at which the period, to which it refers as barring the right of action, commences. [LIMITATIONS, STATUTE OF.]

STATUTE STA[illegible] 2.]

STATUTES AT LARGE. A phrase used to denote an edition of the statutes printed *verbatim.*

STATUTORY DECLARATION. A declaration made before a magistrate in form prescribed by stat. 5 & 6 Will. 4, c. 62, passed in 1835, by which voluntary affidavits, in matters where no judicial inquiry is pending, are henceforth prohibited. Any person making a statutory declaration falsely is guilty of a misdemeanour. 3 *Steph. Com.* 628, *n.*

STATUTUM DE LABORARIIS. A writ judicial, for apprehending such labourers as refuse to work as required by statute. *Cowel.* [LABOURERS, STATUTES OF.]

STATUTUM DE MERCATORIBUS. Stat. 13 Edw. 1, which gives its name to the statute merchant. 2 *Bl.* 160; 1 *Steph. Com.* 309. [ACTON BURNEL.]

STAUNFORD. A legal writer in the sixteenth century. He was born at Hadley, in Middlesex, on the 22nd of August, 1509. He went to Oxford, and thence to Gray's Inn, where he was called to the bar in 1536. He was appointed reader in 1544, and again in 1551. He designates himself as attorney-general on May 3rd, 1545, in his surrender to King Henry VIII. of all the title he had in the rectory of South Mymes in Middlesex. Edward VI. called him to the degree of the coif on May 19th, 1552; and on October 19th, 1553, three months after the accession of Mary, he was made one of the Queen's serjeants. He became a judge of the Court of Common Pleas on April 17th, 1554, and was knighted by King Philip on January 27th, 1555. He died August 28th, 1558, and was buried in Hadley church. He is the author of two highly esteemed works—a treatise on the Pleas of the Crown, and an Exposition of the King's Prerogative. 1 *Bl.* 72; 1 *Steph. Com.* 51; *Foss' Judges of England.*

STAY OF PROCEEDINGS is the putting an end to the proceedings in an action by a summary order of the Court. It differs from an injunction and from a prohibition, as follows:—

1. Staying proceedings is effected by the Court in which the action is brought, or by some other Court on appeal therefrom.

2. An injunction to restrain proceedings is an order of an independent Court restraining the plaintiff from proceeding in the action.

3. A prohibition is an order of a Superior Court, prohibiting the Court in which the action is brought from taking cognizance thereof.

Under the Judicature Acts there are various provisions in reference to staying proceedings in an action. Thus—

(1.) By sect. 24 of the Act of 1873, any person who would, if the Act had not passed, have been entitled to apply for an injunction to restrain the prosecution of any cause or matter, may now apply by motion in a summary way to stay proceedings in such cause or matter.

(2.) In cases where the plaintiff's writ is specially indorsed with the particulars of a debt or liquidated demand [SPECIAL INDORSEMENT, 1], a stay of proceedings will be granted on payment of the debt and costs by the defendant. *Jud. Act*, 1875, 1*st Sched. Ord. III. rule* 7.

(3.) A stay of proceedings will be allowed in cases where a solicitor, whose name has been indorsed on the writ, declares that the same was not issued by him, or with his authority or privity. *Ord. VII. rule* 1.

(4.) A stay of proceedings will also be allowed where a writ is sued out in the name of a partnership firm, and the plaintiffs and their solicitors neglect to comply with the demand of a defendant to furnish the names and places of residence of the persons constituting the firm. *Ord. VII. rule* 2.

(5.) Lastly, in lieu of the old proceeding by *audita querela*, a stay of execution may be allowed in cases where facts have arisen too late to be pleaded. *Ord. XLII. rule* 22.

STEALING. The fraudulent taking away of another man's goods with intent to deprive the owner thereof. *Cowel.* [FURANDI ANIMUS; LARCENY. See also the following Titles.]

STEALING AN HEIRESS. [HEIRESS.]

STEALING CHILDREN. This offence consists in taking away a child under the age of fourteen years, with intent to deprive any parent, guardian, or other person having the lawful care or charge of such child, of its possession, or with intent to steal some article on its person. Any person guilty of this offence is liable to penal servitude for seven years, or to imprisonment for two years with or without hard labour. *Statute* 24 & 25 *Vict. c.* 100, *s.* 56; 4 *Steph. Com.* 93, 94; *Oke's Mag. Syn.*, 11*th ed. pp.* 982, 983; *Cox & Saunders' Cr. Law*, 223.

STEEL BOW GOODS, in the law of Scotland, consist in corns, cattle, straw and imple-

STEEL BOW GOODS—*continued.*

ments of husbandry, delivered by a landlord to a tenant, by which the tenant is enabled to stock the farm; and in consideration thereof he becomes bound to return articles equal in quantity and quality at the expiry of the lease. *Bell.*

STEERING AND SAILING RULES. In Table (C.) in the Schedule to the Merchant Shipping Act, 1862 (stat. 25 & 26 Vict. c. 63), are certain "Regulations for Preventing Collisions at Sea," comprised in twenty articles; of these the last ten are called "Steering and Sailing Rules."

STELLIONATE. An old term of Scotch criminal law, formerly used to denote a serious injury to the person. The word is also applicable to any crime which goes under no general denomination, and also to any civil delinquency in which fraud is an ingredient; as the offence of fraudulent bankruptcy. The word stellionate is now nearly obsolete. *Wm. Bell; Macdonald.*

STERBRECHE. The breaking, obstructing, or straitening of a way. *T. L.; Cowel.*

STERLING. An epithet originally used for silver money current within the realm. And it took its name from this, that there was a pure coin stamped first in England by the Easterlings, or merchants of East Germany, by the command of King John. *Cowel.* Other suggestions as to the origin of the name are given by Mr. Hensleigh Wedgwood (*Dict. p.* 647), who, however, speaks of the above account of its origin as "the hypothesis most generally approved."

STET PROCESSUS, in an action, is an entry on the roll, in the nature of a judgment, that by consent of the parties all further proceedings be stayed. It cannot be ordered without the consent of the parties. *Lush's Pr.* 893.

STEVEDORE. A person whose occupation it is to stow packages and goods in a ship's hold. *Webster.*

STEWARD (Lat. *Senescallus*) is from *stede,* place and ward; as much as to say, an officer appointed in my place or stead. There is in most corporations and houses of honour throughout the realm an officer of this name and authority. *Cowel.* He may be regarded as a superior servant. 1 *Bl.* 427.

Of the special applications of this name we may mention the following:—

1. The *Steward of Scotland* was an officer of the highest dignity and trust; he administered the Crown Revenues, superintended the affairs of the household, and possessed the privilege of holding the first place in the army, next to the king, in the day of battle. From this office the royal house of Stuart took its name. But the office was sunk on their advancement to the throne, and has never since been revived. *Bell.*

2. *The Lord High Steward of England,* &c. [HIGH STEWARD.]

3. The *Steward of a Manor* is an officer of the lord of the manor, appointed to hold his courts, to admit tenants, to accept surrenders, &c. 3 *Steph. Com.* 279.

4. *Steward of the Barmote Courts.* [BARMOTE COURTS.]

STEWARTRY. 1. A Scotch district which is for some purposes a county of itself. *Stat.* 7 *Will.* 4 & 1 *Vict. c.* 39.

2. An overseer or superintendent. *Webster.*

STILLICIDIUM, in the Roman law, was a species of easement or servitude, by which the owner of one house (called the *dominant tenement*) was entitled to compel the owner of a neighbouring house (called the *servient tenement*) to receive the rain water from the former house on to the latter. [EASEMENT.]

STINT. [SANS NOMBRE.]

STIPEND. By this word we generally understand any periodical payment for services; especially the income of an ecclesiastical living or curacy. And in Scotland the word is used to denote the provision made for the ministers of the Presbyterian establishment.

STIPENDIARY. 1. A feudatory who owed services to his lord. 1 *Steph. Com.* 174.

2. A stipendiary magistrate. [See next Title.]

STIPENDIARY MAGISTRATES are paid magistrates acting for the metropolis and other populous districts. 2 *Steph. Comm.* 645, *n.* They are appointed by the Home Secretary on behalf of the Crown. Every stipendiary magistrate has, by stats. 11 & 12 Vict. c. 42, s. 29, and 11 & 12 Vict. c. 43, s. 33, and 21 & 22 Vict. c. 73, s. 1, full power to do alone whatever is authorized by law to be done by any one or more justice or justices of the peace; but by sect. 3 of the last-mentioned Act this provision is not to extend to acts done at quarter sessions, nor to any act or jurisdiction in relation to the grant or transfer of any licence. By stat. 24 & 25 Vict. c. 75, s. 2, the mayor of a borough is not to

STIPENDIARY MAGISTRATES—*contd.*

have any precedence over a stipendiary magistrate engaged in administering justice. By stat. 32 & 33 Vict. c. 34, s. 2, it is provided that any stipendiary or police magistrate may, with the approval of the Home Secretary, appoint a deputy, who shall have practised as a barrister-at-law for at least seven years, subject to the conditions therein mentioned. By statute 26 & 27 Vict. c. 97, s. 3, the local board of any city or place having 25,000 inhabitants may resolve on the expediency of having a stipendiary magistrate, and may fix the salary. See *Oke's Mag. Syn.* 6, 16.

STIPULATION, in the Roman law, was a solemn form giving legal validity to an agreement. This form consisted of a question and answer. "Do you promise to do such a thing?" "I do." The maker of the promise thereupon became bound to its performance. *Sandars' Justinian.*

STIRPES, DISTRIBUTION PER. A distribution *per stirpes* is a division of property among families according to stocks. Thus, if A., B., C. and D. be four brothers, and A. die leaving three children, and B. die leaving two; and then C. dies unmarried, D. being still alive; then C.'s property will be divided into thirds, of which A.'s three children will take one-third, B.'s two children another third, and D. the remaining third. This division is called a distribution *per stirpes*, as opposed to a distribution *per capita*. 2 *Bl.* 217, 517; 1 *Steph. Com.* 407; 2 *Steph. Com.* 211—212. [CAPITA, DISTRIBUTION PER.]

STOCK. 1. A race or family. [STIRPES, DISTRIBUTION PER.]

2. In reference to the investment of money, the term "stock" implies those sums of money contributed towards raising a fund whereby certain objects, as of trade or commerce, may be effected. It is also employed to denote the moneys advanced to Government, which constitute a part of the National Debt, whereupon a certain amount of interest is payable. Since the introduction of the system of borrowing upon interminable annuities, the meaning of the word "stock" has become gradually changed; and, instead of signifying the security upon which loans are advanced, it has for a long time signified the principal of the loans themselves. In this latter sense we speak of the sale, purchase, and transfer of stock. [STOCK BROKER; STOCK EXCHANGE.]

STOCK BROKER is a person who, for a commission, negotiates for other parties the buying and selling of stocks, according to the rules of the Stock Exchange. *Toml.* The members of the Stock Exchange are called *jobbers* and *brokers*. The jobber is the dealer, who buys and sells at the market prices, and acts as an intermediary between the broker who buys and the broker who sells. The broker, on behalf of his principal, deals with the jobber. *Keyser's Law of the Stock Exchange; Fenn on the Funds.* [STOCK EXCHANGE.]

In the year 1734 an Act of Parliament, called Sir John Barnard's Act (statute 7 Geo. 2, c. 8), was passed "to prevent the infamous practice of stock jobbing," which Act was made perpetual by stat. 10 Geo. 2, c. 8, passed in 1737. Sir John Barnard's Act imposed severe penalties upon speculative contracts for the sale, purchase, or transfer of any "public or joint stock or stocks, or other public securities whatsoever." But, being a penal statute [PENAL LAWS], the Act was construed strictly, and was held not to include transactions in any shares not mentioned in it. It has now been repealed (with the Act which made it perpetual) by stat. 23 & 24 Vict. c. 28, passed in 1860. [TIME BARGAIN.]

STOCK EXCHANGE. An association of stock brokers and jobbers in the city of London. [STOCK BROKER.] An increase in the business and the number of the stock jobbers induced them, in 1773, to remove to Sweeting's Alley, where several of the brokers came to a resolution to engage a room, to be called the "Stock Exchange," where any man might transact business by paying sixpence. The increasing transactions in which the brokers were engaged at the close of the eighteenth century gave rise to the formation of a committee, and subscriptions were raised to erect a building for the special purpose of dealing in the public stocks. The site chosen was in Capel Court. After the erection of the new building, free admission ceased, and only members, elected by ballot, could be admitted by paying an annual subscription. About this time the Stock Exchange acquired increased influence, and the enormous loans found necessary to carry on the war with France were effected principally through the instrumentality of its members. On the great increase of foreign loans after the peace in 1815, a room was opened by the English Stock Exchange for the

STOCK EXCHANGE—*continued.*

accommodation of persons interested therein, who were invited to become members; and about the year 1834 the English and Foreign Stock Exchange became united. Since the early furor for foreign loans (which, on balance, have not proved remunerative), railway securities have attracted chief attention. Independently of these, there are canal companies, gas and water companies, joint-stock banks, insurance companies, finance companies, &c., which owe their existence chiefly to the facilities afforded by the Stock Exchange for dealing in shares. The Stock Exchange was subsequently rebuilt, and now stands in the centre of a large block of buildings, bounded by Bartholomew Lane on the south, Threadneedle Street on the east, and Throgmorton Street on the west; being in the immediate vicinity of the Bank of England and Royal Exchange. The new building was opened for public business on the 17th of March, 1854.

The Stock Exchange, for the purposes of business, is regulated by a committee of thirty members, who are annually elected on the 25th of March in each year, and act for one year. The Stock Exchange recognizes no transactions with any parties other than its own members; no member can be admitted who is engaged in any business other than such as is transacted at the Stock Exchange; and every bargain must be in accordance with the usages of the "house." Rules and regulations are issued from time to time for the government of the association, and for regulating the transactions carried on under its authority. The regulations of the Stock Exchange are, like other usages of trade, recognized by courts of law as evidence of the course of dealing between the parties to a contract. See *Pulling on the Laws and Customs of London, pp.* 441—455; *Keyser's Law of the Stock Exchange; Fenn on the Funds,* 10*th ed. pp.* 105—135.

STOCKJOBBER. [STOCK BROKER.]

STOCKS. 1. A wooden engine, to put the legs of offenders in. *Toml.* Originally, the stocks were not to punish, but to keep men in hold; and, by the common law, a constable may confine offenders in the stocks by way of security, but not by way of punishment. But, by divers statutes, the stocks are appointed for the punishment of offenders, in sundry cases, after conviction. *Burn's Justice of the Peace, Vol. V. p.* 731. The stocks are now disused. The last in London were removed from St. Clement Danes, Strand, August 4, 1826. *Haydn's Dict. Dates.*

2. See STOCK, 1, 2.

STOP ORDER, in the Court of Chancery (or the Chancery Division of the High Court) is an order to restrain dealings with any money or stock standing in the name of the Paymaster-General (formerly the Accountant-General) to the credit of any cause or matter. This is the means by which the assignee of a fund in Court may give notice of the assignment. It is obtainable in chambers, whenever the assignor and assignee concur: otherwise, a special petition, with evidence of the assignor's title, and of the assignment to the petitioner, must be presented to the Court. *Hunt. Eq., Part III. ch.* 3, *s.* 2. [PAYMENT OF MONEY INTO COURT, 2.]

STOPPAGE IN TRANSITU. The right which an unpaid vendor of goods has, on hearing that the vendee is insolvent, to stop and reclaim the goods while in their transit and not yet delivered to the vendee. This right will not be affected by the mere fact that the vendor has consigned the goods to the vendee under a bill of lading; but if the vendee has indorsed the bill of lading to a third party for valuable consideration, and without notice of the facts, such party's claim, as assignee of the property under the bill of lading, is paramount to the vendor's right to stop *in transitu.* 2 *Bl.* 449, *note by Coleridge;* 2 *Steph. Com.* 71, 72. The leading case on the subject of *stoppage in transitu* is *Lickbarrow* v. *Mason.* See 1 *Smith's Leading Cases, 7th ed. p.* 756.

STOUTHRIEF is a term in Scotch law, signifying a species of robbery. The distinction between the offences of *robbery* and *stouthrief* has never been very clearly defined, and, originally, they probably meant the same thing: but in modern practice the word "stouthrief" is confined to cases where the inhabitants of a house are attacked by thieves, and resistance quelled by violence actually inflicted, or reasonably dreaded by the inmates; and to cases of attacks by mobs, in which property is violently carried off, and peaceable persons alarmed. *Macdonald.* [ROBBERY.]

STOWAGE. 1. A place where goods are laid. *Cowel.*

2. The money paid for such a place. *Cowel.*

3. The act of stowing cargo in a vessel. The stowage of the cargo is

STOWAGE—*continued.*

primarily a duty of the shipowner and master, and nothing absolves them from this obligation short of express agreement with the charterer, or the unambiguous usage of the port. *Maclachlan on Merchant Shipping*, 386.

STRAND. 1. A shore or bank of a sea or great river, otherwise called *strond.* *Cowel; Toml.*

2. A public highway between the cities of London and Westminster, formerly open to the Thames (whence its name) and to the fields. Houses were first built upon the Strand in 1353, and Somerset House and other palaces were erected in 1549. *Haydn's Dict. of Dates.* It is now one of the principal streets of the metropolis.

STRANDING. A ship is said to be *stranded* when, by tempest, by bad steering, or by violence, it is forced or driven on shore. *Cowel; Latham.*

STRANGER. 1. An alien. [ALIEN.]

2. A person not party or privy to an act, whether tort, contract, conveyance or judgment; that is, one who has taken no part therein, nor is bound or affected thereby. *Cowel;* 2 *Bl.* 356. [FINE, 1; PARTIES, 1, 2.]

3. A *stranger in blood* is a person not within the consideration of natural love and affection arising from relationship. [CONSIDERATION.]

STRAY, otherwise **ESTRAY,** is a beast gone astray, of which the owner is not known. *Cowel;* 1 *Bl.* 297, 298; 2 *Steph. Com.* 548. [ESTRAYS.]

STRICT SETTLEMENT. 1. This phrase was formerly used to denote a settlement whereby land was limited to a parent for life, and after his death to his first and other sons or children in tail, with trustees interposed to preserve contingent remainders. 1 *Steph. Com.* 332, 333.

2. Generally, a settlement in which land is tied up to the descendants of any person to the utmost extent permitted by law, and with the usual limitations for the settlement of real estate, is called a *strict settlement.* [LIMITATION OF ESTATES; SETTLEMENT, 2.]

STRIKING A JURY. This is done when a rule or order has been obtained for a special jury by either party in an action. It takes place as follows:—Where an application has been made by a plaintiff or defendant in a cause to have the case tried by a special jury, tickets corresponding with the names of the jurors on the special jurors' list are put into a box and shaken, and the officer takes out forty-eight; to any of which names either party may object for incapacity; and these forty-eight names being subsequently reduced to twenty-four, by striking off such names as each party shall, in his turn, wish to be removed, the twenty-four are summoned, and their names placed upon a panel to be kept for inspection, delivered out, and annexed to the *nisi prius* record. This method, by sect. 32 of the Juries Act, 1870, is for the future to be resorted to only in compliance with the order of the Court or a judge. 3 *Stephen's Comm.* 517, 518; *Lush's Pr.* 544.

STRIKING OFF THE ROLL. This phrase is used to denote the removal of an attorney and solicitor from the roll of attorneys and solicitors, or of a solicitor of the Supreme Court from the roll of solicitors of that Court. It takes place either at the party's own request, or for misconduct. [SOLICITOR.]

STRIP. Waste, destruction, mutilation, from the French *estropier.* *Cowel.* [ESTREPEMENT; WASTE.]

STROND. The same as Strand. *Cowel.* [STRAND.]

STRONG HAND is a phrase used to denote force and violence, and especially such force and violence as constitutes the offence of forcible entry. 3 *Bl.* 179. [FORCIBLE ENTRY.]

STUFF GOWN. The gown of a member of the junior bar. Hence the phrase is used of junior barristers, as opposed to Queen's Counsel. [SILK GOWN.]

STURGES BOURNE'S ACT. The General Vestry Act, 1818 (stat. 58 Geo. 3, c. 69). 1 *Steph. Com.* 121, *n.* This Act is called "An Act for the Regulation of Parish Vestries." By sect. 1 it was required that three days' notice should be given of vestries intended to be held, and that such notice should be published on some Sunday immediately after divine service. This mode of giving notices was altered in 1837, by stat. 7 Will. 4 & 1 Vict. c. 45. Provision is also made in Sturges Bourne's Act for the election of a chairman, in case the rector or vicar shall not be present. The manner of voting is regulated, and it is provided that inhabitants who have come into a parish since the last rate shall have votes. Inhabitants refusing payment of a poor's rate are to be excluded from

STURGES BOURNE'S ACT—*continued.*

vestries. Penalties are imposed on persons who shall injure parish books, or shall unlawfully refuse or neglect to deliver the same up upon demand. The Act is declared not to extend to any parish within the city of London or borough of Southwark. [VESTRY.]

SUBINFEUDATION signifies a feudal subletting, under which persons, holding estates under the king or other superior lord, carved out in their turn portions of such estates to be held of them by *tenants paravail*, or inferior tenants. This practice is forbidden, as regards England, by the Statute *Quia Emptores*, passed in 1290, except as regards the king's tenants *in capite*, for whom a similar law was enacted some years afterwards. 2 *Bl.* 60, 91; 1 *Steph. Com.* 174, 186, 234. [FEE; FEUDAL SYSTEM; IN CAPITE; MESNE; PARAMOUNT; PARAVAIL; QUIA EMPTORES.]

SUBMISSION is a word especially used with reference to the submission of a matter in dispute to the judgment of an arbitrator or arbitrators. *Bell;* 3 *Steph. Com.* 260; *Kerr's Act. Law.* [See next Title.]

SUBMISSION BOND. A bond by which a party undertakes to abide by the award of an arbitrator. 3 *Steph. Com.* 260. [SUBMISSION.]

SUBORNATION OF PERJURY is the offence of instructing or procuring another to commit perjury. *Cowel;* 4 *Bl.* 137, 138; 4 *Steph. Com.* 243; *Oke's Mag. Syn.* 1074—5. [PERJURY.]

SUBPŒNA (Lat. *Subpœnâ*, under a penalty).

1. A writ whereby formerly all persons under the degree of peerage were called upon to appear and answer to a bill in Chancery. *Cowel;* 3 *Bl.* 52, 445. It was abolished in 1852 by the Chancery Procedure Act, 15 & 16 Vict. c. 86. See 3 *Steph. Com.* 325; *Hunt. Eq.*

2. A writ directed to a person commanding him, on pain of forfeiting 100*l.*, to appear and give evidence. This is called a *subpœna ad testificandum. T. L.; Cowel;* 3 *Bl.* 369; 3 *Steph. Com.* 531; *Lush's Pr.* 524—8; *Hunt. Eq.*

By the Judicature Act, 1875, First Schedule, Order XXXVI. rule 31, the attendance of witnesses before a referee may be enforced by *subpœna.*

3. A writ directed to a person, requiring him not only to give evidence, but to bring with him such deeds or writings as the party who issues the *subpœna* may think material for his purpose. This is called a *subpœna duces tecum*, being a species of the *subpœna ad testificandum.* 3 *Bl.* 382; 3 *Steph. Com.* 531; *Lush's Pr.* 527—8; *Hunt. Eq.*

4. A notice to a defendant in Chancery to hear and abide by the judgment of the Court. This is called a *subpœna to hear judgment. Hunt. Eq.*

SUBREPTION. An old word of Scotch law, signifying the obtaining of a gift from the king by concealing what is true. *Tomlins.* [OBREPTION.]

SUBSCRIBING WITNESS is a person who puts his name to an instrument as attesting witness. The subscription of witnesses is not required by law, except in the case of wills. 2 *Bl.* 378; 1 *Steph. Com.* 596; 2 *Steph. Com.* 189. [ATTESTATION.]

SUBSEQUENT CONDITION. [CONDITIONS PRECEDENT AND SUBSEQUENT.]

SUBSIDY. 1. An aid, tax or tribute granted by Parliament to the king for the urgent occasions of the kingdom, to be levied of every subject upon his property, at such rate as Parliament may think fit. *T. L.; Cowel;* 1 *Bl.* 308; 2 *Steph. Com.* 556.

2. A species of custom payable upon exports and imports of staple commodities. 1 *Bl.* 315; 2 *Steph. Com.* 561. [STAPLE.]

SUBSTANTIAL DAMAGES, given by the verdict of a jury, are damages which amount to a substantial sum, as opposed to merely nominal damages. [NOMINAL DAMAGES.]

SUBSTITUTED SERVICE is where a writ or other process is served upon some person other than the person upon whom the service ought more properly to be effected, by reason of its being impossible to effect personal service. Thus—

1. When it has been found impossible to effect personal service of a bill filed in Chancery on a defendant, but some other mode can be suggested of securing that the filing of the bill may come to his knowledge, the Court has been accustomed to allow of substituted service upon some other person in such manner as will secure this object. *Hunt. Eq., Pt. I. ch.* 2, *s.* 1. And a similar jurisdiction has been exercised in actions at common law. See *Lush's Pr.* 867—870. The same practice is retained under the Judicature Act, stat. 38 & 39 Vict. c. 77, First Schedule, Order IX. rule 2. Every application for an order for substituted service must be supported by an affidavit setting forth the grounds upon which the application is made. [SERVICE, 3.]

SUBSTITUTED SERVICE—*continued.*

2. So, if the Court of Bankruptcy is satisfied that a debtor is keeping out of the way to avoid personal service of an adjudication, it may order service to be made by delivery of the petition to some adult inmate at his usual or last-known place of residence or business. *Robson's Bkcy. ch.* 10, *s.* 8.

SUBTRACTION is when any person who owes any suit, duty, custom, or service to another, withdraws it or neglects to perform it; as in the cases of (1) the neglect of a tenant to attend his lord's court, or otherwise to perform the duties of his tenancy; (2) the neglect by a landowner to pay tithes or ecclesiastical dues; (3) the neglect or refusal by husband or wife to live with the other; and in various other cases. 3 *Bl.* 88, 94, 230; 3 *Steph. Com.* 309, 409.

SUCCESSION is where one comes to property previously enjoyed by another. It is either *singular* or *universal*. Singular succession is where the purchaser, donee, or legatee of a specific chattel, or other specific property, succeeds to the right of the vendor, donor, or testator. Universal succession is the succession to an indefinite series of rights, as the succession by the trustee of a bankrupt to the estate and effects of the bankrupt, or by an executor or administrator to the estate of the deceased.

By sects. 2 and 54 of the Succession Duty Act, 1853 (stat. 16 & 17 Vict. c. 51), (1) every disposition of property, by reason whereof any person has or shall become beneficially entitled to any property, or the income thereof, upon the death of any person dying after the 19th of May, 1853, and (2) every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person dying after the 19th of May, 1853, to any other person, is to be deemed to confer a "succession" on the person entitled by reason of any such disposition or devolution; and the term "successor" is to denote the person so entitled; and the term "predecessor" is to denote the settlor, disponer, testator, obligor, ancestor or other person from whom the interest of the successor is derived. [See next Title.]

SUCCESSION DUTY. A duty payable on "succession," as defined by the Succession Duty Act. [SUCCESSION.] If the successor be the lineal issue or lineal ancestor of the predecessor, then, by sect. 10 of the Act, the succession duty is levied at the rate of one per cent. on the value of the succession, which is the rate of legacy duty in the like case. And so, if the successor be a more distant relative, or a stranger in blood to the predecessor, the succession duty is fixed at three, five, six or ten per cent., according to the scale by which legacy duty would be fixed. [LEGACY DUTY.]

SUCCESSOR. [See the two preceding Titles.]

SUCKEN, in the law of Scotland, signifies "lands astricted to a mill," that is to say, lands whose tenants are bound by their tenure to have their corn ground at a particular mill. The possessors of such lands are called *suckeners*. *Bell.* [INSUCKEN MULTURES; MULTURE; OUTSUCKEN MULTURES; THIRLAGE.]

SUDDER DEWANNY ADAWLUT. The highest Indian Court of Appeal in civil suits. It consists of a chief judge, and of as many *puisne* judges as the Governor General in Council may from time to time deem necessary. *Ben. Reg.* 1811, *Reg. XII.* [DEWANNY; DIWAN.]

SUE. To take legal proceedings against anyone. [NONSUIT; SECTA CURIÆ; SUIT.]

SUFFERANCE. An estate at sufferance is where one comes into possession of land under a lawful title, and, after the title has come to an end, keeps it without any title at all, by the sufferance of the rightful owner. The party continuing in possession is called a *tenant at sufferance*. 2 *Bl.* 150; 1 *Steph. Com.* 293.

SUFFERANCE WHARF. [WHARF.]

SUFFERING A RECOVERY. The tenant in tail, who procured a common recovery of his land to be effected, to the intent that a conveyance might be made of the land in fee simple, was said to *suffer a recovery*. [RECOVERY.]

SUFFRAGAN. A word signifying *deputy*. 2 *Steph. Com.* 669, *n.*

A suffragan bishop is a titular bishop appointed to aid and assist the bishop of the diocese in his spiritual function. According to Sir Henry Spelman, he is called suffragan because by his *suffrage* ecclesiastical causes were judged. *Stat.* 26 *Hen.* 8, *c.* 14; *T. L.*; *Cowel.*

Bishops are also called *suffragan* in respect of their relation to the archbishops of their province. 1 *Steph. Com.* 116; 2 *Steph. Com.* 669, *n.*

SUGGESTIO FALSI. A suggestion or insinuation of something false.

SUGGESTION. 1. An information drawn in writing, showing cause to have a prohibition, and left in court. *T. L.*

2. A surmise, or representation of something, enrolled upon the record of an action or suit at the instance of a party thereto. This might be done on motion in arrest of judgment, or for judgment *non obstante veredicto*, in reference to the existence of material facts which had been omitted; as, for instance, of the death of a party to an action, of error, of facts which might deprive a successful party of his costs, &c. 3 *Steph. Com.* 518, 519, 592, 616; *Lush's Pr.* 489, 577, 585, 669.

Most of the occasions referred to above will not occur under the Judicature Acts; and in reference to the change of parties by death, bankruptcy, &c. the word used in Order L. rule 4, is not "suggestion," but "allegation."

SUICIDE. Self-murder; or, a self-murderer. [FELO DE SE.]

SUI JURIS is a phrase used to denote a person who is under no disability affecting his legal power to make conveyances of his property, to bind himself by contracts, and to sue and be sued; as opposed to persons wholly or partially under disability, as infants, lunatics, married women, prisoners, &c.

SUIT. A following. The word is used as follows:—

1. *Suit of Court;* that is, the attendance which tenants owe to the court of their lord. [SECTA CURIÆ.] 2. *Suit covenant;* which is, when your ancestor hath covenanted with mine to sue to his court. 3. *Suit custom;* when I and my ancestors have been entitled to your and your ancestors' suit time out of mind. 4. *Suit regal;* when men come to the sheriff's tourn or leet. 5. The following any one in chase. 6. A petition made to the king or any great person. 7. *Suit of the king's peace;* that is, pursuing a man for having broken the king's peace by treasons, insurrections, or trespasses. 8. The witnesses or followers of the plaintiff in an action at law. 9. The legal proceeding itself; hence, any litigation. In legal documents and treatises it is most usual to speak of *an action at law* and *a suit in equity*. Otherwise the word suit may include action; and we commonly use the word "lawsuit" to denote any contentious litigation. *Cowel;* 2 *Bl.* 54; 3 *Bl.* 116, 230, 295; 1 *Stephen's Comm.* 180; 3 *Steph. Com.* 409, 487, *n.*

In sect. 100 of the Judicature Act, 1873, "suit" is defined so as to include "action." But, under the Judicature Act, 1875, by Order I. rule I, the word "action" will now be more generally used.

SUIT SILVER. The payment of a small rent or sum of money in lieu of attendance at the Court Baron. *Cowel.* [COURT BARON; SECTA CURIÆ.]

SUITOR. A party to a suit or litigation.

SUITORS' FEE FUND is the fund formed from the payment of the fees of suitors in the Court of Chancery, which is made by means of adhesive stamps affixed to the documents to be used by the Court, and sold by the Commissioners of Inland Revenue. The suitors' fee fund is the primary fund from which are paid the salaries of some of the officers of the court and other expenses connected therewith. *Hunt. Eq.; Stat.* 32 & 33 *Vict. c.* 91, *s.* 4, *and 1st Sched. Pt. II. Fund (C).* [See next Title.]

SUITOR'S FUND IN CHANCERY consists of moneys which, having been paid into the Court of Chancery [PAYMENT OF MONEY INTO COURT, 2], are placed out for the benefit and better security of the suitors of the court, including also interest arising from the same. *Stat.* 5 & 6 *Vict. c.* 103, *s.* 25; *Stat.* 32 & 33 *Vict. c.* 91, *1st Schedule, Part II.* In this Schedule the "Suitors' Fund" figures as "Fund (A)."

By sect. 4 of the last-mentioned Act, the principal of the Fund, amounting at that time to £3,160,110: 1*s.* stock, with the interest arising from the same, amounting to £14,652: 9*s.* 5*d.* cash, was transferred to the Commissioners for the Reduction of the National Debt. [See preceding Title.]

SUMMARY ACTIONS, in Scotch law, are those which are brought into court not by summons (or, as we should say, not by writ of summons, &c.), but by petition. They either relate to practitioners or parties already in court, or belong to a class which have been introduced by statute. *Bell.* They correspond to summary proceedings in English courts, whether by motion or petition in the superior courts, or by complaint before justices of the peace. *Paterson.*

SUMMARY CONVICTION is a conviction before magistrates without the intervention of a jury. To this head may, perhaps, be added the committal of an offender by a judge for contempt of court. 4 *Bl.* 280—285; 4 *Steph. Com.* 329—343; *Oke's Mag. Syn.* 113—817.

SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT is the statute 18 & 19 Vict. c. 67, passed in 1855, for the purpose of facilitating the remedies on bills and notes by the prevention of frivolous or fictitious defences. By this statute, a defendant in an action on a bill or note, brought within six months after it has become payable, is prohibited from defending the action without the leave of the court or a judge. See 2 *Stephen's Comm.* 118, *n.*; *Lush's Pract.* 1027. The procedure under this Act, in cases where it is applicable, is retained by the Judicature Act, 1875, First Schedule, Order II. rule 6.

SUMMER HUS SILVER. A payment to the lords of the wood in the wealds of Kent, who used to visit those places in summer time, when their under tenants were bound to prepare little summer-houses for their reception, or else to pay a composition in money. *Toml.*

SUMMING UP, in a civil or criminal trial before a judge and jury, is the charge of the judge to the jury, recapitulating in greater or less detail the statements of the witnesses and the contents of the documents (if any) adduced on either side, commenting upon the manner in which they severally bear upon the issue, and giving his direction upon any matter of law that may arise upon them. 3 *Stephen's Comm.* 548, 549. [See next Title.]

SUMMING UP EVIDENCE. This may be done by the judge, of whom it is more properly said [see the previous Title], or by a counsel summing up his own case at the close of the evidence which he has adduced. This is allowed in civil cases by sect. 18 of the C. L. P. Act, 1854 (statute 17 & 18 Vict. c. 125), and in criminal cases by statute 28 & 29 Vict. c. 18, passed in 1865. 3 *Steph. Com.* 530; 4 *Steph. Com.* 425—6.

SUMMONER. A petty officer, that calls or cites a man to any court. *Cowel;* 3 *Bl.* 279.

SUMMONITORES SCACCARII. Officers who assisted in collecting the king's revenues by citing the defaulters therein into the Court of Exchequer. *Toml.*

SUMMONS may be defined generally as:—A citation to appear before a judge or magistrate. The word is used variously, as follows:—

1. A citation summoning a person to appear before a police magistrate or bench of justices. [WARRANT, I. 1.]

2. An application to a judge at chambers, whether at law or in equity. Such an application in a suit in equity is often adjourned into open Court; it is then called an *adjourned summons.* [SUMMONS AND ORDER.]

3. A writ, in Scotch law, passing under his Majesty's signet, signed by a writer to the signet, and containing the grounds and conclusions of the action, with the warrant for citing the defender. *Bell.* This writ corresponds to the writ of summons in English procedure. *Paterson.*

4. The writ of summons is likewise in English law the commencement of an action. It is a writ calling on the defendant to cause an appearance to the action to be entered for him within eight days after service, in default whereof the plaintiff may proceed to judgment and execution. There are different forms of it, according as the defendant does or does not reside within the jurisdiction, and if he does not, the period of eight days may be enlarged, with reference to the distance he may be from England. In certain cases the writ may be specially indorsed with particulars of the plaintiff's claim. *Lush's Pr.* 355.

Under the Judicature Act, 1875, by Ord. II. r. 1, every action in the High Court is to be commenced by writ of summons, which must be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and must also specify the division of the High Court to which it is intended that the action shall be assigned. It will not be necessary for the plaintiff, in the indorsement, to set forth the precise relief or remedy to which he considers himself entitled. (Ord. III. r. 2.) In cases of a liquidated demand, the writ of summons may, by Ord. III. r. 6, be specially indorsed. [SPECIAL INDORSEMENT; STATEMENT OF CLAIM. See also the following Titles.]

SUMMONS AD WARRANTIZANDUM was the name of the process whereby a vouchee was called to warranty. *T. L.; Cowel.* [RECOVERY; VOUCHER.]

SUMMONS AND ORDER. In this phrase the summons is the application to a common law judge at chambers in reference to a pending action, and the order is the order made thereon by the judge or master. The summons operates as a stay of proceedings until the time when it is disposed of. [JUDGE'S ORDER; ORDER; SUMMONS, 2.] And by the Judicature Act, 1875, 1st Sched.

SUMMONS AND ORDER—*continued.*

Ord. LIV. rule 1, every application made *at chambers* under the Rules (contained in the 1st Sched.) must be in a summary way by summons.

SUMMONS AND SEVERANCE is a proceeding mentioned in the old books, by which, when two or more are joined in an action, one or more of them is enabled to proceed in such action without the other or others. *Toml.* It was the only mode by which one of several plaintiffs in error, having been defendants in the Court below, was enabled to prosecute a writ of error against the consent of the rest. *Lush's Pract.* 983. Now, by the Judicature Act, 1875, 1st Sched. Ord. XVI. r. 9, where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorized by the Court to defend in such action, on behalf or for the benefit of all parties so interested. And, by Ord. LVIII. rule 1, proceedings in error are abolished.

SUMPTUARY LAWS are laws made to restrain excess in apparel and other luxuries; of which we formerly had many in England, but all were repealed in the reign of James the First. *Cowel;* 4 *Bl.* 170.

SUPER JURARE. A term used in our ancient law, when a criminal endeavoured to excuse himself by his own oath, or the oath of one or two witnesses, and the crime objected against him was so plain and notorious, that he was convicted by the oaths of many more witnesses. *Toml.*

SUPER PREROGATIVA REGIS. A writ which lay against the king's widow for marrying without the licence of the reigning sovereign. *Cowel.* See also 1 *Steph. Com.* 453. [KING'S WIDOW.]

SUPER VISUM CORPORIS (on view of the body). A phrase applied to the view had by a coroner's jury of the body of the deceased concerning whose death they are appointed to inquire.

SUPERCARGO. A factor or agent who goes with a ship beyond the seas by order of the owner of the wares therein, and disposes of the same to the best advantage. *T. L.; Toml.*

SUPERINSTITUTION signifies one institution upon another; as where A. is admitted and instituted to a benefice upon one title, and B. is admitted, instituted, &c. upon the presentment of another, claiming under an adverse title. *Cowel.* [INSTITUTION.]

SUPERINTENDENT REGISTRAR. A local officer whose business it is to supervise the registrars of births, deaths and marriages in the registration districts within his jurisdiction. 3 *Stephen's Comm.* 284. [REGISTRAR, 2.]

SUPERIOR is the granter of a feudal right to be held of himself. By such a grant he creates a vassalage, the receiver standing in the relation of vassal to the granter. The interest of the granter is termed the *dominium directum*, and that of the vassal is termed the *dominium utile. Bell.* Feudal grants of this nature are prohibited as regards England by the Statute of *Quia Emptores*, passed in 1290. [FEE; FEUDAL SYSTEM; QUIA EMPTORES.]

SUPERIOR COURTS. This expression has hitherto been used to denote the Court of Chancery, the Courts of Queen's Bench, Common Pleas, and Exchequer. These Courts, together with the Courts of Probate, Divorce, and Admiralty, are now consolidated together in the Supreme Court of Judicature. *Stat.* 36 & 37 *Vict. c.* 66, *ss.* 3, 16; 3 *Steph. Com.* 318, 340. [SUPREME COURT OF JUDICATURE.]

SUPERONERATIO PASTURÆ. Surcharge of pasture. [SURCHARGE OF COMMON.]

SUPERSEDE. To stop, to put an end to; generally by substituting something else in place of the thing so abolished.

SUPERSEDEAS. A writ in divers cases, signifying in general a command to stay or forbear the doing of anything. The word is especially used with reference to the superseding of a commission of the peace, which suspends the power of the justices therein mentioned, but does not totally destroy it. *T. L.; Cowel;* 1 *Bl.* 353; 2 *Steph. Com.* 647, 648. [CONSERVATOR OF THE PEACE; JUSTICE OF THE PEACE.] Also of the annulment of an adjudication in bankruptcy (*Robson, Bkcy. ch.* 29, *s.* 2); and of an order to discharge a defendant from custody. *Smith's Act. Law, ch.* 13.

SUPERSTITIOUS USES. A superstitious use has been defined as "one which has for its object the propagation of the rites of a religion not tolerated by the law." The law relating to superstitious uses depends partly upon the common law, and partly upon statutes. The statutes relative to superstitious uses are stat. 23 Hen. 8, c. 10, passed in 1532; stat. 1 Edw. 6, c. 14, passed in 1547; and stat. 1 Geo. 1, c. 50, passed in 1714.

The persons who in this country have been held to be obnoxious to the law

SUPERSTITIOUS USES—*continued.*

against superstitious uses may be divided into three classes:—1. Roman Catholics. 2. Protestant Dissenters. 3. Jews.

With regard to Roman Catholics, gifts for the maintenance of Roman Catholic monasteries or other establishments, at home or abroad, for the purpose of maintaining Roman Catholic priests; or to be applied to such purposes as a superior of a nunnery, or her successors, should judge most expedient; or for masses or prayers for a person's soul; or for disseminating Roman Catholic doctrines; have been held to be void as superstitious.

Similarly, prior to the Toleration Act (1 Will. & M. c. 18), passed in 1688, gifts in favour of the places of worship of Protestant Dissenters would have been invalid; but that Act exempted the schools and places for religious worship and for the educational and charitable purposes of Protestant Dissenters from the operation of the penal laws to which they were previously liable. [TOLERATION ACT.]

With regard to the Jewish religion, it was held by Lord Hardwicke, that a bequest for the maintenance of a Jesiba, or an assembly for reading the Jewish law, was invalid, but that bequests for poor persons of the Jewish religion were good; and, in the case of *Straus* v. *Goldsmid*, decided in 1837, and reported 8 Sim. 614, a bequest to enable Jews to observe the rites of their religion was upheld by Vice-Chancellor Shadwell.

Now, by statute 2 & 3 Will. 4, c. 115, passed in 1832, Roman Catholics have, in reference to their schools and places for religious worship, and for educational and charitable purposes, been put upon the same footing as Protestant Dissenters. A bequest, however, for masses for the souls of deceased persons is, in England, held to be superstitious. In Ireland, however, such bequests have been held not to be superstitious.

Also, by statute 9 & 10 Vict. c. 59, passed in 1846, the Jews are placed, in reference to the above matters, on the same footing as Protestant Dissenters. See *Tudor, L. C. R. P., pp.* 478—481. [CHARITABLE USES.]

SUPERVISOR. A surveyor or overseer.

SUPPLEMENT. [See the following Titles.]

SUPPLEMENT, LETTERS OF. When a party is to be sued in Scotland before an inferior Court, and does not reside within its jurisdiction, *letters of supplement* may be obtained on a warrant from the Court of Session, by which he may be cited to appear before the inferior judge. These letters run in the name of the Sovereign; they recite the ground of action, and the reason why it should proceed before the inferior judge. *Bell.*

SUPPLEMENTAL ANSWER was an answer filed in a chancery suit, by leave of the Court, to supply defects in one originally filed. *Hunter's Eq., Pt. I. ch.* 4, *s.* 2. [ANSWER, 1.] By the Judicature Act, 1875, First Schedule, Order XXVII. rule 1, the Court may allow either party to alter his statement of claim or defence or reply.

SUPPLEMENTAL BILL was a bill filed in equity by way of supplement to one previously filed, when new matter arose which did not exist when the first bill was filed. 3 *Bl.* 448. Such a bill set forth the whole of the original bill, together with the new matter. But, by sect. 53 of the Chancery Procedure Act, 1852 (15 & 16 Vict. c. 86), the plaintiff might in such case, if the time for amending the bill had gone by, file a supplemental statement, embodying such new matter; upon which the defendants could be interrogated, and might put in their answers in the ordinary manner. *Hunt. Eq., Pt. II. ch.* 4. Amendments of the pleadings may now be allowed at any stage of the proceedings in an action in the Supreme Court of Judicature. *Ord. XXVI. r.* 1.

SUPPLETORY OATH. An oath administered to a party, plaintiff or defendant, in courts in which the Roman civil law is administered, in order to turn the *semiplena probatio*, which consists in the testimony of but *one witness*, into the *plena probatio*, afforded by the testimony of *two witnesses*. 3 *Bl.* 370; 3 *Steph. Com.* 538, *n.* (*k*).

SUPPLIANT. The claimant in a petition of right. [PETITION OF RIGHT, 1.]

SUPPLICAVIT was a writ issuing out of Chancery or the Queen's Bench, for taking surety of the peace against a man. It was directed to the justices of the peace for the county, and to the sheriff. *T. L.; Cowel;* 4 *Bl.* 253. Now obsolete. [SURETY OF THE PEACE.]

SUPPLIES. Grants made by Parliament to meet the expenses of government. The right of voting supplies is vested in the House of Commons, and the exercise of this right is practically a law for the annual meeting of Parliament for redress of grievances. But a grant from the

SUPPLIES—*continued.*

Commons is not effectual in law without the ultimate assent of the Queen and of the House of Lords. *May's Parl. Pract. ch.* 21. [COMMITTEE OF SUPPLY.]

SUPPORT. The right of support is the right of a person to have his buildings or other landed property supported by his neighbour's house or land.

Every man is entitled to have his land in its natural state supported by the adjoining land of his neighbour, against whom an action will lie, if, by digging on his own land, he removes that support. This right to lateral support from adjoining soil is not held to be an easement, but is a right of property passing with the soil. Thus, if the owner of two adjoining closes conveys away one of them, the alienee, without any grant for that purpose, is entitled to the lateral support of the other close the very instant when the conveyance is executed, as much as he would be after the expiration of twenty years or of any longer period. *Tudor, L. C. R. P.* 172.

But, where a person builds to the utmost extremity of his own land, and thereby increases the lateral pressure on the soil of his neighbour, if the latter digs his own ground, so as to remove some part of the soil, an action will not lie for the injury occasioned to the former, unless he has, by grant or prescription, acquired a right to the support of the house by the soil of his neighbour. *Ibid.* 175.

SUPPRESSIO VERI. The suppression of truth; that is, the suppression, in a one-sided statement, of some material fact on the other side.

SUPREME COURT OF JUDICATURE is a Court established by stat. 36 & 37 Vict. c. 66, otherwise called the Supreme Court of Judicature Act, 1873, by s. 3 of which it was provided that the High Court of Chancery, the Courts of Queen's Bench, Common Pleas, and Exchequer, the High Court of Admiralty, the Court of Probate, the Divorce Court, [and the London Court of Bankruptcy,] should be united and consolidated together, and should constitute one Supreme Court of Judicature in England. By section 4, the Supreme Court is to consist of two divisions, one to be called her Majesty's "High Court of Justice," and the other, "Her Majesty's Court of Appeal." To the High Court of Justice, under sect. 16 of the Act, is transferred the jurisdiction exercised by the Courts of Chancery, Queen's Bench, Common Pleas, Exchequer, Admiralty, Probate, Divorce, [Bankruptcy], the Court of Common Pleas at Lancaster, the Court of Pleas at Durham, and the Assize Courts; with certain exceptions mentioned in sect. 17 of the Act, of which the most conspicuous is the appellate jurisdiction exercised by the Court of Appeal in Chancery. To her Majesty's Court of Appeal is transferred the jurisdiction exercised by the Lord Chancellor and Lords Justices of the Court of Appeal in Chancery, also the jurisdiction of the Court of Exchequer Chamber, and the jurisdiction exercised by the Judicial Committee of the Privy Council on appeal from the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy. By sect. 20, no appeals were to be brought from the High Court or Court of Appeal to the House of Lords or the Privy Council. By sects. 24 and 25, various provisions are made as to the jurisdiction of the divisions of the High Court. By sect. 31, the High Court is to be divided, for the more convenient dispatch of business, into five divisions: (1) The Chancery Division; (2) The Queen's Bench Division; (3) The Common Pleas Division; (4) The Exchequer Division; (5) The Probate, Divorce, and Admiralty Division. By the same section, any judge of any of the said divisions may be transferred by her Majesty, under her royal sign manual, from one to another of the said divisions. By sect. 34, various causes and matters, hitherto cognizable in the Court of Chancery, are assigned to the Chancery Division; and matters hitherto within the exclusive jurisdiction of the Court of Queen's Bench are assigned to the Queen's Bench Division; and similarly with reference to the other divisions. But, by sect. 33, the distribution of business is to be effected according to rules of court to be made from time to time by the judges, and the provisions of sect. 34 are made expressly subject thereto. By sect. 36, any cause or matter brought in a wrong division may be transferred therefrom or retained therein; and, in the former case, by sect. 11 of the Act of 1875, all orders made before the transfer are to be valid and effectual to all intents and purposes.

In the 56th and following sections of the Act of 1873, provisions are made for the trial of causes before official and special referees.

By sect. 75, the judges are required to assemble once a year for the purpose of considering the operation of the Act and the rules made under it, and to report annually to a Secretary of State what amendments or alterations are in their

SUPREME COURT OF JUDICATURE — *cont.*

opinion desirable, which cannot be carried into effect without the authority of Parliament.

The Act of 1873 contains 100 sections; and appended to it is a Schedule of Rules which has since been repealed. This Act, by sect. 2, was appointed to come into operation on the 2nd of November, 1874. But, by the Supreme Court of Judicature (Commencement) Act, 1874 (stat. 37 & 38 Vict. c. 83), the operation of the Act of 1873 was postponed to the 1st of November, 1875. And, lastly, the Act of 1873 has been amended in various ways by the Supreme Court of Judicature Act, 1875 (stat. 38 & 39 Vict. c. 77). Of the changes effected by the Act of 1875, we may mention the following:—

1. The abolition of appeals to the House of Lords and Privy Council is, by sect. 2, postponed to the 1st of November, 1876.

2. The London Court of Bankruptcy is, by sect. 9, excluded from the Supreme Court of Judicature.

3. By sect. 33, the Acts specified in the Second Schedule to the Act of 1875 are repealed to the extent therein mentioned, including considerable portions of the Act of 1873 and the entire Schedule thereto.

It should be added that, by sect. 17 of the Act of 1875, in substitution of certain repealed provisions in the Act of 1873, it is provided that, *after* the passing and *before* the commencement of the Act, her Majesty may, by Order in Council, upon the recommendation of the majority of the judges, make rules for regulating matters relating to the practice and procedure in the Supreme Court; and that, *after* the commencement of the Act, the Supreme Court may at any time, with the concurrence of a majority of the judges thereof present at any meeting to be held for that purpose (of which majority the Lord Chancellor must be one), alter and annul any rules of court and make new rules; but all such rules must, by sect. 25, be laid before both Houses of Parliament for forty days; and if, during the subsequent forty days, either House of Parliament shall address the Queen against any rule, such rule shall become void and of none effect. Moreover, by sect. 20, nothing in any such rules is to affect the usual mode of giving evidence by the oral examination of witnesses in trials by jury, or the law relating to jurymen and juries. And, by sect. 21, the existing forms of procedure are to continue to be used, so far as the same are not inconsistent with the Judicature Acts and the rules made under them.

The Act of 1875 has two Schedules appended to it; the first, containing the rules of the new procedure, arranged in sixty-three "Orders," each containing one or more "Rules." Prefixed to these is a note, that "where no other provision is made by the Act or these Rules, the present procedure and practice remain in force." And by Order LXII. it is expressly provided that nothing in the Rules shall affect the practice or procedure in (1) Criminal proceedings; (2) Proceedings on the Crown side of the Queen's Bench Division; (3) Proceedings on the Revenue side of the Exchequer Division; (4) Proceedings for Divorce or other Matrimonial Causes.

Then follow six Appendices, containing various forms for use in proceedings in the Supreme Court:—

Appendix (A), Part I., contains forms of writs of summons and of the memorandum of appearance.

Appendix (A), Part II., contains forms of indorsements on writs of summons.

Appendix (B) contains forms of various notices.

Appendix (C) contains forms of pleadings.

Appendix (D) contains forms of judgments.

Appendix (E) contains forms of præcipes directed to the officer of the Court to seal the writ of execution required by the circumstances of the case.

Appendix (F) contains forms of the respective writs of execution.

This ends the first Schedule.

The second Schedule is a very brief one, containing a list of four statutes, intended to be partially repealed:—(1) The Judges' Salaries Act of 1825 (stat. 6 Geo. 4, c. 84); (2) the Bankruptcy Act, 1869 (stat. 32 & 33 Vict. c. 70); (3) the Bankruptcy Repeal Act, 1869 (stat. 32 & 33 Vict. c. 83); and the Judicature Act, 1873 (stat. 36 & 37 Vict. c. 66). The repealed portions of the first three of these statutes are extremely insignificant; but the repealed portion of the Act of 1873 includes some of its most important provisions, besides the entire Schedule. It is worthy of observation that no portion of the Chancery Procedure Acts or the C. L. P. Acts is explicitly repealed. All the provisions, therefore, of these enactments remain in full force, except so far as they are impliedly repealed by contrary provisions in the Judicature Acts, and the Rules appended thereto.

SUR CUI ANTE DIVORTIUM; SUR CUI IN VITA. [CUI ANTE DIVORTIUM; CUI IN VITA.]

SUR DISCLAIMER was a writ in the nature of a writ of right, brought by a lord to recover back land against a tenant who had disowned or disclaimed the lord's right to his rents or services. 3 *Bl.* 233. Abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36. See 3 *Steph. Com.* 410, *n.*

SURCHARGE AND FALSIFY. If, in an account stated, there is any mistake, omission, accident, or fraud, by which the account stated is vitiated, it has been held that a Court of Equity would interfere; in some cases, by directing the whole account to be opened and taken *de novo;* in others, by allowing it to stand, with liberty to the plaintiff to surcharge and falsify. To *surcharge* is to show an omission of something for which credit ought to have been given; and to *falsify* is to prove an item to have been wrongly inserted. *Sm. Man. Eq.* [ACCOUNT STATED.]

SURCHARGE OF COMMON is when a commoner puts more beasts in a forest, or in pasture, than he has a right to do. *Cowel;* 3 *Bl.* 237; 3 *Steph. Com.* 412. [ADMEASUREMENT OF PASTURE.] In an action for surcharging, it is not necessary for the plaintiff to show that he has lost his common, but only that he could not take the profits thereof so well as before. *Tudor, L. C. R. P.* 120—1.

SURETY is a man who contracts to be answerable for another in such a manner that the latter is primarily answerable. As, if money be advanced to A.; and B., his friend, joins with him in giving a bond for its repayment; then B. is a surety for A. 2 *Steph. Com.* 105. [See also the two following Titles.]

SURETY OF GOOD BEHAVIOUR. [GOOD ABEARING; GOOD BEHAVIOUR; SURETY OF THE PEACE.]

SURETY OF THE PEACE is an acknowledgment of a bond to the Crown, taken by a competent judge of record, for the keeping of the peace. Any justice of the peace may bind all those to keep the peace who, in his presence, make affray, or contend together with hot and angry words, or go about with unusual weapons, to the terror of the people. So, if a private man hath just cause to fear that another will burn his house, or do him a corporal injury, or will procure others to do so, he may demand surety of the peace against such person; and every justice of the peace is bound to grant it, if he who demands it will make oath that he is actually in fear of death or bodily harm from such other person; and will also further swear, that he does not require such surety out of malice or for mere vexation. This is called *swearing the peace* against another. *Cowel;* 4 *Bl.* 255; 4 *Steph. Com.* 293—295. The recognizance may be either to appear at the sessions to answer the charge, and in the meantime to keep the peace; or for a definite period, as six months, a year, &c. By stat. 16 & 17 Vict. c. 30, s. 3, passed in 1853, it is provided that no person committed to prison, under any warrant or order of *one* justice of the peace for or on account of not entering into recognizances or finding sureties to keep the peace, or to be of good behaviour, shall be detained under such warrant or order for more than twelve calendar months from the time of such commitment. By sect. 2, a Court of Quarter Sessions may declare such recognizance to be forfeited, upon proof of a conviction of the party bound by such recognizance of any offence which is, in law, a breach of the condition of the same. See *Oke's Mag. Syn.* 1473—1477.

SURPLICE FEES are fees payable on burials, marriages, and the like. 2 *Steph. Comm.* 740. The non-payment of these dues is among the matters cognizable in the ecclesiastical courts. 3 *Bl.* 89; 3 *Steph. Com.* 312.

SURPLUSAGE. A superfluity, or addition of something unnecessary, in any legal document. *T. L.; Cowel.* Surplusage in a written pleading is no ground for demurrer. *Stephen on Pleading.*

SURREBUTTER is the plaintiff's answer (not being an objection on a point of law) to the defendant's rebutter, and is the plaintiff's fourth pleading. The intermediate pleadings, in an action at common law, after the declaration, have hitherto been called the *plea* (by the defendant); the *replication* (by the plaintiff); the *rejoinder* (by the defendant); the *surrejoinder* (by the plaintiff); and the *rebutter* (by the defendant); to which the plaintiff may put in a *surrebutter.* But the pleadings very seldom reach this stage. *Cowel;* 3 *Bl.* 310; 3 *Steph. Com.* 507, *n.; Kerr's Act. Law.* By the Judicature Act, 1875, 1st Schedule, Order XXIV. rule 2, no pleading subsequent to reply (or replication), other than a joinder of issue, shall be pleaded without leave of

SURREBUTTER—*continued.*

the Court or a judge, and then upon such terms as the Court or judge shall think fit. [REPLY.]

SURREJOINDER. The answer by the plaintiff (not being an objection on a point of law) to the defendant's rejoinder. *T. L.; Cowel;* 3 *Bl.* 310; 3 *Steph. Com.* 507, *n.*; *Kerr's Act. Law.* [SURREBUTTER.]

SURRENDER (Lat. *Sursum redditio*) is the falling of a less estate into a greater.

1. *Surrender in deed.* This takes place by the yielding up of an estate for life or years to him that hath the immediate reversion or remainder. 2 *Bl.* 326; 1 *Steph. Com.* 522. To constitute a valid express surrender, it is essential that it should be made to, and accepted by, the owner (in his own right) of the reversion or remainder. *Fawcett, L. & T.* 278.

2. *Surrender by operation of law.* This phrase is properly applied to cases where the tenant for life or years has been a party to some act the validity of which he is by law afterwards estopped from disputing, and which would not be valid if his particular estate continued to exist; thus, when a lessee for years accepts a new lease from his lessor, he is estopped from saying that his lessor had not the power to make the new lease, so that the acceptance of the new lease amounts in law to a surrender of the former one. The effect of a surrender by operation of law is expressly reserved in s. 2 of the Statute of Frauds. *Chitty's Statutes, Vol. II. pp.* 147—9; 1 *Steph. Com.* 523; *Tudor, L. C. R. P.* 22; *Fawcett, L. & T.* 279. [ESTOPPEL; FRAUDS, STATUTE OF; PARTICULAR ESTATE; SEAL.]

3. *Surrender of copyholds.* This is the yielding up by a copyholder of his interest to his lord, according to the custom of the manor, generally in order that the same may be granted out again to such person or persons, and for such use or uses, as are named in the surrender. The lord is compellable by *mandamus* to admit the surrenderee, that is, the person to whose use the surrender is made. 2 *Bl.* 365—372; 1 *Steph. Com.* 634—639. [COPYHOLD: see also the two following Titles.]

SURRENDER TO USES OF WILL. Formerly a copyhold interest would not pass by will unless it had been surrendered to the use of the will. [SURRENDER, 3.] But now, by statute 55 Geo. 3, c. 192, passed in 1815, this formality is no longer necessary. 1 *Steph. Com.* 639.

SURRENDEREE is, properly, a person to whom a surrender is made; but the word is frequently used to denote the person to whose use a copyhold is surrendered. [SURRENDER, 3.]

SURROGATE is one that is substituted or appointed in the room of another. The word is most commonly used of a person who is appointed by the bishop for granting marriage licences. *T. L.; Cowel;* 2 *Steph. Com.* 247.

SURSISE. An especial name used in the Castle of Dover, for such penalties and forfeitures as are laid upon those that pay not their duties or rent for castle ward at the appointed time. *Cowel.* [CASTLE WARD.]

SURVEYOR OF HIGHWAYS is a person elected by the inhabitants of a parish in vestry assembled, to survey the highways therein. He must possess certain qualifications in point of property; and, when elected, he is compellable, unless he can show some grounds of exemption, to take upon himself the office; and, under the Highway Act, 1835 (stat. 5 & 6 Will. 4, c. 50), he is subject to various penalties in case he neglects his duty. He is, however, permitted to appoint a deputy, who is subject to the same responsibility as his principal. His duty is to provide for the repair of the highways, and to levy the expenses of doing so on the occupiers of land. The office is not in general remunerated, but the vestry may appoint a surveyor, if they think proper, with a salary. 3 *Steph. Com.* 133; *Oke's Mag. Syn.* 418, 419.

By stat. 25 & 26 Vict. c. 61, s. 37, a surveyor of highways is exempted from toll while executing his duties as such surveyor. By s. 10 of the same Act, the surveyor, in highway districts formed under s. 5 of that Act, is to be superseded by officers called *waywardens*, who, together with the justices, are to constitute the "highway board." [HIGHWAY; HIGHWAY ACTS; WAYWARDENS.]

SURVIVORSHIP is a word used not merely of the *fact* of survivorship, but of the rights arising therefrom; that is to say, of the right of the survivor or survivors of joint tenants to the estate held in joint tenancy, in exclusion of the representatives of the deceased. 2 *Bl.* 183, 399; 1 *Steph. Com.* 342, 352; 2 *Steph. Com.* 14. [JOINT TENANCY; JUS ACCRESCENDI.]

SUS. PER COLL. An abbreviation for *suspendatur per collum*, "let him be hanged by the neck;" the note formerly written by the judge, in the calendar of prisoners, against the name of a prisoner sentenced to death, as a warrant to the sheriff to do execution. 4 *Bl.* 403.

SUSPENSION. 1. A temporary stop or cessation of a man's right. *Cowel.* Or, of his exercise of an office.

2. A temporary revocation of any law by proper authority.

3. A stay of proceedings in a Scotch action, which is effected by what are called "letters of suspension." *Bell.* [SIST ON A SUSPENSION.]

SUSPENSION, PLEA IN, is a species of dilatory plea in an action, showing some matter of temporary incapacity to proceed with the suit. 3 *Steph. Com.* 502. Pleas in suspension (which Mr. Serjeant Stephen distinguishes from pleas in *abatement*) are not specifically abolished by the Judicature Acts, though by Order XIX. rule 13, it is directed that no plea or defence shall be pleaded in abatement. [PLEA, 2.]

SUTHDURE. The south door of a church, being the place where canonical purgation was performed. *Toml.* [BENEFIT OF CLERGY; COMPURGATORS.]

SWANIMOTE or **SWAINMOTE COURT** was a court of the forest, otherwise called the Court of Sweinmote. [FOREST COURTS, 3.]

SWEARING THE PEACE. [SURETY OF THE PEACE.]

SWEINMOTE. [FOREST COURTS, 3.]

SWORN CLERKS IN CHANCERY were officers who had the custody of records, and made copies of pleadings, and performed other duties in connexion with the Court of Chancery. The office was treated as a subject of sale and succession, and was commonly sold for half the profits during the seven years next after a sale. The offices of the "sworn clerks" were abolished, in 1842, by stat. 5 & 6 Vict. c. 103, s. 1, and their duties transferred partly to the Record and Writ Clerks, and partly to the Taxing Masters. [RECORD AND WRIT CLERKS; TAXING MASTERS.]

SYB AND SOM. Peace and safety; an old form of greeting. *T. L.; Cowel.*

SYLVA CÆDUA. Wood under twenty years' growth. *T. L.; Cowel.*

SYMBOLIC DELIVERY is a delivery of any small thing in token of a transfer of something else. Thus, with our Saxon ancestors, the delivery of a turf was a necessary solemnity to establish the conveyance of lands. And, to this day, the conveyance of copyhold estates is usually made by the delivery, on the part of the vendor, of a rod or verge to the lord or his steward, and then by the redelivery of the same from the lord to the purchaser. 2 *Bl.* 313—315; 1 *Steph. Comm.* 507, 508. [COPYHOLD; FEOFFMENT.]

SYNDICATE. 1. A university committee.

2. A combination of persons or firms united for the purpose of enterprises too large for individuals to undertake.

3. A group of financiers who buy up the shares of a company in order to sell them at a profit by creating a scarcity.

SYNDICOS. An advocate or patron; a burgess or recorder of a town. *Toml.*

SYNGRAPH. 1. The name given by the canonists to deeds of which *both parts* (that is to say, the copies corresponding to each party) were written on the same piece of parchment, with some word or letters of the alphabet written between them, through which the parchment was cut in such a manner as to leave half the word on one part and half on the other. 1 *Bl.* 296; 1 *Steph. Com.* 482, 483.

2. Hence, a deed or writing under the hand and seal of all the parties. *Toml.*

SYNOD. A meeting or assembly of ecclesiastical persons concerning religion, of which there are four kinds:—

1. General, when bishops, &c. of all nations meet together.

2. National, when those of one nation only come together.

3. Provincial, when they of one province meet, being now what is called the Convocation.

4. Diocesan, when those of but one diocese meet.

Our Saxon kings also called a *synod* or mixed council, consisting of ecclesiastics and the nobility, three times a year. *Cowel; Toml.* See also 1 *Bl.* 279, 280; 2 *Steph. Com.* 525.

A *synod*, in the Presbyterian Establishment of Scotland, is composed of three or more Presbyteries. *Bell.* [PRESBYTERY.]

SYNODAL. A tribute in money payable by the inferior clergy to the bishop or archdeacon at his Easter visitation. The word is also used for the Synod itself. *T. L.; Cowel.* Provision is now made by stat. 23 & 24 Vict. c. 124, s. 2, passed in 1860, for the payment of all such dues to the Ecclesiastical Commissioners.

SYNODALES TESTES. Synodsmen; thence corrupted into *sidesmen*. They were the urban and rural deans, whose office at first was to inform and attest the disorders of the clergy and people in their respective synods. Afterwards they became a sort of grand jury, composed of a priest and two or three laymen of each parish, for informing of offenders. At length two principal persons from each parish were annually chosen, till, by degrees, the office devolved upon the churchwardens. *Toml.* [SIDESMEN.]

T. R. E. An abbreviation for *Tempore Regis Edwardi*, "in the time of king Edward the Confessor." These initial letters are used in the Domesday Register to distinguish the valuation of manors made in the time of Edward the Confessor from the valuation made since the Conquest. [DOMESDAY BOOK.]

TABLE RENTS (Lat. *Reddituս ad mensam*) were rents paid to bishops, &c. to be reserved and appropriated to their table or housekeeping. *Toml.*

TABLING OF FINES consisted in making a table for every county, giving the contents of each fine passed in any one term, with the names of the county and of the towns and places wherein the lands and tenements lay, the names of the demandant and deforceant, and of every manor named in the fine. This was done by the chirographer of fines of the Common Pleas. *Cowel.* [CHIROGRAPHER OF FINES; FINE, I.]

TABULA IN NAUFRAGIO. This phrase signifies literally a plank in a shipwreck; and is used of any thing saved out of a general loss, as of a small dividend out of a bankrupt's estate.

TACFREE. A word used in old charters to signify exemption from payments. *Toml.*

TACIT RELOCATION is a tacit or implied re-letting, which happens in the law of Scotland when, on the expiration of the period of a lease, neither lessor nor lessee expresses any intention to put an end to it; and continues until such intention is expressed by one party or the other. *Bell; Paterson.* The tenancy thus arising corresponds very nearly to the English tenancy at sufferance. [TENANT AT SUFFERANCE.] It is thus described by Erskine:—"Where neither the setter nor tacksman shall properly discover their intention to have the tack dissolved at the term fixed for its expiration, they are understood or presumed to have entered into a new tack upon the same terms as the former, which is called *tacit relocation*, and continues till the landlord warns the tenant to remove, or the tenant renounces his tack to the landlord." *Erskine's Law of Scotland, 14th ed. p.* 183.

TACITURNITY. This word is used in Scotland to signify laches in not prosecuting a legal claim, or in acquiescing in an adverse claim. *Bell; Paterson.*

TACK, in Scotland, signifies a lease.

TACK DUTY. The rent reserved on a lease.

TACKING MORTGAGES. This happens when a third or subsequent mortgagee of land, by getting a conveyance to himself of the legal estate of the first mortgagee, is enabled to obtain, for his own security, priority over the second mortgagee. He is then said to *tack* his mortgage to the first mortgage. This is permitted if the person who claims to *tack* has originally advanced his money without notice of the incumbrance or incumbrances over which he claims priority, notwithstanding that he might have had notice of the same before getting in the legal estate. For the person so claiming to tack is held to have an *equity* equal to that of the incumbrancer over whom he claims priority; and having got in the *legal estate* he obtains priority on the principle that where the equities are equal, the law shall prevail; and mere priority of time is not regarded where there is any other ground of difference. *Wms. R. P.; Sm. Man. Eq.*

Tacking was abolished by section 7 of the Vendor and Purchaser Act, 1874 (statute 37 & 38 Vict. c. 78). But that section is repealed by the 129th section of the Land Titles and Transfer Act, 1875 (statute 38 & 39 Vict. c. 87). [LEGAL ESTATE; MORTGAGE.]

TACKSMAN. A Scotch term for lessee.

TAIL. A term used to signify an *estate tail.* [ESTATE. See also the following Titles.]

TAIL AFTER POSSIBILITY OF ISSUE EXTINCT is where land is given to a man and his wife, and to the heirs of their two bodies engendered, and one of them overlives the other without issue between them begotten; he shall hold the land for term of his own life as *tenant in tail after possibility of issue extinct*, and, notwithstanding that he do

TAIL AFTER POSSIBILITY, etc.—*contd.*

waste, he shall not be impeached of it. *T. L.; Cowel;* 2 *Bl.* 124, 125; 1 *Steph. Com.* 262. A tenant in tail after possibility of issue extinct cannot bar the entail. *Stat.* 3 & 4 *Will.* 4, *c.* 74, *s.* 18; 1 *Steph. Comm.* 583. [DISENTAILING DEED; FINE, 1; RECOVERY.]

TAIL FEMALE is where a real estate is settled on A. B. and the heirs female of his or her body. Under such words of limitation, females alone can succeed and would inherit together; nor could any female claim except through females. But in practice it never occurs. 1 *Steph. Com.* 245; *Wms. R. P., Pt. I. ch.* 2.

TAIL GENERAL is where an estate is limited to a man and the heirs of his body, without any restriction at all; or, according to some authorities, with no other restriction than that in relation to sex. Thus *tail male general* is the same thing as *tail male;* the word *general* in such case implying that there is no other restriction upon the descent of the estate than that it must go in the *male* line. So, an estate in tail female general is an estate in tail female. 2 *Bl.* 112—114; 1 *Steph. Com.* 245.

The word "general" in the above phrase expresses a purely negative idea, and may denote the absence of any restriction, or the absence of some given restriction which is tacitly understood.

TAIL MALE is where an estate is limited to a man and the heirs male of his body; that is, so far as regards the first generation, to males; and, so far as regards subsequent generations, to males claiming exclusively through males. 2 *Bl.* 114; 1 *Steph. Com.* 245; *Wms. R. P.* [See the two preceding Titles.]

TAIL SPECIAL is defined by *Cowel* as the limitation of lands and tenements to a man and his wife and the heirs of their two bodies. But the phrase need not be thus restricted. Tail special, in its largest sense, is where the gift is restrained to certain heirs of the donor's body, and does not go to all of them in general. 2 *Bl.* 113, 114; 1 *Steph. Comm.* 244. [TAIL GENERAL; TALTARUM'S CASE.]

TAILAGE. A piece cut out of the whole; hence a tribute, toll, or tax. [TALLAGE; TALLIAGE.]

TAILZIE, in Scotch law, is a deed of entail by which the legal line of succession is cut off, and an arbitrary one substituted in its place. *Bell; Paterson.*

The power of entailing Scotch lands is materially modified by the Entail Amendment Act of 1848 (stat. 11 & 12 Vict. c. 36), by which an heir of full age in possession of an entailed estate may disentail the estate, with such consents as are mentioned in the Act.

TAINT. A conviction of felony, or a person convicted. *Cowel.* [ATTAINDER; CORRUPTION OF BLOOD.]

TAKING TO. TAKING UP. 1. These phrases are often used to signify the voluntary acceptance of anything. Thus, *taking up a lease* signifies accepting a lease; and *taking to* a share in a partnership signifies the acceptance of that particular share.

2. A party liable on a bill of exchange who pays the amount for which he is liable, and receives the bill back, is said to *take up the bill.* "Taking up a bill" is thus synonymous with "retiring a bill" in the largest sense of that expression. [RETIRING A BILL.]

TALAB. Wages, salary; demand of arrears of revenue. *Wilson's Gloss. Ind.*

TALE. The old name for the declaration in an action, in which the plaintiff set forth his cause of complaint at length. 3 *Bl.* 293. [DECLARATION.]

TALES. A supply of jurymen to make up a deficiency. If a sufficient number of jurors do not appear, or if by means of challenges or exemptions a sufficient number of unexceptionable ones do not remain, either party may pray a *tales.* For this purpose a writ of *decem tales, octo tales,* and the like, used, at common law, to issue to the sheriff. But the judge who tries the cause is empowered by stat. 6 Geo. 4, c. 50, s. 37, 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 make up the number required, and to add their names to the former panel. But in the case of common jurors, of whom seventy-two are usually returned on the same common jury panel, it happens of course but rarely, that the whole are exhausted so as to make a *tales* necessary; and in special jury causes the deficiency is made up from the common jury panel, if a sufficient number can be found. But if such number be not found, there is then to be a *tales de circumstantibus. T. L.; Cowel;* 3 *Bl.* 364, 365; 4 *Bl.* 354, 355; 3 *Steph. Com.* 528; 4 *Steph. Com.* 424; *Lush's Pr.* 547.

TALESMEN. Members of the tales. [TALES.]

TALFOURD'S ACTS. 1. Stat. 2 & 3 Vict. c. 54, passed in 1839, for enabling the mother of a child under the age of seven years to apply to the Court of Chancery for an order that the child be delivered into her custody. See 2 *Steph. Com.* 295. This Act was repealed in 1873 by stat. 36 & 37 Vict. c. 12, and other provisions substituted by which a mother is entitled to petition for the custody of her child up to the age of sixteen.

2. Stat. 5 & 6 Vict. c. 45, otherwise known as the Copyright Act of 1842. 2 *Steph. Com.* 36—41. [COPYRIGHT.]

The two Acts known as "Talfourd's Acts" were so called from having been introduced by Mr. Serjeant Talfourd, who was subsequently appointed, in July, 1849, a judge of the Common Pleas. He died suddenly, while addressing a grand jury at Stafford, on March 13, 1854. *Foss' Judges of England.*

TALION. Retaliation. 4 *Bl.* 12. [LEX TALIONIS.]

TALITER PROCESSUM EST. "So it has proceeded;" words formerly in use by which a defendant, in justifying his conduct by the process of an inferior court, alleged in his pleading the proceedings in such inferior court. *Steph. Plead. 5th ed. p.* 369.

TALLAGE. A share of a man's substance paid by way of tribute, toll, or tax. Hence it is a general word for all taxes. *T. L.; Cowel.* [TAILAGE.]

TALLAGERS. Tax or toll gatherers. *Toml.*

TALLEY or **TALLY.** A stick cut in two parts, on each whereof is marked, with notches or otherwise, what is due between debtors and creditors. This was the ancient way of keeping accounts, one part being kept by the creditor, the other by the debtor. Hence the *tallier* of the Exchequer, also called the *teller.* [TELLERS, 1.] There were two kinds of tallies formerly used in the Exchequer; one termed tallies of debt, which were acquittances for debts paid to the king, on the payment whereof the tallies were delivered to the debtors. The others were called tallies of reward or allowance, being made to the sheriffs of counties as a recompense for such matters as they had performed at their own charge. The use of tallies in the Exchequer was abolished in 1783 by stat. 23 Geo. 3, c. 82.

In consequence of the changes introduced in 1834 by stat. 4 & 5 Will. 4, c. 15, ss. 1—28, in the keeping of the public accounts, the old tallies were ordered to be destroyed. They were accordingly employed to heat the stoves in the House of Lords, and are said to have been the cause, from having been burned in too large quantities, of the fire which broke out in October, 1834, and consumed the two Houses of Parliament. *Toml.*

TALLIAGE. A tax laid upon cities and burghs. 1 *Bl.* 310; 2 *Steph. Com.* 556. [TAILAGE; TALLAGE.]

TALOOK. Connexion, dependence, possession, property; a dependency or division of a province: hence, a tract of land usually smaller than a *zamindari*, sometimes including several villages, held on a perpetual lease at a fixed revenue payable either (1) directly to the Government, or else (2) to a mesne lord or *zamindar.* [ZAMINDAR.] In the former case the talook is said to be *independent;* in the latter it is said to be *dependent. Wilson's Gloss. Ind.*

TALOOKDAR. The grantee of a talook. [TALOOK.]

TALTARUM'S CASE, which was decided in Michaelmas Term, 1472 (the twelfth year of Edward IV.), is known as the case in which the judges by implication laid down those principles on which "common recoveries" were sanctioned for so many centuries. See 2 *Bl.* 117; 1 *Steph. Com.* 248. [RECOVERY.]

The facts of *Taltarum's case* were as follows:—Humfery Smith, being tenant in tail of lands, made a feoffment [FEOFFMENT] of the same to one Tregos. Tregos made a gift of the same back again to Humfery Smith and Jane his wife and the heirs of their bodies, thus making them tenants in special tail. [TAIL SPECIAL.] Humfery Smith survived his wife without having had issue by her. Being thus *tenant in tail after possibility of issue extinct* [TAIL AFTER POSSIBILITY OF ISSUE EXTINCT], Humfery Smith allowed one Taltarum to recover the lands in question by writ of right, under the forms used in common recoveries, including judgment in value against the vouchee. [RECOVERY; VOUCHER, 1; WRIT OF RIGHT.] Taltarum made a feoffment to the plaintiff (whose name does not appear from the report), and, the plaintiff being in possession, John Smith, the nephew of Humfery Smith, and the issue inheritable under the original entail, entered upon the plaintiff; whereupon the plaintiff took proceedings against him by writ of entry under the Statute of Forcible Entries [ENTRY, WRIT OF; FORCIBLE ENTRY], when the following arguments were presented to the Court.

TALTARUM'S CASE—*continued.*

It was argued for the plaintiff—

(1.) That if the heir in tail had any remedy, it could only be by writ of *formedon*. [FORMEDON.]

(2.) That the heir in tail could not be admitted to "falsify" (*i. e.*, to challenge) the recovery, because he might have execution under the judgment against the vouchee.

It was argued for the defendant—

(1.) That by the descent cast upon him the right of the entail and also the possession descended upon him, so that he was in his *remitter*. [DESCENT CAST; REMITTER.]

(2.) That Humfery Smith was, at the time of the recovery, tenant in tail after possibility of issue extinct, under the special entail; and the recovery could not, therefore, affect the original entail.

As to the point whether the entry of the defendant was lawful, or whether his only remedy was by formedon, there was a difference of opinion among the judges. But, on the other point, the judges were all of opinion that, as the party suffering the recovery was in, not by force of the first entail, but by force of the second, the recovery could not affect the rights of the issue claiming under the first entail. *Year Book* (*ed.* 1680), 12 *Edw.* 4 (*A.D.* 1472), *pp.* 19—21, *Case* 25; *Tudor, L. C. R. P.* 605—615.

TAMASUL. Quality. In Mohammedan law it signifies the division of an inheritance among the legal sharers when their number and that of the shares is the same. *Wilson's Gloss. Ind.*

TANGIBLE PROPERTY is property which may be touched and is the object of sensation: as, for instance, chairs and tables among moveables, fields and gardens among immoveables. This kind of property is opposed to intangible rights, such as patents, copyrights, advowsons, rents, &c. 2 *Bl.* 17; 1 *Steph. Com.* 170; 2 *Steph. Com.* 9.

TANISTRY. An old Irish tenure, by which, from time immemorial, lands descended to the *eldest* and *most worthy* of the blood and name. *Cowel.* These epithets, we may suppose, were not used synonymously, but in order to indicate that a preference for seniority was to be controlled by a due regard to desert. No better mode could be devised of providing for a perpetual supply of those quarrels in which the Irish are supposed to place so much of their enjoyment. Yet, as these grew sometimes a little too frequent, it was not unusual to elect a *tanist*, or reversionary successor, in the lifetime of the reigning chief. *Hallam's Const. Hist. ch.* 18.

TANKA. Appraising goods. *Wilson's Gloss. Ind.*

TARE AND TRET. *Tare* is the weight of box, straw, cloths, &c., wherein goods are packed.

Tret is the consideration allowed in the weight for waste, in emptying and reselling the goods. *Cowel.*

TASHHIR, in Mohammedan law, signifies public exposure, formerly the especial punishment of perjury; abolished 1849. *Wilson's Gloss. Ind.*

TAX. A tribute or impost imposed by parliament.

TAXATIO ECCLESIASTICA was the valuation of ecclesiastical benefices made through every diocese in England, on occasion of Pope Innocent IV. granting to King Henry III. the tenth of all spirituals for three years. *Toml.*

TAXATION OF COSTS is the settlement by the taxing master of the amount payable by a party in respect of costs in any action or suit. The allowance of particular items in the bill will in a great measure depend on the order directing the taxation. In a bill sent in by a solicitor to his client, items would be allowed which would not be allowed in the ordinary taxation of costs between parties in a suit or action. But in some cases, even between the parties to a suit or action, costs are given on the higher scale, and then the costs are said to be taxed *as between solicitor and client* (or, *as between attorney and client*), as opposed to the ordinary taxation *as between party and party*. *Hunt. Eq., Pt. II. ch.* 10, *s.* 3; *Kerr's Act. Law.* See also *Lush's Pract.* 570, 934.

Under rule 23 of the Special Allowances and General Provisions, at the end of the Additional Rules of the 12th of August, 1875, the taxation of costs in the Supreme Court of Judicature is to be effected by the taxing officers of the Court, who are empowered to administer oaths for the purpose. Under rule 32, a party dissatisfied with the certificate of the taxing officer as to any item or part of an item to which an objection in writing has been made, as required by rule 30, may apply to a judge at chambers for an order to review the taxation in reference thereto, and the judge may thereupon make such order as to him may seem just. [See also the two following Titles.]

TAXING MASTERS. The officers appointed to tax costs. [TAXATION OF COSTS.] In actions at common law the taxation of costs has hitherto been done by the masters of each Court. *Smith's Act. Law, ch.* 1. Henceforth the taxation of costs will be effected by the taxing officers of the Supreme Court; and of its respective divisions. [TAXATION OF COSTS.]

TAXING OFFICER. 1. An officer appointed in each House of Parliament to tax the costs of private bills. *May's Parl. Pract. ch.* 29.

2. An officer appointed to tax costs in actions in the Supreme Court of Judicature. [TAXATION OF COSTS.]

TAZIR. Punishment. *Wilson's Gloss. Ind.*

TEAM AND THEAME signifies a royalty granted by the king's charter to the lord of a manor, for the having, restraining and judging of bondmen, neifes and villeins, with their children, goods and chattels, in his court. *Cowel.*

TEDING PENNY. A small duty formerly paid to the sheriff from each tithing, &c. towards the charge of keeping courts. *Toml.*

TEINDS. Tithes in Scotland are so called. *Bell.*

TEINLAND. The land of a thane or noble person. *Cowel.*

TELEGRAPH ACTS. 1. Stat. 26 & 27 Vict. c. 112, passed in 1863, to regulate the exercise of powers under special acts of parliament for the construction and maintenance of telegraphs.

2. Stat. 31 & 32 Vict. c. 110, passed in 1868, to enable her Majesty's Postmaster-General to acquire, work and maintain electric telegraphs. By sect. 2 of the Act, the provisions of the Act of 1863 are incorporated therewith, except so far as the same, or any part thereof, may be expressly varied or altered, or may be inconsistent with the Act of 1868.

TELLERS. 1. Four officers of the Exchequer, formerly appointed to receive monies due to the king and to pay monies payable by the king. *Cowel.* Abolished in 1834 by stat. 4 & 5 Will. 4, c. 15, s. 1.

2. Members of parliament appointed by the Speaker to count the numbers in a parliamentary division. Two tellers are appointed for each party; of whom one for the ayes and another for the noes are associated, to check each other in the telling. There can be no division without two tellers on each side. *May's Parl. Pract. ch.* 12.

TELLWORC signifies that work and labour which a tenant was bound to do for his lord for a certain number of days. From the Saxon word *tællan*, to count, and *worc*, work. *Toml.*

TEMENTALE or **TENEMENTALE.** 1. A tax of two shillings upon every ploughland. *Toml.*

2. A decennary or tithing. *Toml.*

TEMPLARS. A religious order of knighthood, instituted about the year 1119, and so called because they dwelt in a part of the Temple of Jerusalem, and not far from the sepulchre of our Lord. They entertained Christian strangers and pilgrims charitably, and their profession was at first to defend travellers from highwaymen and robbers. The order was suppressed A.D. 1307, and their substance given partly to the knights of St. John of Jerusalem and partly to other religious orders. *Cowel; Toml.* [See next Title.]

TEMPLES. Two of the Inns of Court. [INNS OF COURT.]

At the suppression of the order of Knights Templars their dwelling was purchased by the professors of the common law, and converted into inns of court in the year 1340. They are called the Inner and Middle Temple. Essex House, built in 1185, was formerly a part of the house of the Templars, and was called the Outer Temple, because it was situated without Temple Bar. *Haydn's Dict. Dates.*

TEMPORAL LORDS. [LORDS TEMPORAL.]

TEMPORALITIES OF BISHOPS are the revenues, lands, tenements and lay-fees belonging to the bishops' sees. *Cowel;* 1 *Bl.* 283, 380; 2 *Steph. Com.* 530, 678.

TENANT. 1. One that holds or possesses lands or tenements by any kind of right, be it for life, years, at will or at sufferance, in dower, custody or otherwise; all lands being considered as *holden* of the Queen or of some superior lord. *Cowel;* 2 *Bl.* 59; 1 *Steph. Comm.* 185; *Wms. R. P., Part I. chaps.* 1—5.

2. Especially, a tenant under a lease from year to year, or other fixed period. [LANDLORD AND TENANT, LAW OF.]

3. A defendant in a "real action." [See ACTIONS REAL AND PERSONAL.]

4. We sometimes use the word in reference to interests in pure personalty, as when we speak of any one as tenant for life of a fund, &c.

[See also the following Titles.]

TENANT AT SUFFERANCE. A person who, having been in lawful possession of land, wrongfully continues in possession after his title has come to an end, without the agreement or disagreement of the person then entitled. 2 *Bl.* 150; 1 *Steph. Com.* 293; *Tudor, L. C. R. P.* 8—11; *Fawcett, L. & T.* 49.

TENANT AT WILL is a person in possession of lands let to him to hold at the will of the lessor. A copyhold tenant was originally a tenant at will, and he is still nominally so, being said to hold *at the will of the lord according to the custom of the manor;* but, as the lord's will is controlled by the custom, the so-called tenancy at will is hardly less beneficial than a freehold. 2 *Bl.* 145; 1 *Steph. Com.* 289; *Tudor, L. C. R. P.* 11—20; *Fawcett, L. & T.* 50.

TENANT BY SUFFERANCE. [TENANT AT SUFFERANCE.]

TENANT BY THE CURTESY. [CURTESY.]

TENANT FOR LIFE. A person who holds an estate for his life. [ESTATE.]

TENANT FROM YEAR TO YEAR. A tenancy from year to year is now fixed, by general usage, to signify a tenancy determinable at half a year's notice on either side, ending with the current year of the tenancy. If the tenancy commenced on one of the quarterly feast days, the half-year may be computed from one of such feast days to another; otherwise, the half-year must consist of 182 days. See 1 *Stephen's Comm.* 291; *Tudor, L. C. R. P.* 20—26; *Fawcett, L. & T.* 53—57.

TENANT IN TAIL. [ESTATE.]

TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINCT. [TAIL AFTER POSSIBILITY OF ISSUE EXTINCT; TALTARUM'S CASE.]

TENANT-RIGHT. 1. A kind of customary estate in the north of England, falling under the general class of copyhold, but distinguished from copyhold by many of its incidents. 1 *Steph. Com.* 225, *n.*

2. The so-called *tenant-right of renewal* is the expectation of a lessee that his lease will be renewed, in cases where it is an established practice to renew leases from time to time, as in the case of leases from the Crown, from ecclesiastical corporations, or other collegiate bodies. Strictly speaking, there can be no *right* of renewal against the lessor without an express compact by him to that effect; though the existence of the *custom* often influences the price in sales. *Platt on Leases, Vol. I. p.* 703; *Woodfall, L. & T. 9th ed. p.* 335.

3. The Ulster tenant-right may be described as a right on the tenant's part to sell his holding to the highest bidder, subject to the existing or a reasonable increase of rent from time to time as circumstances may require, with a reasonable veto reserved to the landlord in respect of the incoming tenant's character and solvency. By section 1 of the Irish Land Act, 1870 (statute 34 & 35 Vict. c. 46), the Ulster tenant-right custom, in the holdings proved to be subject thereto, is declared to be legal, and to be enforced as mentioned in the Act; and, by s. 2, a similar enactment is made for the rest of Ireland. What the legislature does by these sections is to legalize as valid customs that had previously rested on mere usages; not attempting to define, modify, improve, or qualify them, but leaving them as matters of fact to be examined by the tribunals appointed to try every such question as it arises. See *De Moleyns' Practical Guide, 6th ed. pp.* 223—5.

TENANT TO THE PRÆCIPE. [PRÆCIPE, TENANT TO THE.]

TENANTABLE REPAIR. Such a state of repair in houses or buildings as renders them fit for the occupation of a tenant.

A tenant from year to year of a house is bound to keep it wind and water tight, to use it in a tenant-like manner, and to make fair and tenantable repairs, such as putting in windows or doors that have been broken by him, so as to prevent waste and decay of the premises. See 2 *Espinasse,* 590; *Fawcett, L. & T.* 189.

TENANTS IN COMMON. [COMMON, TENANCY IN.]

TEND or **TENDE.** To tender or offer, especially in reference to pleading. *Towl.*

TENDER. 1. An offer of money or any other thing in satisfaction of a debt or liability. *T. L.; Cowel;* 3 *Bl.* 303, 313; 3 *Steph. Com.* 383, 505; *Fawcett, L. & T.* 167. [See next Title.]

2. Coin or paper money, which, so far as regards the nature and quality thereof, a creditor may be compelled to accept in satisfaction of his debt, is called *legal tender.* [LEGAL TENDER.]

TENDER OF AMENDS. An offer by a person, who has been guilty of any wrong or breach of contract, to pay a sum of money by way of amends. If a defendant in an action make tender of amends, and the plaintiff decline to accept it, the defendant may pay the money into Court, and plead the payment into Court as a satisfaction of the

TENDER OF AMENDS—*continued.*

plaintiff's claim. 3 *Steph. Comm.* 382, 383, 505; *Kerr's Act. Law.* See also *Lush's Pr.* 823, 919; *Fawcett, L. & T.* 181; *Judicature Act*, 1875, 1*st Schedule, Order XXX.* [PAYMENT OF MONEY INTO COURT, 1.]

TENDER, PLEA OF. A plea by a defendant that he has been always ready to satisfy the plaintiff's claim, and now brings the sum demanded into Court. 3 *Bl.* 303; 3 *Steph. Com.* 505. [See the two preceding Titles.]

TENDERING ISSUE is when a party in an action traverses or denies the last pleading of the opposite party, as this obviously raises a question between the parties. [ISSUE, 5; JOINDER, 3.] See the *Judicature Act*, 1875, 1*st Sched. Ord. XIX. rules* 20, 21.

TENEMENT. 1. A house or home-stall. *Cowel.*

2. Land holden of a superior lord; and in this sense *tenement* is one of the technical words applicable to all real estates, and includes offices and dignities which concern lands and profits issuing out of lands. 2 *Bl.* 16, 59, 113; 1 *Steph. Com.* 169, 170, 185.

3. Especially such an interest in land within a parish as will enable a party to apply to such parish for poor law relief if in need thereof. 1 *Bl.* 364; 3 *Steph. Com.* 53–55. [POOR LAWS; RELIEF, 2; SETTLEMENT, 1.]

TENEMENTAL LAND was a phrase used to denote land distributed by a lord among his tenants, as opposed to the demesnes which he kept for his own enjoyment. 2 *Bl.* 90. [DEMESNE.]

TENEMENTIS LEGATIS. An ancient writ, lying for the city of London or any other corporation where lands were devisable by custom, for the hearing and determining any controversy touching the same. *Reg. Orig.* 244; *Cowel.*

TENENDAS, in Scotch law, is that clause of a charter or grant of land by which the particular tenure is expressed. *Bell.* It corresponds to the *tenendum* in an English conveyance. [TENENDUM.]

TENENDUM. The clause in a deed which was formerly used to signify the tenure by which the estate granted was to be holden; as by knight service, &c. But such tenures being now reduced to free and common socage, the tenure is never specified; and the *tenendum* in a deed is of very little use, and only kept in by custom. 2 *Bl.* 298; 1 *Steph. Com.* 487.

TENENTIBUS IN ASSISIS NON ONERANDIS. A writ that lay for him to whom a disseisor had aliened land, that he might not be molested for damages awarded if the disseisor had wherewith to satisfy them himself *Reg. Orig.* 214; *Cowel.* [DISSEISIN.]

TENHEDED (Lat. *Decanus*). The head of ten, or chief of ten persons. *Cowel.*

TENOR. 1. By the *tenor* of a deed, or other instrument in writing, is signified the matter contained therein, according to the true intent and meaning thereof. *Cowel.* The action of *proving the tenor*, in Scotland, is an action for proving the contents and purport of a deed which has been lost. *Bell.*

2. The word *tenor*, in reference to writs and records, signifies a copy or transcript. *Toml.*

TENORE INDICTAMENTI MITTENDO. A writ whereby the record of an indictment, and the process thereupon, might be called out of another Court into the Court of Chancery. *Cowel.*

TENSARY. An ancient rate alleged in the case of *Griffith* v. *Williams*, 1 Wils. 338, to have been levied by custom at Oswestry for the repair of the prison, upon every inhabitant not being a burgess. The Court seemed to think that the custom could not be supported.

TENTERDEN'S ACT is the stat. 9 Geo. 4, c. 14, passed in 1828, at the instance of Lord Tenterden, Chief Justice of the King's Bench. Lord Tenterden (previously known as Chief Justice Abbott) received his peerage on the 30th of April, 1827.

The following provisions of Lord Tenterden's Act may be mentioned here:—

(1.) In actions of debt or upon the case grounded upon any simple contract, no acknowledgment or promise by words only is to be deemed a sufficient evidence of a new and continuing contract to take the case out of the Statutes of Limitations, unless such acknowledgment or promise be in writing signed by the party chargeable thereby (sect. 1).

(2.) No action is to be brought whereby to charge any person upon or by reason of any assurance made concerning the character, conduct, credit, ability, trade or dealings of any person, to the intent that such person may obtain credit, money or goods, unless such representations be in writing and signed by the party to be charged therewith (sect. 6).

(3.) The 17th section of the Statute of Frauds (by which it is provided that

TENTERDEN'S ACT—*continued.*

no contract for the sale of goods for the price of 10*l.* sterling or upwards shall be good except the buyer (1) accept part of the goods so sold, and actually receive the same, or (2) give something in earnest to bind the bargain, or (3) that some note or memorandum of the said bargain be signed by the parties to be charged by such contract, or their agents lawfully authorized) is to extend to all such contracts, notwithstanding that the goods be intended to be delivered at some future time, or may not at the time of the contract be actually made, procured, or provided, or be fit or ready for delivery.

TENTHS. 1. The tenth part of all spiritual preferments in the kingdom, originally payable to the Pope, and, after the Reformation, to the Crown, until applied by Queen Anne for the purposes of Queen Anne's Bounty, that is, to make up the deficiencies of smaller benefices. *Cowel;* 1 *Bl.* 284, 285; 2 *Steph. Comm.* 531—534. [FIRST-FRUITS; QUEEN ANNE'S BOUNTY.]

2. A temporary aid issuing out of personal property anciently granted from time to time by parliament. 1 *Bl.* 309; 2 *Steph. Com.* 554.

TENURE. The manner whereby tenements are holden of their lords. To hold land by *the tenure* of any given service is to hold land on the condition of a faithful performance of that service; so that the non-performance thereof would be a cause of forfeiture to the lord. This forfeiture might be enforced by writ of *cessavit. T. L.; Cowel;* 2 *Bl.* 59—102; 3 *Bl.* 242; 1 *Steph. Com.* 172—228; *Wms. R. P., Pt. I. ch.* 5. [CESSAVIT; ESTATE; FEE; FEUDAL SYSTEM; KNIGHTSERVICE; MILITARYTENURES; SOCAGE; TENENDUM.]

TERCE is the right which a widow has by the law of Scotland to the third part of the lands of which her husband died infeft. *Bell.* It corresponds to *dower* in England. *Paterson.* [DOWER, 2; INFEFTMENT; KENNING TO THE TERCE.]

TERM. 1. The period of time in which alone the superior courts of common law were formerly open for the redress of injuries. Subsequently, until the commencement of the Judicature Acts, the term was the period principally devoted to sittings in *banc;* but, as we shall presently see, the division of the legal year into terms is now practically abolished. There are (or were) four terms in the year: Hilary, Easter, Trinity and Michaelmas Terms.

Hilary Term formerly began on the 20th of January, and ended on the 12th of February, unless that day were Sunday, and then the day after.

Easter Term began on the Wednesday fortnight after Easter Day, and ended the Monday next after Ascension Day.

Trinity Term began on the Friday after Trinity Sunday, and ended the Wednesday fortnight after.

Michaelmas Term began on the 6th of November, and ended the 28th of November, unless that day were Sunday, and then the day after. *Cowel; Toml.*

By stat. 11 Geo. 4 & 1 Wm. 4, c. 70, the terms are as follows:—

Hilary Term begins on the 11th, and ends on the 31st of January.

Easter Term begins on the 15th of April, and ends on the 8th of May, except any of the days intervening between Thursday before Easter, and Wednesday in Easter week, fall in Easter Term, in which case the sittings in *banc* were on those days suspended, the term being prolonged for such number of days of business as might be equal to the intervening days, exclusive of Easter Day.

Trinity Term (by the same Act) commences on the fourteenth day after the end of Easter Term (generally the 22nd of May), and continues for twenty-two days (generally until the 12th of June).

Michaelmas Term begins on the 2nd of November, and ends on the 25th of November.

If the term would otherwise end on a Sunday, the Monday is to be deemed the last day of term.

By section 26 of the Judicature Act, 1873 (statute 36 & 37 Vict. c. 66), the division of the legal year into terms is abolished so far as relates to the administration of justice; and, by the Judicature Act, 1875, 1st Sched. Order LXI., the terms are to be superseded, for this purpose, by the "sittings" of the Court of Appeal, and the "sittings" in London and Middlesex of the High Court of Justice. [LONDON AND MIDDLESEX SITTINGS; SUPREME COURT OF JUDICATURE.]

2. *A term of years.* This phrase is often used to denote a fixed period of time extending over several years; but in the law of real property it is especially used to signify an estate or interest in land to be enjoyed for a fixed period. This estate is a chattel interest, and goes, on the death of its owner, to his

TERM—*continued.*

executors or administrators. *T. L.; Cowel;* 2 *Bl.* 143—145; 1 *Steph. Com.* 285—289; *Wms. R. P., Pt. IV. ch.* 1. [OUTSTANDING TERM; SATISFIED TERMS ACT.]

3. *Terms legal and conventional* in Scotland are periods for the payment of rent. They correspond in some measures to *quarter days* in England and Ireland. The *legal terms* are—(1) Whitsunday, which for this purpose is the 15th of May; and (2) Martinmas, the 11th of November. In the absence of express contract, one half of the rent is supposed to be due at Whitsunday, and the other half at Martinmas. For the payment of minister's stipends, however, the legal terms are Whitsunday and Michaelmas. *Bell.* Conventional terms are such as are created by contract between different parties. The principal conventional terms in Scotland are Candlemas (Feb. 2) and Lammas Day (Aug. 1). [QUARTER DAYS.]

TERM IN GROSS. A phrase used to designate an estate for years in land *not* held in trust for the party who would be entitled to the land on the expiration of the term. [OUTSTANDING TERM; SATISFIED TERMS ACT; TERM, 2.]

TERM PROBATORY. The period of time allowed to the promoter of an ecclesiastical suit to produce his witnesses and prove the facts on which he rests his case. *Coote's Eccl. Pract. pp.* 240, 241.

TERMES DE LA LEY. Terms of the law; a dictionary of law terms. [RASTALL.]

TERMINUM QUI PRETERIIT. [AD TERMINUM QUI PRÆTERIIT.]

TERMOR. He that holds lands or tenements for a term of years or life. *Cowel.* But we generally confine the application of the word to a person entitled for a term of years. 2 *Bl.* 142.

TERMS, TO BE UNDER. A party in an action or other legal proceeding is said to be *under terms*, when an indulgence is granted to him by the Court in the exercise of its discretion, on condition of his observing certain things. Thus, when an injunction is granted *ex parte*, the party obtaining it is put *under terms* to abide by such order as to damages as the Court may make at the hearing. So, a defendant at law neglecting to plead in proper time, and applying for leave to do so, has, according to the hitherto received practice, been put *under terms* to plead issuably, &c. And now that under the Judicature Acts so much is left to the discretion of the Court or a judge, the cases in which parties are put under terms will doubtless be proportionably numerous.

TERRA EXTENDENDA (land to be valued) was a writ directed to the escheator, willing him to inquire and find out the true yearly value of any land by the oaths of twelve men, and to certify the same into the Chancery. *Reg. Orig.* 293—4; *Cowel.* [ESCHEATOR.]

TERRA LUCRABILIS. Land that may be gained from the sea, or inclosed out of a waste, to a particular use. *Cowel.*

TERRA PUTURA. Land in forests held by the tenure of furnishing man's meat, horse meat, and dog's meat, to the keepers therein. *Cowel.*

TERRA TESTAMENTALIS. Gavelkind land; so called from being formerly devisable by will, when other lands were not so devisable. *Toml.* [DEVISE; GAVELKIND.]

TERRA VESTITA. Land sown with corn. *Cowel.*

TERRA WAINABILIS. Tillable land. *Toml.*

TERRA WARENNATA. Land having appurtenant to it a liberty of free warren. *Toml.* [FREE WARREN.]

TERRAGIUM. Land tax. *Spelman.*

TERRAR. The same as *Terrier.* [TERRIER.]

TERRE TENANT. He who has the actual possession or occupation of land. For example, a lord of a manor hath a freeholder, who letteth out his freehold to another to be occupied; this occupier (having the actual possession) is called the terre tenant. *Cowel;* 2 *Bl.* 91, 328.

TERRIER (Lat. *Terrarium*). A land roll or survey of lands, containing the quantity of acres, tenants' names and such like; and in the Exchequer there is a terrier of all the glebe lands in England, made about 11 Edw. 3, that is, about 1338. In general, an ecclesiastical terrier contains a detail of the temporal possessions of the Church in every parish. *Cowel; Toml.*

TEST AND CORPORATION ACTS. The Test Act was stat. 25 Car. 2, c. 2, passed in 1673 (explained by 9 Geo. 2, c. 26), by which all officers, civil and military, were directed to take the oaths and make the declaration against transubstantiation, in any of the King's Courts at Westminster, or at the quarter sessions,

TEST AND CORPORATION ACTS—*contd.*

within six calendar months after their admission; and also within the same time to receive the Sacrament of the Lord's Supper according to the usage of the Church of England, in some public church, immediately after divine service and sermon, and to deliver into court a certificate thereof signed by the minister and churchwardens, and also to prove the same by two credible witnesses, on pain of forfeiture of 500*l.*, and disability to hold the said office.

By the Corporation Act, stat. 13 Car. 2, stat. 2, c. 1, no person could be legally elected to any office relating to the government of any city or corporation unless, within a twelvemonth before, he had received the Sacrament of the Lord's Supper according to the rites of the Church of England; and he was also enjoined to take the oaths of allegiance and supremacy at the time of taking the oath of office; or, in default in either of these requisites, the election should be void. 4 *Bl.* 58, 59.

Both these enactments were repealed in 1828 by stat. 9 Geo. 4, c. 17, so far as relates to receiving the Sacrament according to the rites of the Church of England.

TESTA DE NEVIL. An ancient document in two volumes, in the custody of the Queen's Remembrancer in the Exchequer of England, compiled about the reign of Edward II. These books contain accounts (1) of fees holden of the king; (2) of serjeanties holden of the king; (3) of widows and heiresses of tenants *in capite* whose marriages were in the gift of the king, with the values of their lands; (4) of churches in the gift of the king; (5) of escheats; (6) of amounts paid for scutage and aids, &c. by each tenant. *Toml.*

TESTAMENT. The true declaration of a man's last will as to that which he would have to be done after his death. It is compounded, according to Justinian, from *testatio mentis;* but the better opinion is that it is a simple word formed from the Latin *testor*, and not a compound word. *T. L.; Cowel;* 2 *Bl.* 489; 2 *Steph. Com.* 178. [WILL, 1.]

TESTAMENTARY CAUSES are causes relating to the validity and execution of wills. The phrase is generally confined to those causes which were formerly matters of ecclesiastical jurisdiction, and are now dealt with by the Court of Probate. 3 *Bl.* 95; 3 *Steph. Com.* 304—5.

TESTAMENTARY GUARDIAN. A guardian appointed by will. By statute 12 Car. 2, c. 24, passed in 1660, a father may, by deed or will, appoint a guardian to his infant children. 1 *Bl.* 462; 2 *Bl.* 88; 2 *Steph. Com.* 310. [GUARDIAN, I. 5.]

TESTATOR. He who makes a will. [WILL, 1.]

TESTATRIX. She who makes a will. [WILL, 1.]

TESTATUM. 1. The witnessing part of a deed, beginning "Now this indenture witnesseth." *Wms. R. P., Pt. I. ch.* 9.

2. An old writ in personal actions directed to the sheriff of a county where the defendant was supposed to reside, not being that in which the action was laid; by which it was recited that the sheriff of the county in which the action was laid had *testified* that he was unable to find the defendant. *Cowel.* This recital was in general untrue, the allegations of fact on which the writ was supposed to be based being purely fictitious. 3 *Bl.* 283. [LATITAT.]

TESTE. 1. A word commonly used in the last part of every writ, wherein the date is contained, beginning with the words *teste meipso*, meaning the Sovereign, if the writ be an original writ, or be issued in the name of the Sovereign; but if the writ be a *judicial* writ, then the word *teste* is followed by the name of the chief judge of the court in which the action is brought; or, in case of a vacancy of such office, in the name of the senior puisne judge. *Cowel;* 3 *Bl.* 274; *Lush's Pr.* 355, 586. [JUDICIAL WRIT; ORIGINAL WRIT.]

By the Judicature Act, 1875, 1st Sched. Order II. rule 18, every writ of summons and also every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England.

2. The word is also sometimes used to signify the date of a document. 3 *Steph. Com.* 665.

TESTES, PROOF OF WILL PER, is a proof of a will by witnesses, in a more solemn form than ordinary, in cases where the validity of the will is disputed. 2 *Bl.* 508. [SOLEMN FORM.]

A bill in Chancery to prove a will *per testes* was a bill for perpetuating evidence of the testator's soundness of mind and due execution of the will, which was sometimes necessary, as the

TESTES, PROOF OF WILL PER—*contd.*

proceedings formerly taken in the Ecclesiastical Court could not bind the parties interested in the real estate. *Haynes' Eq., Lect. VI.*

TESTES, TRIAL BY. A trial by witnesses, without the intervention of the jury, in which the judge is left to form in his own breast his sentence upon the credit of the witnesses examined. 3 *Bl.* 336. The phrase was applied especially to trials according to the method of the Roman civil law, and in this sense is now obsolete, though the trial of questions of fact without a jury in various cases of a civil nature, and in petty criminal charges, is matter of daily occurrence.

TESTIMONIAL, besides its ordinary meaning of a written recommendation to character, has a special meaning under stat. 39 Eliz. c. 17, s. 3, passed in 1597, under which it signifies a certificate under the hand of a justice of the peace, testifying the place and time when and where a soldier or mariner landed, and the place of his dwelling or birth, unto which he was to pass, and a convenient time limited for his passage. Every idle and wandering soldier or mariner not having such a testimonial, or wilfully exceeding for above fourteen days the time limited thereby, or forging or counterfeiting such testimonial, was to suffer death as a felon without benefit of clergy. This Act was repealed in 1812 by stat. 52 Geo. 3, c. 31.

TESTIMONY. Evidence. [EVIDENCE; PERPETUATING TESTIMONY.]

THAKUR. An idol or deity; or any individual entitled to reverence or respect. As a term of address, it is equivalent to "your worship." *Wilson's Gloss. Ind.*

THAMES CONSERVANCY ACTS. 1. Stat. 20 & 21 Vict. c. cxlvii, passed in 1857, for constituting the Thames Conservancy Board. By sect. 2 there are to be twelve Conservators, who are to be a body corporate by the name of "The Conservators of the River Thames," having by that name a perpetual succession and a common seal. By sects. 3—9, the Lord Mayor is to be one of the Conservators, two others are to be aldermen of the city, and four others are to be members of the Common Council, such aldermen and members to be elected at a special common council to be called by the Lord Mayor for the purpose. Another of such Conservators is to be the Deputy Master of the Trinity House for the time being, two others are to be appointed by the Admiralty, another by the Board of Trade and another by the Trinity House. The Conservators appointed by the Common Council, by the Admiralty, by the Board of Trade and the Trinity House, are not to hold office above five years without being re-elected or re-appointed. By sections 50—52, all the rights and powers of the Corporation of London, and of the Crown, in and over the river Thames, are vested in the Conservators, except the portions adjoining lands belonging to Her Majesty or to any department of the Government.

2. Stat. 27 & 28 Vict. c. 113, passed in 1864. By sect. 5 of this act, six Conservators are to be added to the original twelve, to be elected according to sect. 6, as follows:—Two by the shipowners of the Port of London, as regulated by sects. 11 and 12; another by owners of passenger steamers, as regulated by sects. 13 and 14; two more by owners of lighters and steam-tugs, as regulated by sects. 15—17; one by the dockowners and wharfingers, as regulated by sects. 18 and 19. The rest of the Act is occupied by miscellaneous provisions respecting bye-laws, complaints, remuneration of Conservators, ballastage, tolls, &c.

3. Stat. 29 & 30 Vict. c. 89, passed in 1866, for vesting in the Conservators of the River Thames the conservancy of the Thames and Isis, from Staines in the county of Middlesex, to Cricklade in the county of Wilts. By section 1 this Act may be cited as "The Thames Navigation Act, 1866." By section 3 five Conservators are added to the existing body; one to be appointed by the Board of Trade, and four others by the Upper Navigation Commissioners (a numerous body of persons defined by stat. 35 Geo. 3, c. 106, passed in 1795).

THAMES EMBANKMENT ACT. The statute 25 & 26 Vict. c. 93, passed in 1862, for authorizing the Thames Embankment (north side). The Lands Clauses Consolidation Acts are incorporated with this Act, the Metropolitan Board of Works being deemed for this purpose to be the "promoters of the undertaking."

THANAGE OF THE KING signified a certain part of the king's land or property, whereof the ruler or governor was called thane. *T. L.; Cowel.* [See next Title]

THANE signifies sometimes a nobleman, sometimes a freeman, sometimes a magistrate, but more properly an officer or minister of the king. *Skene* says that it is a name of dignity, equal to the son of an earl. *T. L.; Cowel.*

THANELANDS. Such lands as were granted by the charter of the Saxon kings to their thanes. *Toml.*

THAVIE'S INN, once an Inn of Chancery [INNS OF CHANCERY], but now converted into a private court, derives its name from John Thavie, whose house it was in the fourteenth century.

THEFT is the felonious taking and carrying away of the property of another for profit, without his consent. *Bell.* [LARCENY.]

THEFT BOTE. The receiving, by a party robbed, of his goods back again, or other amends, upon an agreement not to prosecute. Theft bote is a species of the offence called *compounding a felony*, and is punishable by fine and imprisonment. *T. L.; Cowel;* 4 *Bl.* 133, 134, 363; 4 *Steph. Com.* 232; *Bell; Oke's Mag. Syn.* 990—1.

THELLUSSON ACT. The stat. 39 & 40 Geo. 3, c. 98, passed in 1799, in consequence of Mr. Thellusson's will. Mr. Thellusson was a person of enormous wealth, and left numerous descendants living at his death, besides two in *ventre sa mère*. By his will, after providing for his immediate descendants, he left the bulk of his property to be accumulated until his descendants living or in *ventre sa mère* at the time of his death should be dead. The Act called the Thellusson Act was passed to prevent a repetition of a bequest of this kind. By this Act a grantor or testator is forbidden to direct the accumulation of his property for a period exceeding twenty-one years from his death, subject to certain exceptions mentioned in the Act. 1 *Steph. Com.* 555, 556; *Wms. R. P.*

THELONIUM. A toll. [DE ESSENDO QUIETUM DE TOLONIO.]

THEM. [TEAM.]

THEODEN. Under-thane; an inferior tenant under the Saxons. *Toml.* [THANE.]

THEOWES. Slaves, captives and bondsmen among the Saxons were called *theowes* and *esnes*. They were not counted members of the commonwealth, but parcels of their master's goods and substance. *Cowel.*

THESAURUS INVENTUS. [TREASURE TROVE.]

THETHINGA. A tithing. *Tomlins.* [TITHING.]

THEW. A cucking-stool, or ducking-stool, for the punishment of scolds. *Cowel.* [CASTIGATORY FOR SCOLDS.]

THINGS. The subjects of property, which may be either *in action* or *in possession*. Things *in action* are not immediately available to the owner without the consent of some other person, whose refusal will give a right of *action*. Things *in possession* may be used immediately without the concurrence of any other person. 2 *Bl.* 1, 16, 384; 1 *Steph. Com.* 167; 2 *Steph. Com.* 2; 3 *Steph. Com.* 385. [CHOSE.]

THINGUS. A nobleman, knight or freeman. *Cowel.*

THIRD NIGHT AWN-HINDE. A guest of three nights. By the laws of St. Edward, if a guest lay a third night in an inn, he was accounted a domestic, and his host was answerable for any offence he might commit. *Cowel.* [AGENHINE.]

THIRDBOROW. A constable. *Cowel.*

THIRDINGS. The third part of the corn or grain growing on the ground at the tenant's death, due to the lord for a heriot within certain lands belonging to the manor of Turfat, in the county of Hereford. *Cowel.* [HERIOT.]

THIRLAGE is the name in the law of Scotland for a servitude by which the possessor of the servient tenement was bound to carry the grain growing on his lands to a certain mill, to be manufactured into flour or meal, and to pay to the owner of the mill a certain proportion of the same (in some cases only a thirtieth part, in other cases so great a proportion as the twelfth part), which is called a *multure*. [MULTURE.] The lands constituting the servient tenement were said to be *astricted to the mill*. [DOMINANT TENEMENT; SERVITUDE.]

The statute 39 Geo. 3, c. 55, passed in 1799, empowers either the proprietor of the lands astricted, or the proprietor of the mill, to apply to have the thirlage commuted to an annual payment.

THIS DAY SIX MONTHS. An expression used in Parliament to mean "never." Thus a proposal to read a bill "this day six months" is a proposal to reject it, because Parliament would not be sitting six months hence. "This day three months" has the same meaning. The term fixed in either case is one beyond the probable duration of the session. If, however, the session should last to the time so nominally specified, it seems that the bill or bills will appear amongst the orders of the day. *May's Parl. Pract. ch.* 18.

THOLED AN ASSIZE is a plea in a Scotch criminal trial by the party accused, to the effect that he has already undergone a previous lawful trial for the same offence. *Macdonald.*

THORNTON. Gilbert de Thornton is mentioned as the king's attorney under Edward I., in the years 1280-1286. In 1289, on the disgrace of Sir Ralph Hengham [HENGHAM, SIR RALPH], he was constituted chief justice of the King's Bench, with a salary of 40*l.* per annum. He continued to sit there as late as 1295. He composed a compendium of the law, which was in the nature of an abridgment of Bracton's work, but which has never been printed. *Foss' Judges of England.*

THORPE. A chief justice in the reign of Edward III. 4 *Bl.* 140; 4 *Steph. Com.* 245, *n.*

William de Thorpe was raised to the bench on the 23rd of April, 1342. On the 23rd of November, 1346, he became chief justice of the King's Bench. In November, 1350, five commissioners were appointed to investigate charges against him of receiving bribes. He confessed that he had received bribes from certain persons indicted before him at Lincoln. On November 19 he received judgment to be degraded and hanged. In the following year he was pardoned and received back part of his lands, which had been taken into the king's hands. On the 24th of May, 1352, William de Thorpe was second baron of the Exchequer, but it seems not quite clear whether he was the same person. Within a few years three William de Thorpes are mentioned, and the Thorpes were so numerous as often to cause uncertainty in identifying particular individuals. *Foss' Judges of England.*

THREAT has been defined to be any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free voluntary action which alone constitutes consent. *Regina* v. *Walton*, 1 *Leigh & Cave*, 288; 9 *Cox, C. C.* 268; 34 *L. J., M. C.* 79; 7 *L. T., N. S.* 754; 11 *W. R.* 348. Threats and threatening letters, as cognizable in criminal courts, are of various kinds:—(1) Letters threatening to publish a libel with a view to extort money. This offence is punishable under stat. 6 & 7 Vict. c. 96, s. 3, with imprisonment not exceeding three years, with or without hard labour. (2) Demanding money or other property with menaces, with intent to steal the same. This offence is felony, and punishable under sect. 45 of the Larceny Act, 1861 (statute 24 & 25 Vict. c. 96), with two years' imprisonment, with or without hard labour. (3) Letters demanding of any person, with menaces and without reasonable and probable cause, any property, chattel, money, valuable security, or other valuable thing. Any person sending such a letter, or causing the same to be received, knowing its contents, is liable, under s. 44 of the same statute, to penal servitude for life, or to imprisonment not exceeding two years, with or without hard labour. (4) Letters threatening to accuse any person of a heinous or infamous crime, as defined in s. 46 of the same statute. Any person guilty of sending any such letter, or causing the same to be received, knowing its contents, with a view to extort money, &c., is liable to penal servitude for life, as in the former case. (5) Letters threatening to kill or murder any person. The punishment for this offence is, by stat. 24 & 25 Vict. c. 100, s. 16, penal servitude for five years, or imprisonment for two years, with or without hard labour. 4 *Steph. Com.* 128, 129, 251; *Oke's Mag. Syn.* 950—1, 1046—9; *Cox & Saunders' Cr. Law*, 49—52, 203.

THREATENING LETTERS. [THREAT.]

THRENGES, also called **DRENCHES**, were vassals in the time of William the Conqueror, but not of the lowest degree. *Toml.*

THRITHING signifies a division consisting of three or four hundreds; or a court of such division. Hence the word *riding*. [HUNDRED; RIDING.]

THWERTNICK. An old Saxon word, taken to mean a custom of giving entertainments to the sheriffs, &c. for three nights. *Cowel.*

TICKET OF LEAVE is a written licence to a convict sentenced to penal servitude, to be at large before the expiration of his sentence. Such licence is granted under the hand or seal of one of her Majesty's principal secretaries of State (generally the Home Secretary), and is revocable at any time before the period of the holder's sentence has expired. *Stat.* 16 & 17 *Vict. c.* 99, *s.* 9. Such a licence may, by stat. 27 & 28 Vict. c. 47, s. 4, be written, printed or lithographed; and it may be in the form given in Schedule A to the latter Act. The conditions of the licence, as expressed in that form, are:—(1) The holder shall preserve his

TICKET OF LEAVE—*continued.*

licence, and produce it when called upon to do so by a magistrate or police officer; (2) he shall abstain from any violation of the law; (3) he shall not habitually associate with notoriously bad characters; (4) he shall not lead an idle and dissolute life, without visible means of obtaining an honest livelihood. If his licence is revoked in consequence of a conviction for any offence, he will be liable to undergo a term of penal servitude equal to the portion of his term which remained unexpired when the licence was granted. By s. 4, every holder of a licence is bound to report himself once a month at the chief police station of the district in which he resides. By s. 10, Her Majesty may grant licences in any other form than that set forth in Schedule A. But, whereas it is expressly provided by s. 5 of the Act, that the holder of a licence granted in the form set forth in Schedule A, who breaks any of the conditions of the licence so granted, is guilty of an offence punishable on summary conviction with imprisonment for three months, with or without hard labour, it is provided by s. 10 that no such consequence is to follow upon the breach of the conditions of a licence granted in any other form. See also 4 *Steph. Com.* 351; *Oke's Mag. Syn.* 319.

TICKET OF LEAVE MAN. A convict who has obtained a ticket of leave. [See preceding Title.]

TIEL (Fr. *Tel*). Such; *ex. gr.*, *nul tiel record*, no such record.

TIMBER. Wood fitted for building, or other such like uses. *Toml.* Oak, ash and elm are timber in all places; and, by the custom of some particular counties, in which other kinds of trees are generally used for building, they are also for that reason considered as timber; and for a tenant for life to cut down timber trees, or to do any act whereby they may decay, is waste, timber being part of the inheritance. See 2 *Bl.* 281—2; 3 *Steph. Com.* 406; *Fawcett, L. & T.* 217. [WASTE.]

TIMBERLODE. A service by which tenants were bound to carry timber felled from the woods to their lord's house. *Cowel; Toml.*

TIME BARGAIN is a contract for the sale of a certain amount of stock at a certain price on a future day, the vendor not in general having such stock to sell at the time of the contract, but intending to purchase it before the time appointed for the execution of the contract. Time bargains were forbidden by s. 4 of Sir John Barnard's Act (7 Geo. 2, c. 8), under a penalty of 500*l.* Such contracts could not, therefore, be enforced by the courts of law. As, however, any party failing to meet his engagement was stigmatized in the Stock Exchange as a *lame duck*, and his name exhibited as a defaulter, the disgrace attending upon a breach of such contracts secured their general observance. *Keyser.* Sir John Barnard's Act is now repealed by stat. 23 & 24 Vict. c. 28, passed in 1860. [BULL, 2; STOCK EXCHANGE.]

TIME IMMEMORIAL. TIME OUT OF MIND. These expressions denote time beyond legal memory; that is, the time prior to the commencement of the reign of Richard I., A.D. 1189. 1 *Steph. Com.* 57, 685—6. [LEGAL MEMORY.]

TIME OUT OF MIND. [See preceding Title.]

TIME POLICY is a policy of marine insurance in which the risk is limited, not to a given voyage, but to a certain fixed term or period of time. In such policies the risk insured is entirely independent of the voyage of the ship. *Arnould, Mar. Ins.* The time is to be reckoned according to the longitude of the place where the contract of insurance was made. *Crump, Mar. Ins. s.* 461. [MIXED POLICY; VOYAGE POLICY; WARRANTY.]

TIME THE ESSENCE OF THE CONTRACT. Where a contract specifies a time for its completion, or something to be done towards it, then, if time be of the essence of the contract, the non-performance by either party of the act in question by the time so specified will entitle the opposite party to regard the contract as broken. Whether time be or be not of the essence of the contract must, in the absence of express words, be gathered from the general character of the contract and the surrounding circumstances. By the Judicature Act, 1873, s. 25, sub-s. 7, stipulations as to time or otherwise are henceforth to receive, in all courts, the same construction as they would hitherto have received in courts of equity.

TINEMAN was of old a petty officer in the forest, who had the nocturnal care of vert and venison, and other servile employments. *Cowel.*

TINEWALD. The ancient parliament or annual convention of the Isle of Man. *Toml.*

TINSEL OF THE FEU, in Scotland, is the loss of a feu, incurred by allowing two years' feu duty to remain unpaid. *Bell.* [FEU.] It seems to correspond to the forfeiture formerly incurred in England by a tenant who for two years neglected to pay the rent or perform the services to which he was bound by his tenure. [CESSAVIT.]

TIP. A note of hand or promissory note. Sometimes it means a list of houses, trees, cattle, &c., preparatory to a tax upon them; sometimes a grant of revenue to a capitalist who has advanced money to the Government. *Wilson's Gloss. Ind.*

TIPSTAFF is an officer who attends the king's courts with a rod tipt with silver, his duty being to take into his charge all prisoners committed by the court, and to attend such prisoners as go at large upon licence. *Cowel.*

TITHE RENT-CHARGE is a rent-charge established in lieu of tithes under the Tithe Commutation Act, 1836 (stat. 6 & 7 Will. 4, c. 71). As between landlord and tenant, the tenant paying the tithe rent-charge is entitled, in the absence of express agreement, to deduct it from his rent, under s. 70 of the above Act. *Fawcett, L. & T.* 120, 223. By s. 81, a tithe rent-charge unpaid is recoverable by distress as rent in arrear. See *Oke's Mag. Syn.* 1478. [RENT; TITHES.]

TITHES. The tenth part of the fruits, prædial, personal and mixed, due to the ministers of the Church for their maintenance. *Cowel.* Tithes arise from the profits and stock of lands, or from the personal industry of the inhabitants of a parish. The former class are either *prædial*, among which are tithes of corn, grass, hops and wood; or *mixed*, as of wool, milk, pigs, &c.; the latter *personal*, as of occupations, trades, fisheries and the like. Of *prædial* and *mixed* tithes the tenth must be paid in gross; but of *personal* tithes only the tenth part of the clear profits is due; nor are tithes of this latter kind generally due at all, except so far as the particular custom of the place may authorize the claim. Hence it may be inferred, that whatever is of the substance of the earth, as stone, lime, chalk and the like, is not in its nature titheable; nor, except by force of special custom, is tithe demandable in respect to animals which are *feræ naturæ*. [FERÆ NATURÆ.]

Tithes are also divided into *great* and *small* tithes. *Small* tithes include tithes mixed and personal, whereas tithes of corn, hay and wood are generally comprised under *great* tithes; but no clear line of demarcation seems to have been drawn between them.

All tithes *primâ facie* by presumption of law belong to the *rector;* but any part of the tithes may be shown, by evidence, to belong to the *vicar*. [RECTOR; VICAR.] Such evidence may consist either of a deed of endowment, vesting certain tithes in the vicar, or of such proof of long usage as is sufficient to raise a presumption that an endowment of that description, though now lost, was anciently made. Not unfrequently an endowment vests all the *small* tithes in the vicar. *T. L.; Cowel;* 1 *Bl.* 384—8; 2 *Bl.* 24—31; 2 *Steph. Com.* 722—730. [MODUS DECIMANDI.]

Almost all the tithes of England and Wales are now commuted into rent-charges under the Tithe Commutation Act (stat. 6 & 7 Will. 4, c. 71), and the various statutes since passed for its amendment. 2 *Steph. Com.* 731—733. [TITHE RENT-CHARGE.]

TITHING (Lat. *Decuria*). The number or company of ten men with their families knit together in a society, all being bound to the king for the peaceable behaviour of each other. Of these companies, there was one chief or principal person called teothing-man or tithing-man, who was in fact a constable. *Cowel;* 1 *Bl.* 115; 1 *Steph. Com.* 123—126. [DECENNARY; FRANK-PLEDGE.]

TITHING-MAN. A constable or head of a tithing. 1 *Bl.* 406; 2 *Steph. Com.* 653. [TITHING.]

TITHING PENNY. A charge formerly payable from a tithing to the sheriff for keeping courts, &c. *Cowel.* [TITHING.]

TITLE. 1. A title of honour; which is an addition to a person's name, implying that he has some honour, office, or dignity. 1 *Bl.* 396—407; 1 *Steph. Com.* 406, 424; 2 *Steph. Com.* 601—608; *Wms. R. P.*

2. A title to orders; which is a certificate of preferment or provision required by the 33rd Canon, in order that a person may be admitted into holy orders; unless he be a fellow or chaplain in Oxford or Cambridge, or master of arts of five years' standing in either of the universities, and living there at his sole charges; or unless the bishop himself intends shortly to admit him to some benefice or curacy. 2 *Steph. Com.* 661.

3. *Title to Lands or Goods.*—This signifies either (1) a party's right to the enjoyment thereof; *or* the means where-

TITLE—*continued.*

by such right has accrued, and by which it is evidenced; or, as it is defined by Blackstone, the means whereby an owner hath the just possession of his property. 2 *Bl.* 195—199; 1 *Steph. Com.* 384—387; *Wms. R. P., Pt. V.*

When we speak of a man having a *good title* to his property we mean that the evidence of his right is cogent and conclusive, or nearly so; and when we speak of a *bad title* we mean that the evidence is weak and insufficient. A forty years' title is now in general sufficient in the case of sale of lands, under the Vendor and Purchaser Act, 1874 (stat. 37 & 38 Vict. c. 78). [DOCUMENT OF TITLE OF GOODS; DOCUMENT OF TITLE TO LANDS.]

4. The title of an act of parliament is its heading, and sometimes it has also a "short title," more condensed than the heading, mentioned in the body of the act as the name by which it is to be known.

5. The title of an affidavit consists of two parts; (1) the style of the court (or division of the High Court of Justice) in which the affidavit is to be used, and (2) the names of the parties to the action or other proceeding. *Lush's Pr.* 879, 880. Writs, pleadings, and all other documents used in legal proceedings are headed by similar titles, as to which see the Forms at the end of the 1st Schedule to the Judicature Act, 1875.

TITLE DEEDS. Deeds evidencing a person's right or title to lands, otherwise called *muniments of title.*

The possession of the title deeds is of importance, as the land cannot be sold without them. Thus, what is called an "equitable mortgage" is generally effected by a deposit of title deeds. Moreover, any mortgagee who negligently allows his mortgagor to retain the title deeds, and to raise money on a second mortgage of the land by fraudulently concealing the first mortgage, will have his security postponed to that of the second mortgagee.

TITULARS OF ERECTION. Persons who in Scotland, after the Reformation, obtained grants from the Crown of the monasteries and priories then *erected* into temporal lordships. Thus the titles formerly held by the religious houses, as well as the property of the lands, were conferred on these grantees, who were also called Lords of Erection and Titulars of the Teinds. *Bell.*

TOALIA. A towel. There was a tenure of lands by the service of waiting with a towel at the king's coronation. *Towl.*

TOCHER, in Scotland, is the marriage portion or dowry which a wife brings to her husband. *Wm. Bell; Paterson.*

TOFT. A messuage or house, or rather a place where a messuage hath stood and is not rebuilt. *T. L.; Cowel.*

TOFTMAN. The owner of a toft. *Spelman.*

TOLBOOTH. [TOLLBOOTH.]

TOLERATION ACT. The Stat. 1 William and Mary, st. 1, c. 18, passed in 1688-9, by which persons dissenting from the Church of England, except Papists and persons denying the Trinity, were allowed freely to assemble for religious worship according to their own forms, and in places of meeting duly certified, on condition of their taking the oaths of allegiance and supremacy, and making a declaration against transubstantiation, and (in the case of dissenting ministers) subscribing also to the Thirty-nine Articles. See 4 *Bl.* 52—54. The liberties granted by the Toleration Act have since, by subsequent statutes, been extended, and the exceptions removed. See 2 *Steph. Com.* 707—710.

TOLL. 1. A liberty to buy and sell within the precincts of a manor. 2. A tribute or custom paid for passage. 3. A liberty to take, or to be free from such tribute. Of this freedom the City of Coventry had an ancient charter, granted by Leofric (or Lurich), Count of Mercia, at the importunity of Godeva (or Godiva), his virtuous lady. *T. L.; Cowel.* [See also the following Titles; and, for the verb *to toll*, see TOLLED.]

TOLL THOROUGH. Money paid for the passage of man or beast in or through highways, or over ferries, bridges, &c. *T. L.; Cowel;* 3 *Steph. Com.* 129, *n.*

TOLL TRAVERSE. A toll paid for passing over a private person's ground. It is thus opposed to *toll thorough*, which is paid for passing over a public highway. *T. L.; Cowel;* 3 *Steph. Com.* 129, *n.*

TOLL TURNE. A toll paid at the return of beasts from fair or market, where they were not sold. *Cowel.*

TOLLAGE. A tallage, or tax. *Cowel.* [TALLAGE.]

TOLLBOOTH or **TOLBUTHE.**

1. A booth for the collection of tolls; or custom-house. *Johnson.*

TOLLBOOTH or **TOLBUTHE**—*continued.*

2. A place where goods are weighed. *Cowel.*

3. A prison. *Jamieson; Latham.*

Dr. Jamieson conjectures that the word *tollbooth*, originally signifying a place of custom, was transferred in its application to the place of confinement for those who refused to pay custom, and thence to prisons generally. *Sc. Dict.*

The Tollbooth of Edinburgh was built by the citizens in the year 1561, for the accommodation of the parliament and courts of justice, and for the confinement of debtors and malefactors. From the year 1640 this building was used solely for a jail, till its removal in 1817. It was popularly called the "Heart of Mid-Lothian." *Arnot; Eng. Encycl.; Sir Walter Scott.*

TOLLED. To *toll* is to take away; thus, when a man's right of entry upon lands was barred or taken away by lapse of time, or otherwise, it was said to be *tolled.*

TOLSESTER. An old duty paid by the tenants of some manors to the lords for liberty to brew and sell ale. *Cowel.*

TOLSEY. The seat of toll; that is, the place where merchants meet in a city or town of trade. *Toml.* It is also the name of the local court of civil jurisdiction in the city of Bristol.

TOLT was a writ by which a cause depending in a court baron might be removed therefrom into the Sheriff's County Court. *T. L.; Cowel;* 3 *Bl.* 34, 195. [COUNTY COURT; COURT BARON.]

TOLZEY. [TOLSEY.]

TONNAGE. 1. A custom or impost paid to the king for merchandise carried out or brought in in ships, at a certain rate for every ton. It was at first granted for the defence of the realm, the safeguard of the seas, and the safe passage of merchandise. *T. L.; Cowel;* 1 *Bl.* 315, 316; 2 *Steph. Com.* 561.

2. The number of tons' burden that a ship will carry. *Toml.*

TONTINE is a species of loan in which the parties who invest receive life annuities, with benefit of survivorship; so called from Lorenzo Tonti, a Neapolitan, who lived in the 17th century. The nature of the plan is this: An annuity, after a certain rate of interest, is granted to a number of people, divided into classes according to their respective ages; so that the whole annual fund of each class is regularly divided among the survivors of that class; and, on the death of the last survivor, reverts to the power by which the tontine was erected. *Encycl. Brit.*

TOOLS are those implements which are commonly used by the hand of man in some labour necessary for his subsistence. The tools of a person's trade are, by s. 15, sub-sect. 2, of the Bankruptcy Act, 1869 (stat. 32 & 33 Vict. c. 71), excepted from the general property which on his bankruptcy passes to his creditors.

TORA signifies a purse or bag of money. *Wilson's Gloss. Ind.*

TORT. A wrong; so called because it is wrested (*tortum*), wrung, or crooked. The word "tort" is especially used to signify a civil wrong independent of contract; that is to say, an actionable wrong not consisting in a breach of contract. An action for such a wrong is called an *action of tort.* Of this class are actions of libel, assault, trespass, &c. *Cowel;* 3 *Bl.* 117; 3 *Steph. Com.* 363; *Lush's Pr.* 142. [WRONG.]

TORT FEASOR. A wrong-doer, a trespasser. *Cowel.*

TORTIOUS. Wrongful. [See next Title.]

TORTIOUS OPERATION OF A FEOFFMENT. When a *tenant for life* made a feoffment in fee of the lands of which he was tenant for life, a freehold of inheritance passed to the feoffee, but a freehold *by wrong*, thus divesting the person in reversion or remainder of his *estate*, and leaving him a *right of entry*, of which he might avail himself *at once.*

But feoffments by *tenants in tail* (or *discontinuances*, as they were called) operated to take away not merely the *estate* of the party entitled in remainder, but also his *right of entry without action;* so that he was driven to his action to recover his estate when the time came. This effect of a discontinuance was abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 39; and such meaning as was left in the doctrine of the tortious operation of a feoffment was abolished in 1845 by sect. 4 of the Act to amend the Law of Real Property (8 & 9 Vict. c. 106). See 2 *Bl.* 274, 275; 1 *Steph. Com.* 509, 510; *Wms. R. P., Part I. ch.* 6. [DISCONTINUANCE OF AN ESTATE; ESTATE; FEOFFMENT; TALTARUM'S CASE.]

TORTURE. 1. A cruel and wanton infliction of pain on any living being.

2. The word is used especially in our

TORTURE—*continued.*

law books of the rack or question which was sometimes applied to extort confession from criminals. 4 *Bl.* 325, 326; 4 *Steph. Com.* 392, *n.*

TORY. Originally a nickname for the wild Irish in Ulster, and derived, according to Webster's conjecture, from *tor*, a bush, because the Irish banditti lived in the mountains or among trees.

It was in 1679 that the words Whig and Tory were first heard in their application to English factions, the most important difference at that time between them being on the subject of the Exclusion Bill, which was supported by the Whigs and opposed by the Tories. [EXCLUSION BILL; WHIG.]

According to Hallam, the cardinal principle of Toryism is, that the king ought to exercise all his prerogatives without the interference or unsolicited advice of parliament or people. The name of Tory is now not unfrequently applied to the Conservative party, though its distinctive historical meaning is lost.

TOTAL LOSS is the entire loss of an insured vessel, or of goods insured, so as to render the underwriters liable to the owner. [UNDERWRITER.]

Total loss is either *actual* or *constructive;* actual, when the thing is actually destroyed, or so damaged that it cannot ever arrive in specie at the port of destination; constructive, when the injury, though short of actual loss, is yet so great as to make the subject of it useless to its owner.

When the subject of the insurance, though not wholly destroyed, is placed in such peril as to render the successful prosecution of the venture improbable, the insured may treat the case as a total loss, and demand the full sum insured. In such case, however, he must, within a reasonable time, give notice to the insurer of his intention, and of his abandonment to the insurer of all right in the thing insured. 2 *Steph. Com.* 132, 133; *Arnould, Marine Ins.; Crump, Mar. Ins. s.* 330. [ABANDONMENT.]

TOTTED. A good debt to the king (*i. e.*, a debt paid to the sheriff, to be by him paid over to the king) was formerly noted as such by an officer, called the "foreign apposer," writing the word *tot* opposite to it in the estreat-roll in the Exchequer, to indicate that for so much (Lat. *tot*) the sheriff must account to the king. *T. L.; Cowel.* Debts "totted" were opposed to debts "nilled." [ESTREAT; FOREIGN APPOSER; NICHILLS.]

TOUJOURS ET ENCORE PRISZ. Always and still ready. [TOUT TEMPS PRIST.]

TOURN. [SHERIFF'S TOURN.]

TOUT TEMPS PRIST. *Always ready;* a plea, by way of defence to an action, brought by a plaintiff whose claim has never been disputed, to the effect that the defendant is, and always has been, ready to satisfy the plaintiff's demand. *Cowel;* 3 *Bl.* 303; 3 *Steph. Com.* 607.

At the present day the proper course for a defendant harassed by vexatious proceedings of this kind would be to pay the money into court, and plead the payment in discharge of his liability. *Lush's Pract.* 825—6; *Judicature Act*, 1875, 1*st Sched. Order XXX.*

TOWAGE. The towing of a ship or barge along the water by another ship or boat, or by men or horses. Also the money paid by bargemen to the owner of ground near a river or canal, where they tow a barge or other vessel. *Toml.*

TOWN CAUSE is a cause tried at the sittings for London and Middlesex. 3 *Steph. Com.* 517. [LONDON AND MIDDLESEX SITTINGS.]

TOWNS IMPROVEMENT CLAUSES ACT, 1847, is the stat. 10 & 11 Vict. c. 34, containing clauses in a convenient form for incorporation by reference in future acts of parliament applicable to particular towns. This Act deals with the following subjects:—Town surveyors, inspectors of nuisances, and health officers; the taking of lands without consent of owners; public sewers and house drains; paving, cleansing and improving streets, and laying out new streets; ruinous and dangerous buildings, nuisances, smoke, fire and ventilation; supply of water; slaughter-houses; execution of works; rates; bye-laws; the recovery of damages and penalties, and access to the special act of parliament (that is, the act applicable to any given town with which the Towns Improvement Clauses Act is incorporated).

TOWNS POLICE CLAUSES ACT, 1847 (stat. 10 & 11 Vict. c. 89) is an Act similar to the above. It deals with the following subjects:—The appointment, duties and expenses of constables; obstructions and nuisances, poundbreach, drunken persons, fires, places of public resort, hackney carriages, public bathing, recovery of damages and penalties, and access to the special act of parliament (that is, the act applicable to any given town with which the Towns Police Clauses Act is incorporated).

TRADE FIXTURES, in a house, or other premises occupied for the purposes of business, include machinery and utensils of a chattel nature, such as salt-pans, vats, &c. for soap-boiling; engines for working collieries; also buildings of a temporary description erected by the tenant for the purpose of carrying on his business. *Fawcett, L. & T.* 294—5.

TRADE UNION ACT, 1871, is the stat. 34 & 35 Vict. c. 31, passed for the purpose of giving legal recognition to trades unions. By s. 2, it is provided that the members of a trade union shall not be prosecuted for conspiracy merely by reason that the rules of such union are in restraint of trade; and by s. 3, that the agreements of trades unions shall not on that account be void or voidable. Provisions are also made with reference to the registration and registered offices of trades unions, and other purposes connected therewith.

TRADER. The following classes of persons, enumerated in the First Schedule to the Bankruptcy Act, 1869, are deemed to be traders for the purposes of that Act:—Alum makers, apothecaries, auctioneers, bankers, bleachers, brokers, brickmakers, builders, calenderers, carpenters, carriers, cattle or sheep salesmen, coach proprietors, cowkeepers, dyers, fullers, keepers of inns, hotels, or coffee-houses, lime burners, livery stable keepers, market gardeners, millers, packers, printers, sharebrokers, shipowners, shipwrights, stockbrokers, stockjobbers, victuallers, warehousemen, wharfingers, persons using the trade or profession of a scrivener, receiving other men's monies or estates into their trust or custody, persons insuring ships or their freight or other matters against perils of the sea, persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment or otherwise, in gross or by retail, and persons who, either for themselves or as agents or factors for others, seek their living by buying and selling, or buying and letting for hire goods or commodities, or by the workmanship or the conversion of goods or commodities.

TRADER DEBTOR SUMMONS. A summons formerly obtainable by the creditor of a trader under the Bankrupt Law Consolidation Act, 1849 (stat. 12 & 13 Vict. c. 106). Its operation was similar to that of the debtor summons under the present law. [DEBTOR SUMMONS.]

TRADES UNION FUNDS PROTECTION ACT, 1869, is the stat. 32 & 33 Vict. c. 61, passed for protecting the funds of trades unions from fraud and imposition, notwithstanding that rules of such unions might operate wholly or partially in restraint of trade. By section 2, this Act was not to continue in force after the 31st August, 1870. In 1871, notwithstanding that the Act had then expired, it was thought necessary to repeal it, which was done by stat. 34 & 35 Vict. c. 31, s. 24. [TRADE UNION ACT, 1871.]

TRAIL-BASTON. Justices of trail-baston were justices appointed by king Edward I. during his absence in the Scotch and French wars, about the year 1305. They were so styled, says Hollingshed, for *trailing* or drawing the staff of justice. Their office was to make inquisition, throughout the kingdom, of all officers and others, touching extortion, bribery, and such like grievances of intruders into other men's lands, barrators, robbers, breakers of the peace and divers other offenders. *Cowel; Toml.*

TRANSFER OF CAUSE is the removal of a cause from one court or judge to another by lawful authority.

By the Judicature Act, 1873, s. 36, and by the Judicature Act, 1875, s. 11, sub-s. 2, any cause or matter may be transferred, with or without the consent of the parties thereto, as may be directed by Rules of Court; and by Order LI. rule 1, any action or actions may be tranferred from one division to another, or from one judge of the Chancery Division to another, by an order of the Lord Chancellor; provided that no transfer shall be made from or to any division without the consent of the president of that division. In certain cases, also, under ss. 7—10 of the County Courts Act, 1867 (stat. 30 & 31 Vict. c. 142), and s. 67 of the Judicature Act, 1873, an action may be ordered to be transferred to the county court.

TRANSFERENCE, in the law of Scotland, is where a party in an action dies while it is pending, and the action is transferred to the heir of the deceased. If it is the pursuer (*i. e.*, plaintiff) who dies and whose heir takes up the action, the transference is said to be *active;* if it is the defender or defendant, the transference is said to be *passive. Bell.* A party who desires the transference of a cause may now, under stat. 31 & 32 Vict. c. 100, s. 96, enrol the cause before the Lord Ordinary, and lodge a minute craving a transference of the cause as against the party specified in the minute. The corresponding English practice is

TRANSFERENCE—*continued.*

regulated by the Judicature Act, 1875, First Schedule, Order L. rule 2, by which the court or a judge may, in case of the marriage, death, bankruptcy or devolution of estate by operation of law of any party to an action, order that the husband, representative, trustee or other successor in interest of such party be made a party to the action.

TRANSGRESSIONE. An old name for the action of trespass, including trespass on the case. *Cowel.* [ACTION ON THE CASE; TRESPASS.]

TRANSIRE. A warrant from the custom-house to let goods pass. *T. L.; Cowel; Stat.* 16 & 17 *Vict. c.* 107, *s.* 156.

TRANSITORY ACTION. An action founded on such cause as may be supposed to take place anywhere,—as in the case of trespasses to goods, batteries, and the like. Transitory actions are opposed to local actions, which are founded on such causes of action as necessarily refer to some particular locality, as in the case of trespasses to land. 3 *Bl.* 294; 3 *Steph. Com.* 366; *Lush's Pr.* 405—410. Formerly, transitory actions might be tried anywhere, but in local actions, the venue must have been laid, and the trial had, in the county where the trespass or other cause of action took place. Now, by the Judicature Act, 1875, First Schedule, Order XXXVI. rule 1, there is to be no local venue for the trial of any action. [VENUE.]

TRANSITU (STOPPAGE IN). [STOPPAGE IN TRANSITU.]

TRANSLATION. 1. A version of a book or publication out of one language into another. *Cowel;* 2 *Steph. Com.* 42. Where the laws of copyright require a *translation* to be made of a foreign work for which copyright is claimed, this requirement is not satisfied by mere *adaptation.* See *Wood* v. *Chart* (the "Frou Frou" case), *L. R.*, 10 *Eq.* 193; 39 *L. J., Ch.* 641; 22 *L. T., N. S.* 432; 18 *W. R.* 822.

2. The removal of a bishop from one diocese to another. *Cowel.*

TRANSPORTATION is the banishing or sending away a person convicted of crime, either pursuant to the express terms of a judicial sentence, or as a condition of pardon by the Crown, to some place out of the United Kingdom, there to remain during the term for which he is ordered to be transported. It has been held, therefore, that a convict under such circumstances is not restored to his civil rights till after the expiration of the term for which he is ordered to be transported. *Bullock* v. *Dodds,* 2 *Barn. & Ald.* 258. And more recently, in the case of the Tipperary Election Petition, decided by the Irish Court of Common Pleas, on the 26th of May, 1875, it was laid down emphatically that transportation is not merely exile, and that a person ordered to be transported does not complete his sentence by merely remaining out of the country, nor purge himself thereby of the disabilities created by his conviction. In order that he may do this, he must remain in the place to which he is sent, and there suffer his sentence (unless, of course, he receive a pardon from the Crown before the expiration of his term). *Ir. Rep.*, 9 *C. L.* 217.

Transportation is now superseded by penal servitude, under stat. 16 & 17 Vict. c. 99 (passed in 1853), and stat. 20 & 21 Vict. c. 3 (passed in 1857). See also 27 & 28 *Vict. c.* 47. [PENAL SERVITUDE.]

TRANSUMPT. An action in Scotland, brought by one having an interest in a deed or writing, to have it produced, so that a copy may be taken in court.

The copy produced in the action is also called a *transumpt. Bell; Paterson.*

TRAVERSE is a denial, in pleading, of facts alleged on the other side. *T. L.; Cowel;* 3 *Bl.* 312; 3 *Steph. Com.* 504; *Hunt. Eq.* [SPECIAL TRAVERSE. See also the following Titles.]

TRAVERSE OF AN INDICTMENT. 1. The denial of an indictment by plea of not guilty. 4 *Bl.* 351. 2. The postponement of the trial of an indictment after a plea of not guilty thereto. This was formerly customary in indictments for misdemeanors, but is now prohibited by stat. 14 & 15 Vict. c. 100, s. 27 (passed in 1851). 4 *Steph. Com.* 419; and see *n.* (*f*).

TRAVERSE OF AN OFFICE is the challenging, by a subject, of an inquest of office, as being defective and untruly made. 3 *Bl.* 260. [INQUEST; OFFICE FOUND.]

TRAVERSE TOLL. [TOLL TRAVERSE.]

TRAVERSING NOTE. A note filed by a plaintiff in Chancery on behalf of a defendant who has refused or neglected to answer, the effect of which is to deny the statements of the bill, and to put the plaintiff upon proof of the whole. This is a course by which a plaintiff, if he thinks that he can himself prove his case against a defendant, who has so refused or neglected to answer, may save

TRAVERSING NOTE—*continued.*

great expense and delay. *Hunt. Eq.; Goldsmith's Eq.*

The traversing note does not appear to be abolished under the Judicature Acts, but the provisions contained in Order XXIX., in reference to default in pleading, will probably render it unnecessary.

TRAWLERMEN. A kind of fishermen on the River Thames, who used unlawful arts and engines to destroy fish. *Toml.*

TRAYLBASTON. [TRAILBASTON.]

TREADMILL or **TREADWHEEL** is an instrument of prison discipline, being a wheel or cylinder with a horizontal axis, having steps attached to it, up which the prisoners walk, and thus put the axis in motion. The men hold on by a fixed rail, and as their weight presses down the step upon which they tread, they ascend the next step, and thus drive the wheel. *Encycl. Brit. Vol. XIV. p.* 480.

TREASON. A betraying, treachery, or breach of faith, especially against the sovereign or liege lord. Treason against the sovereign has always been regarded as *high* treason, in contradistinction to certain offences against private superiors, which were formerly ranked as *petty* treason. [PETIT TREASON.]

Treason is defined by the Statute of Treasons, 25 Edw. 3, stat. 5, c. 2 (passed in 1350), as consisting in one or other of the following acts:—

1. When a man doth compass or imagine the death of our lord the king, of our lady his queen, or of their eldest son and heir. These words include a queen regnant.

2. If a man do violate the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir.

3. If a man do levy war against our lord the king in his realm.

4. If a man be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere.

5. If a man counterfeit the king's great or privy seal.

6. If a man counterfeit the king's money; and if a man bring false money into the realm counterfeit to the money of England, knowing the money to be false, to merchandise and make payment withal.

7. If a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices.

Of the above branches, Nos. 5 and 6 are no longer treason; counterfeiting the great or privy seal being an ordinary felony under statute 24 & 25 Vict. c. 98, relating to forgery; and No. 6 being the offence of coining, which now, under stat. 24 & 25 Vict. c. 99, is also felony. And the protection afforded by the provision relative to the slaying of the judges is extended to the Lords of Session and the Lords of Justiciary in Scotland by stat. 7 Anne, c. 21.

It is now sufficient to speak of high treason as treason simply, seeing that petty treason, as a distinct offence, has been abolished.

Men convicted of high treason were formerly sentenced to be drawn on a hurdle to the place of execution, and to be there hanged and disembowelled alive, and then beheaded and quartered. Women, for all kinds of treason, were sentenced to be burned alive.

By stat. 30 Geo. 3, c. 48, passed in 1790, hanging was substituted for burning in the case of women convicted of high or petty treason; and by stat. 54 Geo. 3, c. 146, passed in 1814, men convicted of treason were to be drawn to the place of execution, and hanged till dead, and then beheaded and quartered. And now by stat. 33 & 34 Vict. c. 23, s. 31, passed in 1870, the punishment of treason is reduced to hanging (in public). *T. L.; Cowel;* 4 *Bl.* 74—93; 4 *Steph. Com.* 149—164; *Cox & Saunders' Cr. Law*, 448. [See next Title.]

TREASON FELONY, under statute 11 & 12 Vict. c. 12, passed in 1848, is the offence of compassing, devising, &c. to depose her Majesty from the Crown; or to levy war in order to intimidate either House of Parliament, &c.; or to stir up foreigners by any printing or writing to invade the kingdom. This offence is punishable with penal servitude for life, or for any term not less than five years, &c., under statutes 11 & 12 Vict. c. 12, s. 3; 20 & 21 Vict. c. 3, s. 2; 27 & 28 Vict. c. 47, s. 2. See 4 *Steph. Com.* 167. By the statute firstly above mentioned, the Government is enabled to treat as felony many offences which must formerly have been treated as high treason.

TREASURE TROVE (Lat. *Thesaurus inventus*) consists of money, coin, gold, silver, plate or bullion found hidden in the earth or other private place, the owner thereof being unknown. In such

TREASURE TROVE—*continued.*

case the treasure belongs to the Crown, and any person concealing the same from the Crown is liable to fine and imprisonment. *T. L.; Cowel;* 1 *Bl.* 295—297; 4 *Bl.* 121; 2 *Steph. Com.* 539, 546; 4 *Steph. Comm.* 199; *Oke's Mag. Syn.* 1106, 1107.

TREASURER. An office to whom the treasure of another is committed to be kept and truly disposed of. The chief of these was the Lord High Treasurer of England, who was a lord by his office; and he held his place during the pleasure of the Crown. His office is now generally executed, under statute 56 Geo. 3, c. 38, passed in 1816, by the Commissioners of her Majesty's Treasury. *Cowel;* 2 *Steph. Com.* 528. [LORD TREASURER; LORDS COMMISSIONERS; TREASURY.]

TREASURER'S REMEMBRANCER. [REMEMBRANCERS.]

TREASURY. The Lords Commissioners of the Treasury, being the department of State under whose control the royal revenue is administered. 2 *Steph. Com.* 528. [TREASURER.] Hence the word is often used to signify the Government or Administration for the time being.

TREBUCKET. The cucking-stool or ducking-stool for scolds. *Cowel;* 4 *Bl.* 169; 4 *Steph. Comm.* 277. [CASTIGATORY FOR SCOLDS.]

TRESAIEL or **TRESAYLE.** A grandfather's grandfather. The old writ of *tresaiel* (a species of the writ of *cosinage*) lay for a man claiming as heir to his grandfather's grandfather, to recover lands of which he had been deprived by an "abatement" happening on the ancestor's death. 3 *Bl.* 116. Abolished in 1833 by 3 & 4 Will. 4, c. 27, s. 36. [ABATEMENT, 5; AIEL; BESAIEL; COSINAGE.]

TRESPASS (Lat. *Transgressio*). 1. Any transgression or offence against the law. 2. Any misfeasance or act of one man whereby another is injuriously treated or damnified. 3. The action brought for injury done to person or property with violence. This action, when brought for an unwarrantable entry upon land of the plaintiff, was called trespass *quare clausum fregit.* [CLOSE; QUARE CLAUSUM FREGIT.] 4. *Trespass on the case.* This is a form of action for some unlawful act, negligence or omission, whereby damage has resulted to the plaintiff. *Cowel;* 3 *Bl.* 208–215; 3 *Steph. Com.* 363, 364, 398. [ACTION ON THE CASE; FORMS OF ACTION.]

TRESPASSANTS. Used in Britton for passengers. *Cowel. Trespasser,* in old French, signified originally "to pass," or "pass away;" but it gradually came to signify "to die a natural death:" hence *trépassé* signifies "deceased." *Littré.*

TRET. [TARE AND TRET.]

TREVOR. Sir John Trevor, Master of the Rolls, was born in the middle of the 17th century. He was a cousin of Judge Jeffreys. He was called to the bar in May, 1661, became Treasurer of the Inner Temple in 1674, and Reader in 1675. He was knighted in 1675, and in 1679 was elected to Parliament for the borough of Beeralston. On the accession of James II., he obtained a seat in Parliament for the town of Denbigh, and was elected Speaker. On the 20th of October, 1685, he was promoted to the office of Master of Rolls, and on July 6, 1688, was admitted to the Privy Council. At the Revolution he, with all the other judges, lost his place. He was again elected for Beeralston, and in 1690 for Yarmouth. In 1695, he was accused of receiving bribes, and was obliged, as Speaker, to put the question to the House, and declare himself guilty of a high crime and misdemeanor. He was expelled, and a new Speaker appointed. But he continued to occupy the office of Master of the Rolls till his death in 1717. He married Jane, daughter of Sir R. Mostyn, and had by her four sons and a daughter, from whom the great Duke of Wellington was descended. *Foss.*

Sir John Trevor's marriage articles gave rise to *Trevor's case,* as to which see the next Title.

TREVOR'S CASE. There is a Dr. Trevor's case, decided in 1610, and reported Cro. Jac. 269, in which it was decided that the officers of the ecclesiastical courts could not sell their offices. But the principal case of this name is that which arose out of Sir John Trevor's marriage articles. [TREVOR.] This case, which was decided in 1720, and is reported 1 P. Wms. 622, is one of the earliest cases on the subject of executory trusts.

Sir John Trevor, by articles of agreement made before marriage, covenanted with trustees, within two years, to settle an estate to the use of himself for life, remainder to his intended wife for life, remainder to the heirs male of him on her body to be begotten, &c.; and, in default of making a formal settlement, he covenanted to stand seised to the same uses. [COVENANT TO STAND SEISED.] No settlement was made pursuant to the

TREVOR'S CASE—*continued.*

articles. Now, according to the *Rule in Shelley's Case*, the technical effect of the language so used, in a conveyance of land, would be to give Sir John Trevor an estate tail in the property, subject only to his wife's life estate therein. [RULE IN SHELLEY'S CASE.] And, as an estate tail may be barred and turned into a fee simple, Sir John Trevor, if the technical construction of the words used was to prevail, would be enabled to disinherit his children at his pleasure, notwithstanding the apparent intention expressed in the covenant to provide for the "heirs male of his body."

Sir John, being provoked by the conduct of his eldest son, barred the entail he conceived himself to have, and left the lands to his second son; providing, nevertheless, amply for his eldest son in other respects. After Sir John's death, his eldest son took proceedings to compel a conveyance of the lands to himself, and maintained that the real meaning of the articles was that Sir John was to have no more than a life estate, and that, after the deaths of himself and his lady, the estate was to go to the first and other sons successively in tail male. This would, in effect, give the eldest son, as soon as he came of age, a right to dispose of the property absolutely.

And the Lord Chancellor Macclesfield decided accordingly; holding that a *covenant to settle land*, and *an actual settlement of land*, were two different things, and that the technical rules applicable to the latter had no application to the former.

In connexion with this case the reader is referred to the Judicature Act, 1875, First Schedule, Appendix (C.), Form No. 25. The material facts presented hypothetically in the statements of claim and defence given in that Form are substantially the facts of *Trevor's Case*, except that the position of the parties is reversed, the equitable claim being set up in the form of a defence to an action.

TREYTS. Taken out or withdrawn; applied to a juror removed or discharged. *Toml.*

TRIAL. The examination of a cause civil or criminal, before a judge who has jurisdiction over it, according to the laws of the land. *T. L.; Cowel;* 3 *Bl.* 330—385; 4 *Bl.* 322—364; 3 *Steph. Com.* 482—626; 4 *Steph. Com.* 389—439.

By the Judicature Act, 1875, First Schedule, Order XXXVI. rule 2, civil actions are to be tried and heard in one of the following ways:—(1) Before a judge or judges; (2) before a judge sitting with assessors; (3) before a judge and jury; (4) before an official or special referee, with or without assessors. Either party, however, is entitled to insist that the action be tried before a judge and jury.

In criminal informations in the Court of Queen's Bench, and in indictments, wherever preferred, the trial (unless the party plead guilty) must take place before a judge or judges (or other presiding magistrate), and a jury. But minor offences against the laws are in general dealt with summarily before magistrates. [See the following Titles.]

TRIAL AT BAR. This phrase has hitherto been used to denote a trial before all the judges of one of the superior courts at Westminster, or before a quorum representing the full court. As to civil cases, by the Judicature Act, First Schedule, Order XXXVI. rule 7, every trial of any question or issue of fact by a jury shall be held before a single judge, unless specially ordered to be held before two or more judges.

TRIAL BY CERTIFICATE. [CERTIFICATE, TRIAL BY.]

TRIAL BY RECORD. [RECORD, TRIAL BY.]

TRIDING, &c. [TRITHING, &C.]

TRINA ADMONITIO. Threefold warning. [PEINE FORTE ET DURE.]

TRINITY HOUSE. A company of masters of ships incorporated in the reign of Henry VIII., and charged by many successive Acts of Parliament with numerous duties relating to the marine, especially the appointment and licensing of pilots, and the superintendence of light-houses, buoys and beacons. See 2 *Steph. Com.* 502; 3 *Steph. Com.* 156, 158.

Trinity House is a self-elected body, and is composed of *elder brethren* and *younger brethren*. The elder brethren manage the affairs of the society, being for the most part elected from the younger brethren. [ELDER BRETHREN.]

TRINITY TERM. One of the law terms, beginning generally on the 22nd of May, and ending on the 12th of June. [TERM, 1.] Now superseded by Trinity sittings. [LONDON AND MIDDLESEX SITTINGS.]

TRINODA NECESSITAS was the threefold obligation to which every man's estate was by the ancient law subject, *pontium reparatio, arcium constructio, et expeditio contra hostem;* that is, repairing

TRINODA NECESSITAS—*continued.*

bridges, building castles, and repelling invasions. 1 *Bl.* 263, 357; 2 *Bl.* 102; 1 *Steph. Com.* 227; 2 *Steph. Com.* 498; 3 *Steph. Com.* 129.

TRIORS, TRIOURS or TRIERS. 1. The lords selected to try a peer, when indicted for felony, in the Court of the Lord High Steward. [HIGH STEWARD.]

2. Two indifferent persons named by the Court to try the reasonableness of an objection taken by a party to a juror on the ground of some alleged probable circumstances of suspicion, as acquaintance and the like; or to the whole panel of jurors, on account of a like objection to the sheriff. *T. L.; Cowel;* 3 *Bl.* 363; 3 *Steph. Com.* 522, 526. [CHALLENGE; FAVOUR, CHALLENGE TO.]

TRIPLICATIO. The stage in Roman law pleading answering to the surrejoinder in an action at common law. 3 *Bl.* 310. [SURREJOINDER.]

TRITHING, TRIDING or TRIHING. In ancient times, when a county was divided into three jurisdictions, each of them was anciently called a trithing, triding or trihing. These divisions still subsist in the large county of York, where by an easy corruption they are denominated *ridings. Cowel;* 1 *Bl.* 117; 1 *Steph. Com.* 127.

TRITHING MOTE. The court held for a trithing or riding. *Toml.*

TRITHING REEVE. The officer over a trithing or triding. 1 *Bl.* 117; 1 *Steph. Com.* 127. [TRITHING.]

TRIVERBIAL DAYS. The judicial days in the Roman calendar for deciding causes; so called because in so deciding the prætor pronounced the three words *do, dico* and *addico.* 3 *Bl.* 424.

TRONAGE. A custom or toll taken for weighing wool. *T. L.; Cowel.*

TROPHY MONEY. Money formerly raised and collected in London and the several counties of England, towards providing harness and maintenance for the militia. *Toml.*

TROVER (from Fr. *Trouver*, to find) was one of the forms of action at law, being originally a kind of action of trespass on the case, based on the finding by defendant of the plaintiff's goods, and converting them to his own use. But in time the suggestion of the finding became mere matter of form, and all that it became necessary to prove was that the goods were the plaintiff's, and that the defendant converted them to his own use. In this action the plaintiff cannot recover the specific chattel, but only damages for its conversion. The fictitious suggestion of the "finding" was abolished by the Common Law Procedure Act, 1852, by which a simple form of declaration was introduced for such cases. *T. L.; Cowel;* 3 *Bl.* 152-3; 3 *Steph. Com.* 363, n., 425-7. [DETINUE; FORMS OF ACTION.]

TRUCK SYSTEM. A name given to the practice of paying the wages of workmen in goods instead of money. The plan has been for the masters to establish warehouses or shops, and the workmen in their employment have either (1) got their wages accounted for to them by supplies of goods from such depôts, without receiving any money, or (2) they have got the money, with a tacit or express understanding that they were to resort to the warehouses or shops of their masters for such articles as they were furnished with. *M'Culloch's Comm. Dict.*

This system of dealing being considered open to grave abuses, was abolished in 1831 by stat. 1 & 2 Will. 4, c. 37, commonly called the Truck Act. By sects. 1 and 2, contracts for the hiring of artificers in certain trades (enumerated in sect. 19) are to be made in the current coin of the realm, and without any stipulations as to the manner in which the wages shall be expended; otherwise they are declared to be illegal and void; and, by sect. 10, any employer entering into such a contract, or making any illegal payment, is liable to be fined as therein mentioned.

TRUE BILL. [BILL, 3.]

TRUE, PUBLIC AND NOTORIOUS. [PUBLIC, TRUE AND NOTORIOUS.]

TRUST. 1. A confidence reposed by one person in conveying or bequeathing property to another, that the latter will apply it to a purpose or purposes desired by the former. These purposes are generally indicated in the instrument, whether deed or will, by which the disposition is made.

2. Hence it signifies the beneficial interest created by such a transaction. In this sense it may be defined as a beneficial interest in, or ownership of, real or personal property, unattended with the legal or possessory ownership thereof. *Sm. Man. Eq., Tit. III.* See also 1 *Steph. Com.* 371; *Chute's Eq. chaps.* 1, 2.

A trust is spoken of by Blackstone (3 *Bl.* 439) as a second use; that is to

TRUST—*continued.*

say, a use upon a use. [TYRRELL'S CASE; USE; USES, STATUTE OF.]

For the various kinds of trusts, see under their respective Titles. See also the following Titles.

TRUSTEE. A person to whom an estate is conveyed, devised, or bequeathed, in trust for another or others. *Sm. Man. Eq.*

TRUSTEE ACTS, 1850 and 1852. The stats. 13 & 14 Vict. c. 60, passed in 1850, and 15 & 16 Vict. c. 55, passed in 1852, enabling the Court of Chancery, without bill filed, to appoint new trustees in lieu of any who, on account of death, lunacy, absence, or otherwise, are unable or unwilling to act as such; and also to make vesting orders by which legal estates and rights may be transferred from the old trustee or trustees to the new trustee or trustees so appointed. 1 *Steph. Comm.* 376, 446; *Wms. R. P.*; *Hunt. Eq.*

TRUSTEE RELIEF ACTS. The stat. 10 & 11 Vict. c. 96, passed in 1847, and stat. 12 & 13 Vict. c. 74, passed in 1849, by which a trustee is enabled to pay money into court [PAYMENT OF MONEY INTO COURT] in cases where a difficulty arises respecting the title to the trust fund. A trustee wishing to avail himself of these Acts must file an affidavit stating shortly the circumstances under which the difficulty has arisen, and the exact sum for which he acknowledges himself to be accountable, and the Paymaster-General will then direct the payment thereof into court. *Hunt. Eq., Pt. III. ch.* 4.

TRUSTS. [TRUST; TRUSTEE.]

TUB-MAN is one of the two most experienced barristers in the Court of Exchequer (the other being called the *post-man*), who have precedence in motions in that court. [POST-MAN.]

TUMBRELL. A cucking-stool, or ducking-stool. *T. L.; Cowel;* 4 *Steph. Com.* 269, *n.* [CASTIGATORY FOR SCOLDS.]

TUMULTUOUS PETITIONING is a misdemeanor under stat. 13 Car. 2, st. 1, c. 5, by which it is enacted that not more than twenty names shall be signed to any petition to the Crown or either House of Parliament for the alteration of matters established by law in Church or State, unless the contents thereof be previously approved, in the country, by three justices, or the majority of the grand jury at assizes or quarter sessions; and in London, by the lord mayor, aldermen, and common council; and that no petition be delivered by a company of more than ten persons; on pain, in either case, of incurring a penalty not exceeding 100*l.* and three months' imprisonment. 4 *Bl.* 147, 148; 4 *Steph. Com.* 255.

TUN-GREVE. A town-reeve or bailiff. *Cowel.*

TUNNAGE. [TONNAGE.]

TURBAGIUM. The liberty of digging turf. *Tyml.* [See next Title.]

TURBARY (Lat. *Turbagium*). The right to dig turf on another man's ground. And *common of turbary* is a liberty which some tenants have by prescription to dig on the lord's waste. *T. L.; Cowel;* 2 *Bl.* 34; 1 *Steph. Com.* 653; *Wms. R. P.* [COMMON.]

TURN or **TOURN.** [SHERIFF'S TOURN.]

TURNED TO A RIGHT. By this phrase, according to Mr. Serjeant Stephen, is generally meant that a person whose estate is divested by usurpation cannot expel the possessor by mere entry, but must have recourse to an action, either possessory or droitural. 3 *Steph. Com.* 390, *n.* Blackstone, however, uses the expression "put to a right" to apply to the case where the owner of land was so far divested of his right of possession as to be unable to bring a possessory action to recover the land, and was driven to his "writ of right," or action in the nature of a writ of right. 2 *Bl.* 197. He also, in a subsequent passage, speaks of the estate of the owner in such a case as being "turned into a *mere* right." 3 *Bl.* 191. [ACTIONS ANCESTRAL, POSSESSORY, AND DROITURAL; WRIT OF RIGHT.]

TURNO VICECOMITUM. A writ that lay for those who were called to the sheriff's tourn out of their own hundred. *Cowel.* [SHERIFF'S TOURN.]

TURNPIKE ACTS are local acts of parliament under which certain highways, thence called turnpike roads, are kept in repair; by which acts the management of such roads is usually vested, for a term of years, in trustees or commissioners; who are empowered thereby to erect toll-gates, and to levy tolls from those who pass through, as a fund for defraying the expenses of repairs or improvements. 3 *Steph. Comm.* 131. Besides which, there are certain general acts of parliament passed in relation to turnpike roads, among which we may mention the following:—stat. 3 Geo. 4, c. 126, passed in 1822; stat. 4 Geo. 4,

TURNPIKE ACTS—*continued.*

c. 95, passed in 1823; stat. 7 & 8 Geo. 4, c. 24, passed in 1827; stat. 9 Geo. 4, c. 77, passed in 1828; stat. 4 & 5 Vict. c. 33, passed in 1841. See *Oke's Mag. Syn.* 690—714. [See also next Title.]

TURNPIKE ROAD is a highway, upon which gates and barriers are set up, and tolls collected; the distinctive mark of a turnpike road being the right of turning back any person who refuses to pay toll. Under the simple system of the common law, whenever a highway was out of repair, the inhabitants of the parish were bound, by actual labour therein, to reinstate it in good order. Under the Highway Acts, a ministerial agent is appointed to superintend the management of highways, whilst by the Turnpike Acts an additional body are appointed proprietors of the road, nevertheless upon trust for the public. They are empowered to bargain and sell, to raise money by mortgage, and to levy taxes for the repair and improvement of the roads placed under their management. *Bateman's Turnpike Road Acts.* [HIGHWAY; SURVEYOR OF HIGHWAYS; TURNPIKE ROAD.]

TURPIS CAUSA. An illegal or immoral consideration by which a contract is vitiated.

TWANIGHT GESTE. A guest of two nights. *Cowel.* [AGENHINE.]

TWELPHINDI. The highest rank of men in the time of the Saxons, who were valued at one thousand two hundred shillings; and, if any injury were done to such persons, satisfaction was to be made according to their worth. *Toml.*

TWYHINDI. The lower order of Saxons, valued at 200*s.* as to pecuniary mulcts inflicted for crimes. *Toml.* [WERE: see also preceding Title.]

TWYNE'S CASE was a case decided in 1602 upon the Statute of Fraudulent Conveyances (13 Eliz. c. 5). In this case P. was indebted to T. in 400*l.*, and to C. in 200*l.* C. brought an action of debt against P., and, pending the writ, P., being possessed of goods of the value of 300*l.*, made to T. a secret gift of all his property in satisfaction of his debt. P. continued in possession. It was held that, having regard to the fact that the gift was a general gift of all the donor's property; that it was secret, and made pending the writ; and that the donor continued in possession; the transaction was fraudulent and void under stat. 13 Eliz. c. 5. *Smith's Leading Cases.*

TYLWITH. A tribe or family branching forth from another; called in the old English heraldry second or third houses.

TYNWALD. [TINEWALD.]

TYRRELL'S CASE is the leading case by which it was decided that there cannot, at law, be "a use upon a use."

In this case, which was decided in 1557, Jane Tyrrell, widow, for the sum of 400*l.* paid by G. Tyrrell her son and heir apparent, bargained and sold, &c. all her lands to G. Tyrrell and his heirs for ever, to the use of herself for her life, and after her death to the use of G. Tyrrell and the heirs of his body; and, in default of such issue, to the heirs of the said Jane for ever. The bargain and sale was enrolled in Chancery in pursuance of the Statute of Enrolments (stat. 27 Hen. 8, c. 16). [ENROLMENT.] Now the transaction called a "bargain and sale" would, prior to the Statute of Uses (stat. 27 Hen. 8, c. 10), have given to the bargainee the *use* in the land. And by means of that statute the *use* became turned into a *legal estate.* [BARGAIN AND SALE; USE; USES, STATUTE OF.] This being so by operation of law, the question in *Tyrrell's case* was, what was the effect of the use to Jane Tyrrell, &c. expressly limited in the deed? And the judges were all of opinion that such a limitation was void, and that there could not be a "use upon a use." *Tudor, L. C. R. P.* 274.

TYTHES. [TITHES.]

TYTHING. [TITHING.]

UBERRIMA FIDES. The most perfect frankness.

UDAL. Allodial; property possessed independently of any superior. 2 *Bl.* 45, *n.*; *Bell.* [FEE; FEUDAL SYSTEM; ODHAL.]

UKASE. An edict of the Emperor of Russia. The word is derived, according to *Littré*, from the word *ukasati*, which signifies "to indicate."

ULLAGE. A want of measure in a cask. *Toml.* Properly, the quantity required to fill it up. *Wedgwood.*

ULNA FERREA. The standard ell of iron, formerly kept in the Exchequer for the rule of measure. *Toml.*

ULPIAN. Domitius Ulpianus was one of the five great Roman jurists, upon whose writings the compilations of Justinian are mainly founded. The greater part of his works were written in the reign of Caracalla. He was banished under Elagabalus, who became emperor A.D. 217; but, on the accession of Alexander Severus, in A.D. 222, he became the emperor's chief adviser. He perished in the year 228 by the hands of the soldiers, who forced their way into the palace, and killed him in the presence of the emperor and his mother. *Smith's Dict. Biog.*

ULTIMATUM. A final proposal in a negotiation in which it is intimated that, in case of its rejection, the negotiation must be broken off.

ULTRA VIRES. Beyond their powers; a phrase applied especially to directors of companies exceeding their legal powers under the articles of association or the acts of parliament by which they are governed; though it is equally applicable to excess of authority of any kind.

UMPIRAGE. The decision of an umpire. [See next Title.]

UMPIRE. 1. An arbitrator. [ARBITRATION.]

2. Especially, a referee called in to decide between the judgment of two arbitrators who cannot agree. 3 *Bl.* 16; 3 *Steph. Com.* 259, 260; *Lush's Pr.* 1041; *Common Law Procedure Act*, 1854 (*stat.* 17 & 18 *Vict. c.* 125), *s.* 12.

UNA VOCE. With one voice; unanimously.

UNCEASESATH. A Saxon word compounded of *un*, not, *ceas*, a law suit, and *ath*, an oath. It signifies that he who kills a thief may make oath that he killed him in flying for the fact, and his relations will not avenge his death. *Cowel.*

UNCERTAINTY is where a deed or will is so obscure and confused that the judges can make nothing of it, which sometimes occurs in wills made by testators without legal advice. Any disposition or conveyance to which it is impossible to affix a meaning is said to be *void for uncertainty;* but the judges will use every effort to affix a meaning to the language used where it is possible to do so. See the will in *Blount* v. *Wheble*, 21 L. T., N. S. 259.

UNCONSCIONABLE BARGAIN. A bargain so one-sided and inequitable in its terms as to raise a presumption of fraud and oppression. [USURY, 2.]

UNCONSTITUTIONAL. [CONSTITUTIONAL.]

UNCORE PRIST (*Encore prêt*). Still ready. [TOUT TEMPS PRIST.]

UNCUTH. Unknown; of a guest on his first night. [AGENHINE.]

UNDE NIHIL HABET. [DOTE UNDE NIHIL HABET.]

UNDECIM TALES. Eleven such; being a supply of eleven men summoned to make up a deficient panel of jurors. 3 *Steph. Com.* 528. [TALES.]

UNDEFENDED. 1. When a person sued in a civil cause or accused of a crime has no counsel to speak for him on his trial, and has to make his defence himself, he is sometimes said to be *undefended*, that is, undefended by counsel.

2. An undefended cause is one in which a defendant makes default (1) in not putting in an appearance to the plaintiff's action; (2) in not putting in his statement of defence; (3) in not appearing at the trial, either personally or by counsel, after having received due notice of trial. *Lush's Pract.* 548—9; *Judicature Act*, 1875, *Orders XIII., XXIX. and XXXVI. rule* 18.

UNDERLEASE. A lease by a lessee for years, for a period less than the residue of the term, as opposed to an *assignment* by which the entire residue is conveyed. *Fawcett, L. & T.* 235—239.

UNDERLIE THE LAW. An accused person, in appearing to take his trial, is, in the language of Scotch criminal procedure, said to "compear and underlie the law." *Stat.* 31 & 32 *Vict. c.* 95, *Sched.* (*A*).

UNDER-SHERIFF is an officer who acts directly under the sheriff, and performs all the duties of the sheriff's office; a few only excepted where the personal presence of the high-sheriff is necessary. The sheriff is civilly responsible for the acts or omissions of his under-sheriff. 1 *Bl.* 345. [SHERIFF.]

By stat. 3 & 4 Will. 4, c. 99, it is provided that every sheriff shall, within one calendar month next after the notification of his appointment in the Gazette, by writing under his hand, nominate some fit person to be his under-sheriff, and transmit a duplicate thereof to the clerk of the peace, to be by him filed among the records of his office. 2 *Steph. Com.* 631—2.

UNDERWRITER is a person who *underwrites* or subscribes his name to a policy of insurance, thereby undertaking to indemnify the assured against the losses referred to in the policy, to the extent

UNDERWRITER—*continued.*

therein mentioned. The word is used especially with reference to *marine insurance*. 2 *Steph. Com.* 129, 133; *Crump's Mar. Ins. s.* 463, p. 298. [INSURANCE; LLOYD'S.]

UNGELD. A person out of the protection of the law; so that, if he were killed, no *geld* or fine should be paid for him. *Toml.* [OUTLAWRY; WERE.]

UNIFORMITY, ACT OF. [ACT OF UNIFORMITY.]

UNIFORMITY OF PROCESS ACT. The stat. 2 Will. 4, c. 39, passed in 1831, for establishing a uniformity of process for the commencement of actions in all the superior courts of law at Westminster, in which there had previously been great diversity. The system thereby established was more fully amended by the Common Law Procedure Acts of 1852, 1854 and 1860, and now by the Judicature Acts of 1873 and 1875. 3 *Steph. Com.* 490, 491.

UNILATERAL. One-sided; a word used especially of a bond or contract by which one party only is bound.

UNION. The consolidation of two or more parishes into one. This may be done:—

1. For the better administration of the poor laws. Under s. 38 of Gilbert's Act (statute 4 & 5 Will. 4, c. 76, passed in 1834), the Local Government Board has power at its discretion to consolidate any two or more parishes into one union under the government of a single board of guardians, to be elected by the owners and ratepayers of the component parishes. And each of such unions is to have a common workhouse, provided and maintained at the common expense. 3 *Steph. Com.* 49–51. Such workhouse is frequently called "the union workhouse," or, more briefly, "the union."

2. For ecclesiastical purposes, under the Acts for the Union of Benefices, under which some of the churches in the city of London have been pulled down, and their congregations transferred to other churches. 2 *Steph. Com.* 692, n. (*b*). [See next Title.]

UNION OF BENEFICES ACTS. 1. Stat. 18 & 19 Vict. c. 127, passed on the 14th of August, 1855. The title of this Act is "An Act to make better provision for the union of contiguous benefices, and to facilitate the building and endowing of new churches in spiritually destitute districts." Provision was made by s. 8 of this Act for the pulling down of churches and parsonage houses, where it should be found necessary or desirable to do so. The Act was, by s. 16, made applicable to England and Wales, and, by s. 17, was to continue in force for five years, that is, until the 14th of August, 1860.

2. Stat. 23 & 24 Vict. c. 142, passed in 1860. The title of this Act is "An Act to make better provision for the union of contiguous benefices in cities, towns, and boroughs." This Act, notwithstanding the apparent generality of its title, applies to the metropolis only. [METROPOLIS.] By s. 3, power is given to the bishops of London and Winchester, in any case where a union of benefices may appear desirable, to issue commissions addressed to five commissioners, appointed as in the Act mentioned, to inquire into the matter. If the commissioners recommend a union, the bishop is to cause proposals for a scheme to be prepared for effecting the union. These proposals, with the consent in writing of the patrons, are to be laid before each parish affected. The parish may then, within two months, notify their assent or objections to the proposals. The proposals are then to be laid before the Ecclesiastical Commissioners, who are to prepare a scheme in accordance therewith, and submit the same to her Majesty in Council: provided (sect. 15) that no such scheme shall be submitted to her Majesty in Council until it has been laid before both Houses of Parliament for two calendar months. Any person interested who objects to the scheme proposed may appeal against it to her Majesty in Council, and her Majesty in Council may direct that objections be considered by the Judicial Committee; and the Judicial Committee, in making their report, may propose to her Majesty to affirm, vary, or dismiss the scheme, or return the same to the Ecclesiastical Commissioners for alteration or amendment.

The scheme may (s. 14) authorize the pulling down of existing churches and parsonage houses, and the erection of new ones. But it is expressly provided, that nothing in the Act contained shall authorize the pulling down of the churches of St. Stephen, Walbrook; St. Martin, Ludgate; St. Peter, Cornhill; and St. Swithin, Cannon Street. And by s. 20, the parishes united under the Act for ecclesiastical purposes are to remain distinct in all other respects. [See next Title.]

UNITED PARISHES. This phrase is often used to denote parishes which are united for ecclesiastical purposes, but remain distinct for civil purposes, or *vice versâ*. [See preceding Title.]

UNITY OF POSSESSION signifies:—1. The joint possession by one person of two rights by several titles. *Cowel.* 2. The holding of the same estate in undivided shares by two or more. [COMMON, TENANCY IN; COPARCENARY; JOINT TENANCY.]

UNIVERSAL AGENT is defined by Story to be a person appointed to do all the acts which the principal may lawfully do, and which he may lawfully delegate to another the power to do. *Story on Agency, 2nd ed. pp.* 21, 22.

UNIVERSAL SUCCESSION. [See next Title.]

UNIVERSITAS RERUM. A bundle or series of rights, the succession to which constitutes universal succession, as opposed to singular succession; and the party who succeeds is called an *universal successor*, as opposed to a *singular successor*. [SINGULAR SUCCESSOR.]

UNIVERSITIES AND COLLEGE ESTATE ACTS. 1. Statute 21 & 22 Vict. c. 44, passed in 1858. By sect. 1 of this Act, the Universities of Oxford, Cambridge, and Durham, and the colleges therein, and the colleges of Eton and Winchester, are empowered, with the consent of the Copyhold Commissioners, to sell their lands, and also to enfranchise lands held of them in copyhold; also to exchange lands for others, and to receive or pay any money by way of equality of exchange. Any money payable to any of the universities and colleges, by virtue of any such transaction, is to be paid into the Bank of England, and to be invested as required by the Act.

The universities and colleges are also empowered, by s. 10, to grant leases at rack-rent for terms not exceeding twenty-one years; by s. 11, to grant building and repairing leases for terms not exceeding ninety-nine years; and, by s. 20, to grant mining leases for terms not exceeding sixty years.

2. Stat. 23 & 24 Vict. c. 59, passed in 1860, extending the provisions of the above Act, and of certain other acts of parliament. By s. 1 of this Act power is given to the universities and colleges to raise money by mortgage by way of compensation for loss of fines on non-renewal of leases, except in cases where the university or college shall have refused a reasonable sum tendered by the lessee by way of fine. By s. 7, the universities and colleges are empowered to sell livings vested in them, or in any person or persons in trust for them.

UNIVERSITY signifies—1. A series of rights. [UNIVERSITAS RERUM.] 2. A corporation. 3. Particularly, a corporation for the advancement of learning. [See next Title.]

UNIVERSITY COURTS are courts established in the Universities of Oxford and Cambridge, by ancient charters, confirmed in 1571 by stat. 13 Eliz. c. 29.

The courts in each university are:—(1.) The chancellor's court, having jurisdiction in personal actions affecting members of the university, and in cases of misdemeanors and minor offences committed by them. (2.) The court of the lord high steward, having jurisdiction in cases of treason, felony, and mayhem, when committed by a member of the university.

Blackstone refers to five instances of the exercise of this jurisdiction,—one in the reign of Elizabeth, two in that of James the First, and two in that of Charles the First, where indictments for murder were challenged by the vice-chancellor at the assizes, and afterwards tried before the high steward by jury. 3 *Bl.* 83; 4 *Bl.* 277, 278; 1 *Steph. Com.* 67; 3 *Steph. Com.* 299—301; 4 *Steph. Com.* 325—328. [CHANCELLOR, 4; HIGH STEWARD, 3.]

UNLAGE. A Saxon word denoting an unjust law. *Cowel.*

UNLAWFUL ASSEMBLY is defined by Mr. Serjeant Stephen as an assembly consisting of any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the peace, and raise fears and jealousies among the subjects of the realm. 4 *Steph. Com.* 254.

It is, however, differently defined by Cowel and Blackstone, as being an assembly of three or more persons to do an unlawful act, who part without doing it. *Cowel;* 4 *Bl.* 146.

UNLIMITED COMPANY. A joint-stock company, the liability of whose members is unlimited. 3 *Steph. Com.* 22, 23. [LIMITED COMPANY.]

UNLIQUIDATED DAMAGES. Damages the amount of which in money is not settled, as in cases of libel, slander, assault, &c. See 3 *Steph. Com.* 529, *n.* (*c*). [LIQUIDATED DAMAGES.]

UNQUES PRIST. Ever ready. [TOUT TEMPS PRIST.]

UPPER BENCH was the name, during the protectorate of Oliver Cromwell, of the Court which is now called the Queen's Bench. [COURT OF QUEEN'S BENCH.]

URBAN SANITARY AUTHORITY. By sect. 5 of the Public Health Act, 1875 (stat. 38 & 39 Vict. c. 55), the whole of England and Wales, except the metropolis, is divided into *urban sanitary districts* and *rural sanitary districts;* such districts to be subject for the purposes of the Act to bodies called *urban sanitary authorities* and *rural sanitary authorities* respectively. By section 6, districts, with certain exceptions and qualifications mentioned in the section, are to consist of three classes:—(1) Boroughs, constituted as such (either before or after the passing of the Act) under the Municipal Corporations Act, 1835 (stat. 5 & 6 Will. 4, c. 76). In these the "urban sanitary authority" is to be the mayor, aldermen, and town council. (2) Improvement Act Districts, that is, districts subject to commissioners, trustees, or other persons invested by any local act of parliament with powers of town government and rating. In such districts the commissioners, &c. lastly referred to (called in the Act "Improvement Commissioners") are to be the urban sanitary authority. (3) Local Government Districts, in which the local board is to be the urban sanitary authority. The rules for the election of local boards are given in Schedule II. to the Act. By sect. 9, the area of any union which is not coincident in area with an urban district, nor wholly included in an urban district, shall, with the exception of those portions (if any) of the area which are included in any urban district, be a rural district, and the guardians of the union shall form the rural authority of such district, subject to certain provisions laid down in the subsequent part of the section. [PUBLIC HEALTH ACTS.]

URBAN SERVITUDES are city servitudes, or servitudes of houses; that is to say, easements appertaining to the building and construction of houses; as, for instance, the right to light and air, or the right to build a house so as to throw the rain-water on a neighbour's house. *Justinian's Institutes, Bk. II., Tit. III.* [EASEMENT; SERVITUDE.]

URE. Use, custom, practice, habit. *Towl.*

USAGE signifies—(1) the custom of a locality; (2) the custom of merchants; (3) the customs of particular trades. See 1 *Steph. Com.* 55. [CUSTOM.]

USANCE, in reference to foreign bills of exchange, is the common period, fixed by the usage or habit of dealing between the country where the bill is drawn, and that where it is payable, for the payment of bills. As this usage or custom is different in different countries, it follows that the same phrase imports different periods of time, according to the country in which the bill is drawn. It sometimes means a month, sometimes two or more months, sometimes half a month. Moreover, bills may be drawn payable at usance, at half usance, or at double or treble usance. *Story on Bills.* Where usance is a month, half usance means fifteen days. *Byles on Bills.*

USE. 1. A *use,* before the Statute of Uses (27 Hen. 8, c. 10, passed in 1536), consisted in the equitable right to receive the profit or benefit of lands and tenements, which was, in cases of lands conveyed to uses, divorced from the legal ownership thereof. The object of such conveyances was principally to evade the Statutes of Mortmain, by which lands were prohibited from being given directly to religious houses. The ecclesiastics obtained grants to persons *to the use* of religious houses, which the clerical chancellors of those days declared to be binding. Another supposed advantage of uses was that they could be dealt with and disposed of without the formalities required for the transfer of the legal estates. *Cowel;* 2 *Bl.* 271, 272, 327, 328; 4 *Bl.* 427—430; 1 *Steph. Com.* 356—383; *Wms. R. P., Pt. I. ch.* 8.

2. Since the Statute of Uses, the *use* of the land involves the *legal* ownership, for by that statute it is provided, that where any person or persons shall stand seised of any lands or other hereditaments to the use, confidence or trust of any other person or persons, the persons that have any such use, confidence or trust shall be deemed in lawful seisin and possession of the same lands and hereditaments for such estates as they have in the use, trust or confidence. 2 *Bl.* 332, 333; 1 *Steph. Com.* 366; *Wms. R. P.* [USES, STATUTE OF.]

3. If, since the Statute of Uses, land should be conveyed to A. to the use of B. to the use of C., B. would have the legal estate, the use to C. being *a use upon a use,* which the courts of law refused to recognize. [TYRRELL'S CASE.] But C. would, nevertheless, be recognized in a court of equity as the party entitled. Practically, however, the relation between B. and C. would be expressed by the word *trust* and not by the word *use.* Some writers have distinguished between uses and trusts, regarding uses as a species of trusts. 1 *Steph. Com.* 357, *n.* The main distinctions seem to be the following:—

USE—*continued.*

(1) A use regards principally the *beneficial interest;* a trust regards principally the *nominal* ownership. So far as this distinction is concerned, they mean the same thing regarded from two different points of view.

(2) The usage of the two terms is, however, widely different. The word "use" is employed to denote either an estate vested since the Statute of Uses, and by force of that statute, or to denote such an estate created before that statute, as, had it been created since, would have become a legal estate by force of the statute. The word "trust" is employed *since* that statute to denote the relation between the party invested with the *legal estate* (whether by force of that statute or independently of it) and the party beneficially entitled, who has hitherto been said to have the *equitable estate.* The main distinction between legal and equitable estates is abolished for the future by section 24 of the Judicature Act, 1873 (statute 36 & 37 Vict. c. 66).

4. We also often speak of a copyhold being surrendered *to the use* of A. B. It must not, however, be supposed that the Statute of Uses applies to copyholds, though a court of common law will compel the admission of the surrenderee in accordance with the custom of the manor. 1 *Steph. Com.* 633, *n.* (*i*); *Wms. R. P., Pt. III. ch.* 2. [COPYHOLD; SURRENDER.]

USE AND OCCUPATION. An action for use and occupation is an action brought by a landlord against a tenant for the profits of land. This action is allowed by stat. 11 Geo. 2, c. 19, s. 14, where there has been no demise by deed. It is also maintainable against a tenant holding over after a lease by deed has expired, in respect of such holding over. The measure of damages recoverable in this action is the rent, where a rent has been agreed upon; and where no rent has been agreed upon, then such sum as the jury may find the occupation to be worth. *Toml.; Fawcett, L. & T.* 188—9.

USER. The enjoyment of property.

USES, STATUTE OF, is the stat. 27 Hen. 8, c. 10, passed in 1536.

This celebrated statute may be considered in its effect upon (1) conveyances to uses; (2) jointures; (3) wills:—

Conveyances to Uses.—By sect. 1 it is provided, that where any person or persons shall be seised of and in any honours, castles, manors, lands, &c. to the use, confidence or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, agreement, will or otherwise; then all such person and persons, &c. that hereafter shall have any use, confidence or trust, &c. shall henceforth stand and be seised, and be deemed and adjudged in lawful seisin, estate and possession of and in the same honours, castles, manors, lands, &c. [USE.]

Jointures.—By section 6 a married woman, upon whom a jointure (called in the Act "jointer") is settled, is not to be entitled to dower. [DOWER, 2; JOINTURE.] But by s. 9 it is provided that if the jointure be settled upon her *after* marriage (otherwise than by act of parliament), then the wife, surviving her husband, may refuse the jointure, and elect to have her dower instead.

Wills.—On the subject of wills, the framers of the Statute of Uses complain in the preamble, at the commencement of the first section, that lands are conveyed "by wills and testaments, sometimes made by *nude parolx* and words, sometimes by signs and tokens, and sometimes by writing, and for the most part made by such persons as be visited by sickness, in their extreme agonies and pains, or at such time as they have scantly had good memory or remembrance; at which times they being provoked by greedy and covetous persons lying in wait about them, do many times dispose indiscreetly and unadvisedly their lands and inheritances." But neither in this preamble, nor (as we have seen above) in the operative part of the section, are wills dealt with differently from other conveyances. But by sect. 11 it is provided, "that all manner true and just wills and testaments heretofore made by any person or persons deceased, or that shall decease before the first day of May, that shall be in the year of our Lord God 1536, of any lands, tenements or other hereditaments, shall be taken and accepted good and effectual in the law." The question might then arise, what effect this section would have on the power of devising lands by will? By the Statute of Wills, 32 Hen. 8, c. 1, passed in 1540, all persons were empowered to dispose by will of the whole of their lands held in socage tenure, and

USES, STATUTE OF—*continued.*

of two-thirds held in knight-service; so that, as regards wills made subsequently to the last-mentioned Act, no question could arise. But as to wills made prior to the last-mentioned Act, by persons dying after the 1st of May, 1536, it was held in *Putbury* v. *Trevilian* (decided in 1557, and reported Dyer, 142 b.), that all such wills were void; and, if made prior to the Statute of Uses, were revoked by that statute, for that "by a proviso in the said statute, all wills made and executed by the death of the makers, or which should take execution and effect before a certain day, are affirmed and made good, and no others." Thus the power of devising lands by will was held to be indirectly abolished by the Statute of Uses, but, as we have seen, it was shortly afterwards restored. [WILL, 1; WILLS ACT.]

USES, SUPERSTITIOUS. [SUPERSTITIOUS USES.]

USHER (Lat. *Ostiarius*; Fr. *Huissier*). A door-keeper of a court. *Cowel.*

USHER OF THE BLACK ROD. [BLACK ROD.]

USQUE AD FILUM AQUÆ, or, more fully, "usque ad medium filum aquæ" (up to the middle thread of the water), is a phrase used to express half the land covered by a stream; which, in the case of a stream not navigable, belongs to the proprietor of the adjoining bank. 1 *Steph. Com.* 659.

USUAL TERMS. A phrase very frequently applied to the terms on which further time for pleading is allowed, namely, pleading issuably, rejoining gratis, and taking short notice of trial. *Smith's Act. Law, ch.* 4. This practice does not seem to be affected by the Judicature Acts.

USUCAPION or **USUCAPTION.** The enjoying a thing by long continuance of time. *Cowel.*

This word in the Roman law indicated that when a person had for a fixed time been *bonâ fide* in possession of a chattel not his own, he acquired a property therein by use against all the world. There is nothing in the English law precisely corresponding to it, but there are two things in the English law which in different ways resemble it.

1. A purchase in market overt, whereby a *bonâ fide* purchaser in general acquires a property in a chattel, though it was not the vendor's to sell. [MARKET OVERT.]

2. The positive prescription arising under the Prescription Act, 1832 (2 & 3 Will. 4, c. 71). But this prescription applies to incorporeal hereditaments only, whereas *usucapion* applied to all kinds of property. [PRESCRIPTION.]

The purely negative prescription arising from the Statutes of Limitation is often confounded with *usucapion*; but *usucapion* was a *direct* source of title to property. The Statutes of Limitation confer no title at all directly, but merely bar the right of action of a negligent absentee. Hence, if there be two or more parties entitled whose rights of possession commence at *different* times (as tenant for life and remainderman), the remedy of the one may be lost by the Statute of Limitations, while that of the other continues in full force. [LIMITATIONS, STATUTE OF.]

USUFRUCT, in the Roman law, was a temporary right of using a thing without having the full dominion over the substance. 2 *Bl.* 327; 1 *Steph. Com.* 357. [DOMINIUM.] But in practice a usufruct was generally understood to signify a right of enjoyment of anything for the life of the usufructuary, *i. e.* of the party entitled to the usufruct. And the word is so understood in the law of Scotland. *Bell.*

USUFRUCTUARY. [USUFRUCT.]

USURA MARITIMA. Maritime usury; that is, the loan of money on the hazard of a voyage; otherwise called *fœnus nauticum.* [BOTTOMRY; FŒNUS NAUTICUM.]

USURIOUS CONTRACT. A contract tainted with usury. [USURY.]

USURPATION. The using that which is not one's own. It is a word used especially in the common law to signify the *usurpation of an advowson*; that is, when a stranger, who is not the patron, presents a clergyman to the living, and the clergyman so presented is thereupon admitted and instituted. *T. L.*; 3 *Bl.* 242—244; 3 *Steph. Com.* 414—417.

So, an usurpation of a franchise is the use of a franchise by a person who has no right to it.

USURY. 1. The gain of anything in consideration of a loan beyond the principal or thing lent; otherwise called interest. *T. L.*; *Cowel*; 2 *Bl.* 454; 2 *Steph. Com.* 90.

2. Especially any such gain abovementioned as is illegal or excessive. See 2 *Bl.* 455, 456; 2 *Steph. Com.* 90—95. The laws against usury are now repealed by stat. 17 & 18 Vict. c. 90, passed in

USURY—*continued.*

1854. But this repeal does not affect the jurisdiction of the Court of Chancery in granting relief to persons who have obtained loans of money on exorbitant and iniquitous terms. 2 *Steph. Com.* 96, 97; *Smith's Man. Eq., Introd. sect.* 2.

UTERINE BROTHER (Lat. *Uterinus frater*). A brother by the mother's side only. 2 *Bl.* 232; 1 *Steph. Com.* 424.

UTFANGTHEF. A jurisdiction by which a lord of a manor was empowered to punish a thief dwelling out of his liberty, and committing theft without the same, if taken within the jurisdiction of the manor. *Cowel.* The word is properly used of the thief himself. It seems to be not quite synonymous with *outfangthef*, as that word is understood in the common law. [OUTFANGTHEF.] See also *Stat.* 1 & 2 *Ph. & M. c.* 15, *ss.* 3, 6.

UTI POSSIDETIS is a barbarous Latin phrase, indicating that two contracting parties are to continue to enjoy those things of which they are in actual possession. When, therefore, it is said that *uti possidetis* is the basis of every treaty of peace, it is meant that the existing state of possession is maintained, except so far as it may be altered by the terms of the treaty. If nothing be said about the conquered countries or places, they remain with the conqueror, and his title cannot afterwards be called in question. *Wheaton's Elements of International Law, by Lawrence, ed.* 1863, *pp.* 878—881.

UTLAGATUS, UTLAGH. An outlaw. [OUTLAWRY.]

UTLAWRY. [OUTLAWRY.]

UTLEPE. An out-leap or escape. *T. L.; Cowel.*

UTRUM. [JURIS UTRUM.]

UTTER. [See the following Titles.]

UTTER BAR. The outer or junior bar, as opposed to the Serjeants-at-Law and Queen's Counsel. [OUTER BAR; UTTER BARRISTERS.]

UTTER BARRISTERS (Lat. *Jurisconsulti*) are defined to be those who, for their long study and great industry bestowed upon the knowledge of the common law, be called from their contemplation to practise, and, in the face of the world, to take upon them the protection and defence of clients: these in other countries are called *licentiati in jure.* The time before any one ought to be called to the bar by the ancient orders was formerly eight years. A barrister newly called had to attend, in the six next long vacations (viz. in Lent and summer), the exercise of the House, and was therefore for those three years called a *vacation barrister.* And they are called *utter barristers*, that is, pleaders *without the bar*, to distinguish them from benchers, who are sometimes admitted to plead *within the bar*, as the King's, Queen's, or Prince's counsel are. *Cowel.*

UTTERING. To *utter* coins or documents (a phrase especially used in reference to false coin and forged documents) is to pass them off as genuine. 4 *Bl.* 89, 90; 4 *Steph. Com.* 143, 191.

V.-C. An abbreviation used for—1. Vice-Chancellor. 2. Victoria Cross.

V.G. An abbreviation for *verbi gratiâ*, for the sake of a word; *i.e.*, taking a word as an instance. The abbreviation *e.g.* (Lat. *exempli gratiâ*) is more common as signifying "for instance."

V.R. An abbreviation for Victoria Regina (Victoria the Queen).

VACANT POSSESSION is where a tenant has virtually abandoned the premises which he held. Thus where the tenant of a house locked it up and quitted it, the Court held that the landlord should treat it as a vacant possession. *Toml.* Where an action of ejectment is brought for the recovery of a vacant possession, the writ may be served by posting a copy of it on the door of the dwelling-house, or other conspicuous part of the property. 3 *Steph. Com.* 621; *Judicature Act*, 1875, 1*st Sched. Order IX. rule* 8.

VACANT SUCCESSION is where, on the death of a sovereign or other person of title, there is no one appointed by law to succeed. Or the phrase may be applied to an *hæreditas jacens*, where there is no one to succeed the deceased. [HÆREDITAS JACENS.]

VACATION. 1. The time betwixt the end of one term and the beginning of another. *Cowel;* 3 *Steph. Com.* 485. [TERM, 1.]

2. The Long Vacation, being the period from the 10th of August to the 24th of October. 3 *Steph. Com.* 485.

3. Under the Judicature Act, 1875, 1st Sched. Order LXI. rule 2, the vacations to be observed in the offices of the Supreme Court are four in number:—

VACATION—*continued.*

(1) The Long Vacation, from the 10th of August to the 24th of October; (2) The Christmas Vacation, from the 24th of December to the 6th of January; (3) The Easter Vacation, from Good Friday to Tuesday in Easter week; and (4) The Whitsun Vacation, from the day before Whit Sunday to Tuesday in Whitsun week. By rule 3, the days of the commencement and termination of each vacation are included in such vacation. The vacations do not entirely fill up the intervals between the "sittings." [LONDON AND MIDDLESEX SITTINGS.]

4. The period from the avoidance of a bishopric or other ecclesiastical dignity to the appointment of a successor.

VACATION BARRISTER. [UTTER BARRISTERS.]

VACATURA. An avoidance of an ecclesiastical benefice. *Toml.*

VACCINATION ACTS. 1. Stat. 3 & 4 Vict. c. 29, passed in 1840, directing the Poor Law Guardians to contract with medical officers for the vaccination of all persons resident in their unions or parishes. By section 8, inoculation is forbidden under pain of a month's imprisonment.

2. Stat. 4 & 5 Vict. c. 32, passed in 1841, directing the expenses of vaccination to be defrayed out of the poor rates; but vaccination not to be deemed to be parochial relief.

3. Stat. 16 & 17 Vict. c. 100, passed in 1853, to extend and make compulsory the practice of vaccination. By sect. 1, the guardians of every parish and union are to divide their parish or union into districts for the purpose of appointing a convenient place in each district for the vaccination of persons resident therein. By sect. 2, parents must have their children vaccinated within three calendar months after birth, under pain (by sect. 9) of a fine of twenty shillings.

4. Stat. 21 & 22 Vict. c. 97, s. 2, passed in 1858, by which the Privy Council are empowered to issue regulations for securing the due qualification of medical officers to be contracted with for the purpose of vaccination, and for securing its efficient performance, and also for providing for the supply of vaccine lymph out of any monies voted by Parliament for the purpose of vaccination.

5. Stat. 24 & 25 Vict. c. 59, passed in 1861, empowering the guardians to appoint some person to prosecute for non-observance of the above Acts, and for charging upon the poor rates the legal expenses of prosecutions.

6. Stat. 30 & 31 Vict. c. 84, passed in 1867, by which the above Acts are formally repealed, but substantially re-enacted, with certain variations. The arrangements of the vaccination districts, and the contracts made by the guardians for the purpose of vaccination, are placed under the control of the Poor Law Board; the qualifications of the vaccinator to be prescribed by the Privy Council. By sect. 31, the justices may make an order for the vaccination of a child under fourteen years of age, who has not been vaccinated nor shown to be unfit for or insusceptible of vaccination.

7. Stat. 34 & 35 Vict. c. 98, passed in 1871, by which the powers of the Privy Council and of the Poor Law Board under the above Acts are transferred to the Local Government Board. There are also several sections relating to vaccination officers.

8. Stat. 37 & 38 Vict. c. 75, passed in 1874, by which the Local Government Board are expressly empowered to make rules prescribing the duties of guardians and officers in relation to the institution of legal proceedings for enforcing the Vaccination Acts, and the payment of the costs and expenses relating thereto.

VADIUM MORTUUM. Dead pledge. [MORTGAGE.]

VADIUM PONERE. To take bail for the appearance of a person in a court of justice. *Toml.*

VADIUM VIVUM. The same as vifgage. [MORTGAGE; VIFGAGE.]

VAGABOND. One that wanders about and has no certain dwelling. By various statutes it is provided that certain acts shall constitute their perpetrator a rogue and vagabond: as leaving a wife and children chargeable to the parish; using subtle craft to deceive his majesty's subjects, &c. 3 *Steph. Com.* 55; 4 *Steph. Com.* 211, 212. [ROGUE; VAGRANT.]

VAGRANT. A person belonging to one of the following classes:—(1) Idle and disorderly persons; (2) rogues and vagabonds; (3) incorrigible rogues. These several classes are defined by various acts of parliament. [ROGUE.]

VAGRANT ACTS. Various laws of great severity against vagrants. Among these we may mention:—Stat. 5 Geo. 4, c. 83, passed in 1824; stat. 11 & 12 Vict. c. 110, passed in 1848; stat. 31 & 32 Vict. c. 52, passed in 1868. See 2 *Steph. Com.* 291, 297; *Oke's Mag. Syn.* 11*th ed. pp.* 722–731.

VALESHERIA signifies the proving by means of the kindred of a slain person, one on the father's side, and another on the mother's, that the man slain was a Welshman. *Toml.* [ENGLESCHERIE.]

VALOR BENEFICIORUM (value of benefices) is the name of an assessment of the value of ecclesiastical livings, made in the reign of Elizabeth, for the purpose of regulating the payment of first fruits. 1 *Bl.* 285; 2 *Steph. Com.* 538. [FIRST FRUITS.]

VALOR MARITAGII, The *value of the marriage;* which wards in knight-service forfeited, in case they refused a suitable marriage, without *disparagement* or inequality, tendered by the lord. The value was deemed to be so much as a jury would assess, or any one would *bonâ fide* give to the guardian for such an alliance. Moreover, a ward who married without the lord's consent forfeited double the value of the marriage. *T. L.; Cowel;* 2 *Bl.* 70; 1 *Steph. Com.* 198; *Wms. R. P.* [MARRIAGE; WARDSHIP.]

VALUABLE CONSIDERATION. A consideration for a grant, contract or other act, which the law deems an equivalent for the same. 2 *Bl.* 296, 297. A court of justice will not in general enter into the question of the *adequacy* of a consideration which is *bonâ fide* intended as an equivalent. 2 *Steph. Comm.* 59, 60. [CONSIDERATION.]

VALUABLE SECURITY is defined by sect. 1 of the Larceny Act (stat. 24 & 25 Vict. c. 96) to include any order, exchequer acquittance, or other security whatsoever evidencing the title of any party to share in any public stock; also any debenture, deed, bond, &c. or other security for the payment of any money. See 4 *Steph. Com.* 122; *Oke's Mag. Syn.* 1035—6; *Cox & Saunders' Cr. Law,* 23.

VALUE OF MARRIAGE. [VALOR MARITAGII.]

VALUE RECEIVED. A phrase implying the existence of a valuable consideration. The phrase is especially used to indicate that a bill of exchange has been accepted for value, and not by way of accommodation. 2 *Steph. Com.* 126; *Byles on Bills, 11th ed. pp.* 85—6. [ACCOMMODATION BILL.]

VALUED POLICY. A policy in which the sum to be recovered under it is agreed upon beforehand between the parties, and expressed on the face of the policy. The value thus agreed on is binding as between the parties, assuming that the transaction is *bonâ fide. Crump, Mar. Ins. s.* 369. [OPEN POLICY.]

VALVASOUR. [VAVASOUR.]

VARIANCE. 1. An alteration or change of condition after thing done. *Cowel.* But this meaning of the word *variance* is now obsolete.

2. A discrepancy between the statement of the cause of action in a writ, and a count in the declaration or statement of claim; or between a statement in a pleading and the evidence adduced in its support. Power is given to the court, under different statutes, for the amendment of variances. 3 *Steph. Com.* 563; 4 *Steph. Com.* 337, *n.*, 371. And under the Judicature Act, 1875, 1st Sched. Order XXVII. rule 1, any amendment may be made for the purpose of determining the real questions or question in controversy between the parties.

VARLETS. Yeomen or yeomen servants. *Cowel.*

VASAL. [VASSAL.]

VASSAL. A tenant holding lands under a lord, and bound by his tenure to feudal services. *Cowel;* 2 *Bl.* 53; 1 *Steph. Com.* 174. [FEE; FEUDAL SYSTEM.]

VASSALAGE. The state or position of a vassal.

VASSALERIA. The tenure or holding of a vassal. *Toml.*

VASTO. A writ of waste. *Cowel.* [WASTE.]

VASTUM. A waste or common. *Toml.*

VAVASOUR was anciently the first dignity, next to a peer; now quite obsolete. *Cowel;* 1 *Bl.* 403; 2 *Steph. Com.* 612.

VEAL MONEY. Money payable by certain tenants in the manor of Bradford, in Wiltshire, to the Marquis of Winchester, in lieu of veal paid formerly in kind. *Cowel.*

VECTIGAL JUDICIARIUM. An old expression for money or fines paid to the king, to defray his charges in maintaining the courts of justice and protection of the people. *Toml.*

VEJOURS (Lat. *Visores*). Viewers; such as are sent by the court to take a view of any place in question, for the better decision of the right. It signifies, also, such as are sent to view those that *essoine themselves de malo lecti* (that is, excuse themselves on the ground of illness), whether they be in truth so sick as that they cannot appear, or whether they do counterfeit. *Cowel.* [ESSOIGN; LICENCE TO ARISE; VIEW.]

VENARY. Chase, hunting. Beasts of venary are beasts of chase, and were formerly held to belong to the king, or to such as were authorized under him. 2 *Bl.* 415.

VENDEE. A buyer, to whom lands or goods are sold.

VENDITIONI EXPONAS. A writ judicial directed to a sheriff or undersheriff, who has taken goods into his hands under a writ of execution, and cannot sell them at a reasonable price, commanding him to sell them for the best price he can get, however inadequate, in order to satisfy the judgment debt. *Cowel;* 3 *Steph. Com.* 585; *Lush's Pr.* 610; *Judicature Act*, 1875, *1st Sched. Order XLIII. rule* 2.

VENDOR. A seller. In sales of lands the party selling is almost always spoken of as "the vendor;" but in sales of goods he is quite as frequently spoken of as "the seller."

VENDOR AND PURCHASER ACT, 1874, is the stat. 37 & 38 Vict. c. 78, which substitutes forty for sixty years as the root of title, and amends in other ways the law of vendor and purchaser.

VENDOR'S COVENANTS FOR TITLE ordinarily extend to the acts done by the vendor and the persons from whom he claims by succession, devise or voluntary conveyance; that is, to all acts done since the last sale of the estate. *Wms. R. P., Pt. V.*

VENDOR'S LIEN is the hold which an unpaid vendor of land has over the land for the payment of the purchase-money. This lien exists against the vendee and his heirs, and against persons claiming by a voluntary conveyance from the vendee; also against purchasers under him, with notice that the purchase-money due from such vendee has not been paid. *Sm. Man. Eq., Tit. II. ch.* 6; *Chute's Eq.* 97.

VENIA ÆTATIS is a privilege granted by a prince or sovereign, in which a minor is entitled to act as if he were of full age. *Story's Conflict of Laws, 7th ed. p.* 63, *n.*

VENIRE. [See the following Titles.]

VENIRE DE NOVO. This was a form of motion for a new trial; the words implying that a new *venire facias* was directed to the sheriff. It was grantable as a matter of right whenever it appeared on the record that there had been a mis-trial, as where a jury had been taken from the wrong county, or a challenge had been improperly disallowed. *Lush's Pract.* 643; *Kerr's Act. Law.* [VENIRE FACIAS JURATORES.]

These formal proceedings are superseded as regards civil actions under the Judicature Acts, by the provisions in Order XXXIX. relating to motions for a new trial, and those in Order LVIII. relating to appeals.

VENIRE FACIAS (that you cause to come). A writ in the nature of a summons to cause a party to appear, who is indicted for a petty misdemeanor, or on a penal statute. 4 *Bl.* 318; 4 *Steph. Com.* 383. [See also the two following Titles.]

VENIRE FACIAS JURATORES was a writ judicial directed to the sheriff, when issue was joined in an action, commanding him to cause to come to Westminster, on such a day, twelve free and lawful men of his county, by whom the truth of the matter at issue might be better known. *T. L.; Cowel;* 3 *Bl.* 352. [VENUE.]

This writ was abolished by s. 104 of the Common Law Procedure Act, 1852; and, by s. 105, a precept issued by the judges of assize is substituted in its place. The process so substituted is sometimes loosely spoken of as a "venire."

VENIRE FACIAS TOT MATRONAS (cause so many matrons to come). A writ directing the summoning of a jury of matrons to see if a woman be with child. *Cowel.* [JURY OF MATRONS.]

VENTRE INSPICIENDO. [AD VENTREM INSPICIENDUM.]

VENUE (Lat. *Vicinetum*). The neighbourhood from whence a jury come for the trial of an action or indictment. In former times the direction to the sheriff was to summon a jury, not from the *body of the county*, but from the *immediate neighbourhood* where the facts occurred, and from among those persons who best knew the truth of the matter; the jurors being formerly regarded as witnesses, or as persons in some measure cognizant, of their own knowledge, of the matter in dispute, and of the credit to be given to the parties; and, in order to know into what county the *venire facias* [VENIRE FACIAS JURATORES] should issue, it was necessary that the issue in the action, and the pleadings out of which it arose, should show particularly what that place or neighbourhood was. Such place was called the *visne* or *venue;* and the statement of it, in the pleadings, obtained the same

VENUE—*continued.*

name; to allege the place being, in the language of pleading, to *lay the venue. Stephen on Pleading;* 4 *Steph. Com.* 368.

A venue is either *transitory* or *local.* It is transitory when the cause of action is of a sort that might have happened anywhere, which is generally the case where the locality is not the gist of the action, as in a case of assault. It is local when it could have happened in one county only, as in an action for trespass in breaking and entering the plaintiff's close. Changing the venue means changing the place of trial, which, in civil actions before the commencement of the Judicature Acts, might be done by a special order of the judge, or by consent of the parties to the action. *Lush's Pr.* 404—414.

Now, by the Judicature Act, 1875, sect. 23, sub-s. 4, her Majesty may, by Order in Council, regulate the venue in all cases, civil and criminal, triable on any circuit. And by Order XXXVI. rule 1, there is to be no local venue for the trial of any civil action; but when the plaintiff proposes to have the action tried elsewhere than in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a judge otherwise orders, be tried in the county or place so named. Any order of a judge as to the place of trial may be discharged or varied by a Divisional Court of the High Court.

VERDEROR (Lat. *Viridarius*). An officer of a forest, chosen by the freeholders of the county where the forest is, by a writ directed to the sheriff to do it. His duty is to look after the vert, and see it well maintained; and to receive and enrol attachments and presentments of trespasses of vert and venison. *T. L.; Cowel;* 3 *Bl.* 71, 72; 3 *Steph. Com.* 283. [FOREST; FOREST COURTS; VERT.]

VERDICT is the answer given to the Court by the jury, in any cause civil or criminal committed to their trial; and is either general or special; *general* when they give it in general terms, as guilty or not guilty; *special* when they find it at large according to the evidence given, and pray the direction of the Court as to what the law is upon the facts so found. *T. L.; Cowel;* 3 *Bl.* 377; 4 *Bl.* 360, 361; 3 *Steph. Com.* 550, 551; 4 *Steph. Com.* 433.

VERGE. 1. The compass about the king's court, which bounded the jurisdiction of the lord steward, and of the coroner of the king's house. It extended for twelve miles from the royal residence. *T. L.; Cowel;* 3 *Bl.* 75, 76. [COURT OF MARSHALSEA; MARSHAL, 2.]

2. An uncertain quantity of land from fifteen to thirty acres. *Toml.*

3. A stick or rod by which a tenant of a manor is admitted; and, holding it in his hand, takes the oath of fealty to the lord of the manor. *Cowel.*

VERGENS AD INOPIAM. Verging on destitution; in insolvent circumstances. *Paterson.*

VERGERS (Lat. *Virgatores*). Such as carry white wands before the judges. *Toml.* A *verger* now commonly signifies an inferior officer in a cathedral or parish church.

VERIFICATION was the concluding averment, "and this he is ready to verify," which was formerly necessary in every pleading which contained new affirmative matter. 3 *Bl.* 309; *Stephen on Pleading.* [ET HOC PARATUS EST VERIFICARE.] By s. 67 of the Common Law Procedure Act, 1852 (statute 15 & 16 Vict. c. 76), "no formal conclusion shall be necessary to any plea, avowry, cognizance, or subsequent pleading."

VERSUS. Against. Smith *versus* Jones is the cause of Smith against Jones.

VERT is anything that doth grow and bear a green leaf within the forest. It is divided into *over vert* and *nether vert. Over vert* is the great woods, and *nether vert* is the underwoods. There is also a vert called *special vert*, which includes all trees growing in the king's forests, and such trees in other men's woods as bear fruit to feed the deer. Special vert was so called because the destroying of it was more grievously punished than that of any other vert. *T. L.; Cowel.*

VERY LORD AND VERY TENANT are they that are *immediate* lord and tenant one to the other. *Cowel.*

VEST (Lat. *Vestire*). 1. To deliver to a person the full possession of land, and so to clothe him with the legal estate therein. *Cowel.* [INVESTITURE.]

2. To become a vested interest. [See the following Titles.]

VESTED IN POSSESSION. A phrase used to indicate that an estate is an estate in possession, as opposed to an estate in reversion or remainder.

VESTED INTEREST may be defined generally to be such an interest as is in the actual possession or certain expectation of some specific person, and is of such a nature that it cannot be lost except by the death or voluntary act or misconduct of the party entitled thereto.

1. Thus, when parliament makes changes in any institution, *vested interests* are generally respected; that is to say, the incomes and other emoluments enjoyed, or certainly expected by such persons as are then members thereof, in virtue of such membership, are secured to them. Sometimes when a change is contemplated an act is passed to prevent the accumulation of future vested interests. [PUBLIC SCHOOLS ACTS, 1.]

2. When we apply the phrase "vested interest" to a fund or other personal property, we generally mean either such an interest as is in the actual possession of a specific person, or such a future interest as, in case of the death of the party entitled thereto, will be transmissible to his representatives.

3. The phrase "vested interest," used in reference to real estate, would include all estates in possession and reversion, and all vested remainders. [REVERSION; VESTED REMAINDER.]

VESTED REMAINDER, in the law of real property, is a remainder which is always ready, from its beginning to its end, to come into possession at once, subject only to the determination of some prior particular estate or estates. 2 *Bl.* 168; 1 *Steph. Com.* 326; *Wms. R. P., Pt. II. ch.* 1. [ESTATE, II.; REMAINDER.]

A vested remainder is so called because it constitutes an immediate disposable interest in the party entitled thereto. And although it is also true that a contingent remainder, limited to a specific person upon an uncertain event, may be freely disposed of by the party entitled thereto, this was not so formerly, and the old nominal distinction still continues.

We may adduce the two following characteristics of every vested remainder, by one or other of which it may be distinguished from any given contingent remainder:—1. A vested remainder is limited to some specific person, and not to a dubious or uncertain person. 2. A vested remainder cannot be prevented from taking effect in possession by any condition extrinsic to the limitation by which it is created. But a remainder is none the less a vested remainder merely because it may fail to take effect by virtue of some condition implied in the limitation by which it exists. [LIMITATION OF ESTATES.] Thus, if land be granted to A. for life, remainder to B. for life, B.'s estate is a vested remainder, though, if B. dies before A., it will never come into possession. But if land be granted to A. for life, remainder to B. and his heirs if B. survive A., B.'s estate is then called a contingent remainder, because the condition that B. shall survive A. is extrinsic to the limitation to B. and his heirs.

VESTING ORDER is an order of the Court of Chancery, or of the Chancery Division of the High Court of Justice, vesting the legal estate in property (generally land) in any person specified in the order. This is often done under the Trustee Acts, when the trustees appointed are unwilling or unable to act in the execution of the trusts [TRUSTEE ACTS]; or when, for any reason, it is desirable to appoint new trustees, and it is found impracticable or inconvenient to procure a conveyance to them in the ordinary way. *Hunt. Eq., Pt. III. ch.* 4, *s.* 2.

VESTRY. 1. The place in a church where the priest's vestures are deposited. 1 *Steph. Com.* 120.

2. An assembly of the minister, churchwardens and parishioners, held in the vestry of the church. But, by stat. 13 & 14 Vict. c. 57, passed in 1850, the Poor Law Board may, upon application of the churchwardens, where a parish exceeds 2000, direct the vestry meetings to be held elsewhere. In such cases they are generally held in a building called a *vestry hall.* 1 *Steph. Com.* 120—122; 3 *Steph. Com.* 47.

3. *Select Vestries.* — In large and populous parishes, a custom has obtained of yearly choosing a select number of parishioners to represent and manage the concerns of the parish for one year; and this has been held to be a good and reasonable custom. And by stat. 59 Geo. 3, c. 12, s. 1, passed in 1819, power is given to the inhabitants of any parish in vestry assembled to appoint not more than twenty, nor less than five, householders to be a select vestry. *Toml.* Moreover, under stat. 59 Geo. 3, c. 134, s. 80, also passed in 1819, and by other enactments relative to the building of new churches, provision is made for the appointment of select vestries for the care and management of new churches; but by stat. 14 & 15 Vict. c. 97, s. 23, passed in 1851, all such select vestries are abolished.

4. *Metropolitan Vestries.*—These are now regulated by the Metropolis Local

VESTRY—*continued.*

Management Acts, namely, stat. 18 & 19 Vict. c. 120, passed in 1855; stat. 19 & 20 Vict. c. 112, passed in 1856; stat. 21 & 22 Vict. c. 104, passed in 1858; and stat. 25 & 26 Vict. c. 102, passed in 1862. By section 6 of the Act of 1855, the vestries in the metropolitan parishes [METROPOLIS] are to consist of persons occupying houses within the parish, and rated or assessed to the relief of the poor upon a rental of not less than 40*l.* per annum, except that in any parish in which the number of poor-rate assessments of 40*l.* or upwards does not exceed the whole number of such assessments, the assessment of a vestryman need not exceed 25*l.* By sect. 7 every election is to take place annually in the month of May in each year, and by sect. 9 the members of the vestry are elected for three years, except that where a vestryman is elected to supply a vacancy arising otherwise than by effluxion of time, he will then go out of office at the time when his predecessor's term of office would have expired by effluxion of time. By sect. 8, large parishes which at the time of the passing of the Act contain more than 2000 rated householders, are divided into wards for the purposes of the election; and, by sect. 16, the electors are the parishioners rated to the relief of the poor in the parish, or, where the parish is divided into wards, then in the ward for which the election is holden. The number of vestrymen is prescribed by sect. 2 of the Act as follows:—Eighteen vestrymen for every parish in which the number of rated householders shall not exceed 1000; and six additional vestrymen (that is, twenty-four vestrymen) for every parish in which the number of rated householders shall exceed 1000; and twelve additional vestrymen for every thousand rated householders; provided always, that in no case the number of vestrymen shall exceed 120; provided also, that the incumbent and churchwardens of each parish shall constitute a part of the vestry, and shall vote therein, in addition to the elected vestrymen.

The powers and duties of the vestries embrace the following matters:—Highways; poor rates; the appointment of churchwardens (in concurrence with the minister of the parish); workhouses; providing land for employing the poor in its cultivation; making out lists of persons to serve as constables; baths and washhouses, &c. [See the following Titles.]

VESTRY CESS. A compulsory rate formerly levied in Ireland for parochial purposes. Abolished in 1864 by statute 27 & 28 Vict. c. 17.

VESTRY CLERK. By stat. 13 & 14 Vict. c. 57, s. 1, in every parish where the population exceeds 2000 persons, according to the last preceding census, the Poor Law Commissioners (now the Local Government Board) may, on the application of the vestry, order that the Act or any part thereof be applied to the parish; and by s. 6 may, within one calendar month of any such order, if such order extend to the appointment of a vestry clerk, and, in the case of any subsequent vacancy, within one calendar month next after such vacancy, convene a meeting of the vestry for the special purpose of electing a vestry clerk, of which meeting at least seven days' notice shall be given. The vestry clerk may be removed from his office by the vestry, with the consent of the Poor Law Commissioners (now the Local Government Board).

The duties of the vestry clerk are enumerated in sect. 7 of the above Act. He is bound (among other things) to give notice of, and attend, the meetings of the vestry and committees appointed thereat; to summon and attend meetings of the churchwardens and overseers, when required, and to enter the minutes thereof respectively; to keep accounts of all charity monies which the churchwardens or overseers are authorized or accustomed to distribute; to keep the vestry books and the parish deeds and documents; to assist the overseers in making out their accounts; to make out the list of persons liable to serve on juries; to give notices for claims to vote for members of parliament, and to make out lists of voters; and to advise the churchwardens and overseers in all the duties of their office. [VESTRY.]

VESTRY HALL. [VESTRY, 2.]

VESTRYMEN. A select number of parishioners elected in large and populous parishes to take care of the concerns of the parish; so called because they used ordinarily to meet in the vestry of the church. *Cowel.* [VESTRY, 2, 3, 4.]

VESTURE signifies—(1) a garment; (2) the possession or seisin of land; (3) the profit of land. *Cowel.*

VETERA STATUTA. Old statutes. This phrase is applied to the statutes from Magna Charta to the end of the reign of Edward II. 1 *Steph. Com.* 68, *n.*

VETITUM NAMIUM. [WITHERNAM.]

VEXATA QUÆSTIO. A question much discussed, and not settled.

VEXATIOUS INDICTMENTS ACT. Stat. 22 & 23 Vict. c. 17, passed in 1859, for the prevention of vexatious indictments for misdemeanors. By s. 1 of that act, no bill of indictment for any of the offences following—(1) perjury, (2) subornation of perjury, (3) conspiracy, (4) obtaining money or other property by false pretences, (5) keeping a gambling house, (6) keeping a disorderly house, (7) indecent assault, is to be presented to or found by a grand jury, unless (1) the prosecutor have been bound by recognizance to prosecute or give evidence, or (2) unless the person accused has been committed to or detained in custody, or (3) has been bound by recognizance to appear and answer for such offence, or (4) unless such indictment have been preferred by the direction of a judge of the superior courts, or by her Majesty's attorney or solicitor general, or unless (5) in a case of perjury the prosecution have been directed by any court, judge or public functionary authorized by s. 19 of 14 & 15 Vict. c. 100 (the Administration of Criminal Justice Act, 1851), to direct a prosecution for perjury. The Vexatious Indictments Act has been amended and explained by stat. 30 & 31 Vict. c. 35, passed in 1867, and commonly called Russell Gurney's Act. See *Oke's Mag. Syn.* 822—4.

VI ET ARMIS. With force and arms; a phrase formerly used in declarations for trespass, and in indictments. These words are rendered unnecessary in civil cases by sect. 49 of the Common Law Procedure Act, 1852 (stat. 15 & 16 Vict. c. 76), and in criminal cases by s. 24 of the Administration of Criminal Justice Act, 1851 (stat. 14 & 15 Vict. c. 100).

VI LAICA REMOVENDA is a writ that lies where debate is between two parsons for a church, and one of them enters with a great number of laymen, and holds the other out by force and arms. He that is holden out shall have this writ, directed to the sheriff, that he remove the lay force. But this writ shall not be granted until the bishop hath certified into the Chancery such resisting and force. *Reg. Orig.* 59, 60; *Cowel.* In the case of *Ex parte Jenkins* (reported *L. R.*, 2 *P. C.* 258; 38 *L. J., P. C.* 6—11; 19 *L. T., N. S.* 583; and 17 *W. R.* 502), Lord Chelmsford, in delivering the judgment of the Judicial Committee, observed of the writ of *vi laica removenda*, that it may, at the present day, be regarded as obsolete. It should be stated, however, that that particular case (which was an appeal from the colony of Bermuda) was one not of a contention between two rival clergymen, but of the lawful induction of a clergyman into a parish church being opposed by physical force on the part of a large body of laymen.

VIA, in the Roman law, was the servitude (or easement) of a carriage road enjoyed by one man through another's property. [EASEMENT; SERVITUDE.]

VIA REGIA. The king's highway or common road. *Toml.*

VIABLE (Lat. *Vitæ habilis*). An infant newly born is said to be viable if the organs are in such a state of regular conformation and development as to render the infant capable of living. But if an infant, newly born, be affected with such a disease or malformation as to render a continuance of life impossible, the infant is said to be non-viable; and, according to some systems of law, is, so far as regards the transmission of right to legal representatives, as if he had never been born. *Beck; Littré.*

VIABILITY. Capability of living; possibility of continued existence. [VIABLE.]

VICAR. The priest of every parish is called *rector*, unless the prædial tithes be impropriated, and then he is called vicar, *quasi vice fungens rectoris* (as if vicariously discharging the duty of a rector). *Cowel.*

A vicar was originally the substitute of the appropriator in those parishes where the fruits of the livings had been appropriated either by religious houses or by laymen. His stipend was at first at the discretion of the appropriator, till it was enacted, in 1391, by stat. 15 Ric. 2, c. 6, that vicarages should be sufficiently endowed. Further, by statute 4 Hen. 4, c. 12, it was provided that the vicar should not be removable at the caprice of the monastery; that he should be a secular person; and should be sufficiently endowed at the discretion of the ordinary, for these three purposes:—to do divine service, to inform the people, and to keep hospitality. The same rule, however, was not observed in the endowment of all vicarages. Some are more liberally, some more scantily endowed; and the tithes of many things, as wood in particular, belong, in some parishes, to the rector or appropriator, and, in others, to the vicar. In a non-appropriated church there is no vicar, but a rector only; but in an appropriated living there is gene-

VICAR—*continued.*

rally, besides the appropriator, a vicar. Certain parishes, however, are exempted from stat. 4 Hen. 4, c. 12, and in them no vicar has been endowed. Such churches, however, usually possess a minister in holy orders, who, up to the year 1868, was called a *perpetual curate*, and charged with the cure of souls. But by stat. 31 & 32 Vict. c. 117, the minister of the church of every parish, or new parish for ecclesiastical purposes, not being a rector, shall be styled a *vicar*.

In some cases, also, the rector of a benefice, having cure of souls, obtained permission to appoint a vicar to officiate under him, and the ultimate effect of this was, that by custom the rector became entirely relieved from residence, and was then called a *sinecure rector*. Sinecure rectories were abolished in 1840 by stat. 3 & 4 Vict. c. 113, by which it was provided that the lands, tithes and endowments of any suppressed sinecure rectory should be annexed, when expedient, to the vicarage or perpetual curacy attached to such rectory, which was thereupon constituted a rectory with cure of souls. 1 *Bl.* 384—388; 2 *Steph. Com.* 680—683. [APPROPRIATION, 1; IMPROPRIATION; RECTOR.]

VICAR CHORAL. [CHORAL.]

VICAR GENERAL was, in ancient times, an officer *occasionally* constituted, when the bishop was called out of the diocese by foreign embassies or attendances in parliament, or other affairs; and his commission contained in it the whole administration of the diocese, except the hearing of causes in the Consistory Court, which was the province of the *official*, otherwise called the *official principal*. In time, the vicar general came to be a fixed and standing officer, who should be ready (without the trouble of a special commission for every occasion), to execute the episcopal power, when the bishop himself was hindered by infirmities, avocations or other impediments. The office of *vicar general* came by degrees to be united with that of *official;* and the person in whom the two offices are united is called the bishop's *chancellor*. *Gibson's Codex, Introd. pp.* xxii, xxiii. In the case of *Smith* v. *Lovegrove*, decided in 1755, and reported 2 *Lee*. 162, Sir George Lee, p. 169, drew a distinction between the ancient powers spoken of by Gibson as being granted to temporary vicars general in the absence of the bishop, and those of modern vicars general, whose patents are for life, and who are only to be assistant to the bishop. And Sir G. Lee held, in that case, that a chancellor had no power except as a merely ministerial officer acting in pursuance of the bishop's fiat, to give a licence to a clergyman to perform the office of lecturer in a church, on the ground that by the 19th section of the Act of Uniformity (stat. 13 & 14 Car. 2, s. 4) such licence must be given by the archbishop or bishop, or guardian of the spiritualities.

VICARAGE. The benefice, office or parsonage house of a vicar.

VICARIAL TITHES. Tithes appropriated to a vicarage. 1 *Bl.* 388; 2 *Steph. Com.* 681—726. [TITHES; VICAR.]

VICE-ADMIRALTY COURTS are courts with an admiralty jurisdiction established in her Majesty's possessions beyond the seas. 3 *Bl.* 69; 3 *Steph. Com.* 345.

VICE-CHAMBERLAIN. A great officer under the Lord Chamberlain, who, in the absence of the Lord Chamberlain, has the control and command of the officers appertaining to that part of the royal household which is called the chamber. *Cowel.* [CHAMBERLAIN.]

VICE-CHANCELLOR. 1. A judicial officer having jurisdiction in equity under the Lord Chancellor. There are three vice-chancellors who sit to hear causes in Lincoln's Inn. The first vice-chancellorship was appointed in 1813 under stat. 53 Geo. 3, c. 24, and two new ones were appointed in 1841. There is also a vice-chancellor of the County Palatine of Lancaster, who is generally a leading member of the Chancery Bar. 3 *Steph. Com.* 331; *Haynes' Eq., Lect. II.; Hunt. Eq. Introd.*

By section 5 of the Judicature Act, 1873, the vice-chancellors are transferred to the High Court of Justice, and by sect. 31, sub-sect. 1, they are appointed judges of the Chancery Division.

There is one Vice-Chancellor of the Court of Chancery in Ireland.

2. A principal officer in the Universities of Oxford and Cambridge. He must be selected from among the heads of colleges in the University.

VICE-COMES signifies properly the sheriff of a county, being the deputy of the count or earl. [COUNT, 1; EARL; SHERIFF.]

This title was not made use of as an arbitrary title of honour until the reign of Henry the Sixth, when that monarch

VICE-COMES—*continued.*

created John Beaumont a peer by the title of Viscount Beaumont. See 1 *Bl.* 117, 398; 1 *Steph. Com.* 126; 2 *Steph. Com.* 604. [VICOUNT.]

VICE COMES NON MISIT BREVE (the sheriff has not sent the writ). An entry formerly sometimes necessary to be made in the record of an action, but now no longer so. Rule 31 of Hilary Term, 1853. *Lush's Pr.* 538.

VICE-WARDEN OF THE STANNARIES. The local judge of the Stannary Courts. 3 *Stephen's Comm.* 298. [COURT OF STANNARIES OF CORNWALL AND DEVON; STANNARIES.]

VICEROY. A person in place of the king; hence a governor of a dependency.

VICINAGE. Neighbourhood. [COMMON, I., 3.]

VICINETUM. Neighbourhood; a word used especially with reference to the summoning a jury from the neighbourhood. *Cowel.* [VENUE.]

VICIOUS INTROMISSION. [VITIOUS INTROMISSION.]

VICIS ET VENELLIS MUNDANDIS. An ancient writ directed to the local authorities of a town for the clean keeping of their streets and lanes. In *Reg. Orig.* 267, an instance is given of this writ, directed to the mayor and bailiffs of Oxford. Complaints having been made of the accumulation of filth, by which the atmosphere was tainted to an extent injurious to the health of the residents, and dangerous to life, the king by his writ directs the mayor and bailiffs of Oxford to cause the streets and lanes of the town and suburbs to be cleansed without delay, and to be kept clean for the future, and threatens them with penal consequences in case any mischief should arise from their neglect.

VICONTIEL JURISDICTION. The jurisdiction of a sheriff. [VICE-COMES.]

VICONTIEL WRIT. A writ directed to the sheriff, and triable in the sheriff's county court, in case any question should arise touching its execution. A vicontiel writ was not to be returned by the sheriff to any superior court until finally executed by him. *T.L.; Cowel;* 3 *Bl.* 238.

VICOUNT or **VISCOUNT** signifies (1.) A sheriff; (2.) A degree of nobility next to an earl. *Cowel;* 1 *Bl.* 398; 2 *Steph. Com.* 604. [SHERIFF; VICE-COMES.]

VIDAME (Lat. *Vice-dominus*). 1. The same as *vavasour*. [VAVASOUR.]

2. He who held lands of a bishopric on condition of defending its temporalities. *Littré.*

3. He who possessed land erected into a hereditary fief. *Littré.*

VIDELICET. Namely; often abbreviated into "viz." or "vizt." To state a time or other matter in a pleading with the phrase "to wit," or "that is to say," is called *laying it with a videlicet.* This was necessary in certain cases, as a matter of form, prior to the Common Law Procedure Act, 1852. *Stephen on Pleading, 5th ed. p.* 329.

VIDIMUS. A word employed to denote the *innotescimus* clause formerly used in letters patent. *Cowel.* [INNOTESCIMUS.] Also, a particular clause in a safe-conduct, which, as it appears from stat. 15 Hen. 6, c. 3, was formerly open to great abuses. *Cowel.* [SAFE-CONDUCT.]

VIEW. The act of viewing; a word especially applicable in speaking of a jury viewing any person or thing in controversy. In some cases, when the cause concerns lands or messuages, of which it is thought expedient that the jury should have a *view*, the officer of the court will, on application, draw up a rule for one. Two persons will be appointed as *showers*, and six jurymen as *viewers*, and the sheriff will return their names to the associate, for the purpose of being called at the trial. *T. L.; Cowel;* 3 *Bl.* 299, 358; 3 *Steph. Com.* 521; *Lush's Pr.* 540—2.

So, where a surveyor of highways is charged before justices with non-repair of the same, they may take a *view* of the highway to see if it is in repair. 3 *Steph. Com.* 134; *Oke's Mag. Sys.* 1144.

So, a coroner's inquisition into the death of a person is held *super visum corporis* (on view of the body). 1 *Bl.* 348; 2 *Steph. Com.* 638.

VIEW OF FRANKPLEDGE (Lat. *Visus Franci Plegii*). [FRANK-PLEDGE.]

VIEWERS. [VIEW.]

VIFGAGE (Lat. *Vivum vadium*, living pledge) is where the property of a debtor is transferred to a creditor, to be retained until the latter shall have satisfied his claim out of the rents and profits thereof. The term hardly ever occurs in practice. 2 *Bl.* 157; 1 *Steph. Com.* 304.

VIIS ET MODIS (by ways and means). Where there is no opportunity of effecting on a defendant in an ecclesiastical

VIIS ET MODIS—*continued.*

court personal service of a citation or decree, proof of the fact is made by the affidavit of the officer of the court, upon which another decree issues, called a decree *viis et modis*, directing the citation to be served so as by all *ways and means* to affect the party with the knowledge of its contents. *Phillimore's Eccl. Law*, 1258.

VILL is sometimes taken for a manor; sometimes for a parish, or part of it; sometimes of collections of houses consisting of ten freemen or frank pledges. *Cowel;* 1 *Bl.* 114; 1 *Steph. Com.* 125. [FRANK-PLEDGE; MANOR; PARISH.]

VILLAIN or **VILLEIN.** A person of servile degree. There were two sorts of villains in England. The one was termed a *villain in gross*, who was immediately bound to the person of the lord and his heirs, and transferable by deed from one owner to another. The other was a villain regardant to a manor, as being a member belonging and annexed to a manor, and bound to the lord thereof. *T. L.; Cowel;* 2 *Bl.* 92, 93; 1 *Steph. Com.* 215. [COPYHOLD; FREEHOLD.]

VILLANIS REGIS SUBTRACTIS REDUCENDIS. A writ that lay for the bringing back of the king's bondmen, that had been carried away by others out of his manors. *Cowel.*

VILLANOUS JUDGMENT. That which cast the reproach of villany and shame upon them against whom it is given; whereby they lost their *liberam legem*, or frank-law, and were discredited and disabled as jurors and witnesses. It was pronounced against conspirators. *T. L.; Cowel;* 4 *Bl.* 136; 4 *Steph. Com.* 239. [AMITTERE LEGEM TERRÆ; FRANK-LAW.]

VILLEIN. [VILLAIN.]

VILLEIN IN GROSS. [VILLAIN.]

VILLEIN REGARDANT. [REGARDANT; VILLAIN.]

VILLEIN SERVICES. Services fit only for peasants or persons of a servile rank. 2 *Bl.* 61; 1 *Steph. Com.* 187. [FREEHOLD; VILLAIN.]

VILLEIN SOCAGE, otherwise called privileged villenage, was tenure of land by services *certain* in quantity, but *servile* in quality. 2 *Bl.* 61, 98; 1 *Steph. Com.* 187, 223. [FREEHOLD; PRIVILEGED VILLENAGE; VILLAIN.]

VILLENAGE. The condition of a villain or villein. [VILLAIN.].

VILLENOUS JUDGMENT. [VILLANOUS JUDGMENT.]

VINCULO MATRIMONII. From the bond of marriage. [DIVORCE, 2, 3.]

VINDICTIVE DAMAGES, in an action, are damages given by way of revenge, beyond the actual amount of injury suffered by the plaintiff.

VIOLENT PRESUMPTION, in the law of evidence, is a presumption of such a nature as almost to amount to proof. 3 *Bl.* 371. [PRESUMPTION.]

VIOLENT PROFITS. The penalty due by the law of Scotland on a tenant who forcibly or unwarrantably retains possession after he ought to have been removed. In houses, the violent profits amount to double the rent; in lands, they amount to the full profit which the proprietor could otherwise have made. They include also damages done to the property by withholding possession. *Hunter, L. & T.; Bell; Paterson.* [DOUBLE RENT.]

VIRGE. A species of copyhold tenure. 2 *Bl.* 148. [VERGE, 3.]

VIRIDARIO ELIGENDO (for electing a verderor). A writ that lies for the choice of a verderor in the forest. *Cowel.* [VERDEROR.]

VIS MAJOR signifies irresistible force; by which is meant such an interposition of human agency as is from its nature and power absolutely uncontrollable; such as the inroads of a hostile army, or forcible robberies. *Story on Bailments.* The phrase is especially applied to the loss of goods by a bailee, through violence too great to be resisted. [BAILMENT.]

VISCOUNT. [VICE-COMES; VICOUNT.]

VISITATION. 1. The office that is performed by a bishop in every diocess once every three years, or by the archdeacon once a year, in visiting the churches and their rectors, &c. *T. L.; Cowel;* 2 *Steph. Com.* 674—676.

The bishop at his triennial visitation, and the archdeacon at his annual visitation, preside over a lawful court; and those subject to its jurisdiction, and refusing to appear, are liable to ecclesiastical punishment for their contumacy. *Phillimore's Eccl. Law*, 1346.

2. The office of inquiring into and correcting the irregularities of corporations. [VISITOR.]

VISITOR. 1. A person appointed to visit, inquire into, and correct irregularities

VISITOR—*continued.*

arising in a society or corporation. The ordinary is the visitor of ecclesiastical corporations; that is, of corporations composed entirely of spiritual persons, as bishops, &c. In the colleges of Oxford and Cambridge, the visitor is generally either the Crown, acting by the Lord High Chancellor, or some bishop of the Church of England, or the chancellor or vice-chancellor of the university, or the head of some college *ex officio*. In cases of Jesus College, Oxford, and Magdalene College, Cambridge, the visitor is hereditary; and in the case of Balliol College he is elected by the society. The errors and abuses of civil lay incorporations are inquired into and redressed by the Court of Queen's Bench (now the Queen's Bench Division of the High Court of Justice). See 1 *Bl.* 480—482; 3 *Steph. Com.* 25—29.

2. An official visitor of lunatics, appointed to see and report upon persons found lunatic by inquisition. 2 *Steph. Com.* 513.

3. A person appointed by a school board to visit houses to see that parents are complying with the provisions of the Elementary Education Act, 1870 (stat. 33 & 34 Vict. c. 75), and the bye-laws of the board, in reference to the education of their children.

VISNE (Lat. *Vicinetum*). The neighbourhood. *Cowel;* 3 *Bl.* 294; 4 *Bl.* 350. [VENUE.]

VISUS FRANCI PLEGII (view of frank pledge). A writ, called *visus franci plegii*, lay to exempt a party from coming to the view of frank pledge, who was not resident within the hundred. *Cowel.* [FRANK PLEDGE.]

VITIOUS INTROMISSION in the Scotch law, is the unlawful meddling by an heir, or other person not executor, with the property of a deceased person. The party so unlawfully meddling is called the *vitious intromitter;* he corresponds with the *executor de son tort* of the English law. *Bell; Paterson.*

VIVA PECUNIA. A phrase anciently used for live cattle. *Cowel.*

VIVA VOCE. Orally. [WITNESS.]

VIVARY. A place of land or water, where living creatures are kept. It generally signifies a park, warren, or fish-pond. *T. L.; Cowel.*

VIVUM VADIUM. [VIFGAGE.]

VOID AND VOIDABLE. A transaction is said to be *void* when it is a mere nullity and incapable of confirmation; whereas a *voidable* transaction is one which may be either avoided or confirmed by matter arising *ex post facto*. 1 *Steph. Com.* 474-5.

Thus, prior to the Infant's Relief Act, 1874 (statute 37 & 38 Vict. c. 62), the contract of a minor (otherwise than for necessaries) was merely voidable, as it might be confirmed by him on coming of age; but since that Act such a contract is void, and incapable of confirmation.

VOIDANCE. The state of an ecclesiastical benefice without an incumbent. *Cowel.*

VOIR DIRE or **VOIRE DIRE** (Lat. *Veritatem dicere*). An examination of a witness upon the *voir dire* is in the nature of an examination as to his competency to give evidence, or some other collateral matter, and generally takes place prior to his examination in chief. It was formerly used in cases where a witness was suspected of an interest in the cause, which, until stat. 6 & 7 Vict. c. 85, rendered his testimony inadmissible. 3 *Bl.* 332; 3 *Steph. Com.* 535, *n.* [INITIALIA TESTIMONII.]

VOLUMUS (we will). A word used in royal writs of protection and letters patent. *Cowel.* [WILL, 2.]

VOLUNTARY ANSWER, in the practice of the Court of Chancery, was an answer put in by a defendant, when the plaintiff had filed no interrogatories which required to be answered. *Hunt. Eq.* Under the Judicature Act, 1875, First Sched. Ord. XXII., any statement hitherto included in a voluntary answer would now form part of the statement of defence. [STATEMENT OF DEFENCE.]

VOLUNTARY CONFESSION. A confession of crime made by an accused person, without any promise of worldly advantage held out to him as obtainable by confession, or any harm threatened to him if he refuses to confess. Such a confession is always admissible in evidence against the party. *Powell's Ev., 4th ed. p.* 276.

VOLUNTARY CONVEYANCE. This phrase denotes a conveyance not founded upon a valuable consideration. [VALUABLE CONSIDERATION.] Such a conveyance is, by stat. 27 Eliz. c. 4, passed in 1585, void as against a purchaser for valuable consideration, though with notice of the voluntary conveyance. 2 *Bl.* 296; 1 *Steph. Com.* 497, 498; *Robson's Bkcy. ch.* 8; *Hunt's Law of Fraudulent Conveyances and Bills of Sale, ch.* 4.

VOLUNTARY COURTESY. An old phrase used to signify a spontaneous act of kindness, as opposed to one done upon the request of the party for whose benefit it is intended. When it is said that a voluntary courtesy will not uphold an assumpsit, it is meant that a spontaneous act of kindness is not a sufficient consideration for a subsequent promise by the party towards whom it is performed to pay the other party for his trouble, so as to enable the latter to maintain an action for the breach thereof. *Lampleigh* v. *Brathwaite*, 1 *Smith's Leading Cases.* [CONSIDERATION; CONTRACT.]

VOLUNTARY JURISDICTION signifies—

1. A jurisdiction which consists in doing that which no one opposes, as the granting of licences, &c. 3 *Bl.* 66.

2. A jurisdiction voluntarily submitted to by the parties in a dispute.

VOLUNTARY OATH. An oath not taken before a magistrate or other proper officer in some civil or criminal proceeding. 4 *Bl.* 137. Voluntary oaths are now prohibited by stat. 5 & 6 Will. 4, c. 62, passed in 1835, and statutory declarations substituted for them. 4 *Steph. Com.* 242. [STATUTORY DECLARATION.]

VOLUNTARY REDEMPTION, in the law of Scotland, is when a mortgagee receives the sum due into his own hands and discharges the mortgage, without any "consignation." *Bell.* [CONSIGNATION.]

VOLUNTARY SETTLEMENT. A settlement made without valuable consideration. [VOLUNTARY CONVEYANCE.]

VOLUNTARY WASTE. Waste committed on lands by the voluntary act of the tenant, as opposed to waste which is merely permissive. [WASTE.]

VOLUNTEER. 1. A person who takes property under a voluntary conveyance. [VOLUNTARY CONVEYANCE.]

2. A member of some volunteer rifle or artillery corps. The formation of these volunteer corps was first sanctioned by stat. 44 Geo. 3, c. 54, passed in 1804; and by stat. 26 & 27 Vict. c. 65, passed in 1863 (amended in 1869 by statute 32 & 33 Vict. c. 81), the previous acts of parliament relating to the volunteer force are consolidated, and their enactments amended. 2 *Steph. Com.* 588, *and notes.*

VOTES AND PROCEEDINGS are short entries of the proceedings of the House of Commons made by the clerks at the table. These have, since the year 1817, been printed and distributed every day. From these the Journal is afterwards prepared, in which the entries are made at greater length and with the forms more distinctly pointed out. These records are confined to the votes and proceedings of the House, without any reference to the debates. *May's Parl. Pract.*

VOUCH (Lat. *Vocare*). To call or summon.

VOUCHEE (Latin, *Vocatus*). A person "vouched" or summoned. [RECOVERY; VOUCHER, 1.]

VOUCHER. 1. *Vouching to warranty.* This, in the old form of real action for the recovery of land, was the calling in of some person to answer the action, who had warranted the title of the tenant or defendant to the land in question. If the "vouchee" appeared, he was made defendant instead of the "voucher;" but if he afterwards made default, recovery might then be had against the original defendant, who in his turn might recover over an equivalent in value against the deficient vouchee. This was the form used in *common recoveries*, which were grounded on a *writ of entry*, a species of action that relied chiefly on the weakness of the tenant's title. The tenant thereupon vouched the warrantor, or person who had warranted the title. The process of calling the vouchee was styled a *summonceas* (or summons) *ad warrantizandum.* In *writs of assize*, indeed, where the principal question was whether the demandant or his ancestors were or were not in possession when the ouster happened, no voucher was allowed; but the tenant might bring a writ of *warrantia chartæ* against the warrantor, to compel him to assist him with a good plea or defence, or else to render damages and the value of the land, if recovered against the tenant. 2 *Bl. App. No. V.*; 3 *Bl.* 300. The writ of *warrantia chartæ* was abolished in 1833 by statute 3 & 4 Will. 4, c. 27, s. 36. [ACTIONS REAL AND PERSONAL; ASSIZE, WRIT OF; ENTRY, WRIT OF; RECOVERY; WARRANTIA CHARTÆ.]

2. A book of accounts, wherein are entered the acquittances or warrants for the accountant's discharge. *Cowel.* Also any acquittance or receipt discharging a person, as being evidence of payment. *Toml.*

VOUCHING TO WARRANTY. [VOUCHER, 1.]

VOUCHOR. A person who vouches or calls another. [VOUCHER, 1.]

VOYAGE POLICY. A policy of insurance on a ship against losses incurred during a voyage specified in the policy. 2 *Steph. Com.* 130—132. [TIME POLICY.]

VULGARIS PURGATIO. The name applied to the ordeal, in order to distinguish it from the canonical purgation. 4 *Bl.* 342; 4 *Steph. Comm.* 407. [BENEFIT OF CLERGY; COMPURGATORS; ORDEAL.]

WADSET. The old Scotch term for a mortgage. The mortgagee was called the *wadsetter*, and the mortgagor the *reverser*. The mortgage debt was called the *wadset sum*. A *wadset improper* was where the mortgagee entered into possession. *Bell.* [BOND AND DISPOSITION IN SECURITY; MORTGAGE.]

WADSETTER. A mortgagee. [WADSET.]

WAGE. The giving security for the due performance of anything. *T. L.; Cowel.* [GAGE. See also the following Titles.]

WAGER. A mutual contract for the future payment of money by A. to B., or by B. to A., according as some unknown fact or event, otherwise of no interest to the parties contracting, shall turn out. Wagers are now void in law by stat. 8 & 9 Vict. c. 109, s. 18, passed in 1845. 4 *Steph. Com.* 274. [FEIGNED ISSUE.]

WAGER OF BATTEL. A mode of trial, in the nature of an appeal to Providence, to give the victory to him who had the right. It was introduced into England by William the Conqueror, and was available only in three cases: one military, one criminal, and the third, civil.

1. In the court-martial, or court of chivalry and honour. [COURT OF CHIVALRY.]

2. In appeals of felony, and upon approvements. [APPEAL; APPROVER.]

3. Upon issue joined in a writ of right. [ISSUE, 5; WRIT OF RIGHT.]

In wager of battel on a writ of right, the parties fought by their champions; but on appeals they fought in their own proper persons. If, however, the appellant or approver were a woman, a priest, an infant, or of the age of sixty, or lame or blind, or a peer of the realm, or a citizen of London; also if the crime were notorious, as if the murderer were taken with the bloody knife; in these cases wager of battel might be declined by the appellant or approver. Where, however, the wager of battel was allowed, the appellee pleaded not guilty, and threw down his glove; and declared he would defend the same with his body. The appellant took up the glove, and replied that he was ready to make good his appeal, body for body; and thereupon the appellee, taking the Bible in his right hand, and in his left the right hand of his antagonist, swore to this effect: "Hear this, O man, whom I hold by the hand, who callest thyself John by the name of baptism, that I, who call myself Thomas by the name of baptism, did not feloniously murder thy father, William by name, nor am anywise guilty of the said felony; so help me God and the saints: and this I will defend against thee by my body, as this Court shall award." To which the appellant replied: "Hear this, O man, whom I hold by the hand, who callest thyself Thomas by the name of baptism, that thou art perjured; and therefore perjured, because that thou didst murder my father, William by name; so help me God and the saints; and this will I prove against thee by my body, as this Court shall award." Then followed oaths on either side against amulets and sorcery, in this or a similar form: "Hear this, ye justices, that I have this day neither eat, drank, nor have upon me neither bones, stones, nor grass, nor any enchantment, sorcery, or witchcraft, whereby the law of God may be abased, or the law of the devil exalted. So help me God and his saints."

The battle was then begun; and if the appellee were so far vanquished as not to be able or willing to fight any longer, he was adjudged to be hanged immediately; but if he killed the appellant, or could maintain the fight from sunrising till the stars appeared in the evening, he was acquitted. Also if the appellant became recreant, and pronounced the word *craven*, he lost his *liberam legem*, and became infamous; and the appellee recovered his damages, and was for ever quit of any further proceedings for the same offence.

The proceedings in wager of battel in a writ of right were similar to the above, except that the battle was by champions. It was the only mode of determining a writ of right until the *grand assise* was introduced by Henry II., with consent of parliament. The prevalence of judicial combats in the Middle Ages is attributed by Mr. Hallam to systematic perjury in witnesses, and want of legal discrimination on the part of judges.

WAGER OF BATTEL—*continued.*

Wagers of battel were abolished, together with appeals, by stat. 59 Geo. 3, c. 46, passed in 1819. 3 *Bl.* 337—341; 4 *Bl.* 346, 418; 4 *Steph. Com.* 411—416.

WAGER OF LAW (Lat. *Vadiatio legis*). This was where a man put in sureties that he would *make his law*, that is, take the benefit which the law allowed him. It was based upon the principle that a man's credit depended upon the opinion which his neighbours had of his veracity. The defendant, being prepared to swear himself not chargeable, brought into Court eleven of his neighbours. He then, standing at the bar, was admonished by the judges of the nature and danger of a false oath. And if he still persisted, he had to repeat this or the like oath: "Hear this, ye justices, that I do not owe unto Richard Jones the sum of ten pounds, nor one penny thereof, in manner and form as the said Richard hath declared against me. So help me God." And thereupon his eleven neighbours would swear that they believed in their consciences that he said the truth. No infant, nor any person outlawed or attainted for false verdict, or for conspiracy or perjury, or otherwise infamous, was permitted to wage his law; nor was any defendant against whom there was any alleged contempt, trespass, deceit, or injury with force, permitted to wage his law. 3 *Bl.* 341—348. And wager of law is now entirely abolished by stat. 3 & 4 Will. 4, c. 42, s. 13, passed in 1833. 3 *Steph. Com.* 424, 425.

WAGERING POLICIES are policies of assurance, in the subject-matter whereof the assured has no interest; as, for instance, an insurance on the life of a stranger. They are disallowed by law. See 2 *Bl.* 460; 2 *Steph. Comm.* 137. [INSURANCE; WAGES.]

WAGES. Any money or salary paid or payable to any clerk or servant, labourer or workman. When a master becomes bankrupt, a clerk or servant is entitled to be paid any sum owing to him, not exceeding four months wages or salary, and not exceeding 50*l.*, in priority to the general creditors; and any labourer or workman is entitled to be paid any sum due, not exceeding two months' wages, in priority to the general creditors. *Stat.* 32 *&* 33 *Vict. c.* 71, *s.* 32; *Stat.* 38 *&* 39 *Vict. c.* 26.

WAIFS (Lat. *Bona waviata*). Goods stolen and thrown away by the thief in his flight, for fear of being apprehended. Waifs were formerly forfeited to the king or lord of the manor, unless they belonged to a foreign merchant. Their forfeiture was intended as a punishment to the owner for not bringing the thief to justice. *T. L.; Cowel;* 1 *Bl.* 297; 2 *Steph. Com.* 539, 547.

WAINAGIUM. Gainage. [GAINAGE.]

WAITING CLERKS were officers whose duty it was to wait in attendance upon the Court of Chancery. By an order of the 26th of February, 1807, they were allowed 3*s.* 4*d.* for every day that a cause was in the paper for hearing, and a fee of 6*s.* 8*d.* for every day that a cause, appeal, re-hearing, or further direction, should be in hearing, or should be in the paper after being part heard. The abolition of these fees was suggested by the Report of the Chancery Commission of 1826. The office of the waiting clerks, with other offices of the Court of Chancery, were abolished in 1842 by stat. 5 & 6 Vict. c. 103.

WAIVE (Lat. *Habere pro derelicto*). To forsake, to forego. [WAIFS.]

Thus we speak of a party waiving a claim, or waiving an objection, meaning that he does not put it forward. So, a man is said to *waive a tort* when he foregoes his right of treating a wrongful act as such; which he does, when he expressly, or by implication, adopts the acts of the wrongdoer. Thus, if goods have been wrongfully taken and sold, and the owner thinks fit to receive the price, or part thereof, he adopts the transaction, and cannot afterwards treat it as a wrong. *Addison on Torts.*

WAIVER. A waiving or forsaking the assertion of a right at the proper opportunity. [WAIVE.]

WAKENING. The Scotch term for the revival of an action. In Scotland, when an action has been called on in court, and allowed to lie over for the space of a year without any procedure having taken place, it is said to fall asleep, and requires to be wakened by a new summons. Now, by statute 31 & 32 Vict. c. 100, s. 95, passed in 1868, it is provided that "where, according to the existing practice, a cause would require to be wakened in order to its being proceeded with, it shall be competent to any of the parties to enrol such cause before the Lord Ordinary, and to lodge a minute craving a wakening of the cause." [TRANSFERENCE.]

WAKF. A bequest for charitable or religious purposes. *Wilson's Gloss. Ind.*

WAKIL. An ambassador or representative; an agent, attorney, or public pleader. *Wilson's Gloss. Ind.*

WALDS were forests or woods where wolves and foxes did harbour before the destruction of wolves by King Edgar, A. D. 959. *Manwood.*

WANLASS. Driving deer to a stand that the lord might have a shot. An ancient tenure of lands. *Toml.*

WAPENTAKE. From *weapon* and *take;* the name in the northern counties for a hundred. [HUNDRED.] Wapentakes were so called, according to some, because the people at a public meeting confirmed their union with the governor by touching his weapon or lance; according to others, because those who could not find sufficient pledges for their "good abearing" had their weapons taken away and given to others. *T. L.; Cowel;* 1 *Bl.* 116; 1 *Steph. Com.* 126. [GOOD ABEARING.]

WARAN (from the English "warrant"). An order for the apprehension of a criminal. *Wilson's Gloss. Ind.*

WARD (Lat. *Custodia*) signifies *care* or *guard*, and is used variously to denote:—1. A portion of a city or town. 2. A division of a forest. 3. A prison. 4. The heir of the king's tenant, that held by knight's service *in capite*, was called a ward during his nonage. [IN CAPITE; WARDSHIP.] 5. A minor under the protection of the Court of Chancery, generally called a ward in Chancery, or a ward of court. 6. And, generally, a minor under the protection or tutelage of a guardian. *Cowel;* 1 *Bl.* 356; 4 *Bl.* 292, 426; 2 *Steph. Com.* 412; *Hunter's Eq., Pt. III. ch.* 3, *s.* 1. [WATCH AND WARD.]

WARDA. The custody of a town or castle. *Toml.*

WARDAGE seems to be the same as wardpeny, which see. *Cowel.*

WARDEN. A guardian; he that hath the custody of any person or thing by his office; as the warden of a fellowship or company in London; the Warden of the Cinque Ports; the warden of a college; the warden of the Fleet Prison, &c. *T. L.; Cowel.* [GUARDIAN.]

WARDHOLDING. The ancient military tenure of Scotland, corresponding to knight's service in England. Abolished in 1747 by stat. 20 Geo. 2, c. 50. *Bell;* 1 *Step. Com.* 204, *n.* [KNIGHT-SERVICE.]

WARDMOTE. A court anciently kept in every ward in the city of London. *T. L.; Cowel.*

WARDPENY or **WARPENY.** Money contributed to watch and ward. *Cowel.*

WARDS AND LIVERIES. The Court of Wards and Liveries was a court erected in the reign of Hen. VIII., for the purpose of inquiring, on the death of any of the king's tenants *in capite*, of what lands he died seised, who was his heir, and of what age; in order to entitle the king to his marriage, wardship, relief, *primer seisin*, or other advantages, as the circumstances of the case might turn out. It was abolished in 1660, by stat. 12 Car. 2, c. 24, abolishing the military tenures. *Cowel;* 2 *Bl.* 69; 3 *Bl.* 258; 1 *Steph. Com.* 192.

WARDSHIP. The custody of a ward; a word used especially with reference to wardship in chivalry, but also applicable to any form of the relation between guardian and ward.

1. Wardship in chivalry was the right claimed by a lord to have the custody of the body and lands of the heir of a tenant by knight's service, without any account of the profits, till the age of twenty-one in males and sixteen in females. It was abolished in 1660 by 12 Car. 2, c. 24. 2 *Bl.* 67; 4 *Bl.* 418—421; 1 *Steph. Com.* 190; *Wms. R. P., Pt. I. ch.* 5. [GUARDIAN, I. 4.]

2. Wardship in socage differed from wardship in chivalry, inasmuch as in socage tenures the guardian was accountable to his ward for the profits of the land, and the guardian was not the lord, but the nearest relation to whom the inheritance could not descend. This form of wardship ceased at the age of fourteen. 2 *Bl.* 87, 88. [GUARDIAN, I. 3.]

3. Wardship in copyholds partakes both of that in chivalry and that in socage. As in chivalry, the lord is the legal guardian; but, like the guardian in socage, he is accountable to his ward for the profits. 2 *Bl.* 97, 98. (This is, however, doubted by the late Mr. Justice Coleridge, in his note on the above passage from Blackstone.)

WARDWIT. The being quit of keeping ward in a town, and of contributing thereto. *Cowel.*

WAREHOUSE. [See the two next Titles.]

WAREHOUSE BOOK. A book used by merchants to contain an account of the quantities of goods received, sent out, and on hand. *Chambers' Bookkeeping, p.* 5.

WAREHOUSING SYSTEM. The system of allowing goods imported to be deposited in public warehouses, at a reasonable rent, without payment of the duties on importation if they are re-exported; or, if they are to be withdrawn for home consumption, then without payment of such duties until they are so removed. *Toml.*

By s. 10 of the Customs Consolidation Act, 1853 (statute 16 & 17 Vict. c. 107), the Commissioners of the Treasury may from time to time appoint the ports in the United Kingdom which shall be warehousing ports for the purposes of the Act, and the Commissioners of Customs may appoint warehouses or places of security in such ports, and direct in what different parts or divisions of such warehouses or places, and in what manner, any goods, and what sort of goods, may and may only be warehoused, kept, and secured without payment of duty upon the first entry thereof; or for exportation only, in cases where the same may be prohibited for home use. The subjects of importation and warehousing are dealt with at length in sects. 41 to 116 of the Act. See also, as to the warehousing of sugar, stat. 17 & 18 Vict. c. 29, s. 6; as to tobacco, stat. 20 & 21 Vict. c. 62, ss. 5—13; as to sugar, molasses and treacle, to be used in the distillation of spirits, stat. 23 & 24 Vict. c. 114, ss. 55, 56, and stat. 37 & 38 Vict. c. 16, ss. 14—19; as to the powers and duties of warehouse owners, stat. 25 & 26 Vict. c. 63, ss. 66—77; as to the warehousing of spirits, stat. 27 & 28 Vict. c. 12; as to the removal of warehoused goods, stat. 30 & 31 Vict. c. 82, s. 7.

WARIS. An heir; anyone having right of heritage. *Wilson's Gloss. Ind.*

WARNOTH. An ancient custom, that if any tenant, holding of the castle of Dover, failed in paying his rent at the day, he should forfeit double, and for the second failure treble. *Toml.*

WARRANDICE is the obligation which, according to the law of Scotland, lies upon every vendor of land or goods to protect the purchaser from all claims and every diminution in the value of the thing sold, arising from causes antecedent to the sale. This warrandice, which is the natural warrandice of sale, is what is termed *absolute warrandice.* When the warrandice rests on the personal obligation of the vendor, it is called *personal warrandice.* So far as it rests upon lands (thence called *warrandice* lands) accepted by the purchaser either in lieu of, or in addition to, personal warrandice, it is called *real warrandice.* But warrandice may be of a slighter kind, in cases where it is so stipulated between the parties; as *warrandice from fact and deed,* which implies that nothing has been done by the granter or vendor to defeat the right; or the warrandice may be still slighter, as *simple warrandice,* which implies no more than that the granter or vendor will do nothing inconsistent with the grant or sale. *Bell.*

WARRANT signifies—

I. A written document authorizing and requiring a person to do some specific act.

1. *Warrants of Arrest.*—These are most usually issued for the apprehension of persons accused or suspected of serious crimes. On information being laid before a justice that any person has committed, or is suspected to have committed, any offence, the justice will, according to the circumstances of the case, issue a summons, to be served upon the defendant, citing him to appear, or will issue a warrant for his apprehension in the first instance. In most cases of serious offences a warrant will be issued at once. In minor offences, especially those punishable on summary conviction, a warrant will not in general be issued except against a party who has disobeyed a summons. But, even in these cases, a justice may, if he think fit, issue in the first instance a warrant for apprehending the defendant. Also, where an indictment has been found against a person who is at large, a warrant may be issued for his apprehension.

Every warrant must be under the hand and seal of the justice issuing the same, and must state shortly the matter of the information or complaint on which it is founded, and name, or otherwise describe, the person against whom it is issued.

Where a warrant is issued in the first instance for the apprehension of an offender, it must be upon the sworn testimony of the complainant, whereas a summons may be granted without an oath, unless the act under which it is issued requires an oath. Moreover, a warrant cannot in general be executed in a place out of the jurisdiction of the justice who granted it, without being *backed* by some justice having jurisdiction in such place, which is done by the latter justice making an endorsement on the warrant authorizing its execution within his jurisdiction. But a summons

WARRANT—*continued.*

may be legally served anywhere, without being backed. A warrant for the apprehension of a party accused of an indictable offence may be issued on Sunday as well as on any other day.

A warrant may also be issued for bringing before the court a person who has refused to attend as a witness when summoned; or, if a justice be satisfied, by evidence upon oath or affirmation, that such person will not attend to give evidence without being compelled to do so, the justice may issue his warrant for the purpose in the first instance. See *Statutes* 11 & 12 *Vict. co.* 42, 43; *Oke's Mag. Syn.* 137—147, 821—884.

By a rule which has been for many years in operation at the Mansion House, London, no application for a summons or warrant can be made in open court, but the same must be made to the Lord Mayor or to the Chief Clerk, either before the public sitting of the court, or at the termination of such sitting; a police court not being an *open court* for such a purpose. *Oke's Mag. Syn.* 825.

Warrants may also be issued, under the authority of the House of Lords or Commons, for the apprehension of parties guilty of the breach of the privileges of the House. In such case, also, the Speaker may issue his warrant, requiring all mayors, sheriffs, bailiffs, constables, &c., and all other her Majesty's subjects, to assist the officers of the House. *May's Parl. Pract.* [BREACH, 6.]

Power is also given to courts having jurisdiction in bankruptcy to grant warrants for the apprehension of bankrupts about to abscond, by the following enactments:—The Scotch Bankruptcy Act, 1856 (stat. 19 & 20 Vict. c. 79), ss. 88, 89; the Irish Bankruptcy and Insolvency Act, 1857 (20 & 21 Vict. c. 68), s. 124; and the English Bankruptcy Act, 1869 (stat. 32 & 33 Vict. c. 71), s. 86. The provisions of the English enactment are, by stat. 33 & 34 Vict. c. 76, extended to debtors against whom a debtor's summons has been granted, though a petition in bankruptcy may not yet have been presented against them.

2. *Warrants of Commitment.*—A warrant of commitment (as opposed to a warrant of arrest) is a written authority committing a person to prison. This may be done (1) in pursuance of a judicial sentence; (2) for the purpose of securing the attendance of the party to take his trial for an indictable offence; (3) for the purpose of a remand, for securing the party's attendance at an adjourned hearing of the charge against him; (4) for default in payment of a sum of money ordered to be paid, whether by way of fine or otherwise; (5) for default in finding sureties to keep the peace; (6) in default of sufficient property being found to satisfy a warrant of distress; (7) for contumacy, as in a witness refusing to answer questions properly put to him. 1 *Bl.* 137; 1 *Steph. Com.* 147; *Oke's Mag. Syn.* 183—192.

3. *Distress Warrants.*—A distress warrant is a warrant issued for raising a sum of money upon the goods of a party specified in the warrant; as, for the purpose of levying the amount of the costs upon the goods of a complainant whose complaint has been dismissed with costs; or for levying a sum payable by a defendant, by way of penalty or otherwise. See *Oke's Mag. Syn.* 173, 194—200.

4. *Search Warrants.*—These may be issued by justices of the peace, under various circumstances, as to which see title SEARCH WARRANT. Moreover, under the Bankruptcy Act of 1869, any person acting under the warrant of a court having jurisdiction in bankruptcy may seize any property of a bankrupt divisible among his creditors, whether in the bankrupt's custody or in that of any other person, and with a view to such seizure may break open any house, building, or room, &c.; and where the court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house not belonging to him, the court may grant a search warrant to any constable or prescribed officer of the court, who may execute the same according to the tenor thereof. *Stat.* 32 & 33 *Vict. c.* 71, *s.* 99. Forms of these warrants of seizure and search are given in the appendix to the Bankruptcy Rules of 1870, and are numbered 71 and 72 respectively. And by sect. 76 of the Act, any such warrant may be executed in any part of her Majesty's dominions in the same manner and subject to the same privileges in and subject to which a warrant issued by any justice of the peace against a person for an indictable offence may be executed. Provisions similar to the above are contained in the Irish Bankruptcy Act, 1857 (stat. 20 & 21 Vict. c. 60), ss. 82, 85.

5. *General Warrants.*—By this expression we understand warrants not specifying particularly any person or subject-matter, but intended to be executed upon all persons or things coming within a general description in the war-

WARRANT—*continued.*

rant; also warrants for the seizure of a party guilty of a specified offence, without naming any party. All general warrants were, in the case of *Wilkes* v. *Wood*, decided in the year 1763, and the cases of *Leach* v. *Money* and *Entick* v. *Carrington*, decided in 1765, declared to be illegal. See *Broom's Constitutional Law, pp.* 525—615.

II. A writ conferring some right or authority. *Dr. Johnson.* And the word is used generally to denote an authority for doing anything, and in this sense it is applied to acts of parliament, to decrees and orders of courts of justice (especially in Scotland); to orders of a government department; also to the authority given by a principal to his agent or factor, &c. [WARRANT OF ATTORNEY.]

III. Moreover, by the caprice of language, certain negotiable instruments are spoken of as *warrants.* Thus we speak of a *dividend warrant*, which is an order in the nature of a cheque by a joint-stock company upon its bankers, directing them to pay a sum of money specified therein to a shareholder entitled thereto in respect of a dividend, or to his order. Such an instrument is generally crossed, and ought therefore to be presented through a banker. As to *dock warrants*, see DOCK WARRANT.

WARRANT OF ATTORNEY is a letter sent by a debtor to some attorney named by the creditor, empowering him to confess judgment in an action of debt to be brought by the creditor against the debtor for the specific sum due. *Cowel;* 3 *Bl.* 397.

By sect. 4 of the Debtors Act, 1869 (stat. 32 & 33 Vict. c. 62), no warrant of attorney to confess judgment is to be valid, unless there is present with the person executing it some attorney expressly named by him and attending at his request to inform him of its nature and effect, which attorney shall subscribe his name as a witness of the due execution thereof.

WARRANTIA CHARTÆ. A writ formerly brought by a tenant or defendant in an assize, or writ of entry in the nature of an assize, against one who had infeoffed him, with a clause of warranty, in the lands the subject of the action. This writ was not available in any action in which the tenant or defendant was allowed to *vouch to warranty*, for in such case the tenant ought so to vouch. The above writ, though issued on the supposition that the party applying for the same was impleaded in an action, nevertheless might be sued out before the party was impleaded in any action. *F. N. B.* 134—135; *Reg. Orig.* 157; 3 *Bl.* 300. [ASSIZE, WRIT OF; ENTRY, WRIT OF; FEOFFMENT; VOUCHER, 1.] This writ, having been long obsolete, was abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36.

WARRANTIA CUSTODIÆ. A writ judicial, which lay for him who was challenged to be a ward to another in respect to land said to be holden by knight-service, which land, when it was bought by the ancestors of the ward, was *warranted* free from such thraldom. The writ lay against the warrantor and his heirs. *Cowel.* [KNIGHT-SERVICE; WARDSHIP, 1.] That is to say, lands held by knight-service were charged with certain burdens, the principal of which was called "wardship." Now, if A. sold lands to B. warranting them free from the burden of wardship, and C., one of B.'s descendants, was sued by D., a party claiming right thereto, C. might then have the above writ against A. or his heirs to make good his warranty.

WARRANTIA DIEI. A writ which lay for a man who, having had a day assigned him personally to appear in court in any action in which he was sued, was in the meantime, by commandment, employed in the king's service, so that he could not come at the day assigned. It was directed to the justices, that they might not record him in default for that day. *Cowel.*

WARRANTOR. A person who warrants, or gives a warranty. [WARRANTY.]

WARRANTY. A promise or covenant offered by a bargainor, to warrant or secure the bargainee against all men in the enjoyment of anything agreed on between them. The word is used especially with reference to any promise (express or implied by law, according to circumstances) from a vendor to a purchaser, that the thing sold is the vendor's to sell and is good and fit for use, or at least for such use as the purchaser intends to make of it. *T. L.; Cowel;* 2 *Bl.* 300, 451; 3 *Bl.* 166; 1 *Steph. Comm.* 488, 489; 2 *Steph. Comm.* 76, 77. [CAVEAT EMPTOR; VOUCHER, 1; WARRANDICE; WARRANTIA CHARTÆ.]

In marine insurances, an *express* warranty is an agreement expressed in the policy, whereby the assured stipulates that certain facts are or shall be true, or that certain acts shall be done relative to the risk. It may relate to an existing

WARRANTY—*continued.*

or past fact, or be promissory and relate to the future; and the fact or act warranted need not be material to the risk. A formal expression is not necessary to give effect to a warranty. An *implied* warranty is such as necessarily results from the nature of the contract, as that the ship is seaworthy. But it has been held that in a time policy there is no implied warranty of seaworthiness. The implied warranty in such case is merely that the ship is in existence and capable of navigation, and has not sustained actual damage. See *Crump, Mar. Ins.* 479—505. [TIME POLICY.] But according to the majority of the Court of Appeal in *Dudgeon* v. *Pembroke*, decided December 21, 1875, and reported in the *Law Reports* (March, 1876), 1 Q. B. D. 96, it would seem that, if the loss arise from the unseaworthiness, the owner cannot recover even on a time policy.

WARREN (Lat. *Vivarium*). 1. A place in which birds, fishes, or wild beasts are kept. 2. A franchise or privilege, either by prescription or grant from the king, to keep beasts and fowls of warren, which are hares, coneys, partridges, pheasants, &c. 3. Also any place to which such privilege extends. *T. L.; Cowel;* 2 *Bl.* 38; 1 *Steph. Com.* 670. [FREE WARREN.]

WASILADAR. A client or dependant. *Wilson's Gloss. Ind.*

WASTE. Spoil and destruction done, or allowed to be done, by a tenant for life or other particular estate, to houses, woods, lands, or other corporeal hereditaments, during the continuance of his particular estate therein. Whatever is hurtful to the freehold or inheritance is waste. Waste is either *voluntary* or *permissive:* voluntary, if it be a matter of commission, as by pulling down a house; permissive, as if a house be allowed to fall into ruin for want of necessary repairs. *T. L.; Cowel;* 2 *Bl.* 281—283; 3 *Bl.* 223, 229, 438; 1 *Steph. Com.* 405; 2 *Steph. Com.* 219; 3 *Steph. Com.* 405—409.

As to *equitable waste*, which is now, under the Judicature Act, 1873, s. 25, sub-s. 3, cognizable in any division of the High Court of Justice, see EQUITABLE WASTE; WITHOUT IMPEACHMENT OF WASTE.

The old *writ of waste* was an action for waste committed, partly founded upon the Common Law and partly upon the Statute of Gloucester, which might be brought by him who had the immediate estate of inheritance against a tenant for life, in dower, by the curtesy, or for years; also, under the Statute of Westminster the Second, by one tenant in common against another. 3 *Bl.* 227. This writ of waste having been long superseded by actions at law on the case for waste, and by suits in equity for injunctions to restrain waste, was abolished with other real actions by stat. 3 & 4 Will. 4, c. 27, s. 36.

WASTORS. A kind of thieves so called. *Stat.* 5 *Edw.* 3, *c.* 14; 4 *Hen.* 4, *c.* 27; *Cowel.*

WATANDAR. The holder of a hereditary right, property or office, with the privileges and emoluments attached to it. *Wilson's Gloss. Ind.*

WATCH AND WARD. *Watch* was the word applicable to the night duty of constables; *ward*, to their duties in the daytime, in apprehending rioters and robbers on the highways, &c. 1 *Bl.* 356; 4 *Bl.* 292, 426; 2 *Steph. Com.* 652, n. [CONSTABLE; WARD.]

WATER. Under the word "water," in a conveyance, it seems that a right of fishing will pass, but the soil will not pass. *Fawcett, L. & T.* 75.

WATER BAILIFFS. Officers in port towns for the searching of ships. Also an officer belonging to the city of London, who hath the supervising and search of the fish brought thither. *Cowel.*

The water bailiff is the most ancient of the officers who were appointed by the Corporation to see to the observance of the statutes and bye-laws applicable to the River Thames. He had to survey the whole of the civic jurisdiction of the river, to observe encroachments and nuisances, &c. *Pulling on the Laws and Customs of London.* The powers formerly exercised over the river by the Corporation of London are now vested in the Thames Conservancy Board. [THAMES CONSERVANCY ACTS.]

WATER COURSE. A right which a man may have to the benefit or flow of a river or stream. This right includes that of having the course of the stream kept free from any interruption or disturbance to the prejudice of the proprietor, by the acts of persons without his own territory; whether owing to a diversion of the water, or to its obstruction, or pollution by offensive commixture. 1 *Steph. Com.* 659, 693.

WATER ORDEAL. [ORDEAL.]

WATERWORKS CLAUSES ACTS are stat. 10 & 11 Vict. c. 17, passed in 1847, and stat. 26 & 27 Vict. c. 93, passed in 1863.

WAVESON. Such goods as after shipwreck do appear swimming upon the waves. *Toml.* [FLOTSAM; WRECK.]

WAXSCOT (Lat. *Ceragium*). Duty anciently paid thrice a year towards the charge of wax candles in churches. *Cowel.*

WAY. [HIGHWAY; RIGHT OF WAY; WAYS.]

WAY-GOING CROP. The phrase used in Scotland for *away-going crop. Paterson.* [AWAY-GOING CROP.]

WAYS. 1. Paths. Of these there are various kinds:—(1) A foot-way (Lat. *iter*). (2) A bridle road for horse and man (Lat. *actus*). (3) A cart-way, containing also the two preceding. (4) A drift-way or a way for driving cattle. (5) A highway. [HIGHWAY.]

2. Rights of way; especially private rights of way over a man's ground. See 2 *Bl.* 35; 1 *Steph. Com.* 658; *Wms. R. P., Pt. II. ch.* 4. [RIGHT OF WAY.]

WAYS AND MEANS. [COMMITTEE OF WAYS AND MEANS.]

WAYWARDENS. Persons who may be elected under the Highway Acts of 1862 and 1864 (statutes 25 & 26 Vict. c. 61, and 27 & 28 Vict. c. 101), in any county of which the justices, in sessions assembled, have formed it, or any part of it, into a highway district, governed by a highway board, according to the plan prescribed by those Acts. The waywardens are elected annually in each parish within the highway district, and, together with the justices acting for the county, and residing within the district, form the highway board for the district. 3 *Steph. Com.* 136, 137. [HIGHWAY; HIGHWAY ACTS; SURVEYOR OF HIGHWAYS.]

By statute 26 & 27 Vict. c. 61, passed in 1863, waywardens are forbidden, under a penalty of 10*l.*, to contract for works to be executed within their own district.

WEALREAF. The robbing of a dead man in his grave. *Toml.*

WEDBEDRIP. A customary service which inferior tenants paid to their lord in cutting down their corn, or doing other harvest duties. *Toml.*

WEEKLY NOTES are brief notes of decided cases, published weekly under the sanction of the Council of Law Reporting. The more important of such cases are given at length in the Law Reports. [LAW REPORTS.]

WEEKLY REPORTER. A series of reports, published weekly, of cases decided in the Superior Courts of England and Ireland. This series commenced in the autumn of 1851. The volumes are made up yearly, at the end of October in each year. The *Weekly Reporter* is published at 12, Cook's Court, Carey Street, Lincoln's Inn Fields, the office also of the *Solicitor's Journal.*

WEIGHT OF EVIDENCE, in a trial, is the preponderance in the evidence adduced on one side over that adduced on the other. A new trial is frequently applied for on the ground that the verdict is *against the weight of evidence.* But the granting of a new trial under such circumstances is in the discretion of the court, and a new trial will not be granted on this ground unless the judge who tried the case has expressed himself dissatisfied with the verdict. The courts have also established a rule that they will not grant a new trial on this ground where the damages or matter in dispute is less than 20*l.*, and no permanent right in question, if the issue was tried before a judge; or 5*l.* if tried before an under sheriff. *Lush's Pract.* 636; *Smith's Act. Law, ch.* 6.

The practice in this respect is not disturbed by the Judicature Acts. See the Act of 1875, s. 21; also 1st Sched. Order XXXIX.

WELSH MORTGAGE is a mortgage in which there is no condition or proviso for repayment at any time. The agreement is that the mortgagee, to whom the estate is conveyed, shall receive the rents till his debt is paid, and in such case the mortgagor and his representatives are at liberty to redeem at any time. *Sm. Man. Eq.*

WERA or **WERE.** The estimation or price of a man, especially of one slain. In the criminal law of the Anglo-Saxons, every man's life had its value, called a *were* or *capitis æstimatio.* In the time of Athelstan, a law was made to settle the *were* of every order of persons in the State. The king was rated at 30,000 *thrymsæ* (a *thrymsa* being equal to fourpence), that is, at 500*l.*; an archbishop or earl, at 15,000 thrymsæ, or 250*l.*; a bishop or alderman, at 8,000 thrymsæ, or 133*l.* 6*s.* 8*d.*; a military commander, at 4,000 thrymsæ, or 66*l.* 13*s.* 4*d.*; a priest or thane, at 2,000 thrymsæ, or 33*l.* 6*s.* 8*d.*; a common person, at 267 thrymsæ, or 4*l.* 9*s.* *Reeves' History of Eng. Law.* [WEREGILD.]

WEREGILD. The fine formerly paid for killing a man, when such crimes were punished with a pecuniary mulct, and not with death. This fine was paid partly to the king, for the loss of his subject, partly to the lord whose vassal he was, and partly to the next of kin of the slain man. *Cowel;* 4 *Bl.* 188, 313, 413; 4 *Steph. Com.* 58, 479, 488. [WERA.]

WERELADA was where a party accused of slaying a man, and not paying the weregild, but denying the fact of the killing, purged himself by the oaths of several persons, according to his degree and quality. *Toml.* [COMPURGATORS; WAGER OF LAW.]

WEST SAXON LAGE. The laws of the West Saxons, which obtained in the counties to the south and west of England, from Kent to Devonshire. [MERCEN LAGE.]

WESTMINSTER THE FIRST, STATUTE OF, is the statute made at Westminster on the 25th of April, 1275, in the first general Parliament of the reign of King Edward I., and in the third year of his reign: it contains 51 chapters [STATUTE], and it may be referred to either as Stat. 3 Edw. I., or as the Statute of Westminster the First. By this statute it is provided, among other things, that a clerk convicted of felony shall not depart without purgation; that if a man, dog, or cat escape out of a ship or barge, it shall not be adjudged wreck; that there shall be no disturbance of free elections; that amerciaments shall be reasonable, and according to the nature of the offence; that all men shall be ready to pursue felons; that notorious felons, which be openly of evil fame, shall be put in strong and hard imprisonment (*soient mys en la prisone forte et dure*) if they refuse trial by the common law of the land [PEINE FORTE ET DURE]; that an heir marrying without consent of his guardian shall pay double the value of the marriage; that none shall report slanderous news, and he that does so shall be put into prison until he hath brought him into court who was the first author of the tale. The statute also contains enactments on the following subjects:—Limitations of prescription in certain writs; vouching to warranty; the champion's oath in a writ of right [WRIT OF RIGHT]; &c.

WESTMINSTER THE SECOND, STATUTE OF. The statute 13 Edw. 1, st. 1, made at Westminster in the year 1285. This statute contains fifty chapters, beginning with the celebrated enactment *De Donis.* It prescribes the form of a *formedon,* and deals with the subjects of second deliverance, cui in vitâ, usurpation of advowson, vouching to warranty, writ of mesne, writ of waste, fieri facias, elegit, &c. [See those Titles.]

Statute 2 of the same year is the Statute of Winchester. [WINCHESTER, STATUTE OF.]

Statute 3 of the same year, though made at Westminster, is called the Statute of Merchants. This statute prescribes the form of acknowledging a statute merchant. [STATUTE MERCHANT.]

WESTMINSTER THE THIRD, STATUTE OF. This statute was passed in the eighteenth year of Edward I., A.D. 1290. It commences with the words *Quia Emptores Terrarum,* and is therefore known as the Statute of *Quia Emptores.* [QUIA EMPTORES.] By c. 3 of this statute, sales of land in mortmain are forbidden.

WHARF. A broad plain place near a river, canal, or other water to lay wares on that are brought to or from the water. *Cowel.*

There are two kinds of wharfs,—*legal quays* and *sufferance wharfs.* The former are established by act of parliament, or exist as such by immemorial usage. The latter are places where goods may be landed and shipped by special permission of the Crown. *Toml.*

By the Customs Clauses Consolidation Act, 1853 (statute 16 & 17 Vict. c. 107), s. 13, the Commissioners of Customs may from time to time, by order under their hands, appoint places to be sufferance wharves for the lading and unlading of goods by sufferance, in such cases, under such restrictions, and in such manner as they shall see fit.

[See also WAREHOUSING SYSTEM.]

WHARFAGE. Money paid for landing wares at a wharf, or for shipping or taking goods into a boat or barge from thence. *Cowel.*

WHIG. The name of one of the great political parties in the State. The name of Whig, meaning sour milk, is said, according to Hallam, to have originated in Scotland in 1648, and to have been given to the covenantors who opposed the Duke of Hamilton's invasion of England in order to restore Charles I. But it was in the year 1679 that the words Whig and Tory were first heard in their application to English factions, and, though as senseless as any cant terms that could be devised, they became in-

WHIG—*continued.*

stantly as familiar in use as they have since continued. [TORY.]

Both parties agreed in the maintenance of the Constitution; that is, in the administration of the government by a hereditary Sovereign, and in the concurrence of that Sovereign with the two Houses of Parliament in legislation, as well as in those other institutions which have been reckoned most ancient and fundamental. But they differed mainly in this: that to a Tory the Constitution was an ultimate point beyond which he never looked; whereas a Whig deemed all forms of government subordinate to the public good. The principle of the one party was amelioration, that of the other conservation. *Hallam's Const. Hist. chaps.* 12, 16.

WHITE RENTS (Lat. *Reditus albi*). [ALBA FIRMA; BLACK MAIL.]

WHITEHART SILVER. A mulct paid into the Exchequer out of certain lands in or near the Forest of White Hart, first imposed by Henry III. upon Thomas de la Linde, for killing a most beautiful white hart, which that king had before purposely spared in hunting. *Cowel.*

WHITSUNDAY ordinarily signifies the ecclesiastical festival of that name, which is kept seven weeks after Easter in each year; and in England the word has no other meaning. But in Scotland the legal term of Whitsunday, for the removing of tenants and other civil purposes, is fixed by Acts of 1690 and 1693 for the fifteenth of May. [QUARTER-DAYS; TERM, 3.]

WHOLE BLOOD. The relation between two persons descended from a pair of nearest common ancestors; as opposed to the relation of the half blood, in which there is but one nearest common ancestor, whether male or female. [HALF BLOOD.]

WICHENCRIF. Witchcraft. The word is found in the laws of King Canute. *Toml.*

WIDOW OF THE KING. [DOTE ASSIGNANDA; KING'S WIDOW.]

WIDOW'S CHAMBER. The apparel and furniture of a widow's bed-chamber, to which, by the custom of the city of London, the widow of a freeman was formerly entitled. Abolished in 1856 by statute 19 & 20 Vict. c. 94. 2 *Bl.* 518; 2 *Steph. Com.* 212, *n.* [CUSTOM OF LONDON; FREEMAN OF LONDON.]

WIDOW'S QUARANTINE. [QUARANTINE.]

WIDOW'S TERCE. The right which, by the law of Scotland, a widow has to the third part of the rents of the heritage of which her husband died infeft. *Bell.* It corresponds to dower in England. [DOWER, 2; TERCE.]

WIFE'S EQUITY TO A SETTLEMENT. [EQUITY TO A SETTLEMENT.]

WILD BIRDS PROTECTION ACT. The statute 35 & 36 Vict. c. 78, passed in 1872, for the protection of certain wild birds during the breeding season. Its provisions are analogous to those of the Sea Birds Protection Act, 1869 (stat. 32 & 33 Vict. c. 17). [SEA BIRDS PROTECTION ACT.]

WILD'S CASE was a case decided by all the judges of England, in the year 1599. The facts of the case were that land was devised by will to A. for life, with remainder to B. and the heirs of his body, with remainder to Rowland Wild and his wife, and after their decease to their children; Rowland and his wife then having issue a son and a daughter. The testator died, then A. died, B. died without issue, Rowland and his wife died, and the son died leaving issue a daughter. Then the question arose between Rowland's daughter and the son's daughter which should have the land. This question depended on the nature of the estate or interest which the terms of the will might be held to confer on Rowland and his wife. If that estate was an estate tail, then the son's daughter would be entitled as heiress in tail. But the judges decided that Rowland and his wife took only an estate for life, with remainder to their children for life, and no estate tail. And the judges resolved that it would have been the same though Rowland Wild's children had not been born at the time of the devise; because the words "after their decease" indicate the testator's intention that the children should take by way of remainder. But it was also resolved for good law, *that if A. devises his lands to B. and to his children or issue, and B. hath not any issue at the time of the devise, that the same is an estate tail.* This resolution is called the "Rule in Wild's Case." *Tudor, L. C. R. P.* 581—592.

WILL. 1. The legal declaration of a man's intention which he wills to be performed after his death. 2 *Bl.* 499. [WILLS ACT.] It has been said that a will and testament are, strictly, not of the same meaning; that a will is limited to land, and a testament to personal estate. *Toml.*

WILL—*continued.*

But this distinction, if it ever existed, is now quite obsolete.

2. That part of a letter or other authoritative document issued in the name of the sovereign, which begins with these words "Our Will is." *Bell.* This use of the word is frequent in Scotch legal procedure.

WILL, ESTATE AT. The estate of a tenant holding lands at the will of the lessor. [ESTATE; TENANT AT WILL.]

WILLS ACT. 1. The stat. 32 Hen. 8, c. 1, passed in 1540, by which persons seised in fee simple of lands holden in socage tenure were enabled to devise the same at their will and pleasure, except to bodies corporate; and those who held estates by the tenure of chivalry were enabled to devise two third parts thereof. [USES, STATUTE OF.]

2. The stat. 7 Will. 4 & 1 Vict. c. 26, passed in 1837, and also called Lord Langdale's Act. This Act permits of the disposition by will of every kind of interest in real and personal estate, and provides that all wills, whether of real or of personal estate, shall be attested by two witnesses, and that such attestation shall be sufficient. [FRAUDS, STATUTE OF.] Other important alterations are effected by this statute in the law of wills. See 2 *Bl.* 375, 376; 1 *Steph. Com.* 591, 595; 2 *Steph. Com.* 206; *Wms. R. P.*

WINCHESTER MEASURE. The standard of the measure of length, originally kept at Winchester. 1 *Bl.* 274; 2 *Steph. Com.* 517.

WINCHESTER, STATUTE OF, also called the Statute of Wynton, is the stat. 13 Edw. 1, s. 2, made at Winchester in the year 1285. By this statute it was provided, among other things, that in great towns, being walled, the gates should be closed from sunset to sunrise; and that night watches should be kept; that if any stranger passed by the watch he should be arrested until morning; that every man should have sufficient armour to keep the peace; that fairs and markets be not kept in churchyards, &c.

WINDING UP AN ESTATE is the putting it in liquidation for the purpose of distributing the assets among creditors and others who may be found entitled thereto. It is a phrase most frequently used in connexion with public companies unable to satisfy their liabilities.

WINDOW TAX was at first laid upon windows exceeding nine in a house, and afterwards extended to windows exceeding six in a house. Abolished in 1851, by stat. 14 & 15 Vict. c. 36. 1 *Bl.* 325; 3 *Steph. Com.* 525, n.

WINTER CIRCUIT. A special commission issued into certain parts of the kingdom in the vacation after Michaelmas Term (now the latter period of the Michaelmas sittings), occasionally for the trial of causes, but chiefly to secure the more speedy trial of persons charged with offences not triable at the quarter sessions. 3 *Steph. Com.* 351, n.; 4 *Steph. Com.* 313, n. (*e*).

WINTER HEYNING. The period between the 11th of November and the 20th of April, which, by s. 10 of the Forest of Dean Act, 1668, is excepted from the liberty of commoning in the Forest of Dean.

The Act above mentioned is given in Ruffhead's edition as stat. 20 Car. 2, c. 3. But in the authorized edition of the statutes published in 1819, it is given as 19 & 20 Car. 2, c. 8.

WISBUY, ORDINANCES OF. A code of maritime jurisprudence compiled in the Middle Ages at Wisbuy or Wisby, a town in the Isle of Gothland, for the governance of the Baltic traders. These Ordinances are by some referred to the year 1400. Wisbuy flourished chiefly in the early part of the 14th century, being then an independent republic. It fell under the yoke of Denmark in the year 1361. See *Hallam's Middle Ages, Chap. IX. Part 2; Knight's Encycl. Geog., Vol. III. col.* 60.

WITAM. *Secundum witam jurare* was for a person accused to purge himself by the oaths of so many witnesses as the offence required. *Toml.*

WITCHCRAFT. Supposed intercourse with evil spirits; formerly punishable with death under stat. 33 Hen. 8, c. 8, passed in 1541, and stat. 1 Jac. 1, c. 12, passed in 1603, which Acts continued in force, to the terror of all ancient females in the kingdom, until repealed in 1736 by stat. 9 Geo. 2, c. 5, which provided that no prosecution should for the future be carried on against any persons for witchcraft, sorcery, enchantment, or conjuration. 4 *Bl.* 60—62; 4 *Steph. Com.* 210—212.

WITE. A Saxon word signifying penalty; also freedom or immunity from fines and amerciaments. *Cowel.*

WITENAGEMOTE. [WITTENAGEMOTE.]

WITERDEN. A kind of taxation among the West Saxons, imposed by the general council of the kingdom. *Cowel.*

WITH COSTS. A phrase which, when used with reference to the result of an action, implies that the successful party is entitled to recover his costs from his opponent. [COSTS.]

WITHDRAWAL OF JUROR. A practice occasionally adopted by consent of the parties to an action, when neither party feels sufficient confidence to render him anxious to persevere until verdict. If, after the withdrawal of a juror, the plaintiff should proceed with the action, the defendant may apply to stay the proceedings. 3 *Steph. Com.* 550; *Lush's Pr.* 962. [STAY OF PROCEEDINGS.]

WITHDRAWING THE RECORD is where a plaintiff revokes the entry of a cause for trial, and thus discontinues the action. 3 *Steph. Com.* 568, *n.*; *Lush's Pr.* 535. By the Judicature Act, 1875, 1st Sched. Order XXIII. the plaintiff may, at any time before receipt of the defendant's statement of defence, or after such receipt before taking any other proceeding in the action (save an interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint. Moreover, the Court or a judge may, before or at or after the hearing or trial, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out.

WITHERNAM (Lat. *Vetitum namium*). An unlawful distress, or forbidden taking, as the taking or driving a thing distrained out of the county, so that the sheriff cannot upon the replevin make deliverance thereof to the party distrained. Hence it signifies also the *reprisals* for such forbidden taking as above mentioned, which was enforced by a writ of *capias in withernam*, and was executed by a second or reciprocal distress, in lieu of the first which was *eloigned* or removed from the sheriff's jurisdiction. The goods taken under this second distress were said to be *taken in withernam;* and it was a rule that goods taken in withernam could not be replevied till the original distress were forthcoming. *T. L.; Cowel;* 3 *Bl.* 149, 413.

All this practice is now superseded since the passing of the County Courts Act, 1846. 3 *Steph. Com.* 422, 423. [REPLEVIN.]

WITHOUT DAY. [EAT INDE SINE DIE.]

WITHOUT IMPEACHMENT OF WASTE. A phrase used in conveyances to tenants for life or other particular estate, to indicate that the tenant is not to be held responsible for waste. [WASTE.] But this exemption will not extend to *equitable waste;* that is, the commission of wanton injury, as the pulling down of the family mansion house, or felling timber left standing for ornament. 1 *Steph. Com.* 257; *Wms. R. P. Pt. I. ch.* 1; *Haynes' Eq., Lect. IX.; Chute's Eq. ch.* 8.

And by the Judicature Act, 1873, s. 25, sub-s. 3, an estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as *equitable waste*, unless an intention to confer such right shall expressly appear by the instrument creating the estate.

WITHOUT PREJUDICE to any matter in question means that a decision come to, or action taken, is not to be held to affect such question, but to leave it open. Thus, when a lawyer writes on behalf of a client to offer a compromise of a question in dispute, he guards himself from being supposed to make any admission, beyond the mere act of his willingness to compromise, by stating that what he offers is without prejudice to any question in dispute.

WITHOUT RECOURSE TO ME. [SANS RECOURS.]

WITHOUT RESERVE. A term applied to a sale by auction, indicating that no price is reserved. In such case the seller may not employ any person to bid at the sale, and the auctioneer may not knowingly take any bidding from any such person. *Stat.* 30 & 31 *Vict. c.* 48. [PUFFER.]

WITHOUT THIS THAT. A phrase formerly used in a special traverse, meaning "except." [SPECIAL TRAVERSE.]

WITNESS. A person who, on oath or solemn affirmation, gives evidence in any cause or matter. [EVIDENCE.]

By the Judicature Act, 1875, 1st Schedule, Order XXXVII. rule 1, the witnesses at the trial of any action, or at any assessment of damages, shall be examined *viva voce* and in open court, but the Court or a judge may, at any time for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that any witness whose

WITNESS—*continued.*

attendance in court ought to be dispensed with may be examined by interrogatories or otherwise before a commissioner or examiner. This rule is to take effect in the absence of agreement between the parties. Upon any motion, petition, or summons, evidence may, by rule 2, be given by affidavit.

WITTENAGEMOTE or **WITENAGEMOTE.** The great meeting of wise men, or common council of England under the Saxons, answering to our parliament. 1 *Bl.* 147, 148; 2 *Steph. Com.* 319, 320.

WOLFESHEAD (Lat. *Caput lupinum*, wolf's head). A phrase used to denote the condition of such as were outlawed in the time of the Saxons, who, if they could not be brought alive to justice, might be slain. *Toml.* [CAPUT LUPINUM; OUTLAWRY.]

WOOD CORN. A certain quantity of grain paid by the tenants of some manors to the lord, for the liberty to pick up dead or broken wood. *Toml.*

WOOD GELD. (1) The gathering or cutting of wood within the forest; (2) Money paid for the same to the foresters; (3) The immunity from such payment, by grant from the king. *T. L.; Cowel.*

WOOD MOTE. [ATTACHMENTS, COURT OF; FOREST COURTS.]

WOOD PLEA COURT. A court held twice a-year in the forest of Clun, in the county of Salop. *Cowel.*

WOODS, FORESTS AND LAND REVENUES. A public department charged under stat. 10 Geo. 4, c. 50, passed in 1829, and stat. 14 & 15 Vict. c. 42, passed in 1851, with the superintendence of the royal parks and public land revenues of the Crown. By stat. 29 & 30 Vict. c. 62, ss. 7—13, the rights of the Crown in the foreshore are transferred to the Board of Trade. [CROWN LANDS.] The office of the Woods and Forests is at 1 and 2, Whitehall Place. See *Post Office London Directory, p.* 126.

WOODWARD. An officer of the forest, whose duty it was to inform the verderor of all offences against vert and venison, and to present the same at the next court of the forest. *Cowel.* [FOREST; FOREST COURTS; VERDEROR; VERT.]

WOOLSACK. The seat of the Lord Chancellor in the House of Lords. It is not strictly within the House, for the lords may not speak from that part of the chamber; and, if they sit there during a division, their votes are not reckoned. *May's Parl. Pract. ch.* 7.

WOOLSTAPLE. That city or town where wool was sold. *Cowel.*

WORDS OF LIMITATION. Words following the name of an intended grantee or devisee under a deed or will, which are intended to "limit" or mark out the estate or interest taken by the party. [LIMITATION OF ESTATES; RULE IN SHELLEY'S CASE.]

WORT or **WORTH** was a curtilage, or country farm. *Toml.*

WORTHIEST OF BLOOD. A phrase applied to males, as opposed to females, in the succession to inheritances. 2 *Bl.* 213; 1 *Steph. Com.* 402. But in reference to the custom called *tanistry*, it seems to have a more general sense. [TANISTRY.]

WORTHINE OF LAND. A certain quantity of ground so called in the manor of Kingsland, in the county of Hereford. From the Saxon *weorth*, a country house or farm. *Cowel.*

WOUNDING. An aggravated species of assault and battery, consisting in one person giving another some dangerous hurt. 3 *Steph. Com.* 373; and see *Oke's Mag. Syn.* 960—965.

WRECK (Lat. *Wrecum maris*), by the ancient common law, was where any ship was lost at sea, and the goods or cargo were thrown upon the land; in which case the goods so wrecked were adjudged to belong to the king. But it was ordained by King Henry the First, that if any person escaped alive out of the ship, it should be no wreck. And afterwards King Henry the Second, by his charter of the 26th of May, 1174, declared that if, on any of the coasts of England, Poicton, Oleron or Gascony, any ship should be distressed, and either man or beast should escape or be found therein alive, the goods should remain to the owners, if they claimed them within three months; but otherwise should be esteemed a wreck, and should belong to the king, as lord of the franchise. The law was further altered by Richard I. In Henry III.'s reign it was held that if any certain mark were set upon the goods, by which they might be known again, it was held to be no wreck. Afterwards, by statute 3 Edw. 1, c. 4 (the Statute of Westminster the First), passed in 1275, the time of limitation of claims was extended to a year and a day;

WRECK—*continued.*

and it was provided that if a man, a dog or a cat escaped alive, the vessel should not be adjudged a wreck.

In order to constitute a legal wreck the goods must come to land, as was resolved in *Constable's case*, decided in 1601, and reported 5 Coke's Rep. 105. The law distinguishes goods lost at sea by the barbarous names of *jetsam*, *flotsam* and *ligan*. [See under those Titles.] Sir W. Blackstone (vol. i. pp. 292-3) says that these names are applied to the goods only so long as they continue at sea. But in *Constable's case* it was resolved, among other things, that "none of these goods which are called *jetsam*, *flotsam* or *ligan*, are called wreck so long as they remain in or upon the sea; but if any of them by the sea be put upon the land, then they shall be said wreck." From this it would appear that the names are equally applicable whether the goods come to land or not. See *Cowel;* 1 *Bl.* 291—294; 2 *Steph. Com.* 539—545.

By sect. 64 of the Larceny Act, 1861, the offence of plundering or stealing from a wreck is punishable by penal servitude for fourteen years. See *Oke's Mag. Syn.* 1042—3; *Cox & Saunders' Cr. Law*, 57, 58.

Provision is made by section 432 of the Merchant Shipping Act, 1854 (stat. 17 & 18 Vict. c. 104), for inquiring into losses of ships by inspecting officers of coast guard, or other person appointed by the Board of Trade; and by sect. 433, such officer may, if he think a formal investigation expedient, or if the Board of Trade so directs, apply to two justices or a stipendiary magistrate to hear the case, and report to the Board of Trade. See *Oke's Mag. Syn.* 1497—1502.

WRECKFREE or **WRECKFRY** signifies exemption from the forfeiture of shipwrecked goods and vessels, which king Edw. I., by charter, granted to the barons of the Cinque Ports. *Toml.*

WRECKING. Stealing from a ship in distress. [WRECK.]

WRIT. The king's precept, whereby anything is commanded to be done touching a suit or action. Writs are distinguished into original and judicial writs. Original writs are those that were sent out for the summoning of a defendant in an action, and bear in the *teste* the name of the Sovereign. Judicial writs are those that are sent out by order of the Court where the cause depends, and the *teste* bears the name of the chief justice of that court whence it issues. *Cowel;* 3 *Bl.* 51, 183, 273; 3 *Steph. Comm.* 489, 606. [JUDICIAL WRIT; ORIGINAL WRIT.]

Now, by the Judicature Act, 1875, 1st Sched. Order II, rule 8, every writ of summons and also every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England.

[See also the following Titles.]

WRIT OF ASSISTANCE. 1. An ancient writ issuing out of the Exchequer, authorizing a person to take a constable or other public officer, to seize goods or merchandise prohibited, or on which duty has not been paid. *Cowel.*

2. A writ issuing out of Chancery when a defendant has been ordered to give up possession of lands, and has refused to do so. The writ is directed to the sheriff of the county in which the lands lie, commanding him to eject the defendant, and to put the plaintiff in possession. *Cowel;* 3 *Steph. Com.* 602; *Hunt. Eq., Pt. II. ch.* 6, *s.* 3.

WRIT OF CAPIAS. [CAPIAS.]

WRIT OF ENTRY. [ENTRY, WRIT OF.]

WRIT OF ERROR. [ERROR.]

WRIT OF ESCHEAT. A writ in the nature of a writ of right, which lay for a lord claiming by escheat. [WRIT OF RIGHT.]

WRIT OF INQUIRY is a process in an action at common law, by which, after judgment by default for the plaintiff, the sheriff inquires, by the oaths of twelve honest and lawful men, what amount of damages the plaintiff hath really sustained. The inquiry is undertaken by the under-sheriff before a jury; and when their verdict is given, which must assess *some* damages, the sheriff returns the inquisition, which is entered upon the roll; and thereupon execution issues for the amount so assessed. 3 *Bl.* 397, 398; 3 *Steph. Com.* 569, 570; *Lush's Pr.* 791.

If the amount of damages recoverable by the plaintiff is substantially matter of calculation, then, by s. 94 of the C. L. P. Act, 1852, it is directed to be ascertained by one of the masters of the Court without a writ of inquiry. And now, under the Judicature Act, 1875, by Order XIII. rule 6, and Order XXIX. rule 4, the Court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

WRIT OF RIGHT was the old writ in the law for asserting the right to lands in fee simple unjustly withheld from the true proprietor. This writ was properly brought, in the first instance, in the court baron of the lord of whom the lands were holden, and then it was called a *writ of right patent;* but if the lord held no court, or had waived his right, it might be brought in the king's courts in the first instance, *quia dominus remisit curiam*, and then it was called a *writ of right close*, and was directed to the sheriff and not to the lord.

Also, when one of the king's immediate tenants *in capite* [IN CAPITE] was deforced (*i. e.*, unjustly deprived of his land), his writ of right was called a *writ of right close.*

There was another writ of right close, called the "writ of right close *secundum consuetudinem manerii*," which lay for the king's tenants in ancient demesne to try the right of their lands and tenements in the court of the lord exclusively.

But the *writ of right patent* itself might be removed from the lord's court into the county court by writ of *tolt*, and thence into the king's courts by writ of *pone* or *recordari facias*, at the suggestion of either party that there was a delay or defect of justice.

In this action the demandant was bound to allege some seisin of the lands and tenements in himself, or else in some person under whom he claimed, and then to derive the right from such person to himself; to which the tenant might answer by denying the demandant's right, and averring that he had more right to hold the lands than the demandant had to demand them; and this right of the tenant being shown, put the demandant upon the proof of his title, in which, if he failed, he and his heirs were perpetually barred of their claim; but if he could show that his right was superior to the tenant's, he should then recover the land against the tenant and his heirs for ever.

This writ of right was considered the highest writ in the law. But it could not be sued out at any distance of time, for by the ancient law no seisin could be alleged by the demandant, but from the time of Henry I.; by the Statute of Merton, 20 Hen. 3, c. 8, from the time of Henry II.; by the Statute of Westminster the First, 3 Edw. 1, c. 39, from the time of Richard I.; and afterwards by stat. 32 Hen. 8, c. 2, passed in 1540, it was enacted that the seisin claimed in a writ of right should be within sixty years.

There were also various writs which were said to be in the nature of a writ of right. These writs resembled the writ of right in that they were droitural and not merely possessory actions, but differed from it in some other respects. In some of these writs (as in formedon) the fee simple was not demanded; and in others not land, but some incorporeal hereditament. In others land was claimed in fee simple, but was so claimed under peculiar circumstances, to which the writ of right proper did not apply. See 3 *Bl.* 194—197, *and Appendix, No. I.* [ACTIONS ANCESTRAL, POSSESSORY, AND DROITURAL; ESTATE; FORMEDON; WRIT OF ESCHEAT.]

The writ of right is abolished by stat. 3 & 4 Will. 4, c. 27, s. 36, passed in 1833.

WRIT OF RIGHT CLOSE. [WRIT OF RIGHT.]

WRIT OF RIGHT OF ADVOWSON. A writ of right framed for the purpose of trying a right to an advowson, but in other respects corresponding with other writs of right, except that the Statutes of Limitations did not apply to it. 3 *Bl.* 243, 250. Abolished in 1833 by stat. 3 & 4 Will. 4, c. 27, s. 36. [LIMITATIONS, STATUTE OF; WRIT OF RIGHT.]

WRIT OF RIGHT OF DOWER. [DOTE.]

WRIT OF RIGHT PATENT. [WRIT OF RIGHT.]

WRIT OF SUMMONS. [SUMMONS, 4; WRIT.]

WRIT OF TRIAL. A writ directing an action brought in a superior court to be tried in an inferior court or before the under-sheriff, under stat. 3 & 4 Will. 4, c. 42, s. 17. It is now superseded by sect. 6 of the County Courts Act, 1867 (stat. 30 & 31 Vict. c. 142), by which a defendant in certain cases is enabled to obtain an order that the action be tried in a county court. 3 *Steph. Com.* 515, *n.*; *Lush's Pr.* 564.

WRITER OF THE TALLIES. An officer of the Exchequer who wrote upon the tallies the letters of tellers-bills. He was clerk to the auditor of the receipts. *Cowel; Madox, Hist. of Exch. Vol. II. p.* 258. By statute 23 Geo. 3, c. 82, passed in 1783, the tallies were directed to be disused; and by stat. 4 & 5 Will. 4, c. 15, passed in 1834, the office of auditor, and the offices subordinate thereto, were abolished.

WRITER TO THE SIGNET. The writers to the signet are the oldest body of law practitioners in Scotland. Mr. Erskine considers the signet as the seal of the Court of Session, but this opinion is disputed on the ground that the signet existed long before the Court of Session was instituted, and the Court has another seal with which reports, &c. are sealed. The signet was originally under the sole control of the Secretary of State, and the writers to the signet were clerks in his office, and were known by the name of "Clerks to the Signet." In the Act of 1537, establishing the College of Justice, the writers to the signet are mentioned as a pre-existing body. They became a component part of the college, and were at this time, if not sooner, a corporation, with the Secretary of State at their head. Even after the Union, until the year 1746, the Secretary of State continued to name a keeper of the signet, but since that time the keeper has been appointed by a special commission from the Crown, and he appoints a deputy, who has been accustomed to sit as chairman at meetings of the society. The duty of the writers to the signet is to prepare the warrants of all charters of lands flowing from the Crown; all summonses for citing parties to appear in the Court of Session; all processes of the law for affecting the person or estate of a debtor, or for compelling the performance of the decrees of the Supreme Court. The writers to the signet have further the privilege of acting as agents or attorneys in conducting causes before the Court of Session. *Bell; Darling; Shand.*

The 59th section of the Stamp Act, 1870 (statute 33 & 34 Vict. c. 97), requiring solicitors to take out annual certificates duly stamped, applies also to writers to the signet; and any writer to the signet practising in any court without having taken out such certificate is to forfeit the sum of 50*l.*, and to be unable to recover on account of any act or proceeding so done or taken by him.

WRITINGS OBLIGATORY. This phrase is sometimes used for *bonds*. 2 *Steph. Com.* 108. [BOND.]

WRITS CLOSE. [CLOSE ROLLS.]

WRONG. That which is *wrung* or turned aside from the right or straight way to the desired end. It corresponds to the French *tort*, from the Latin *tortum*, twisted. *Wedgwood; Littré.* [TORT.]

The words *wrong* and *tort* may be used in law to signify any injury; but they are used especially to denote such civil injuries as are independent of contract.

WRONGOUS IMPRISONMENT. The Scotch term for wrongful imprisonment, or, as it is called in the law of England, *false imprisonment.*

WYDRAUGHT. A water passage, gutter or watering-place. *Toml.*

WYNTON. [WINCHESTER, STATUTE OF.]

WYTE. [WITE.]

YARDLAND (Lat. *Virgata terræ*). A quantity of land containing in some counties twenty acres, in others twenty-four, and in others thirty acres of land. *T. L.* [FERLINGATA TERRÆ.]

YEAR. [OLD STYLE. See also the following Titles.]

YEAR AND DAY. 1. Where the law of Scotland requires any act to be performed within a year, a day is generally added *in majorem evidentiam*, that it may appear with greater certainty that the year is completed.

2. The same reason will probably account for the frequent mention of the year and day in the old English law; for instance, in reference to the time within which appeals might be brought [APPEAL]; also in reference to the time within which death must follow upon a mortal wound, in order to constitute the crime murder; and in various other cases. *Cowel.* [YEAR, DAY AND WASTE.]

YEAR BOOKS were reports of cases in a regular series from the reign of King Edward II. to the reign of King Henry VIII. inclusive. They were taken down by the protonotaries or chief scribes of the courts, at the expense of the Crown, and published annually, whence they were known under the denomination of *Year Books.* 1 *Bl.* 71, 72; 1 *Steph. Com.* 49.

YEAR, DAY, AND WASTE, was part of the king's prerogative, whereby he was entitled to the profits for *a year and a day* of persons attainted of petty treason or felony, together with the right of wasting the said tenements; afterwards restoring it to the lord of the fee. But in *Magna Charta*, stat. 9 Hen. 3, c. 22, in which this prerogative is allowed as to the year and day, no mention is made of waste; and it is asserted by Sir Edward Coke that the waste was the original prerogative of the king, exercised in detestation of the crime, and the year

YEAR, DAY, AND WASTE—*continued.*

and day were *pro bono publico*, accepted by the king in lieu thereof; so that the year, day, and waste, was originally a usurpation on the part of the Crown. It was sanctioned, nevertheless, by the stat. 17 Edw. 2, *De Prerogativâ Regis*, passed in 1323.

The year, day, and waste had no application in cases of high treason, for then the lands were absolutely forfeited to the king; nor in the case of land holden immediately of the king, for in such cases there was no mesne lord of the fee against whom the right could be exercised, but the king would be entitled absolutely. *Cowel;* 4 *Bl.* 385, 386; 4 *Steph. Com.* 457, 458.

All this is now abolished by the Felony Act, 1870, stat. 33 & 34 Vict. c. 23, sect. 1. See 4 *Steph. Com.* 459; *Cox & Saunders' Cr. Law*, 433.

YEAR TO YEAR. [TENANT FROM YEAR TO YEAR.]

YEARS, ESTATE FOR. An estate demised or granted for a term of years. [ESTATE; TERM, 2.]

YEOMAN (Sax. *Geman;* Lat. *Communis*). 1. He that hath free land of forty shillings a year; who was anciently thereby qualified to serve on juries, vote for knights of the shire, and do any other act, where the law required one that was *probus et legalis homo. Cowel;* 1 *Bl.* 406; 2 *Steph. Com.* 617.

2. Also an officer of the king's house. *Cowel.*

YEOMANRY. The small freeholders and farmers. *Hallam's Const. Hist. ch.* 1. [YEOMAN.] The name is also given to certain local forces raised by individuals with the approbation of the Queen, who accepts their voluntary service. See *Murray's Official Handbook.*

YEOMEN OF THE GUARD were a force originally established by King Henry VII., in 1485, for the defence of his person, and perhaps to be considered rather as the king's domestic servants than his soldiers. *Hallam's Const. Hist. ch.* 9. The corps still forms the defence of the sovereign's palace; and a detachment is mustered daily in the guard chamber. It consists of about 100 men. The yeomen are selected from meritorious men who have served in the army, on the recommendation of the Commander in Chief. *Murray's Official Handbook.*

YEVEN or **YEOVEN.** Given, dated. *Cowel.*

YIELDING AND PAYING are words used at the beginning of the *reddendum* clause in a lease, with reference to the rent intended to be payable under the lease. No special form of words is, however, essential. *Fawcett, L. & T.* 83. [REDDENDUM.]

YORK, CUSTOM OF, was a custom in the province of York for the distribution of intestate's effects, according to which the substance of the deceased was, if he left a widow and children, divided into three parts, one of which belonged to the widow, another to the children, and a third to the administrator. If the deceased left *only* a widow, or *only* children, they would respectively take a moiety, and the administrator the other moiety; if he left neither widow nor child, the administrator would have the whole. This custom applied also to freemen of London. 2 *Bl.* 518. It was abolished in 1856 by statute 19 & 20 Vict. c. 94. [CUSTOM OF LONDON.]

YORKSHIRE REGISTRIES are the registries of titles to land provided by acts of parliament for the ridings of the county of York. 2 *Bl.* 343; 1 *Steph. Com.* 613, 614; *Wms. R. P.* These Acts are: (1) For the West Riding, statute 2 & 3 Anne, c. 4, passed in 1703; extended by statute 5 Anne, c. 18, passed in 1706; (2) For the East Riding, stat. 6 Anne, c. 35, passed in 1706; (3) For the North Riding, stat. 8 Geo. 2, c. 6, passed in 1735. These Acts provide that, in the several ridings of the county to which they refer, a memorial of all deeds, conveyances and devises affecting lands of freehold tenure (but not including leases at rack rent, or for twenty-one years or under, where the actual possession goes along with them) may be registered in such manner as in the Acts directed; and that every such conveyance shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless a memorial thereof shall be registered before the registering of the memorial of the deed under which such subsequent purchaser or mortgagee shall claim; and that every such devise shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee, unless a memorial thereof be registered in such manner as in the acts directed. See 2 *Bl.* 343; 1 *Steph. Com.* 613, 614; *Wms. R. P., Pt. I. ch.* 9.

The statute 7 Anne, c. 20, passed in 1708, is a similar Act for Middlesex. [MIDDLESEX REGISTRY.]

By sect. 8 of the Vendor and Purchaser Act, 1874 (stat. 37 & 38 Vict. c. 78), it is enacted that, where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee, or by some one deriving title under him, shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law.

YOUNG PERSON. A phrase used in the Factory Acts to denote a person between the ages of thirteen and eighteen years. *Stat.* 7 *&* 8 *Vict. c.* 15, *s.* 73. [FACTORY ACTS.]

YOUNGER BRETHREN. [ELDER BRETHREN; TRINITY HOUSE.]

YOUNGER CHILDREN. This phrase, when used with reference to settlements of land, signifies all such children as are not entitled to the rights of an eldest son. It therefore includes daughters, even those who are older than the eldest son.

ZAMINDAR. A landholder in India, who is the responsible collector of revenues on behalf of the Government. *Wilson's Gloss. Ind.*

ZAMINDARI. The estate of a Zamindar.

ZEALOT. A word often used in English history to signify a person who separates from the Church of England. *Cowel.*

ZEMINDAR. [ZAMINDAR.]

ZILA or **ZILLAH.** A division or district: hence it signifies a tract of country constituting the jurisdiction of a commissioner or circuit judge. *Wilson's Gloss. Ind.*

APPENDIX.

ON THE

VARIOUS STEPS TAKEN IN AN ACTION

IN THE

HIGH COURT OF JUSTICE.

In this Appendix, which is intended principally for students of law and of persons outside the legal profession, we propose, first, to advert to the procedure in the Court of Chancery and the Courts of Common Law, as those Courts existed prior to the Judicature Acts; and then to give an account of the various steps in an ordinary action in the High Court of Justice, at the same time adverting to certain incidental matters arising in such actions.

By the 4th section of the Judicature Act, 1873, the Supreme Court of Judicature is to consist of two divisions, one of which is to be called "Her Majesty's High Court of Justice," and is to exercise original jurisdiction, and also, in certain cases, appellate jurisdiction from inferior courts; the other is to be called "Her Majesty's Court of Appeal," which is to exercise appellate jurisdiction, together with such original jurisdiction as may be necessary to the determination of any appeal. Stat. 36 & 37 Vict. c. 66, s. 4.

By the 16th section of the Judicature Act of 1873, amended by the 9th section of the Act of 1875, the jurisdiction of the following Courts is transferred to the High Court of Justice:— Sect. 16. Stat. 38 & 39 Vict. c. 77, s. 9.

(1.) The Court of Chancery (except the appellate jurisdiction of the Court of Appeal): (2.) The Court of Queen's Bench: (3.) The Court of Common Pleas: (4.) The Court of Exchequer: (5.) The Court of Admiralty: (6.) The Court of Probate: (7.) The Divorce Court: (8.) The Court of Common Pleas at Lancaster: (9.) The Court of Pleas at Durham: (10.) The Assize Courts.

The Courts of Queen's Bench, Common Pleas, and Exchequer, were known as the Superior Courts of Common Law at Westminster. We propose, in the first instance, to contrast very briefly the procedure in these Courts, as they existed prior to the commencement of the Judicature Acts in November, 1875, with that in the Court of Chancery.

A Chancery suit was commenced by a *bill*, which was a detailed statement of the plaintiff's cause of complaint. The defendant, having "entered his appearance" to the suit, which he was required to do within eight days, might make his defence (1) by *demurrer*, by which he denied that the plaintiff in his bill showed any title to the relief he sought: (2) by *plea*, which was a short statement of additional facts tending to show that the plaintiff had no right to the relief he claimed by his bill: (3) by *answer*, which was a statement at length of the defendant's case; or (4) by *disclaimer*, in cases where a party was made a defendant in respect of some right which he was supposed to claim. A *demurrer* raised an issue of law at once. As regarded a *plea*, if the plaintiff considered the facts therein stated insufficient in law, he would *set the plea down for hearing*, and the question of its sufficiency would then come on to be argued. An *answer* might be met in various ways: (1) by an application on the part of the plaintiff to *amend his bill*: (2) by *replication*, by which the plaintiff called in question the facts stated in the answer: (3) by *notice of motion for decree* (*i. e.*, by notice that he would move the Court to give judgment in his favour). The notice required was twenty-eight days.

Ante, p. 138, post, p. 506.

The Common Law Procedure differed entirely from that in Chancery. An action at Common Law commenced by *writ of summons*, calling upon the defendant to "enter an appearance" within eight days. This writ of summons was indorsed with the amount of the plaintiff's claim; and where the sum claimed was a *liquidated* amount (*i. e.*, an amount definite and certain, so that under the circumstances the only question would be, whether the particular sum claimed was or was not due), it might be *specially* indorsed with the *particulars* of the plaintiff's claim. After the defendant's appearance, there followed certain mutual written statements called the *pleadings*. The object of these pleadings was to evolve some question of fact or law as to which the parties differed, so that they might understand what they were quarrelling about. The first of these pleadings was the plaintiff's *declaration*, stating the facts on which he based his action. Any subsequent pleading by which a party denied the sufficiency *in law* of his adversary's pleading was called a *demurrer*. Otherwise the various pleadings received various special names, according to the stage in which they were put in. The defendant's answer to the declaration was called a *plea;* the plaintiff's reply, a *replication;* the defendant's next step, a *rejoinder;* the plaintiff's third pleading, a *surrejoinder;* and so on to *rebutter* and *surrebutter*. But the pleadings seldom reached to this stage. For when the parties had arrived at an *issue*, that is, to some matter, whether of fact or law, asserted on the one side and denied on the other, the pleadings were closed.

It will thus be seen that the preliminary steps in a suit in Chancery were utterly different from those in an action at Common Law. The mode of giving evidence was also different. In Chancery, written

evidence was the rule, even at the hearing of the case; oral evidence the exception. There were officers, called *examiners*, appointed to take oral evidence; and in very exceptional cases evidence was given in open court. Whereas, in the trial of actions at Common Law, evidence was always given orally in open court; though, on incidental applications in the course of an action, generally called *interlocutory* applications, whether in court or in judge's chambers, evidence was given by affidavit.

We now proceed to consider (1) the ordinary steps of an action in the High Court; and (2) certain incidental matters arising in actions, or by which the ordinary course of an action is diverted or altered. For this purpose we shall frequently have occasion to condense the language of the Rules; nor shall we consider it necessary to advert to *every* matter contained in them.

Writ of Summons.]—The first step in an action is the issuing of the writ of summons. This writ is directed to be prepared by the plaintiff or his solicitor. It may be written or printed, or partly written and partly printed. The writ is in the following form, which may be procured at any law stationer's. Ord. II. r. 1. Ord. V. r. 5. App. A, Part I.

IN THE HIGH COURT OF JUSTICE.
[ ] Division.

Between A. B., Plaintiff,
and
C. D., Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to of in the of : We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of Our High Court of Justice, in an action at the suit of . And take notice that, in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence. Witness, The Right Honourable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, at Westminster, the day of in the year of our Lord one thousand eight hundred and seventy .

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of such renewal, including the day of such date, and not afterwards.

The defendant may appear thereto by entering appearance , either personally or by solicitor, at the .

(The writ is indorsed as follows:—)

The plaintiff's claim is and £ for costs; and if the amount claimed be paid to the plaintiff or h solicitor within four days from the service hereof, further proceedings will be stayed.

This writ was issued by of solicitor for the said plaintiff , who reside at .

The address for service is .

This writ was served by me on the defendant on day the day of 187 .
Indorsed the day of 187 .

It will be observed that blanks are left for the division of the High Court of Justice in which the action is intended to be brought, and for the names of the plaintiff, defendant, &c. The reader should also observe the blanks in the second paragraph of the memorandum. A space is left for an "s" at the end of the word "Defendant" in case there should be more than one defendant; and a space between "entering" and "appearance" in order that the form may be equally applicable whether there be one or more defendants: so that it may be filled up as "entering an appearance," or "entering appearances."

Ord II r. 1; Ord. III. r. 2.

The indorsement commences with a *brief* statement of the nature of the plaintiff's claim; it being expressly provided that such indorsement need not state the *precise* ground of complaint.

The following are specimens of indorsements, among many others, given in Appendix A, Part II.

(*By Mortgagor.*)

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated and made between [*parties*], and to redeem the property comprised therein.

(*Cancellation or Rectification of Deed.*)

The plaintiff's claim is to have a deed dated and made between [*parties*] set aside and rectified.

(*Claim for Goods sold.*)

The plaintiff's claim is *l.* for the price of goods sold.

(*Claim for Return of Money by Stakeholder.*)

The plaintiff's claim is *l.* for a return of money deposited with the defendant as stakeholder.

(*Money paid for Calls.*)

The plaintiff's claim is *l.* for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.

(*Non-compliance with Award.*)

The plaintiff's claim is for damages for non-compliance with the award of X. Y.

(*Negligence by a Medical Man.*)

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

(*Mischievous Dog.*)

The plaintiff's claim is for damages for injury by the defendant's dog.

It will be seen from the above extracts that the indorsement is confined to the barest statement which may be consistent with giving the defendant an idea of the case which he has to meet. It

will, moreover, be observed that in the form given *ante*, p. 503, a claim for costs is added; and that the indorsement gives the name of the solicitor by whom the writ was issued, and also the "address for service," which must (except in the cases to which we shall presently allude) be within three miles of Temple Bar. The "address for service" is the address at which writs and other documents, and all proceedings and written communications, may be *served* upon the plaintiff by the opposite party, so as to give the plaintiff due notice of the same. App. A, Part II. sect. 3. Ord. IV. r. 2.

Amending Indorsement.]—The plaintiff may, by leave of the court or a judge, amend his indorsement, so as to extend it to any other cause of action, or any additional remedy or relief. Ord. III. r. 2.

Issue of Writ.]—Up to this point the writ has not been in fact "issued;" the statement that it was issued by such a solicitor being merely intended for subsequent use, as it will not reach the defendant, whom it concerns, until it has been "issued."

The writ of summons must be taken by the plaintiff's solicitor to the proper officer for sealing, together with a copy of the writ and indorsements thereon. The officer will seal the writ, and it will then be deemed to have been "issued." The offices in the country out of which writs are issued are called "district registries." In any action other than a Probate action, the plaintiff, wherever resident, may issue a writ of summons out of any district. If the writ be issued out of a district registry, within the district of which defendant neither resides nor carries on business, there must be a statement on the face of the writ of summons that the defendant may "cause an appearance to be entered" either at the district registry or at the London office; but if the defendant either resides or carries on business within the district, then the statement must be that the defendant "do cause an appearance to be entered" at the district registry. In the latter case, the "address for service" must be within the district. Ord. V. rr. 6, 7. Rule 1. Rule 2. Rule 3. Ord. IV. r. 2.

Renewal of Writ.]—No original writ will be in force for more than TWELVE MONTHS from its date; but if not duly served, it may be renewed at any time within the twelve months, with leave of a judge or district registrar. The renewed writ is then in force for SIX MONTHS. For the purpose of renewal, the plaintiff or his solicitor takes a memorandum to the proper officer, containing a request to him to seal the renewed writ, together with a copy of the original writ and the indorsements. The writ is then renewed by being marked with a seal bearing the date of the day, month and year of such renewal. Ord. VIII. App. A, Part I. Form No. 5.

We have thought it necessary to explain briefly what is meant by "renewal," as otherwise the memorandum at the foot of the front part of the writ would not be wholly intelligible to the reader.

After the writ has been issued, the next step is to effect "service"

on the defendant, unless the defendant, by his solicitor, agrees to accept service, and enters an appearance. For this purpose, a copy of the writ should, if possible, be delivered personally to the defendant; but the person serving the writ (generally the solicitor's clerk) should also take the original with him, as the defendant is entitled to see it. Various rules, to which we need not more particularly refer, are given for effecting service in certain specific cases.

See *infra*.

Ord. IX. r. 13. After service of the writ has been effected, the person serving the writ must within three days indorse on the writ the day of the month and week on which the service was effected, together with the date of the indorsement. This is done, as will be seen, in the form given above (*ante*, pp. 503-4).

Ord. XII. rr. 6, 7. *Entering an Appearance.*]—This is effected by the defendant's solicitor delivering to the proper officer a memorandum in writing in the following form:—

(*Memorandum of Appearance.*)

187 . . No. .

IN THE HIGH COURT OF JUSTICE.

[ ] Division.

——— *v.* ———

ENTER AN APPEARANCE for in this action.

Dated this day of 187 .

——— Solicitor for the defendant .

The place of business and address for service of the defendant's solicitor is at .

The said defendant require a statement of claim to be filed and delivered.

Ord. XII. r. 8 The defendant's "address for service" must, if the appearance is entered in the London office, be within three miles of Temple Bar; if the appearance be entered in a district registry, the "address for service" must be within the district.

Ord. XII. rr. 1—3. If the writ have been issued in the London office, the appearance must be entered in the London office. If the writ have been issued in a district registry in which the defendant resides or carries on business, the appearance must then be entered in the same registry. If the writ have been issued in a district registry, in which the defendant neither resides nor carries on business, the appearance may then be entered either in the London office or in the district registry in which the writ was issued. If the defendant or any of the defendants appear in London, the action will in general proceed in London; but if the defendant or all the defendants appear in the district registry, the action will proceed in the district registry.

In the concluding paragraph of the memorandum of appearance, the defendant states whether he does or does not require a "statement of claim" to be filed and delivered. It will be observed, that in the form of memorandum given above, the blanks are so arranged

See post, p. 507.

as to leave room for the affirmation or denial by the defendant that he does so.

The officer, on receiving the memorandum of appearance, must enter the appearance in the cause-book. Ord. XII. r. 11.

From the form of the writ of summons given above, it will be seen that the defendant is commanded to "enter his appearance" within EIGHT DAYS after service of the writ of summons, inclusive of the day of service. This period of eight days is spoken of as "the time limited for appearance." The defendant may, however, "enter his appearance" at any time before judgment, provided that on the same day he give notice of his doing so to the plaintiff or his solicitor. Ord. XII. r. 15.

Where the action is one for the recovery of land, any person claiming an interest in the land, either as being in actual possession or as landlord, may file an affidavit stating his possession or ownership of the land, and thereupon obtain leave to appear and defend his title. Moreover, in actions for the recovery of land, any party "entering an appearance" is at liberty to limit his defence to part only of the property mentioned in the writ, describing that part *either* in his memorandum of appearance, *or* in a notice to be sworn within FOUR DAYS after appearance; otherwise he will be taken to defend for the whole. Ord. XII. r. 18. Ord. XII. rr. 21, 22; App. A, Part I. Form No. 7.

For the cases where a defendant fails to appear, see *post*, pp. 522-3.

Statement of Claim.]—After the defendant's appearance as above described, the next step in the action will, in general, be the delivery by the plaintiff of his *statement of claim*, otherwise called the *statement of complaint*. This "statement of claim" corresponds to the old "declaration" in an action at common law, and to the "bill" in a chancery suit. The plaintiff may deliver his statement of claim at any time after issuing the writ of summons until a period of SIX WEEKS from the defendant's appearance; and even after that period by leave of the court or a judge. But the delivery of the statement of claim will not be necessary if the defendant have stated in his memorandum of appearance that he does not require it. In such case, if the plaintiff persist in delivering his statement of claim, the court or a judge may order him to pay the costs occasioned by his so doing. Ord. XXI. Ord. XIX. r. 2. Ord. XXI. r. 1.

The statement of claim must state, as concisely as may be, the material facts on which the plaintiff relies, and the specific relief which he claims, either simply or in the alternative. The statement of claim may also ask for "such further or other relief as the nature of the case may require." Ord. XIX. rr. 4, 8. App. C.

Where a plaintiff's claim is for *discovery* only (*i. e.*, for some information to be given by the defendant), the statement of claim must show that this is so. Ord. XIX. r. 8.

Ord. XIX. rr. 6, 7. The statement of claim is delivered by the plaintiff's solicitor to the defendant's solicitor, at his residence or "address for service." If the defendant or any of the defendants appear in person, then the statement of claim will be delivered to such defendant personally. But if the defendant or any of the defendants fail to put in an appearance, then the statement is "delivered" by being filed with the proper officer of the Court.

Ord. XXII. r. 1. *Statement of Defence.*]—After the statement of claim comes the statement of defence. This statement of defence must be delivered within EIGHT DAYS from the delivery of the statement of claim or from the time "limited for appearance," whichever shall be last. In other words, the defendant has FIFTEEN DAYS from the service of the writ of summons, or EIGHT DAYS from the delivery of the statement of claim, whichever time shall be longest, to deliver his
Rule 2. statement of defence. But if the defendant has stated that he does not require the delivery of a statement of claim, and no statement of claim has been delivered, then the defendant may deliver his defence at any time within EIGHT DAYS after his appearance. A defendant who wishes to dispute any statement made by the plaintiff
Ord. XIX. r. 17. in his statement of claim must expressly deny such statement, or must state that he does not admit it; otherwise the defendant will
Rule 3. be deemed to have admitted it. A defendant may also, in his defence, set up any set-off or counter-claim against the plaintiff, and such set-off or counter-claim is to have the same effect as a statement of claim in a cross-action, so as to enable the court, if it thinks fit, to pronounce a final judgment in the same action, both on the original and on the cross-claim.

Ord. XXIII. *Discontinuance of Action.*]—The plaintiff may, at any time before receiving the defendant's statement of defence, or even after receiving it before taking any other proceeding in the action, withdraw the whole or any part of his alleged cause of complaint on paying the defendant's costs occasioned by the matter so withdrawn.

Ord. XXIV. r. 1. *Reply.*]—Within THREE WEEKS after the statement of defence (or the last of the defences, if there be more than one defendant) shall have been delivered, the plaintiff shall deliver his *reply*.

Pleadings.]—The statements of claim (or complaint), defence and reply, and the subsequent similar documents, if any, are called the *pleadings* in the action. In Order XIX. various rules are laid down in reference to pleadings, among which we may mention the following:—

Ord. XIX. r. 4. (1) Every pleading must contain, as concisely as may be, a statement of the material facts on which the party pleading

relies, but not the evidence by which they are to be proved; such statement being divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation.

(2) Dates, sums, and numbers are to be expressed in figures and not in words. Ord. XIX. r. 4.

(3) Signature of counsel is not necessary.

(4) Every pleading which shall contain less than three folios of seventy-two words each (each figure being counted as one word) may be either printed or written, or partly printed and partly written. Every longer pleading must be printed. Rule 5.

(5) Every allegation of fact in any pleading, if not denied specifically or by necessary implication, or stated not to be admitted in the pleading of the opposite party, will be taken to be admitted. Rule 17.

(6) Each party in any pleading must allege all such facts, not appearing in the previous pleadings, as he means to rely on, and must raise distinctly any question which, if not raised on the pleadings, would be likely to take the other party by surprise. Rule 18.

(7) It will not be sufficient for a defendant in his defence to deny *generally* the facts alleged by the statement of claim, or for a plaintiff in his reply to deny *generally* the facts alleged in a defence by way of counter-claim, but each party must deal *specifically* with each allegation of fact of which he does not admit the truth. Rule 20.

(8) If, however, the defendant does not in his defence allege any matter by way of counter-claim, the plaintiff may *join issue* upon the defence; which is done by delivering a memorandum, stating that he "joins issue" with the defendant upon his defence, or any part of the same specifically mentioned. The "joinder of issue" operates as a denial of every material allegation of fact in the pleading upon which issue is joined, or in the portion of it referred to in the joinder of issue; or where the joinder of issue excepts facts which the party is willing to admit, the denial will not, of course, extend to the facts so excepted. Rule 21. App. C, Form No. 12.

(9) When any party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but must give a fair and substantial answer to the allegation. Thus, if it be alleged that he received a certain sum of money, he must not deny generally that he received that particular amount; but must either deny that he received that sum *or any part thereof*, or else must state how much he received. Ord. XIX. r. 22.

Ord. XXIV. r. 2. (10) No pleading subsequent to "reply," other than a "joinder of issue" upon the previous pleading (see above), may be pleaded without leave of the court or a judge.

Rule 3. Ord. LVII. r. 2. (11) For pleadings subsequent to reply, FOUR DAYS are allowed, exclusive of Sunday, Christmas Day, and Good Friday; but in this case, as in others, the time may be extended by the court or a judge.

Ord. XXV. (12) As soon as either party has "joined issue" upon any pleading of the opposite party simply without adding anything, the pleadings are deemed to be *closed*.

Ord XXVI. (13) If the judge thinks that the pleadings do not clearly raise any definite issue of fact between the parties, he may direct them to prepare "issues;" and the "issues," if the parties differ, shall be settled by the judge.

Ord. XXVII. *Amendment of Pleadings.*]—The Court or a judge may, at any stage of the proceedings allow either party to alter his statement of claim or defence or reply, and may direct any statements to be struck out which may tend to embarrass the fair trial of the action. This power of amendment is not new, having been for some time exercised by the Courts of Common Law, and, up to a certain stage in the proceedings, by the Court of Chancery. There was once, however, a time when our procedure was singularly inelastic in this respect, as will appear from the following case, which happened in the year 1742, and which we may describe in untechnical language as follows:—A plaintiff of the name of Coy sued a defendant of the name of Hymas for £388, basing his claim on the existence of a judicial "record," by which Hymas was declared to owe that amount to Coy. Hymas pleaded that there was no such record. Coy desired time to produce the record, which was allowed him by the court. He found that it was too true what the defendant had pleaded: there was no such record:—but there was a record by which the defendant was declared to owe him £388 : 0*s.* 1*d.* Accordingly it occurred to the plaintiff that, if he could only get his £388, he might forgive the defendant the payment of the extra penny; and he entered a memorandum to that effect on the "record" in question. But the Court, we are told, "resented this abuse of their indulgence," and gave judgment for the defendant. So the plaintiff lost, not only the penny, but the £388 as well; and, moreover, having lost his case, had to pay his own and his rival's costs.

Strange's Rep. p. 1171.

Discovery in the course of an Action.]—It may very often happen that one party in an action is in possession of facts or documents relevant to the matter, the concealment or withholding of which from the opposite party would place the latter at an unfair disadvantage. Provision is accordingly made by the rules of pro-

Ord. XXXI.

cedure for compelling the "discovery" or disclosure of such facts and documents.

(1) The plaintiff may, at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings; and — Ord. XXXI. r. 1.
(2) The defendant may, at the time of delivering his defence, or at any time not later than the close of the pleadings; and
(3) Either party may at any time, by leave of the court or a judge,

Deliver interrogatories in writing for the examination of the opposite party or parties.

Interrogatories must be answered by affidavit within TEN DAYS, or within such other time as a judge may allow. — Rule 6.

A person interrogated, who refuses to answer any lawful interrogatory, or answers insufficiently, may be ordered to answer further by affidavit or *viva voce*, as the judge may direct. — Rule 10.

Discovery of Documents].—Any party to any action may, without filing any affidavit, apply to a judge for an order directing any other party to make discovery on oath of the documents which *are* or *have been* in his possession or power relating to any matter in question in the action. A party against whom such order is made must make an affidavit as to the documents in question, stating which of the documents in his possession he objects to produce, and the grounds of such objection. — Ord. XXXI. r. 12. — Rule 13; App. B, Form No. 9.

Production of Documents.]—The court or judge may order any party to an action to produce any documents in his possession relating to any matter in question in the action; and the court may deal with such documents, when produced, in such manner as may appear just. — Ord. XXXI. r. 11.

A party who fails to comply with an order to answer interrogatories, or for discovery or inspection of documents, is liable not only to "attachment" (a proceeding explained below, see p. 516), but is also liable, if a plaintiff, to have his action dismissed for want of prosecution; and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended. — Ord. XXXI. r. 20.

Payment into Court in Satisfaction.]—Where a plaintiff claims money, whether by way of debt or damages, from a defendant, and the defendant merely disputes the amount and not the claim itself, it will obviously save time and expense if the defendant pay at once what he is willing to admit to be due to the plaintiff. Provision is accordingly made that a defendant may, at any time after service of the writ, and before or at the time of delivering his defence (or by — Ord. XXX. r. 1.

leave of the court or a judge at any later time), pay into the hands of the proper officer of the court a sum of money by way of satisfaction or amends; such money to be paid out to the plaintiff or his
Ord. XXX. r. 2. solicitor. If the payment be made by the defendant before delivering his defence, he must serve a notice upon the plaintiff that he has paid the money.

Trial.]—We have now reached the stage at which a cause is *at issue*, that is to say, some distinct question has been raised between the parties, the settlement of which is to determine the result of the action. It must not, however, be assumed that, as a matter of course,
Ante, p. 509. there is but one simple question to be tried. The "joinder of issue," as we have seen, may amount to a denial, not merely of one, but of many allegations on the other side; so that the result of the action may really involve several distinct questions. (For the present we
See post, p. 523. assume that no question of *law* has been raised, but that the matters at issue are purely on questions of *fact*.)

Ord. XXXVI. r. 4. The plaintiff must in general give notice of trial within SIX WEEKS after the *close of the pleadings*, otherwise the defendant may anticipate the plaintiff by himself giving notice of trial.

Rule 1. The trial is to take place in Middlesex, unless a judge otherwise orders, or unless the plaintiff, in his statement of claim, has named some other county or place in which he proposes that the action should be tried; in which case the action will be tried in such county
App. B. Form No. 14. or place, unless a judge otherwise orders. The place of trial must be stated in the notice of trial.

Ord. XXXVI. r. 2. The trial will take place *either* (1) before a judge or judges; *or* (2) before a judge sitting with assessors; *or* (3) before a judge and jury; *or* (4) before an official or special *referee*, with or without as-
Rules 3, 4. sessors. Any one of these modes of trial may be specified by the party (whether plaintiff or defendant) who gives *notice of trial;* and the opposite party may, within four days, or such extended time as a court or judge may allow, give notice to the effect that he desires to have the questions of fact tried before a judge and jury, in which case he shall be entitled to have the same so tried.

Rule 9. TEN DAYS' notice of trial must be given, unless the party to whom it is given has consented to take *short notice of trial*, in which case FOUR DAYS' notice will suffice.

Rule 11. Notice of trial in London or Middlesex is not deemed to operate for any particular sittings of the court, but for any day on which the action may come on for trial in its order upon the list.

Rule 12. Notice of trial elsewhere than in London or Middlesex is to be deemed to be for the first day of the then next assizes at the place for which notice of trial is given.

The next step is to *enter the action for trial* with the proper officer
Rule 17. of the court in which the trial is to take place. The party so enter-

ing the cause must deliver to the officer a copy of the "pleadings" in the action, for the use of the judge at the trial.

A party who gives notice of trial to take place in London or Middlesex may enter the action for trial on the same day or the day after; after which day the party to whom the notice has been given may, within FOUR DAYS, enter the action for trial. If notice for trial is given for elsewhere than in London or Middlesex, either party may enter the action for trial. If both parties enter the action for trial, it will then be tried in the order of the plaintiff's entry. Ord. XXXVI. r. 14. Rule 15.

If, when an action is called on for trial, the plaintiff appears by himself or his counsel, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him. If the defendant appears and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to a judgment dismissing the action; and if he has a counter-claim, he may prove such claim, so far as the burden of proof lies upon him. Any verdict or judgment obtained, where one party does not appear at the trial, may be set aside by the court or a judge, upon such terms as may seem fit, upon any application made within six days after the trial. Rules 18—20.

The judge may direct that a verdict be entered for the plaintiff or defendant according to law upon the matters of fact found by the jury. Rule 22.

Trials with assessors (where such a course is desired or assented to by the parties) are to take place in such manner, and upon such terms, as the court or a judge shall direct. Assessors are persons who, from their profession or experience, are deemed to be specially qualified to try a given case. The remuneration (if any) to be paid them for their services is to be determined by the court. Rule 28. Stat. 36 & 37 Vict. c. 66, s. 56.

But a trial may (as we have seen) take place before a referee, with or without assessors. Referees are of two kinds: *official* and *special* referees. Official referees are permanent officers of the Supreme Court. Special referees are persons agreed on between the parties. Trials before referees are to be conducted, as nearly as may be, in the same manner as trials before a judge of the High Court; but the tribunal of the referee is not to be a public court of justice; nor is a referee to have power to commit any person to prison for contempt of his authority. Stat. 36 & 37 Vict. c. 66, sects 66, 67. Ord. XXXVI. r. 31. Rule 33.

Evidence at the trial of the action is to be given *vivâ voce* in open court, except as to facts in reference to which the court may order, or the parties agree, that the evidence shall be taken by affidavit. Ord. XXXVII.

The verdict having been given, let us suppose one of the parties is dissatisfied, and desires a new trial. He may within FOUR DAYS (not including Sundays, &c.) make a *motion for a new trial*. That is, he may apply to a Divisional Court of the High Court of Justice for an order calling upon the opposite party to show cause why Ord. XXXIX. r. 1.

Stat. 36 & 37 Vict. c. 66, ss. 40, 41. there should not be a new trial. A Divisional Court is a court constituted of two or three judges of the High Court. If no Divisional Court be sitting at the time, then the party must make his motion for a new trial within FOUR DAYS after the commencement of the sitting of the Divisional Court next after the trial.

Ord. XXXIX. rr. 1, 2. If the order asked for be obtained, the party who has obtained it must, within FOUR DAYS (not including Sundays, &c.), serve the same on the opposite party, who will be called on within EIGHT DAYS from the date of the order, or so soon after as the case can be heard, to show cause why a new trial should not be directed.

Rule 4; Ord. XL. r. 10. On the case coming on to be heard, the court may, according to the justice of the case, direct a new trial on all or some of the points at issue, or refuse the new trial altogether; or the court may, if it is of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration.

We now come to *judgment:* which is the official statement of the result of the action, whereby, in general, a successful party is authorized to obtain the fruits of his success. Judgment is completed by *entry of judgment*, a proceeding to be presently explained (see next page.)

Motion for Judgment.]—Where judgment is not entered at the trial of a cause, or is entered "subject to leave to move for judgment," or where, judgment having been so entered, a party dissatisfied wishes to set it aside and obtain judgment in his favour, the proper course is *to set down the action on motion for judgment*, that is, to enter the action in the cause list as being about to come on at that particular stage which is called *motion for judgment*. The following cases are specified in which this may be done:—

Ord. XL. r. 2. (1) Where at the trial the judge or referee has ordered that judgment be entered *subject to leave to move.*

Rule 3. (2) Where at the trial the judge or referee has abstained from directing any judgment to be entered.

Rule 4. (3) Where, in a trial before a jury, the judge has caused the finding of the jury to be entered wrongly, *i.e.*, where the finding as entered is not a proper legal inference from the facts as found by the jury.

Rule 5. (4) Where, upon the finding as entered, the judgment directed to be entered is wrong; *i.e.*, where the judgment is not legally justified by the finding as entered.

The party who is in the first instance to be entitled to move for judgment is, in the first of these cases, the party to whom leave has been reserved; in the second, the plaintiff in the action; in the third and fourth, any party dissatisfied.

Rule 2. In the first of these cases, the party entitled to move for judgment must set down the action on motion for judgment within the time

limited by the judge in so reserving the leave, or, if no such time be limited, then within TEN DAYS. Within the same time he must give notice to the other party or parties. This notice of motion must state the grounds of the motion, the nature of the relief sought, and that the motion is "pursuant to leave reserved."

In the second case, if the plaintiff does not, within TEN DAYS after the trial, set down the action or motion for judgment, and give notice to the other parties as in the former case, the defendant may set down the action on motion for judgment, and give notice of his doing so to the other parties. Ord. XL. r. 3.

In the third and fourth cases, the motion must be made within FOUR DAYS after the trial if the Divisional Court be then sitting; if not, then within the first FOUR DAYS after the commencement of the sitting of the Divisional Court next after the trial, or within such extended time as a court or judge may allow. In these two cases the order must be an order calling upon the opposite party to "show cause" against the motion, which must be done in EIGHT DAYS. Rule 6.

Some other cases are mentioned, to which we need not more particularly refer. Rules 7, 8.

No action, except by leave of the court or a judge, may be set down on motion for judgment after the expiration of ONE YEAR from the time when the party seeking to set down the same first became entitled to do so. Rule 9.

Upon motion for judgment, the court may either give judgment at once, or may direct the motion to stand over for further consideration and inquiry. Rule 10.

Entry of Judgment.]—The party desirous to have the judgment entered gives to the officer of the court, whose duty it is to make the entry, a copy of the "pleadings" in the action. The copy must be in print, except as to such parts of the pleadings as are by the Rules permitted to be written. The officer then enters the judgment in a book kept for the purpose. The judgment as entered recites briefly the grounds on which it is entered: as whether (1) in default of appearance by the defendant; (2) on trial before judge with or without a jury; (3) on motion for judgment, &c.; and finishes by stating what it is which is "adjudged." Ord. XLI. r. 1. App. D.

Execution.]—Judgment having been given, the next question is, how it is to be enforced. For it will generally be the case that something remains to be done under the judgment. If and so far as the plaintiff is successful, he must have some means of realizing the fruits of success, and of being compensated for the expenses he has been put to. Again, if the plaintiff fails, he must in like manner compensate the defendant for the expense he has put him to. It may happen, however, that though the plaintiff loses his action, the defendant may, by raising irrelevant issues or otherwise, be held to

have disentitled himself to costs. In this exceptional case nothing will remain to be done under the judgment. But in all other cases something will remain to be done; and the question is, how is this to be enforced if the party whose duty it is refuses to perform it? or, in technical language, how is execution of a judgment to be enforced?

The modes of doing so are manifestly twofold. An execution may be enforced either against the *person* or against the *property* of the "judgment debtor," that is, of the person who is required by a judgment to pay or perform anything.

Ord. XLII. rr. 2, 4, 5.

First, a judgment debtor may be personally arrested and imprisoned for refusing to obey a judgment. This may be done by direct committal to prison; or by *writ of attachment*, which is a writ directed to the sheriff, requiring him to bring the party before

Ord XLIV. r. 2.

the court to answer for his contempt. No writ of attachment can issue without the leave of the court or a judge, to be applied for on notice to the party against whom the attachment is to be issued.

Secondly, the "judgment creditor," that is, the person entitled to enforce the judgment, may obtain the fruits of his success, or compensation for the wrong done to him, out of the property of the judgment debtor, or out of debts owing to him. Thus he may

Ord. XLIII. r. 1. App. F, Forms 1, 2.

obtain a writ of *fieri facias*, by which the sheriff is directed to take goods of the judgment debtor and sell or otherwise dispose of them in satisfaction of the claim of the judgment creditor. Or the judgment creditor may obtain a writ of *elegit*, which operates upon

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the lands as well as upon the goods of the judgment debtor. Or he may obtain an order that the judgment debtor be orally examined as to the debts owing to him, and satisfy his claim out of the debts so owing to the judgment debtor. This process is called *attachment*

Ord. XLVI. r. 1.

of debts. Or he may obtain a *charging order*, by which stock or shares belonging to the judgment debtor may be charged with the

Ord XLII. rr. 2, 4; Ord. XLVII.

amount of the judgment creditor's claim. Or he may obtain a *writ of sequestration*, directed to certain commissioners (generally four in number) called *sequestrators*, who are thereby commanded to take possession of the lands and goods of the recalcitrant party. Any

Ord. XLII. r. 3;

person resisting the sequestrators in the execution of their duty is guilty of a contempt of court, and is liable to be sent to prison.

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Also, in an action for the recovery of land, a judgment for the

App. F, Form No. 7.

plaintiff may be enforced by a writ called a *writ of possession*, which is in the form of a letter from the Queen to the sheriff, directing him to enter upon the land and deliver possession of the same to

Ord. XLII. r. 4; Ord. XLIX.

the plaintiff in the action. So, if the action be for the recovery of property other than land or money, a judgment for the plaintiff may

App. F, Form No. 8.

be enforced by *writ of delivery*, which is a writ commanding the sheriff to cause the property in question to be returned to the plaintiff, with certain alternative directions providing for the event of the property not being found within the sheriff's jurisdiction.

Any person to whom a sum of money or any costs shall be payable under a judgment, may, IMMEDIATELY after the judgment has been entered, sue out one or more writs of *fieri facias* or of *elegit* (see preceding page) to enforce payment thereof: except that if the period of payment be mentioned in the judgment, no such writ can be issued before the expiration of such period. Moreover, the court or a judge may stay execution until any time such court or judge may think proper. Ord. XLII. r. 15.

Where a judgment is to the effect that a party is entitled to relief subject to a condition or contingency, he may, upon the fulfilment of the condition or contingency, and after demand made upon the party against whom he is entitled to relief, apply to the court or a judge for leave to issue execution against such party; and the court or judge may make order accordingly, or, if any question arises as to the rights of the parties, may order the same to be determined in any of the ways in which questions arising in an action may be tried. Rule 7.

Any person desirous to have a writ issued must prepare a formal request to the officer of the court, called a "præcipe," directing him to seal the writ of execution. This "præcipe" must contain the title of the action and the date of the judgment, and must describe briefly the nature of the writ to which the officer is requested to put the seal of the court. Various forms of this "præcipe" are given in Appendix (E) to the Rules. These forms vary according to circumstances; moreover, the party issuing execution may adopt other forms in cases where the circumstances may require it. The party or his solicitor must file the præcipe in the court, and must also deliver to the officer of the court the judgment, or an official copy of the judgment, upon which it is desired that the execution should issue. And in cases where any time for the execution is specified in the judgment, the officer must satisfy himself that the proper time has elapsed for sealing the writ of execution. Rule 10. Rule 9.

Every writ of execution must be indorsed with the name and place of abode or office of business of the solicitor suing out the same; and when the solicitor suing out the writ is agent for another solicitor, the name and place of abode of such other solicitor must also be indorsed upon the writ. A writ of execution, if unexecuted, remains in force for ONE YEAR; but such writ may, at any time before its expiration, by leave of the court or judge, be renewed by the party issuing it. The renewed writ is in force for ONE YEAR from the date of renewal. Execution may not issue more than SIX YEARS from the judgment, without the leave of the court or a judge. Rule 11. Rule 16. Rules 18, 19.

Audita Querela.]—Formerly, if after judgment against a defendant some fact or circumstance appeared which would entitle the defendant to be discharged from the consequences of the judgment, he

might sue out a writ of *audita querela*, by which the court was enjoined to do justice between the plaintiff and defendant. This
Ord. XLII. r. 22. proceeding, having long been superseded by more summary methods, is now abolished. But it is provided that any party, against whom judgment has been given, may apply to the court or a judge for a stay of execution or other relief against such judgment upon the ground of facts which have arisen too late to be pleaded; and the court or judge may give such relief and upon such terms as may be just.

Appeals.]—By an "appeal" we generally understand an application by a party to a superior tribunal to rectify an alleged injustice done to him by an inferior tribunal. Prior to the commencement of the Judicature Acts, there existed in civil cases two methods of appealing, which are now abolished. One was by *bill of exceptions*, the other by *proceedings in error*. A *bill of exceptions* was a document drawn up at the trial of a case by the counsel of a party dissatisfied with the judge's ruling on a point of law, or with his rejection or admission of evidence. The judge was bound to affix his seal to the document, and the "exceptions" were argued in the Court of Exchequer Chamber (which, so far as its jurisdiction went, corresponded to the Court of Appeal under the Judicature Acts).
Ord. LVIII. r. 1. Bills of exceptions are now declared to be abolished; but it is,
Stat. 38 & 39 Vict. c. 77, s. 23. nevertheless, provided by the Judicature Act of 1875, that nothing in the Act of 1873, nor in any rule or order made under that Act or the Act of 1875, shall take away the right of any party to have the issues for trial by jury submitted and left by the judge to the jury, with a complete and proper direction to the jury upon the law, and as to the evidence applicable to such issues; and it is expressly provided, that the said right may be enforced *either* by motion in the High Court of Justice, *or* by motion in the Court of Appeal, *founded upon an exception entered upon or annexed to the record*. Thus, though bills of exception are nominally abolished, the same procedure is for many purposes preserved.

Error was a method of reviewing a judgment, grounded either on the suggestion of some *fact* which rendered the judgment erroneous, in which case it was called *error in fact*; or upon some defect of law manifest upon the face of the official record of the action, in which case it was called *error in law*. We need not here enter into a detailed description of these proceedings, which (so far as regards
Ord. LVIII. r. 1. civil cases) are now abolished.

Rule 2. Appeals to the Court of Appeal are now to be brought by notice of motion in a summary way, and *no petition, case, or other formal*
Rule 3. *proceeding other than such notice of motion is necessary*. This notice of appeal must be served upon all parties directly affected by the
Rule 8. appeal. Moreover, the party appealing from a judgment or order must produce to the proper officer of the Court of Appeal the judg-

ment or order, or an official copy of the same, and must leave with the officer a copy of the notice of appeal to be filed. The officer will then set down the appeal by entering the same in the proper list of appeals.

No appeal from any *judgment* may, except by special leave of the Court of Appeal, be brought after the expiration of ONE YEAR. Ord. LVIII. r. 15.

Appeals from *interlocutory orders* (including orders made in the winding-up of a company, or in a bankruptcy) must be brought within TWENTY-ONE DAYS. Rule 9.

A notice of appeal from any *judgment*, whether final or interlocutory, must be a FOURTEEN DAYS' notice. (The nature of an "interlocutory judgment" is explained, *post*, p. 522.) Notice of appeal from an *interlocutory order* must be a FOUR DAYS' notice.

If a respondent to an appeal wishes to contend that the decision of the court below should be varied in his own favour, he must give notice to the party to be affected by such contention. Such notice must be an EIGHT DAYS' notice if the appeal be one from a *final judgment*, but if the appeal be from an *interlocutory order*, a TWO DAYS' notice will suffice. Ord. LVIII. r. 6. Rule 7.

The functions of the Court of Appeal are not confined to decisions on legal points; but the Court of Appeal has all powers and duties, as to amendment and otherwise, of the Court of First Instance. It has, moreover, full discretionary power to receive further evidence upon questions of fact. Such evidence may be either by oral examination in court, or by affidavit, or by deposition taken before an examiner or commissioner. Rule 5.

Court of Final Appeal.]—The House of Lords is still the Court of Final Appeal, and will continue to be so until November of the present year, 1876. What may happen then will depend on the legislation of the present Session. A bill has been introduced into Parliament by Lord Cairns for reconstituting the Court of Final Appeal. Stat. 38 & 39 Vict. c. 77, s. 2

Costs.]—Where one person has unwarrantably taken legal proceedings against another, or has unwarrantably refused to comply with another's just demand against himself, it is obvious that a mere compliance with the original demand will not wholly compensate the successful party. Accordingly, a successful party in an action is in general entitled to recover, under the name of *costs*, the expenses to which he has been put in prosecuting or defending the action. Now it is directed that the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court. At the same time it is expressly provided, that where any action or issue is tried by a jury, the costs shall follow the event, unless upon application made at the trial for good cause shown the judge before whom such action or issue is tried, or the court, shall otherwise Ord. LV.

order. As to the scale on which law costs are charged, there i higher and a lower scale applicable, under Order VI. of the Ad tional Rules of the 12th of August, 1875, to different classes actions respectively.

The rule that the successful party is entitled to his costs must understood subject to qualifications. For instance, the opposi party may not have been at all to blame. Let us suppose that t contention, which is ultimately decided to be erroneous, has bee made under an excusable error as to a matter of *fact*. It woul then by no means follow that the party who has raised the con tention should be ordered to pay the costs, especially if the case b such that it would have been his duty to raise the question had the fac been otherwise. For instance, a party having been absent from the country, and not having been heard of for a dozen years, returns and claims a share in a trust fund. The trustee, not being satisfied of the party's identity, declines to pay over the share without an order of a court of justice. The identity of the party, and his title to the fund, are nevertheless established in the opinion of the court. Should the trustee be ordered to pay the costs occasioned by his doubts? This question would be by no means clear, even in those cases where the conduct of the successful claimant is entirely free from blame. The result in such cases must turn upon the question whether the doubts of the trustee had or had not been excusable under the circumstances. Various other cases of a similar kind may be easily conceived, where a party acting, not for his own benefit, but in a representative capacity, commits an excusable error on a matter of fact. And the same principle applies to those cases where a party is (as in the case of the construction of an obscure will) entitled to have the opinion of a court of justice of first instance. Moreover it is expressly provided, that nothing in the Rules contained shall deprive a trustee, mortgagee, or other person, of any right to costs out of a particular estate or fund (*e. g.*, a trust estate or fund in court) to which he would be entitled according to the rules hitherto acted upon in courts of equity.

Re Elliott's Trusts, L. R., 15 Eq. 195; 42 L. J., Ch. 89; 21 W. R. 455.

See *Chesterfield* v. *Janssen*, 2 Ves. sen. 125, 159, 160; White and Tudor's L. C., Eq., 4th ed., vol. i. pp. 591-2.

Ord. LV.

In the cases above referred to it is at least an arguable point that the successful party should not be entitled to his costs, on the ground that no *wrong* properly so called has been done, but that an unlucky accident has driven the parties into a court of justice.

Another class of cases to which we may refer are those in which the action has been occasioned, or at least its costs have been increased, by the conduct of the successful party; as where he has, by destroying, or by conduct tending to destroy, the evidences of his title, rendered a judicial investigation necessary; or where he has increased the expenses of the action by undue prolixity in his pleadings, or otherwise; or where, though successful in the main object of the action, he is unsuccessful in some of the issues which he has raised. In many of these cases justice and economy will

alike be served by simply depriving the successful party of his costs in the action, without entering into a tedious and expensive inquiry as to how far each party has contributed to each particular item of expense.

Sometimes a successful party has been deprived of his costs on the ground that it would be a great hardship to make the opposite party pay them, or because the decision is on a point of law which has been hitherto undecided. But such cases must not be regarded as precedents to be followed. The sounder doctrine is, that "ignorance of the law excuseth no man;" and that on a pure question of law the costs must follow the event. And the same principle applies to inexcusable errors of fact.

It should be observed that an order as to costs, or a refusal to make such order, will in general be final, as a Court of Appeal is unwilling to interfere with the decision of a court or judge below in a matter of discretion.

A party who is unsuccessful in a Court of Final Appeal will in general have to pay all costs; notwithstanding that he may have been successful in a court or courts below. This, which has been the almost invariable rule in the Privy Council, has been adopted by the Court of Appeal in the Supreme Court of Judicature.

We now proceed to consider several miscellaneous matters arising in an action, or by which the ordinary course of an action may be diverted or varied.

Procedure under Bills of Exchange Act, 1855.]—Under this Statute the holder of a bill of exchange or promissory note may, within six months after the same shall have become due, bring an action by writ of summons in a special form contained in Schedule (A) to that Act, by which the defendant is warned that, unless within TWELVE DAYS he *obtain leave* from a judge to appear in the action, the plaintiff may proceed to judgment and execution. On the back of the writ is indorsed (among other things) the sum claimed by the plaintiff in the action. It is directed, by sect. 2 of the Act, that a judge, if applied to, shall give the defendant leave to appear and defend the action, on the defendant paying into court the sum indorsed on the writ, or on satisfactory affidavits disclosing a legal or equitable defence, or such other facts as the judge may consider sufficient. Stat. 18 & 19 Vict. c. 67.

The procedure above mentioned is a very special procedure; and, though it is expressly retained under the Judicature Acts for the cases to which it applies, a plaintiff who adopts it may not combine it with any other procedure. Ord. II. r. 6.

Other Cases where leave to Defend required.]—In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, arising on a contract in writing Ord. III. r. 6.

(including bills of exchange and promissory notes), whether under seal or not, he may indorse his writ of summons with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off. This indorsement is called a *special* indorsement.

Ord XIII. r. 3. Rule 4. In this case no leave is required to enable the defendant to *appear;* but, if he fail to appear, the plaintiff may at once proceed to final judgment and execution; and if in such action there are several defendants, and any one or more of them fail to appear, the plaintiff may proceed to final judgment against those who have not appeared, and go on with the action against the rest. Moreover, even where the defendant appears, the plaintiff may, on swearing by affidavit to the facts on which the action is based, and that in his belief there is no defence to the action, call on the defendant to show cause why the plaintiff should not be at liberty to proceed to final judgment; and unless the defendant can show, by affidavit or otherwise, that he has a good defence to the action, the Court may make an order empowering the plaintiff at once to proceed to judgment.

Ord. XIV. r. 1.

It will be seen that the holder of a bill of exchange or promissory note may proceed either under the Act of 1855, or under the method lastly above mentioned.

Default of Appearance in Ordinary Cases.]—We propose to consider four cases.

1st. Where the defendant fails to appear to the writ of summons, and the writ is not *specially indorsed* with the particulars of the amount of the claim, but the claim is for a debt or liquidated demand only. In this case the plaintiff may file an affidavit of service or notice in lieu of service (*i. e.*, an affidavit of having served the writ of summons on the defendant, or of having given notice of the issue of the writ), and also a statement of the particulars of his claim. He may then, after the expiration of EIGHT DAYS, proceed to final judgment.

Ord. XIII. r. 5. Ord. IX. r. 2. Ord. XIII. r. 2.

2nd. Where the defendant fails to appear, and the plaintiff's claim is for detention of goods and pecuniary damages, or either of them. In this case, as in the former, the plaintiff must file an affidavit of service or of notice in lieu of service, and may proceed to judgment, asserting his right to recover something, leaving the *amount* of damages to be ascertained by further inquiry. A judgment so obtained is called an *interlocutory judgment.* The amount of damages may be ascertained in any way in which any question arising in an action may be tried.

Ord. XIII. r. 2. Rule 6.

3rd. Where the defendant fails to appear in an action for the recovery of land. In this case the plaintiff, having made affidavit as in the former cases, is to be at liberty to "enter a judgment" that the person whose title is asserted in the writ shall recover possession of the land. If the defendant appear, but his defence be limited to part of the land, the plaintiff may enter judgment as to the other part.

Rule 7.

Ante, p. 515.

4th. Where the case is one of ordinary account, as in the case of a partnership or trust account, and the plaintiff indorses the writ, as he is entitled to do, with a claim that the account be taken. In this case, if the defendant fail to appear, and the plaintiff make affidavit as in the former cases; or if the defendant, having appeared, fail to satisfy the Court that there is some preliminary question to be tried; the Court will at once make an order for the account claimed. Ord. III. r. 6. Ord. XIII. r. 2; Ord. XV. r. 1.

Demurrer.]—(1) If a defendant wishes to object to the plaintiff's "statement of claim," on the ground that the facts alleged therein do not show any cause of action; or (2), if a plaintiff wishes to object to the defendant's statement, on the ground that it discloses no ground of defence, set-off, or counter-claim, as the case may be; and generally (3), if a party wishes to object to the last pleading of the opposite party on the ground that it is legally insufficient for the purpose for which it is put forward; he may deliver to his opponent what is called a *demurrer*. A demurrer must state specifically whether it is to the whole or to a part, and, if the latter, to what part, of the pleading of the opposite party. It must state some ground in law for the demurrer, but the party demurring is not to be limited on the argument to the ground so stated. The demurrer must be delivered in the same manner and within the same time as if it had been any other pleading. The demurrer, as soon as delivered, may be *entered for argument* by either party. This is done by the solicitor of the party delivering a memorandum of entry to the officer of the court. The party entering the demurrer for argument must give notice the same day to the opposite party. If the demurrer is not entered and notice given within TEN DAYS after delivery, and the party whose pleading is demurred to (*i.e.*, objected to by demurrer) does not within that time serve an order for leave to amend his pleading, the demurrer will be held to be *allowed;* that is, the objection will be deemed to be held good. The costs of a demurrer will in general be ordered to be paid by the unsuccessful party. Ord. XXVIII. r. 1. Rule 2; App. C, Form No. 28. Ord. XXVIII. r. 3. Rule 6. Rule 13; App. C, Form No. 29. Ord. XXVIII. r. 6. Rules 8, 11.

Default of Pleading.]—If a plaintiff, being bound to deliver a "statement of claim," fails to do so within the proper time, the defendant may apply to the court or a judge to dismiss the action with costs, for want of prosecution; and the court or a judge may make an order to that effect, or may make such other order on such terms as shall be just. Ord. XXIX. r. 1.

The proceedings to be taken in the various cases where a defendant fails to deliver his defence are for the most part analogous to those directed to be taken where the defendant fails to appear. But in cases where the claim is for an account, and in some other cases, if the defendant makes default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and such Rules 2–9.

judgment shall be given as upon the statement of claim the Court shall consider the plaintiff entitled to.

Ord. XXIX. r. 12. If a plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading or a demurrer, within the period allowed for that purpose, the pleadings are to be deemed to be closed at the expiration of that period, and the statements of fact in the pleading last delivered are to be deemed to be admitted.

Rule 14. Any judgment by default may be set aside by the court or a judge, upon such terms as to costs or otherwise as such court or judge may think fit.

Ord. XXXIV. *Special Case.*]—After the writ of summons has been issued, the parties may concur in stating the questions of law arising in an action, in the form of a *special case* for the opinion of the Court. Every such special case is to be divided into paragraphs numbered consecutively, and must concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby.

Motion and Summons.]—It frequently happens that a party has occasion to make an incidental application to the court in the course of an action, for facilitating the ends of justice, or for preventing an abuse of the process of the court. For instance, a party may desire to change the place proposed for the trial of an action; or to set aside a judgment obtained by default; or to have further time to plead, or to take any other step, than he would ordinarily be entitled to. In these and numerous other cases, he must make the application in

Ord. LIII. r. 1. open court, by a proceeding called a *motion:* and the order granting the application has generally, in the Common Law Courts, been called

Rule 4. a *rule.* A motion must in general be preceded by TWO DAYS' notice to the party to be affected thereby. But other applications are directed

Ord. LIV. or authorized to be made privately to the judge sitting in chambers: the proceeding is then called a *summons.*

Ord. LVII. r. 6. *Time.*]—A court or a judge have power to enlarge or abridge the time appointed by the Rules for doing any act or taking any proceeding, upon such terms as the justice of the case may require.

Ord. LIX. *Non-compliance.*]—Non-compliance with any of the Rules is not to render the proceedings in any action void, unless the court or a judge shall so direct; but such proceedings may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court or judge may think fit.

What we have stated in the course of this Appendix has exclusive reference to civil proceedings (not including divorce and matrimonial causes).

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