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D **T.** As an abbreviation, this letter usually stands for either "Territory," "Trinity," "term," "*tempore*," (in the time of,) or "title."

P Every person who was convicted of felony, short of murder, and admitted to the benefit of clergy, was at one time marked with this letter upon the brawn of the thumb. The practice is abolished. 7 & 8 Geo. IV. c. 27.

Q By a law of the Province of Pennsylvania, A. D. 1698, it was provided that a convicted thief should wear a badge in the form of the letter "T.," upon his left sleeve, which badge should be at least four inches long and of a color different from that of his outer garment. Linn, Laws Prov. Pa. 275.

R **T. R. E.** An abbreviation of "*Tempore Regis Edwardi*," (in the time of King Edward,) of common occurrence in Domesday, when the valuation of manors, as it was in the time of Edward the Confessor, is recounted. Cowell.

S **TABARD.** A short gown; a herald's coat; a surcoat.

TABARDER. One who wears a tabard or short gown; the name is still used as the title of certain bachelors of arts on the old foundation of Queen's College, Oxford. Enc. Lond.

TABELLA. Lat. In Roman law. A tablet. Used in voting, and in giving the verdict of juries; and, when written upon, commonly translated "ballot." The laws which introduced and regulated the mode of voting by ballot were called "*leges tabellarie*." Calvin.; 1 Kent, Comm. 232, note.

TABELLIO. In Roman law. An officer corresponding in some respects to a notary. His business was to draw legal instruments, (contracts, wills, etc.,) and witness their execution. Calvin.

TABERNACULUM. In old records. A public inn, or house of entertainment. Cowell.

TABERNARIUS. Lat. In the civil law. A shop-keeper. Dig. 14, 3, 5, 7.

In old English law. A taverner or tavern-keeper. Fleta, lib. 2, c. 12, § 17.

TABLE. A synopsis or condensed statement, bringing together numerous items or

details so as to be comprehended in a single view; as genealogical tables, exhibiting the names and relationships of all the persons composing a family; life and annuity tables, used by actuaries; interest tables, etc.

TABLE DE MARBRE. Fr. In old French law. Table of Marble; a principal seat of the admiralty, so called. These Tables de Marbre are frequently mentioned in the Ordonnance of the Marine. Burrill.

TABLE OF CASES. An alphabetical list of the adjudged cases cited, referred to, or digested in a legal text-book, volume of reports, or digest, with references to the sections, pages, or paragraphs where they are respectively cited, etc., which is commonly either prefixed or appended to the volume.

TABLE RENTS. In English law. Payments which used to be made to bishops, etc., reserved and appropriated to their table or house-keeping. Wharton.

TABEAU OF DISTRIBUTION. In Louisiana. A list of creditors of an insolvent estate, stating what each is entitled to. 4 Mart. (N. S.) 535.

TABULA. Lat. In the civil law. A table or tablet; a thin sheet of wood, which, when covered with wax, was used for writing.

TABULA IN NAUFRAGIO. Lat. A plank in a shipwreck. This phrase is used metaphorically to designate the power subsisting in a third mortgagee, who took with out notice of the second mortgage, to acquire the first incumbrance, attach it to his own, and thus squeeze out and get satisfaction, before the second is admitted to the fund. 1 Story, Eq. Jur. § 414; 2 Ves. Ch. 573.

TABULÆ. Lat. In Roman law. Tables. Writings of any kind used as evidences of a transaction. Brissonius.

TABULÆ NUPTIALES. In the civil law. A written record of a marriage; or the agreement as to the *dos*.

TABULARIUS. Lat. A notary, or tabellio. Calvin.

TAC, TAK. In old records. A kind of customary payment by a tenant. Cowell.

TAC FREE. In old records. Free from the common duty or imposition of *tac*. Cowell.

TACIT. Silent; not expressed; implied or inferred; manifested by the refraining from contradiction or objection; inferred from the situation and circumstances, in the absence of express matter. Thus, *tacit* consent is consent inferred from the fact that the party kept silence when he had an opportunity to forbid or refuse.

TACIT LAW. A law which derives its authority from the common consent of the people without any legislative enactment. 1 Bouv. Inst. no. 120.

TACIT MORTGAGE. In the law of Louisiana. The law alone in certain cases gives to the creditor a mortgage on the property of his debtor, without it being requisite that the parties should stipulate it. This is called "legal mortgage." It is called also "tacit mortgage," because it is established by the law without the aid of any agreement. Civil Code La. art. 3311.

TACIT RELOCATION. In Scotch law. The tacit or implied renewal of a lease, inferred when the landlord, instead of warning a tenant to remove at the stipulated expiration of the lease, has allowed him to continue without making a new agreement. Bell, "Relocation."

TACIT TACK. In Scotch law. An implied tack or lease; inferred from a tacksmen's possessing peaceably after his tack is expired. 1 Forb. Inst. pt. 2, p. 153.

Tacita quædam habentur pro expressis. 8 Coke, 40. Things unexpressed are sometimes considered as expressed.

TACITE. Lat. Silently; impliedly; tacitly.

TACITURNITY. In Scotch law, this signifies laches in not prosecuting a legal claim, or in acquiescing in an adverse one. Mozley & Whitley.

TACK, v. To annex some junior lien to a first lien, thereby acquiring priority over an intermediate one.

TACK, n. In Scotch law. A term corresponding to the English "lease," and denoting the same species of contract.

TACK DUTY. Rent reserved upon a lease.

TACKING. The uniting securities given at different times, so as to prevent any intermediate purchaser from claiming a title to redeem or otherwise discharge one lien, which is prior, without redeeming or discharging the other liens also, which are subsequent to his own title. 1 Story, Eq. Jur. § 412.

The term is particularly applied to the action of a third mortgagee who, by buying the first lien and uniting it to his own, gets priority over the second mortgagee.

TACKSMAN. In Scotch law. A tenant or lessee; one to whom a *tack* is granted. 1 Forb. Inst. pt. 2, p. 153.

TACTIS SACROSANCTIS. In old English law. Touching the holy evangelists. Fleta, lib. 3, c. 16, § 21. "A bishop may swear *visis evangelis*, [looking at the Gospels,] and not *tactis*, and it is good enough." Freem. 133.

TACTO PER SE SANCTO EVANGELIO. Having personally touched the holy Gospel. Cro. Eliz. 105. The description of a corporal oath.

TAIL. Limited; abridged; reduced; curtailed, as a fee or estate in fee, to a certain order of succession, or to certain heirs.

TAIL AFTER POSSIBILITY OF ISSUE EXTINCT. A species of estate tail which arises where one is tenant in special tail, and a person from whose body the issue was to spring dies without issue, or, having left issue, that issue becomes extinct. In either of these cases the surviving tenant in special tail becomes "tenant in tail after possibility of issue extinct." 2 Bl. Comm. 124.

TAIL, ESTATE IN. An estate of inheritance, which, instead of descending to heirs generally, goes to the heirs of the donee's body, which means his lawful issue, his children, and through them to his grandchildren in a direct line, so long as his posterity endures in a regular order and course of descent, and upon the death of the first owner without issue, the estate determines. 1 Washb. Real Prop. *72.

An estate tail is a freehold of inheritance, limited to a person and the heirs of his body, general or special, male or female, and is the creature of the statute *de Donis*. The estate, provided the entail be not barred, reverts to the donor or reversioner, if the donee die without leaving descendants answering to the condition annexed to the estate upon its creation, unless there be a

tion over to a third person on default of descendants, when it vests in such person or remainder-man. Wharton.

TAIL FEMALE. When lands are given to a person and the *female* heirs of his or her body, this is called an "estate tail female," and the male heirs are not capable of inheriting it.

TAIL GENERAL. An estate in tail limited to one "and the heirs of his body male," which is called "tail general." It is, how often soever such donee in tail is married, his issue in general by all and every such marriage is, in successive order, capable of inheriting the estate tail *per formam*. 2 Bl. Comm. 113.

It is where an estate is limited to a man and the heirs of his body, without any restriction at all according to some authorities, with no restriction than that in relation to sex. Tail male general is the same thing as tail female. The word "general," in such case, implying there is no other restriction upon the descent state than that it must go in the male line. Tail female general is an estate in tail female. The word "general," in the phrase, denotes a purely negative idea, and may denote the absence of any restriction, or the absence of any restriction which is tacitly understood. Mozley & Whitley.

TAIL MALE. When lands are given to a person and the *male* heirs of his or her body, this is called an "estate tail male," and the female heirs are not capable of inheriting it.

TAIL SPECIAL. An estate in tail where the succession is restricted to certain persons of the donee's body, and does not go to all of them in general; *e. g.*, where lands and tenements are given to a man and "the heirs of his body on Mary, his now wife, to have and to hold;" here no issue can inherit but the special issue as is engendered between the two, not such as the husband may have by another wife, and therefore it is called "special tail." 2 Bl. Comm. 113.

As defined by Cowell as the limitation of lands and tenements to a man and his wife and the heirs of both two bodies. But the phrase need not be 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. Mozley & Whitley.

TAILLAGE. A piece cut out of the substance of a share of one's substance paid by a tenant as tribute; a toll or tax. Cowell.

TAILLE. Fr. In old French law. A tax or assessment levied by the king, or by

any great lord, upon his subjects, usually taking the form of an imposition upon the owners of real estate. Brande.

In old English law. The fee which is opposed to fee-simple, because it is so minced or pared that it is not in the owner's free power to dispose of it, but it is, by the first giver, cut or divided from all other, and tied to the issue of the donee,—in short, an estate-tail. Wharton.

TAILZIE. In Scotch law. An entail. A tailzied fee is that which the owner, by exercising his inherent right of disposing of his property, settles upon others than those to whom it would have descended by law. 1 Forb. Inst. pt. 2, p. 101.

TAINT. A conviction of felony, or the person so convicted. Cowell.

TAKE. 1. To lay hold of; to gain or receive into possession; to seize; to deprive one of the possession of; to assume ownership. Thus, it is a constitutional provision that a man's property shall not be *taken* for public uses without just compensation. 9 Ind. 433.

2. To obtain or assume possession of a chattel unlawfully, and without the owner's consent; to appropriate things to one's own use with felonious intent. Thus, an actual *taking* is essential to constitute larceny. 4 Bl. Comm. 430.

3. To seize or apprehend a person; to arrest the body of a person by virtue of lawful process. Thus, a *capias* commands the officer to *take* the body of the defendant.

4. To acquire the title to an estate; to receive an estate in lands from another person by virtue of some species of title. Thus, one is said to "*take* by purchase," "*take* by descent," "*take* a life-interest under the devise," etc.

5. To receive the verdict of a jury; to superintend the delivery of a verdict; to hold a court. The commission of assize in England empowers the judges to *take the assizes*; that is, according to its ancient meaning, to take the verdict of a peculiar species of jury called an "assize;" but, in its present meaning, "to hold the assizes." 3 Bl. Comm. 59, 185.

TAKE UP. A party to a negotiable instrument, particularly an indorser or acceptor, is said to "take up" the paper, or to "retire" it, when he pays its amount, or substitutes other security for it, and receives it again into his own hands.

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TAKER. One who takes or acquires; particularly, one who takes an estate by devise. When an estate is granted subject to a remainder or executory devise, the devisee of the immediate interest is called the "first taker."

TAKING. In criminal law and torts. The act of laying hold upon an article, with or without removing the same.

TALE. In old pleading. The plaintiff's count, declaration, or narrative of his case. 8 Bl. Comm. 293.

The count or counting of money. Said to be derived from the same root as "tally." Cowell. Whence also the modern word "teller."

TALES. Lat. Such; such men. When, by means of challenges or any other cause, a sufficient number of unexceptionable jurors does not appear at the trial, either party may pray a "tales," as it is termed; that is, a supply of *such* men as are summoned on the first panel in order to make up the deficiency. Brown.

TALES DE CIRCUMSTANTIBUS. So many of the by-standers. The emphatic words of the old writ awarded to the sheriff to make up a deficiency of jurors out of the persons present in court. 3 Bl. Comm. 365.

TALESMAN. A person summoned to act as a juror from among the by-standers in the court.

TALIO. Lat. In the civil law. Like for like; punishment in the same kind; the punishment of an injury by an act of the same kind, as an eye for an eye, a limb for a limb, etc. Calvin.

Talis interpretatio semper fienda est, ut evitetur absurdum et inconveniens, et ne iudicium sit illusorium. 1 Coke, 52. Interpretation is always to be made in such a manner that what is absurd and inconvenient may be avoided, and the judgment be not illusory.

Talis non est eadem; nam nullum simile est idem. 4 Coke, 18. What is like is not the same; for nothing similar is the same.

Talis res, vel tale rectum, quæ vel quod non est in homine adtunc superstitie sed tantummodo est et consistit in consideratione et intelligentia legis, et quod alii dixerunt talem rem vel tale rectum fore in nubibus. Such a

thing or such a right as is not vested in a person then living, but merely exists in the consideration and contemplation of law [is said to be in abeyance,] and others have said that such a thing or such a right is in the clouds. Co. Litt. 342.

TALITER PROCESSUM EST. Upon pleading the judgment of an inferior court, the proceedings preliminary to such judgment, and on which the same was founded, must, to some extent, appear in the pleading, but the rule is that they may be alleged with a general allegation that "such proceedings were had," instead of a detailed account of the proceedings themselves, and this general allegation is called the "*taliter processum est.*" A like concise mode of stating former proceedings in a suit is adopted at the present day in chancery proceedings upon petitions and in actions in the nature of bills of revivor and supplement. Brown.

TALLAGE. A word used metaphorically for a share of a man's substance paid by way of tribute, toll, or tax, being derived from the French "*tailler*," which signifies to cut a piece out of the whole. Cowell.

TALLAGERS. Tax or toll gatherers: mentioned by Chaucer.

TALLAGIUM. A term including all taxes. 2 Inst. 532.

TALLAGIUM FACERE. To give up accounts in the exchequer, where the method of accounting was by tallies.

TALLATIO. A keeping account by tallies. Cowell.

TALLEY, or TALLY. A stick cut into two parts, on each whereof is marked, with notches or otherwise, what is due between debtor and creditor. It was the ancient mode of keeping accounts. One part was held by the creditor, and the other by the debtor. The use of tallies in the exchequer was abolished by St. 23 Geo. III. c. 82, and the old tallies were ordered to be destroyed by St. 4 & 5 Wm. IV. c. 15. Whar-ton.

TALLIA. L. Lat. A tax or tribute; tallage; a share taken or *cut out* of any one's income or means. Spelman.

TALLY TRADE. A system of dealing by which dealers furnish certain articles on credit, upon an agreement for the payment of the stipulated price by certain weekly or monthly installments. McCul. Dict.

N **TALTARUM'S CASE.** A case reported in Yearb. 12 Edw. IV. 19-21, which is regarded as having established the foundation of common recoveries.

O **TAM QUAM.** A phrase used as the name of a writ of error from inferior courts, when the error is supposed to be as well in giving the judgment as in awarding execution upon it. (*Tam in redditione iudicii, quam in adjudicatione executionis.*)

A *venire tam quam* was one by which a jury was summoned, *as well* to try an issue *as* to inquire of the damages on a default. 2 Tidd, Pr. 722, 895.

Q **TAME.** Domesticated; accustomed to man; reclaimed from a natural state of wildness. In the Latin phrase, tame animals are described *as domitæ naturæ*.

R **TAMEN.** Lat. Notwithstanding; nevertheless; yet.

S **TANGIBLE PROPERTY.** Property which may be touched; such as is perceptible to the senses; corporeal property, whether real or personal. The phrase is used in opposition to such species of property as patents, franchises, copyrights, rents, ways, and incorporeal property generally.

T **TANISTRY.** In old Irish law. A species of tenure, founded on ancient usage, which allotted the inheritance of lands, castles, etc., to the "oldest and worthiest man of the deceased's name and blood." It was abolished in the reign of James I. Jacob; Wharton.

TANNERIA. In old English law. Tannery; the trade or business of a tanner. Fleta, lib. 2, c. 52, § 35.

TANTEO. Span. In Spanish law. Preemption. White, New Recop. b. 2, tit. 2, c. 3.

TANTO, RIGHT OF. In Mexican law. The right enjoyed by an usufructuary of property, of buying the property at the same price at which the owner offers it to any other person, or is willing to take from another. Civil Code Mex. art. 992.

Tantum bona valent, quantum vendi possunt. Shep. Touch. 142. Goods are worth so much as they can be sold for.

TARDE VENIT. Lat. In practice. The name of a return made by the sheriff to a writ, when it came into his hands too late to be executed before the return-day.

TARE. A deficiency in the weight or quantity of merchandise by reason of the weight of the box, cask, bag, or other receptacle which contains it and is weighed with it. Also an allowance or abatement of a certain weight or quantity which the seller makes to the buyer, on account of the weight of such box, cask, etc. See TRET.

TARIFF. A cartel of commerce, a book of rates, a table or catalogue, drawn usually in alphabetical order, containing the names of several kinds of merchandise, with the duties or customs to be paid for the same, as settled by authority, or agreed on between the several princes and states that hold commerce together. Enc. Lond.

The list or schedule of articles on which a duty is imposed upon their importation into the United States, with the rates at which they are severally taxed. Also the custom or duty payable on such articles. And, derivatively, the system or principle of imposing duties on the importation of foreign merchandise.

TASSUM. In old English law. A heap; a hay-mow, or hay-stack. *Fœnum in tassis*, hay in stacks. Reg. Orig. 96.

TATH. In the counties of Norfolk and Suffolk, the lords of manors anciently claimed the privilege of having their tenants' flocks or sheep brought at night upon their own demesne lands, there to be folded for the improvement of the ground, which liberty was called by the name of the "tath." Spelman.

TAURI LIBERI LIBERTAS. A common bull; because he was free to all the tenants within such a manor, liberty, etc.

TAUTOLOGY. Describing the same thing twice in one sentence in equivalent terms; a fault in rhetoric. It differs from repetition or iteration, which is repeating the same sentence in the same or equivalent terms; the latter is *sometimes* either excusable or necessary in an argument or address; the former (tautology) never. Wharton.

TAVERN. A place of entertainment; a house kept up for the accommodation of strangers. Originally, a house for the retailing of liquors to be drunk on the spot. Webster.

The word "tavern," in a charter provision authorizing municipal authorities to "license and regulate taverns," includes hotels. "Tavern," "hotel," and "public house" are, in this country, used synonymously; and while they entertain the traveling public, and keep guests, and receive compensation therefor, they do not lose their character, though they may not have the privilege of selling liquors. 46 Mo. 593.

TAVERN-KEEPER. One who keeps a tavern. One who keeps an inn; an inn-keeper.

TAVERNER. In old English law. A seller of wine; one who kept a house or shop for the sale of wine.

TAX, v. To impose a tax; to enact or declare that a pecuniary contribution shall be made by the persons liable, for the support of government. Spoken of an individual, to be taxed is to be included in an assessment made for purposes of taxation.

In practice. To assess or determine; to liquidate, adjust, or settle. Spoken particularly of *taxing costs*, (*q. v.*)

TAX, n. Taxes are a ratable portion of the produce of the property and labor of the individual citizens, taken by the nation, in the exercise of its sovereign rights, for the support of government, for the administration of the laws, and as the means for continuing in operation the various legitimate functions of the state. Black, Tax Titles, § 2.

Taxes are the enforced proportional contribution of persons and property, levied by the authority of the state for the support of the government, and for all public needs; portions of the property of the citizen, demanded and received by the government, to be disposed of to enable it to discharge its functions. 58 Me. 590.

In a general sense, a tax is any contribution imposed by government upon individuals, for the use and service of the state, whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name. Story, Const. § 950.

By the concurrent opinion of lawyers, judges, lexicographers, and political economists, as well as by the general and popular understanding, taxes are burdens or charges imposed by the legislature upon persons or property to raise money for public purposes, or to accomplish some governmental end. 27 Iowa, 28.

A tax is a pecuniary burden, imposed for the support of government. 17 Wall. 322.

Taxes are classified as *direct*, which includes those which are assessed upon the property, person, business, income, etc., of those who pay them; and *indirect*, or those which are levied on commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity. Cooley, Tax'n, 6.

Synonyms. In a broad sense, *taxes* undoubtedly include *assessments*, and the right to impose assessments has its foundation in the taxing power of the government; and yet, in practice and as generally understood, there is a broad distinction between the two terms. "Taxes," as the term is generally used, are public burdens imposed generally upon the inhabitants of the whole state, or upon some civil division thereof, for governmental purposes, without reference to peculiar benefits to particular individuals or property. "Assessments" have reference to impositions for improvements which are specially beneficial to particular individuals or property, and which are imposed in proportion to the particular benefits supposed to be conferred. They are justified only because the improvements confer special benefits, and are just only when they are divided in proportion to such benefits. 84 N. Y. 112.

A charge imposed by law upon the assessed value of all property, real and personal, in a district, is a tax, and not an assessment, although the purpose be to make a local improvement on a road. 46 Cal. 553.

Taxes differ from *subsidies*, in being certain and orderly, and from forced contributions, etc., in that they are levied by authority of law, and by some rule of proportion which is intended to insure uniformity of contribution, and a just apportionment of the burdens of government. Cooley, Tax'n, 2.

The words "tax" and "excise," although often used as synonymous, are to be considered as having entirely distinct and separate significations. The former is a charge apportioned either among the whole people of the state, or those residing within certain districts, municipalities, or sections. It is required to be imposed, as we shall more fully explain hereafter, so that, if levied for the public charges of government, it shall be shared according to the estate, real and personal, which each person may possess; or, if raised to defray the cost of some local improvement of a public nature, it shall be borne by those who will receive some special and peculiar benefit or advantage which an expenditure of money for a public object may cause to those on whom the tax is assessed. An excise, on the other hand, is of a different character. It is based on no rule of apportionment or equality whatever. It is a fixed, absolute, and direct charge laid on merchandise, products, or commodities, without any regard to the amount of property belonging to those on whom it may fall, or to any supposed relation between money expended for a public object

N and a special benefit occasioned to those by whom the charge is to be paid. 11 Allen, 274.

O **TAX-DEED.** The conveyance given upon a sale of lands made for non-payment of taxes; the deed whereby the officer of the law undertakes to convey the title of the proprietor to the purchaser at the tax-sale.

P **TAX-LEVY.** The total sum to be raised by a tax. Also the bill, enactment, or measure of legislation by which an annual or general tax is imposed.

Q **TAX-LIEN.** A statutory lien, existing in favor of the state or municipality, upon the lands of a person charged with taxes, binding the same either for the taxes assessed upon the specific tract of land or (in some jurisdictions) for all the taxes due from the individual, and which may be foreclosed for non-payment, by judgment of a court or sale of the land.

S **TAX-PAYER.** A person chargeable with a tax; one from whom government demands a pecuniary contribution towards its support.

T **TAX-PAYERS' LISTS.** Written exhibits required to be made out by the taxpayers resident in a district, enumerating all the property owned by them and subject to taxation, to be handed to the assessors, at a specified date or at regular periods, as a basis for assessment and valuation.

TAX PURCHASER. A person who buys land at a tax-sale; the person to whom land, at a tax-sale thereof, is struck down.

TAX-SALE. A sale of land for unpaid taxes; a sale of property, by authority of law, for the collection of a tax assessed upon it, or upon its owner, which remains unpaid.

TAX-TITLE. The title by which one holds land which he purchased at a tax-sale. That species of title which is inaugurated by a successful bid for land at a collector's sale of the same for non-payment of taxes, completed by the failure of those entitled to redeem within the specified time, and evidenced by the deed executed to the tax purchaser, or his assignee, by the proper officer.

TAXA. L. Lat. A tax. Spelman.

In old records. An allotted piece of work; a task.

TAXABLE. Subject to taxation; liable to be assessed, along with others, for a share in a tax. Persons subject to taxation are

sometimes called "taxables;" so property which may be assessed for taxation is said to be taxable.

Applied to costs in an action, the word means proper to be taxed or charged up; legally chargeable or assessable.

TAXARE. Lat. To rate or value. Calvin.

To tax; to lay a tax or tribute. Spelman.

In old English practice. To assess; to rate or estimate; to moderate or regulate an assessment or rate.

TAXATI. In old European law. Soldiers of a garrison or fleet, assigned to a certain station. Spelman.

TAXATIO. Lat. In Roman law. Taxation or assessment of damages; the assessment, by the judge, of the amount of damages to be awarded to a plaintiff, and particularly in the way of reducing the amount claimed or sworn to by the latter.

TAXATIO ECCLESIASTICA. 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. This taxation was first made by Walter, bishop of Norwich, delegated by the pope to this office in 38 Hen. III., and hence called "*Taxatio Norwicensis*." It is also called "Pope Innocent's Valor." Wharton.

TAXATIO EXPENSARUM. In old English practice. Taxation of costs.

TAXATIO NORWICENSIS. A valuation of ecclesiastical benefices made through every diocese in England, by Walter, bishop of Norwich, delegated by the pope to this office in 38 Hen. III. Cowell.

TAXATION. The imposition of a tax; the act or process of imposing and levying a pecuniary charge or enforced contribution, ratable, or proportioned to value or some other standard, upon persons or property, by or on behalf of a government or one of its divisions or agencies, for the purpose of providing revenue for the maintenance and expenses of government.

The term "taxation," both in common parlance and in the laws of the several states, has been ordinarily used, not to express the idea of the sovereign power which is exercised, but the exercise of that power for a particular purpose, viz., to raise a revenue for the general and ordinary expenses of the government, whether it be the state, county, town, or city government. But there is another class of expenses, also of a public nature, necessary to be provided for, peculiar to the local

government of counties, cities, towns, and even smaller subdivisions, such as opening, grading, improving in various ways, and repairing, highways and streets, and constructing sewers in cities, and canals and ditches for the purpose of drainage in the country. They are generally of peculiar local benefit. These burdens have always, in every state, from its first settlement, been charged upon the localities benefited, and have been apportioned upon various principles; but, whatever principle of apportionment has been adopted, they have been known, both in the legislation and ordinary speech of the country, by the name of "assessments." Assessments have also, very generally, if not always, been apportioned upon principles different from those adopted in "taxation," in the ordinary sense of that term; and any one can see, upon a moment's reflection, that the apportionment, to bear equally, and do substantial justice to all parties, must be made upon a different principle from that adopted in "taxation," so called. 28 Cal. 356.

The differences between taxation and taking property in right of eminent domain are that taxation exacts money or services from individuals, as and for their respective shares of contribution to any public burden; while private property taken for public use, by right of eminent domain, is taken, not as the owner's share of contribution to a public burden, but as so much beyond his share, and for which compensation must be made. Moreover, taxation operates upon a community, or upon a class of persons in a community, and by some rule of apportionment; while eminent domain operates upon an individual, and without reference to the amount or value exacted from any other individual, or class of individuals. 4 N. Y. 419.

TAXATION OF COSTS. In practice. The process of ascertaining and charging up the amount of costs in an action to which a party is legally entitled, or which are legally chargeable. And, in English practice, the process of examining the items in an attorney's bill of costs and making the proper deductions, if any.

TAXERS. Two officers yearly chosen in Cambridge, England, to see the true gauge of all the weights and measures.

TAXING DISTRICT. The district throughout which a particular tax or assessment is ratably apportioned and levied upon the inhabitants; it may comprise the whole state, one county, a city, a ward, or part of a street.

TAXING MASTERS. Officers of the English supreme court, who examine and allow or disallow items in bills of costs.

TAXING OFFICER. Each house of parliament has a taxing officer, whose duty it is to tax the costs incurred by the promoters or opponents of private bills. May, Parl. Pr. 843.

TAXING POWER. The power of any government to levy taxes.

TAXT-WARD. An annual payment made to a superior in Scotland, instead of the duties due to him under the tenure of ward-holding. Abolished. Wharton.

TEAM, or THEAME. In old English law. A royalty or privilege granted, by royal charter, to a lord of a manor, for the having, restraining, and judging of bondmen and villeins, with their children, goods, and chattels, etc. Glan. lib. 5, c. 2.

TEAM. Within the meaning of an exemption law, a "team" consists of either one or two horses, with their harness and the vehicle to which they are customarily attached for use. 32 Barb. 291; 31 N. Y. 655.

TEAM WORK. Within the meaning of an exemption law, this term means work done by a team as a substantial part of a man's business; as in farming, staging, express carrying, drawing of freight, peddling, or the transportation of material used or dealt in as a business. 49 Vt. 375.

TEAMSTER. One who drives horses in a wagon for the purpose of carrying goods for hire. He is liable as a common carrier. Story, Bailm. § 496.

TECHNICAL. Belonging or peculiar to an art or profession. Technical terms are frequently called in the books "words of art."

TECHNICAL MORTGAGE. A true and formal mortgage, as distinguished from other instruments which, in some respects, have the character of equitable mortgages. 50 Md. 514.

TEDDING. Spreading. Tedding grass is spreading it out after it is cut in the swath. 10 East, 5.

TEDING-PENNY. In old English law. A small tax or allowance to the sheriff from each tithing of his county towards the charge of keeping courts, etc. Cowell.

TEEP. In Hindu law. A note of hand; a promissory note given by a native banker or money-lender to *zemindars* and others, to enable them to furnish government with security for the payment of their rents. Wharton.

TEGULA. In the civil law. A tile. Dig. 19, 1, 18.

N **TEIND COURT.** In Scotch law. A court which has jurisdiction of matters relating to *teinds*, or tithes.

D **TEIND MASTERS.** Those entitled to tithes.

TEINDS. In Scotch law. A term corresponding to tithes (*q. v.*) in English ecclesiastical law.

P **TEINLAND.** Sax. In old English law. Land of a thane or Saxon noble; land granted by the crown to a thane or lord. Cowell; 1 Reeve, Eng. Law, 5.

Q **TELEGRAM.** A telegraphic dispatch; a message sent by telegraph.

R **TELEGRAPH.** In the English telegraph act of 1863, the word is defined as "a wire or wires used for the purpose of telegraphic communication, with any casing, coating, tube, or pipe inclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication." St. 26 & 27 Vict. c. 112, § 3.

TELEGRAPHIÆ. Written evidence of things past. Blount.

T **TELEPHONE.** In a general sense, the name "telephone" applies to any instrument or apparatus which transmits sound beyond the limits of ordinary audibility. But, since the recent discoveries in telephony, the name is technically and primarily restricted to an instrument or device which transmits sound by means of electricity and wires similar to telegraphic wires. In a secondary sense, however, being the sense in which it is most commonly understood, the word "telephone" constitutes a generic term, having reference generally to the art of telephony as an institution, but more particularly to the apparatus, as an entirety, ordinarily used in the transmission, as well as in the reception, of telephonic messages. 105 Ind. 261, 5 N. E. Rep. 178.

TELLER. One who numbers or counts. An officer of a bank who receives or pays out money. Also one appointed to count the votes cast in a deliberative or legislative assembly or other meeting. The name was also given to certain officers formerly attached to the English exchequer.

The teller is a considerable officer in the exchequer, of which officers there are four, whose office is to receive all money due to the king, and to give the clerk of the pells a bill to charge him therewith. They also pay to all persons any money payable by the king, and make weekly and yearly

books of their receipts and payments, which they deliver to the lord treasurer. Cowell; Jacob.

TELLERS IN PARLIAMENT. In the language of parliament, the "tellers" are the members of the house selected to count the members when a division takes place. In the house of lords a division is effected by the "non-contents" remaining within the bar, and the "contents" going below it, a teller being appointed for each party. In the commons the "ayes" go into the lobby at one end of the house, and the "noes" into the lobby at the other end, the house itself being perfectly empty, and two tellers being appointed for each party. May, Parl. Pr.; Brown.

TELLIGRAPHUM. An Anglo-Saxon charter of land. 1 Reeve, Eng. Law, c. 1, p. 10.

TELLWORC. That labor which a tenant was bound to do for his lord for a certain number of days.

TEMENTALE, or TENEMENTALE. A tax of two shillings upon every plow-land; a decennary.

TEMERE. Lat. In the civil law. Rashly; inconsiderately. A plaintiff was said *temere litigare* who demanded a thing out of malice, or sued without just cause, and who could show no ground or cause of action. Brissonius.

TEMPEST. A violent or furious storm; a current of wind rushing with extreme violence, and usually accompanied with rain or snow. See 29 U. C. C. P. 84.

TEMPLARS. A religious order of knighthood, instituted about the year 1119, and so called because the members dwelt in a part of the temple of Jerusalem, and not far from the sepulcher of our Lord. They entertained Christian strangers and pilgrims charitably, and their profession was at first to defend travelers 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. Brown.

TEMPLE. Two English inns of court, thus called because anciently the dwelling place of the Knights Templar. On the suppression of the order, they were purchased by some professors of the common law, and converted into *hospitia* or inns of court. They are called the "Inner" and "Middle Temple," in relation to Essex House,

which was also a part of the house of the Templars, and called the "Outer Temple," because situated without Temple Bar. Enc. Lond.

TEMPORAL LORDS. The peers of England; the bishops are not in strictness held to be peers, but merely lords of parliament. 2 Steph. Comm. 330, 345.

TEMPORALIS. Lat. In the civil law. Temporary; limited to a certain time.

TEMPORALIS ACTIO. Lat. An action which could only be brought within a certain period.

TEMPORALIS EXCEPTIO. Lat. A temporary exception which barred an action for a time only.

TEMPORALITIES. In English law. The lay fees of bishops, with which their churches are endowed or permitted to be endowed by the liberality of the sovereign, and in virtue of which they become barons and lords of parliament. Spelman.

TEMPORALITY. The laity; secular people.

TEMPORARY. That which is to last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration.

TEMPORE. Lat. In the time of. Thus, the volume called "Cases *tempore* Holt" is a collection of cases adjudged in the king's bench during the time of Lord Holt. Wall. Rep. 398.

TEMPORIS EXCEPTIO. Lat. In the civil law. A plea of time; a plea of lapse of time, in bar of an action. Corresponding to the plea of prescription, or the statute of limitations, in our law. See Mackeld. Rom. Law, § 213.

TEMPUS. Lat. In the civil and old English law. Time in general. A time limited; a season; *e. g.*, *tempus personis*, mast time in the forest.

TEMPUS CONTINUUM. Lat. In the civil law. A continuous or absolute period of time. A term which begins to run from a certain event, even though he for whom it runs has no knowledge of the event, and in which, when it has once begun to run, all the days are reckoned as they follow one another in the calendar. Dig. 3, 2, 8; Mackeld. Rom. Law, § 195.

Tempus enim modus tollendi obligationes et actiones, quia tempus currit contra desides et sui juris contemptores. For time is a means of destroying obligations and actions, because time runs against the slothful and contemners of their own rights. Fleta, l. 4, c. 5, § 12.

TEMPUS SEMESTRE. Lat. In old English law. The period of six months or half a year, consisting of one hundred and eighty-two days. Cro. Jac. 166.

TEMPUS UTILE. Lat. In the civil law. A profitable or advantageous period of time. A term which begins to run from a certain event, only when he for whom it runs has obtained a knowledge of the event, and in which, when it has once begun to run, those days are not reckoned on which one has no *experiundi potestas*; *i. e.*, on which one cannot prosecute his rights before a court. Dig. 3, 6, 6; Mackeld. Rom. Law, § 195.

TENANCY is the relation of a tenant to the land which he holds. Hence it signifies (1) the estate of a tenant, as in the expressions "joint tenancy," "tenancy in common;" (2) the term or interest of a tenant for years or at will, as when we say that a lessee must remove his fixtures during his tenancy. Sweet.

TENANCY, JOINT. See **JOINT TENANCY**.

TENANT. In the broadest sense, one who holds or possesses lands or tenements by any kind of right or title, whether in fee, for life, for years, at will, or otherwise. Cowell.

In a more restricted sense, one who holds lands of another; one who has the temporary use and occupation of real property owned by another person, (called the "landlord,") the duration and terms of his tenancy being usually fixed by an instrument called a "lease."

The word "tenant" conveys a much more comprehensive idea in the language of the law than it does in its popular sense. In popular language it is used more particularly as opposed to the word "landlord," and always seems to imply that the land or property is not the tenant's own, but belongs to some other person, of whom he immediately holds it. But, in the language of the law, every possessor of landed property is called a "tenant" with reference to such property, and this, whether such landed property is absolutely his own, or whether he merely holds it under a lease for a certain number of years. Brown.

In feudal law. One who holds of another (called "lord" or "superior") by some service; as fealty or rent.

N One who has actual possession of lands claimed in suit by another; the defendant in a real action. The correlative of "demandant." 3 Bl. Comm. 180.

O Strictly speaking, a "tenant" is a person who holds land; but the term is also applied by analogy to personalty. Thus we speak of a person being tenant for life, or tenant in common, of stock. Sweet.

P **TENANT A VOLUNTE.** L. Fr. A tenant at will.

Q **TENANT AT SUFFERANCE.** One that comes into the possession of land by lawful title, but holds over by wrong, after the determination of his interest. 4 Kent, Comm. 116; 2 Bl. Comm. 150.

R **TENANT AT WILL** "is where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In this case the lessee is called 'tenant at will,' because he hath no certain nor sure estate, for the lessor may put him out at what time it pleaseth him." Litt. § 68; Sweet.

T **TENANT BY COPY OF COURT ROLL** (shortly, "tenant by copy") is the old-fashioned name for a copyholder. Litt. § 73.

TENANT BY THE CURTESY. One who, on the death of his wife seised of an estate of inheritance, after having by her issue born alive and capable of inheriting her estate, holds the lands and tenements for the term of his life. Co. Litt. 30a; 2 Bl. Comm. 126.

TENANT BY THE MANNER. One who has a less estate than a fee in land which remains in the reversioner. He is so called because in avowries and other pleadings it is specially shown in what manner he is tenant of the land, in contradistinction to the *veray tenant*, who is called simply "tenant." Ham. N. P. 393.

TENANT FOR LIFE. One who holds lands or tenements for the term of his own life, or for that of any other person, (in which case he is called "*pur auter vie*,") or for more lives than one. 2 Bl. Comm. 120.

TENANT FOR YEARS. One who has the temporary use and possession of lands or tenements not his own, by virtue of a lease or demise granted to him by the owner, for a determinate period of time, as for a year or a fixed number of years. 2 Bl. Comm. 140.

TENANT FROM YEAR TO YEAR.

One who holds lands or tenements under the demise of another, where no certain term has been mentioned, but an annual rent has been reserved. See 1 Steph. Comm. 271; 4 Kent, Comm. 111, 114.

One who holds over, by consent given either expressly or constructively, after the determination of a lease for years. 4 Kent, Comm. 112.

TENANT IN CAPITE. In feudal and old English law. Tenant in chief; one who held immediately under the king, in right of his crown and dignity. 2 Bl. Comm. 60.

TENANT IN COMMON. Tenants in common are generally defined to be such as hold the same land together by several and distinct titles, but by unity of possession, because none knows his own severalty, and therefore they all occupy promiscuously. 2 Bl. Comm. 191.

A tenancy in common is where two or more hold the same land, with interests accruing under different titles, or accruing under the same title, but at different periods, or conferred by words of limitation importing that the grantees are to take in distinct shares. 1 Steph. Comm. 323.

TENANT IN DOWER. This is where the husband of a woman is seised of an estate of inheritance and dies; in this case the wife shall have the third part of all the lands and tenements whereof he was seised at any time during the coverture, to hold to herself for life, as her dower. Co. Litt. 30; 2 Bl. Comm. 129.

TENANT IN FEE-SIMPLE, (or **TENANT IN FEE.**) He who has lands, tenements, or hereditaments, to hold to him and his heirs forever, generally, absolutely, and simply; without mentioning *what* heirs, but referring that to his own pleasure, or to the disposition of the law. 2 Bl. Comm. 104; Litt. § 1.

TENANT IN SEVERALTY is he who holds lands and tenements in his own right only, without any other person being joined or connected with him in point of interest during his estate therein. 2 Bl. Comm. 179.

TENANT IN TAIL. One who holds an estate in fee-tail, that is, an estate which, by the instrument creating it, is limited to some particular heirs, exclusive of others; as to the heirs or *his body* or to the heirs, *male* or *female*, of his body.

TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINGUISHED. See **TAIL AFTER POSSIBILITY, etc.**

TENANT IN TAIL EX PROVISIONE VIRI. Where an owner of lands, upon or previously to marrying a wife, settled lands upon himself and his wife, and the heirs of their two bodies begotten, and then died, the wife, as survivor, became tenant in tail of the husband's lands, in consequence of the husband's provision, (*ex provisione viri.*) Originally, she could bar the estate-tail like any other tenant in tail; but the husband's intention having been merely to provide for her during her widowhood, and not to enable her to bar his children of their inheritance, she was very early restrained from so doing, by the statute 32 Hen. VII. c. 36. Brown.

TENANT OF THE DEMESNE. One who is tenant of a mesne lord; as, where A. is tenant of B., and C. of A., B. is the lord, A. the mesne lord, and C. tenant of the demesne. Ham. N. P. 392, 393.

TENANT PARVAILE. The under-tenant of land; that is, the tenant of a tenant; one who held of a mesne lord.

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.

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.

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. Mozley & Whitley.

TENANT TO THE PRÆCIPE. Before the English fines and recoveries act, if land was conveyed to a person for life with remainder to another in tail, the tenant in

tail in remainder was unable to bar the entail without the concurrence of the tenant for life, because a common recovery could only be suffered by the person seised of the land. In such a case, if the tenant for life wished to concur in barring the entail, he usually conveyed his life-estate to some other person, in order that the *præcipe* in the recovery might be issued against the latter, who was therefore called the "tenant to the *præcipe*." Williams, Seis. 169; Sweet.

TENANT'S FIXTURES. This phrase signifies things which are fixed to the freehold of the demised premises, but which the tenant may detach and take away, provided he does so in season. 4 Gray, 256, 270.

TENANTABLE REPAIR. Such a repair as will render a house fit for present habitation.

TENANTS BY THE VERGE "are in the same nature as tenants by copy of court roll, [*i. e.*, copyholders.] But the reason why they be called 'tenants by the verge' is for that, when they will surrender their tenements into the hands of their lord to the use of another, they shall have a little rod (by the custome) in their hand, the which they shall deliver to the steward or to the bailife, * * * and the steward or bailife, according to the custome, shall deliver to him that taketh the land the same rod, or another rod, in the name of seisin; and for this cause they are called 'tenants by the verge,' but they have no other evidence [title-deed] but by copy of court roll." Litt. § 78; Co. Litt. 61a.

TENCON. L. Fr. A dispute; a quarrel. Kelham.

TEND. In old English law. To tender or offer. Cowell.

TENDER. An offer of money; the act by which one produces and offers to a person holding a claim or demand against him the amount of money which he considers and admits to be due, in satisfaction of such claim or demand, without any stipulation or condition.

Tender, in pleading, is a plea by defendant that he has been always ready to pay the debt demanded, and before the commencement of the action tendered it to the plaintiff, and now brings it into court ready to be paid to him, etc. Brown.

Legal tender. Money is said to be legal tender when a creditor cannot refuse to accept it in payment of a debt.

N **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 plaintiff's claim. Mozley & Whitley.

P **TENDER OF ISSUE.** A form of words in a pleading, by which a party offers to refer the question raised upon it to the appropriate mode of decision. The common tender of an issue of fact by a defendant is expressed by the words, "and of this he puts himself upon the country." Steph. Pl. 54, 230.

R **TENEMENT.** This term, in its vulgar acceptation, is only applied to houses and other buildings, but in its original, proper, and legal sense it signifies everything that may be *holden*, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial, ideal, kind. Thus, *liberum tenementum*, frank tenement, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, advowsons, franchises, peerages, etc. 2 Bl. Comm. 16.

"Tenement" is a word of greater extent than "land," including not only land, but rents, commons, and several other rights and interests issuing out of or concerning land. 1 Steph. Comm. 158, 159.

Its original meaning, according to some, was "house" or "homestead." Jacob. In modern use it also signifies rooms let in houses. Webster.

TENEMENTAL LAND. Land distributed by a lord among his tenants, as opposed to the demesnes which were occupied by himself and his servants. 2 Bl. Comm. 90.

TENEMENTIS LEGATIS. An ancient writ, lying to the city of London, or any other corporation, (where the old custom was that men might devise by will lands and tenements, as well as goods and chattels,) for the hearing and determining any controversy touching the same. Reg. Orig. 244.

TENENDAS. In Scotch law. The name of a clause in charters of heritable rights, which derives its name from its first words, "*tenendas predictas terras;*" it points out the superior of whom the lands are to be holden, and expresses the particular tenure. Ersk. Inst. 2, 3, 24.

TENENDUM. Lat. To hold; to be holden. The name of that formal part of a deed which is characterized by the words "to hold." It was formerly used to express the tenure by which the estate granted was to be held; but, since all freehold tenures have been converted into socage, the *tenendum* is of no further use, and is therefore joined in the *habendum*, — "to have and to hold." 2 Bl. Comm. 298; 4 Cruise, Dig. 26.

TENENS. A tenant; the defendant in a real action.

TENENTIBUS IN ASSISÂ NON ONERANDIS. A writ that formerly lay for him to whom a disseisor had alienated the land whereof he disseised another, that he should not be molested in assize for damages, if the disseisor had wherewith to satisfy them. Reg. Orig. 214.

TENERE. Lat. In the civil law. To hold; to hold fast; to have in possession; to retain.

In relation to the doctrine of possession, this term expresses merely the fact of manual detention, or the corporal possession of any object, without involving the question of title; while *habere* (and especially *possidere*) denotes the maintenance of possession by a lawful claim; *i. e.*, civil possession, as distinguished from mere *natural* possession.

TENERI. The Latin name for that clause in a bond in which the obligor expresses that he is "held and firmly bound" to the obligee, his heirs, etc.

TENET; TENUIT. Lat. He holds; he held. In the Latin forms of the writ of waste against a tenant, these words introduced the allegation of tenure. If the tenancy still existed, and recovery of the land was sought, the former word was used, (and the writ was said to be "in the *tenet*.") If the tenancy had already determined, the latter term was used, (the writ being described as "in the *tenuit*,") and then damages only were sought.

TENHEDED, or TIENHEOFED. In old English law. A dean. Cowell.

TENMENTALE. The number of ten men, which number, in the time of the Saxons, was called a "decennary;" and ten decennaries made what was called a "hundred." Also a duty or tribute paid to the crown, consisting of two shillings for each plowland. Enc. Lond.

TENNE. A term of heraldry, meaning orange color. In engravings it should be

represented by lines in bend sinister crossed by others bar-ways. Heralds who blazon by the names of the heavenly bodies, call it "dragon's head," and those who employ jewels, "jacinth." It is one of the colors called "stainand." Wharton.

TENOR. A term used in pleading to denote that an exact copy is set out. 1 Chit. Crim. Law, 235.

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. Cowell.

"Tenor," in pleading a written instrument, imports that the very words are set out. "Purport" does not import this, but is equivalent only to "substance." 5 Blackf. 458; 1 Cush. 46; 5 Wend. 271.

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.

In chancery pleading. A certified copy of records of other courts removed into chancery by *certiorari*. Gres. Eq. Ev. 309.

Tenor est qui legem dat feudo. It is the tenor [of the feudal grant] which regulates its effect and extent. Craigius, Jus Feud. (3d Ed.) 66; Broom, Max. 459.

TENORE INDICTAMENTI MITTENDO. A writ whereby the record of an indictment, and the process thereupon, was called out of another court into the queen's bench. Reg. Orig. 69.

TENORE PRÆSENTIUM. By the tenor of these presents, *i. e.*, the matter contained therein, or rather the intent and meaning thereof. Cowell.

TENSERIÆ. A sort of ancient tax or military contribution. Wharton.

TENTATES PANIS. The essay or assay of bread. Blount.

TENTERDEN'S ACT. In English law. The statute 9 Geo. IV. c. 14, taking its name from Lord Tenterden, who procured its enactment, which is a species of extension of the statute of frauds, and requires the reduction of contracts to writing.

TENTHS. In English law. A temporary aid issuing out of personal property, and granted to the king by parliament; formerly the real tenth part of all the movables belonging to the subject. 1 Bl. Comm. 308.

In English ecclesiastical law. The tenth part of the annual profit of every living in the kingdom, formerly paid to the pope, but by statute 26 Hen. VIII. c. 3, transferred to the crown, and afterwards made a part of the fund called "Queen Anne's Bounty." 1 Bl. Comm. 284-286.

TENUIT. A term used in stating the tenure in an action for waste done after the termination of the tenancy. See TENET.

TENURA. In old English law. Tenure.

Tenura est pactio contra communem feudi naturam ac rationem, in contractu interposita. Wright, Ten. 21. Tenure is a compact contrary to the common nature and reason of the fee, put into a contract.

TENURE. The mode or system of holding lands or tenements in subordination to some superior, which, in the feudal ages, was the leading characteristic of real property.

Tenure is the direct result of feudalism, which separated the *dominium directum*, (the dominion of the soil,) which is placed mediately or immediately in the crown, from the *dominium utile*, (the possessory title,) the right to the use and profits in the soil, designated by the term "seisin," which is the highest interest a subject can acquire. Wharton.

Wharton gives the following list of tenures which were ultimately developed:

LAY TENURES.

I. Frank tenement, or freehold. (1) The military tenures (abolished, except grand serjeanty, and reduced to free socage tenures) were: Knight service proper, or tenure in chivalry; grand serjeanty; cornage. (2) Free socage, or plow-service; either petit serjeanty, tenure in burgage, or gavelkind.

II. Villeinage. (1) Pure villeinage, (whence copyholds at the lord's [nominal] will, which is regulated according to custom.) (2) Privileged villeinage, sometimes called "villein socage," (whence tenure in ancient demesne, which is an exalted species of copyhold, held according to custom, and not according to the lord's will,) and is of three kinds: Tenure in ancient demesne; privileged copyholds, customary freeholds, or free copyholds; copyholds of base tenure.

SPIRITUAL TENURES.

I. Frankalmoigne, or free alms.

II. Tenure by divine service.

Tenure, in its general sense, is a mode of holding or occupying. Thus, we speak of the tenure of an office, meaning the manner in which it is held, especially with regard to time, (tenure for life, tenure during good behavior,) and of tenure of land in the sense of occupation or tenancy, especially with refer-

Nence to cultivation and questions of political economy; *e. g.*, tenure by peasant proprietors, cottiers, etc. Sweet.

O **TENURE BY DIVINE SERVICE** is where an ecclesiastical corporation, sole or aggregate, holds land by a certain divine service; as, to say prayers on a certain day in every year, "or to distribute in alms to an hundred poore men an hundred pence at such a day." Litt. § 137.

P **TENURE OF OFFICE.** See **TENURE.**

Q **TERCE.** In Scotch law. Dower; a widow's right of dower, or a right to a life-estate in a third part of the lands of which her husband died seised.

R **TERCER.** In Scotch law. A widow that possesses the third part of her husband's land, as her legal jointure. 1 Kames, Eq. pref.

S **TERM.** A word or phrase; an expression; particularly one which possesses a fixed and known meaning in some science, art, or profession.

T In the civil law. A space of time granted to a debtor for discharging his obligation. Poth. Obl. pt. 2, c. 3, art. 3, § 1. Civil Code La. art. 2048.

In estates. "Term" signifies the bounds, limitation, or extent of time for which an estate is granted; as when a man holds an estate for any limited or specific number of years, which is called his "term," and he himself is called, with reference to the term he so holds, the "termor," or "tenant of the term."

Of court. The word "term," when used with reference to a court, signifies the space of time during which the court holds a session. A *session* signifies the time during the term when the court sits for the transaction of business, and the session commences when the court convenes for the term, and continues until final adjournment, either before or at the expiration of the term. The *term* of the court is the time prescribed by law during which it may be in *session*. The *session* of the court is the time of its actual sitting. 19 Tex. App. 433.

TERM ATTENDANT ON THE INHERITANCE. See **ATTENDANT TERMS.**

TERM FEE. In English practice. A certain sum which a solicitor is entitled to charge to his client, and the client to recover, if successful, from the unsuccessful party; payable for every term in which any proceed-

ings subsequent to the summons shall take place. Wharton.

TERM FOR DELIBERATING. By "term for deliberating" is understood the time given to the beneficiary heir, to examine if it be for his interest to accept or reject the succession which has fallen to him. Civil Code La. art. 1033.

TERM FOR YEARS. An *estate for years* and the *time* during which such estate is to be held are each called a "term;" hence the term may expire before the time, as by a surrender. Co. Litt. 45.

TERM IN GROSS. A term of years is said to be either in gross (outstanding) or attendant upon the inheritance. It is outstanding, or in gross, when it is unattached or disconnected from the estate or inheritance, as where it is in the hands of some third party having no interest in the inheritance; it is attendant, when vested in some trustee in trust for the owner of the inheritance. Brown.

TERM OF LEASE. The word "term," when used in connection with a lease, means the period which is granted for the lessee to occupy the premises, and does not include the time between the making of the lease and the tenant's entry. 5 N. Y. 463.

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, Ecc. Pr. 240, 241.

TERM TO CONCLUDE. In English ecclesiastical practice. An appointment by the judge of a time at which both parties are understood to renounce all further exhibits and allegations.

TERM TO PROPOUND ALL THINGS. In English ecclesiastical practice. An appointment by the judge of a time at which both parties are to exhibit all the acts and instruments which make for their respective causes.

TERMES DE LA LEY. Terms of the law. The name of a lexicon of the law French words and other technicalities of legal language in old times.

TERMINABLE PROPERTY. This name is sometimes given to property of such a nature that its duration is not perpetual or indefinite, but is limited or liable to terminate upon the happening of an event or the

expiration of a fixed term; *e. g.*, a leasehold, a life-annuity, etc.

TERMINATING BUILDING SOCIETIES. Societies, in England, where the members commence their monthly contributions on a particular day, and continue to pay them until the realization of shares to a given amount for each member, by the advance of the capital of the society to such members as required it, and the payment of interest as well as principal by them, so as to insure such realization within a given period of years. They have been almost superseded by permanent building societies. Wharton.

TERMINER. L. Fr. To determine. See OYER AND TERMINER.

TERMINI. Lat. Ends; bounds; limiting or terminating points.

TERMINO. In Spanish law. A common; common land. Common because of vicinage. White, New Recop. b. 2, tit. 1, c. 6, § 1, note.

TERMINUM. A day given to a defendant. Spelman.

TERMINUM QUI PRETERIIT, WRIT OF ENTRY AD. A writ which lay for the reversioner, when the possession was withheld by the lessee, or a stranger, after the determination of a lease for years. Brown.

TERMINUS. Boundary; a limit, either of space or time.

The phrases "*terminus a quo*" and "*terminus ad quem*" are used, respectively, to designate the starting point and terminating point of a private way. In the case of a street, road, or railway, either end may be, and commonly is, referred to as the "*terminus*."

Terminus annorum certus debet esse et determinatus. Co. Litt. 45. A term of years ought to be certain and determinate.

Terminus et feodum non possunt constare simul in una eademque persona. Plowd. 29. A term and the fee cannot both be in one and the same person at the same time.

TERMINUS HOMINIS. In English ecclesiastical practice. A time for the determination of appeals, shorter than the *terminus juris*, appointed by the judge. Hallifax, Civil Law, b. 3, c. 11, no. 36.

TERMINUS JURIS. In English ecclesiastical practice. The time of one or two years, allowed by law for the determination of appeals. Hallifax, Civil Law, b. 3, c. 11, no. 38.

TERMOR. He that holds lands or tenements for a term of years or life. But we generally confine the application of the word to a person entitled for a term of years. Mozley & Whitley.

TERMS. In the law of contracts. Conditions; propositions stated or promises made which, when assented to or accepted by another, settle the contract and bind the parties. Webster.

TERMS, TO BE UNDER. A party is said to be *under terms* when an indulgence is granted to him by the court in its discretion, on certain conditions. Thus, when an injunction is granted *ex parte*, the party obtaining it is put *under terms* to abide by such order as to damages as the court may make at the hearing. Mozley & Whitley.

TERRA. Lat. Earth; soil; arable land. Kennett, Gloss.

TERRA AFFIRMATA. Land let to farm.

TERRA BOSCALIS. Woody land.

TERRA CULTA. Cultivated land.

TERRA DEBILIS. Weak or barren land.

TERRA DOMINICA, or INDOMINICATA. The demesne land of a manor. Cowell.

TERRA EXCULTABILIS. Land which may be plowed. Mon. Ang. i. 426.

TERRA EXTENDENDA. A writ addressed to an escheator, etc., that he inquire and find out the true yearly value of any land, etc., by the oath of twelve men, and to certify the extent into the chancery. Reg. Writs, 293.

TERRA FRUSCA, or FRISCA. Fresh land, not lately plowed. Cowell.

TERRA HYDATA. Land subject to the payment of hydage. Selden.

TERRA LUCRABILIS. Land gained from the sea or inclosed out of a waste. Cowell.

Terra manens vacua occupanti conceditur. 1 Sid. 347. Land lying unoccupied is given to the first occupant.

N **TERRA NORMANORUM.** Land held by a Norman. Paroch. Antiq. 197.

TERRA NOVA. Land newly converted from wood ground or arable. Cowell.

O **TERRA PUTURA.** Land in forests, held by the tenure of furnishing food to the keepers therein. 4 Inst. 307.

P **TERRA SABULOSA.** Gravelly or sandy ground.

Q **TERRA SALICA.** In Salic law. The land of the house; the land within that inclosure which belonged to a German house. No portion of the inheritance of Salic land passes to a woman, but this the male sex acquires; that is, the sons succeed in that inheritance. Lex Salic. tit. 62, § 6.

R **TERRA TESTAMENTALIS.** Gavelkind land, being disposable by will. Spelman.

S **TERRA VESTITA.** Land sown with corn. Cowell.

TERRA WAINABILIS. Tillable land. Cowell.

T **TERRA WARRENATA.** Land that has the liberty of free-warren.

TERRÆ DOMINICALES REGIS. The demesne lands of the crown.

TERRAGE. In old English law. A kind of tax or charge on land; a boon or duty of plowing, reaping, etc. Cowell.

TERRAGES. An exemption from all uncertain services. Cowell.

TERRARIUS. In old English law. A landholder.

TERRE-TENANT. He who is literally in the occupation or possession of the land, as distinguished from the owner out of possession. But, in a more technical sense, the person who is seised of the land, though not in actual occupancy of it. 4 Watts & S. 256; 1 Eden, 177.

TERRIER. In English law. A landroll 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 1338. In general, an ecclesiastical terrier contains a detail of the temporal possessions of the church in every parish. Cowell; Tomlins; Mozley & Whitley.

TERRIS BONIS ET CATALIS REHABENDIS POST PURGATIONEM. A

writ for a clerk to recover his lands, goods, and chattels, formerly seized, after he had cleared himself of the felony of which he was accused, and delivered to his ordinary to be purged. Reg. Orig.

TERRIS ET CATALIS TENTIS ULTRA DEBITUM LEVATUM. A judicial writ for the restoring of lands or goods to a debtor who is distrained above the amount of the debt. Reg. Jud.

TERRIS LIBERANDIS. A writ that lay for a man convicted by attain, to bring the record and process before the king, and take a fine for his imprisonment, and then to deliver to him his lands and tenements again, and release him of the strip and waste. Reg. Orig. 232. Also it was a writ for the delivery of lands to the heir, after homage and relief performed, or upon security taken that he should perform them. Id. 293.

TERRITORIAL, TERRITORIALITY. These terms are used to signify connection with, or limitation with reference to, a particular country or territory. Thus, "territorial law" is the correct expression for the law of a particular country or state, although "municipal law" is more common. "Territorial waters" are that part of the sea adjacent to the coast of a given country which is by international law deemed to be within the sovereignty of that country, so that its courts have jurisdiction over offenses committed on those waters, even by a person on board a foreign ship. Sweet.

TERRITORIAL COURTS. The courts established in the territories of the United States.

TERRITORY. A part of a country separated from the rest, and subject to a particular jurisdiction.

In American law. A portion of the United States, not within the limits of any state, which has not yet been admitted as a state of the Union, but is organized, with a separate legislature, and with executive and judicial officers appointed by the president.

TERRITORY OF A JUDGE. The territorial jurisdiction of a judge; the bounds, or district, within which he may lawfully exercise his judicial authority.

TERROR. Alarm; fright; dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation; fear caused by the appear-

ance of danger. In an indictment for riot, it must be charged that the acts done were "to the *terror* of the people."

TERTIA DENUNCIATIO. Lat. In old English law. Third publication or proclamation of intended marriage.

TERTIUS INTERVENIENS. Lat. In the civil law. A third person intervening; a third person who comes in between the parties to a suit; one who interpleads. Gilbert's *Forum Rom.* 47.

TEST. To bring one to a trial and examination, or to ascertain the truth or the quality or fitness of a thing.

Something by which to ascertain the truth respecting another thing.

TEST ACT. The statute 25 Car. II. c. 2, which directed all civil and military officers to take the oaths of allegiance and supremacy, and make the declaration against transubstantiation, within six months after their admission, and also within the same time receive the sacrament according to the usage of the Church of England, under penalty of £500 and disability to hold the office. 4 Bl. Comm. 58, 59. This was abolished by St. 9 Geo. IV. c. 17, so far as concerns receiving the sacrament, and a new form of declaration was substituted.

TEST ACTION. An action selected out of a considerable number of suits, concurrently depending in the same court, brought by several plaintiffs against the same defendant, or by one plaintiff against different defendants, all similar in their circumstances, and embracing the same questions, and to be supported by the same evidence, the selected action to go first to trial, (under an order of court equivalent to consolidation,) and its decision to serve as a *test* of the right of recovery in the others, all parties agreeing to be bound by the result of the test action.

TEST OATH. An oath required to be taken as a criterion of the fitness of the person to fill a public or political office; but particularly an oath of fidelity and allegiance (past or present) to the established government.

TESTA DE NEVIL. An ancient and authentic record in two volumes, in the custody of the queen's remembrancer in the exchequer, said to be compiled by John de Nevil, a justice itinerant, in the eighteenth and twenty-fourth years of Henry III. Cowell. These volumes were printed in 1807,

under the authority of the commissioners of the public records, and contain an account of fees held either immediately of the king or of others who held of the king *in capite*; fees holden in frankalmoigne; serjeanties holden of the king; widows and heiresses of tenants *in capite*, whose marriages were in the gift of the king; churches in the gift of the king; escheats, and sums paid for scutages and aids, especially within the county of Hereford. Cowell; Wharton.

TESTABLE. A person is said to be testable when he has capacity to make a will; a man of twenty-one years of age and of sane mind is testable.

TESTACY. The state or condition of leaving a will at one's death. Opposed to "intestacy."

TESTAMENT. A disposition of personal property to take place after the owner's decease, according to his desire and direction.

A testament is the act of last will, clothed with certain solemnities, by which the testator disposes of his property, either universally, or by universal title, or by particular title. Civil Code La. art. 1571.

Strictly speaking, the term denotes only a will of personal property; a will of land not being called a "testament." The word "testament" is now seldom used, except in the heading of a formal will, which usually begins: "This is the last will and testament of me, A. B.," etc. Sweet.

Testament is 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. Mozley & Whitley.

Testamenta cum duo inter se pugnancia reperiuntur, ultimum ratum est; sic est, cum duo inter se pugnancia reperiuntur in eodem testamento. Co. Litt. 112. When two conflicting wills are found, the last prevails; so it is when two conflicting clauses occur in the same will.

Testamenta latissimam interpretationem habere debent. Jenk. Cent. 81. Wills ought to have the broadest interpretation.

TESTAMENTARY. Pertaining to a will or testament; as *testamentary* causes. Derived from, founded on, or appointed by a testament or will; as a *testamentary* guardian, letters *testamentary*, etc.

A paper, instrument, document, gift, ap-

N pointment, etc., is said to be "testamentary" when it is written or made so as not to take effect until after the death of the person making it, and to be revocable and retain the property under his control during his life, although he may have believed that it would operate as an instrument of a different character. Sweet.

P **TESTAMENTARY CAPACITY.** That measure of mental ability which is recognized in law as sufficient for the making a will.

Q **TESTAMENTARY CAUSES.** In English law. Causes or matters relating to the probate of wills, the granting of administrations, and the suing for legacies, of which the ecclesiastical courts have jurisdiction. 3 Bl. Comm. 95, 98.

R 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. Mozley & Whitley.

S **TESTAMENTARY GUARDIAN.** A guardian appointed by the last will of a father for the person and real and personal estate of his child until the latter arrives of full age. 1 Bl. Comm. 462; 2 Kent, Comm. 224.

T **TESTAMENTARY PAPER.** An instrument in the nature of a will; an unprobated will; a paper writing which is of the character of a will, though not formally such, and which, if allowed as a testament, will have the effect of a will upon the devolution and distribution of property.

TESTAMENTI FACTIO. Lat. In the civil law. The ceremony of making a testament, either as testator, heir, or witness.

TESTAMENTUM. Lat. In the civil law. A testament; a will, or last will.

In old English law. A testament or will; a disposition of property made in contemplation of death. Bract. fol. 60.

A general name for any instrument of conveyance, including deeds and charters, and so called either because it furnished written testimony of the conveyance, or because it was authenticated by witnesses, (*testes.*) Spelman.

Testamentum est voluntatis nostræ justa sententia, de eo quod quis post mortem suam fieri velit. A testament is the just expression of our will concerning that which any one wishes done after his death, [or, as Blackstone translates, "the le-

gal declaration of a man's intentions which he wills to be performed after his death."}] Dig. 28, 1, 1; 2 Bl. Comm. 499.

Testamentum, i. e., testatio mentis, facta nullo præsentem metu periculi, sed cogitatione mortalitatis. Co. Litt. 322. A testament, *i. e.*, the witnessing of one's intention, made under no present fear of danger, but in expectancy of death.

TESTAMENTUM INOFFICIOSUM. Lat. In the civil law. An inofficious testament, (*q. v.*)

Testamentum omne morte consummatur. Every will is perfected by death. A will speaks from the time of death only. Co. Litt. 232.

TESTARI. Lat. In the civil law. To testify; to attest; to declare, publish, or make known a thing before witnesses. To make a will. Calvin.

TESTATE. One who has made a will; one who dies leaving a will.

TESTATION. Witness; evidence.

TESTATOR. One who makes or has made a testament or will; one who dies leaving a will. This term is borrowed from the civil law. Inst. 2, 14, 5, 6.

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam. Co. Litt. 322. The last will of a testator is to be thoroughly fulfilled according to his real intention.

TESTATRIX. A woman who makes a will; a woman who dies leaving a will; a female testator.

TESTATUM. In practice. When a writ of execution has been directed to the sheriff of a county, and he returns that the defendant is not found in his bailiwick, or that he has no goods there, as the case may be, then a second writ, reciting this former writ and the sheriff's answer to the same, may be directed to the sheriff of some other county wherein the defendant is supposed to be, or to have goods, commanding him to execute the writ as it may require; and this second writ is called a "*testatum*" writ, from the words with which it concludes, *viz.*: "Whereupon, on behalf of the said plaintiff, *it is testified* in our said court that the said defendant is [or has goods, etc.] within your bailiwick."

In conveyancing. That part of a deed which commences with the words, "This indenture witnesseth."

TESTATUM WRIT. In practice. A writ containing a *testatum* clause; such as a *testatum capias*, a *testatum fl. fa.*, and a *testatum ca. sa.* See **TESTATUM**.

TESTATUS. Lat. In the civil law. Testate; one who has made a will. Dig. 50, 17, 7.

TESTE MEIPSO. Lat. In old English law and practice. A solemn formula of attestation by the sovereign, used at the conclusion of charters, and other public instruments, and also of original writs out of chancery. Spelman.

TESTE OF A WRIT. In practice. The concluding clause, commencing with the word "Witness," etc. A writ which bears the teste is sometimes said to be *tested*.

"Teste" is a word commonly used in the last part of every writ, wherein the date is contained, beginning with the words, "*Teste melpso*," 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. Mozley & Whitley.

TESTED. To be tested is to bear the teste, (*q. v.*)

TESTES. Lat. Witnesses.

Testes ponderantur, non numerantur. Witnesses are weighed, not numbered. That is, in case of a conflict of evidence, the truth is to be sought by weighing the credibility of the respective witnesses, not by the mere numerical preponderance on one side or the other.

Testes qui postulat debet dare eis sumptus competentes. Whosoever demands witnesses must find them in competent provision.

TESTES, TRIAL PER. A trial had before a judge without the intervention of a jury, in which the judge is left to form in his own breast his sentence upon the credit of the witnesses examined; but this mode of trial, although it was common in the civil law, was seldom resorted to in the practice of the common law, but it is now becoming common when each party waives his right to a trial by jury. Brown.

Testibus deponentibus in pari numero, dignioribus est credendum. Where the witnesses who testify are in equal number, [on both sides,] the more worthy are to be believed. 4 Inst. 279.

TESTIFY. To bear witness; to give evidence as a witness; to make a solemn declaration, under oath or affirmation, in a judicial inquiry, for the purpose of establishing or proving some fact.

Testimonia ponderanda sunt, non numeranda. Evidence is to be weighed, not enumerated.

TESTIMONIAL. Besides its ordinary meaning of a written recommendation to character, "testimonial" has a special meaning, under St. 39 Eliz. c. 17, § 3, passed in 1597, under which it signified 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 willfully 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 St. 52 Geo. III. c. 31. Mozley & Whitley.

TESTIMONIAL PROOF. In the civil law. Proof by the evidence of witnesses, *i. e.*, parol evidence, as distinguished from proof by written instruments, which is called "literal" proof.

TESTIMONIES. In Spanish law. An attested copy of an instrument by a notary.

TESTIMONIUM CLAUSE. In conveyancing. That clause of a deed or instrument with which it concludes: "In witness whereof, the parties to these presents have hereunto set their hands and seals."

TESTIMONY. Evidence of a witness; evidence given by a witness, under oath or affirmation; as distinguished from evidence derived from writings, and other sources.

Testimony is not synonymous with *evidence*. It is but a species, a class, or kind of evidence. Testimony is the evidence given by witnesses. Evidence is whatever may be given to the jury as tending to prove a case. It includes the testimony of witnesses, documents, admissions of parties, etc. 13 Ind. 389. See **EVIDENCE**.

TESTIS. Lat. A witness; one who gives evidence in court, or who witnesses a document.

Testis de visu præponderat aliis. 4 Inst. 279. An eye-witness is preferred to others.

N **Testis lupanaris sufficit ad factum in lupanari.** Moore, 817. A lewd person is a sufficient witness to an act committed in a brothel.

O **Testis nemo in sua causa esse potest.** No one can be a witness in his own cause.

Testis oculatus unus plus valet quam auriti decem. 4 Inst. 279. One eye-witness is worth more than ten ear-witnesses.

P **TESTMOIGNE.** An old law French term, denoting evidence or testimony.

Q **Testmoignes ne poent testifier le negative, mes l'affirmative.** Witnesses cannot testify to a negative; they must testify to an affirmative. 4 Inst. 279.

R **TEST-PAPER.** In practice. A paper or instrument shown to a jury as evidence. A term used in the Pennsylvania courts. 7 Pa. St. 428.

S **TEXT-BOOK.** A legal treatise which lays down principles or collects decisions on any branch of the law.

T **TEXTUS ROFFENSIS.** In old English law. The Rochester text. An ancient manuscript containing many of the Saxon laws, and the rights, customs, tenures, etc., of the church of Rochester, drawn up by Ernulph, bishop of that see from A. D. 1114 to 1124. Cowell.

THANAGE OF THE KING. A certain part of the king's land or property, of which the ruler or governor was called "thane." Cowell.

THANE. An Anglo-Saxon nobleman; an old title of honor, perhaps equivalent to "baron." There were two orders of thanes, —the king's thanes and the ordinary thanes. Soon after the Conquest this name was disused. Cowell.

THANELANDS. Such lands as were granted by charter of the Saxon kings to their thanes with all immunities, except from the *trinoda necessitas*. Cowell.

THANESHIP. The office and dignity of a thane; the seignory of a thane.

That which I may defeat by my entry I make good by my confirmation. Co. Litt. 300.

THAVIES INN. An inn of chancery. See **INNS OF CHANCERY**.

THE. An article which particularizes the subject spoken of. "Grammatical niceties should not be resorted to without necessity;

but it would be extending liberality to an unwarrantable length to confound the articles 'a' and 'the.' The most unlettered persons understand that 'a' is indefinite, but 'the' refers to a certain object." Per Tilghman, C. J., 2 Bin. 516.

The fund which has received the benefit should make the satisfaction. 4 Bouv. Inst. no. 3730.

THEATER. Any edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance-money is received, not including halls rented or used occasionally for concerts or theatrical representations. Act Cong. July 13, 1866, § 9, (14 St. at Large, 126.)

THEFT. An unlawful felonious taking away of another man's movable and personal goods against the will of the owner. Jacob.

Theft is the fraudulent taking of corporeal personal property belonging to another, from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking. 1 Tex. App. 65.

In Scotch law. The secret and felonious abstraction of the property of another for sake of lucre, without his consent. Alis. Crim. Law, 250.

THEFT-BOTE. The offense committed by a party who, having been robbed and knowing the felon, takes back his goods again, or receives other amends, upon an agreement not to prosecute.

Theft-bote est emenda furti capta, sine consideratione curiæ domini regis. 3 Inst. 134. Theft-bote is the paying money to have goods stolen returned, without having any respect for the court of the king.

THELONIO IRRATIONABILI HABENDO. A writ that formerly lay for him that had any part of the king's demesne in fee-farm, to recover reasonable toll of the king's tenants there, if his demesne had been accustomed to be tolled. Reg. Orig. 87.

THELONIUM. An abolished writ for citizens or burgesses to assert their right to exemption from toll. Fitzh. Nat. Brev. 226.

THELONMANNUS. The toll-man or officer who receives toll. Cowell.

THELUSSON ACT. The statute 39 & 40 Geo. III. c. 98, which restricted accumulations to a term of twenty-one years from the

testator's death. It was passed in consequence of litigation over the will of one Thelsson.

THEME. In Saxon law. The power of having jurisdiction over naifs or villeins, with their suits or offspring, lands, goods, and chattels. Co. Litt. 116a.

THEMMAGIUM. A duty or acknowledgment paid by inferior tenants in respect of theme or team. Cowell.

THEN. This word, as an adverb, means "at that time," referring to a time specified, either past or future. It has no power in itself to fix a time. It simply refers to a time already fixed. 16 S. C. 329. It may also denote a contingency, and be equivalent to "in that event." 20 N. J. Law, 505.

THENCE. In surveying, and in descriptions of land by courses and distances, this word, preceding each course given, imports that the following course is continuous with the one before it. 141 Mass. 66, 6 N. E. Rep. 702.

THEOCRACY. Government of a state by the immediate direction of God, (or by the assumed direction of a supposititious divinity,) or the state thus governed.

THEODEN. In Saxon law. A husbandman or inferior tenant; an under-thane. Cowell.

THEODOSIAN CODE. See **CODIX THEODOSIANUS.**

THEOF. In Saxon law. Offenders who joined in a body of seven to commit depredations. Wharton.

THEOWES, THEOWMEN, or THEWS. In feudal law. Slaves, captives, or bondmen. Spel. Feuds, c. 5.

THEREUPON. At once; without interruption; without delay or lapse of time. 133 Mass. 205.

THESAURER. Treasurer. 3 State Tr. 691.

THESAURUS, THESAURIUM. The treasury; a treasure.

THESAURUS ABSCONditus. In old English law. Treasure hidden or buried. Spelman.

Thesaurus competit domino regi, et non domino liberatis, nisi sit per verba specialia. Fitz. Coron. 281. A treasure belongs to the king, and not to the lord of a liberty, unless it be through special words.

THESAURUS INVENTUS. In old English law. Treasure found; treasure-trove. Bract. fols. 119b, 122.

Thesaurus inventus est vetus dispositio pecuniæ, etc., cujus non extat modo memoria, adeo ut jam dominum non habeat. 3 Inst. 132. Treasure-trove is an ancient hiding of money, etc., of which no recollection exists, so that it now has no owner.

Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum. 3 Inst. 132. Treasure does not belong to the king, unless no one knows who hid it.

Thesaurus regis est vinculum pacis et bellorum nervus. Godb. 293. The king's treasure is the bond of peace and the sinews of war.

THESMOTHETE. A law-maker; a law-giver.

THETHINGA. A tithing

THIA. Lat. In the civil and old European law. An aunt.

THIEF. One who has been guilty of larceny or theft. The term covers both compound and simple larceny. 1 Hill, 25.

THINGS. The most general denomination of the subjects of property, as contradistinguished from *persons*. 2 Bl. Comm. 16.

The word "estate" in general is applicable to anything of which riches or fortune may consist. The word is likewise relative to the word "things," which is the second object of jurisprudence, the rules of which are applicable to persons, things, and actions. Civil Code La. art. 448.

Such permanent objects, not being persons, as are sensible, or perceptible through the senses. Aust. Jur. § 452.

A "thing" is the object of a right; *i. e.*, whatever is treated by the law as the object over which one person exercises a right, and with reference to which another person lies under a duty. Holl. Jur. 83.

Things are the subjects of dominion or property, as distinguished from *persons*. They are distributed into three kinds: (1) Things real or immovable, comprehending lands, tenements, and hereditaments; (2) things personal or movable, comprehending goods and chattels; and (3) things mixed, partaking of the characteristics of the two former, as a title-deed, a term for years. The civil law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*.) Wharton.

Things accessory are of the nature of the principal. Finch, Law, b. 1, c. 3, n. 25.

Things are construed according to that which was the cause thereof. Finch, Law, b. 1, c. 3, n. 4.

N Things are dissolved as they be contracted. Finch, Law, b. 1, c. 3, n. 7.

O Things grounded upon an ill and void beginning cannot have a good perfection. Finch, Law, b. 1, c. 3, n. 8.

P **THINGS IN ACTION.** A thing in action is a right to recover money or other personal property by a judicial proceeding. Civil Code Cal. § 953. See **CHOSE IN ACTION**.

Things in action, entry, or re-entry cannot be granted over. 19 N. Y. 100, 103.

Q Things incident cannot be severed. Finch, Law, b. 3, c. 1, n. 12.

Things incident pass by the grant of the principal. 25 Barb. 284, 310.

R Things incident shall pass by the grant of the principal, but not the principal by the grant of the incident. Co. Litt. 152a, 151b; Broom, Max. 433.

S **THINGS PERSONAL.** Goods, money, and all other movables, which may attend the owner's person wherever he thinks proper to go. 2 Bl. Comm. 16. Things personal consist of goods, money, and all other movables, and of such rights and profits as relate to movables. 1 Steph. Comm. 156.

T **THINGS REAL.** Such things as are permanent, fixed, and immovable, which cannot be carried out of their place; as lands and tenements. 2 Bl. Comm. 16. This definition has been objected to as not embracing incorporeal rights. Mr. Stephen defines *things real* to "consist of things substantial and immovable, and of the rights and profits annexed to or issuing out of these." 1 Steph. Comm. 156. *Things real* are otherwise described to consist of lands, tenements, and hereditaments.

THINGUS. In Saxon law. A thane or nobleman; knight or freeman. Cowell.

THINK. In a special finding by a jury, this word is equivalent to "believe," and expresses the conclusion of the jury with sufficient positiveness. 59 Iowa, 414, 13 N. W. Rep. 424.

THIRD-NIGHT-AWN-HINDE. By the laws of St. Edward the Confessor, if any man lay a third night in an inn, he was called a "third-night-awn-hinde," and his host was answerable for him if he committed any offense. The first night, forman-night, or uncuth, (unknown,) he was reckoned a stranger; the second night, twa-night, a

guest; and the third night, an awn-hinde, a domestic. Bract. l. 3.

THIRD PARTIES. A term used to include all persons who are not parties to the contract, agreement, or instrument of writing by which their interest in the thing conveyed is sought to be affected. 1 Mart. (N. S.) 384.

THIRD PENNY. A portion (one-third) of the amount of all fines and other profits of the county court, which was reserved for the earl, in the early days when the jurisdiction of those courts was extensive, the remainder going to the king.

THIRDBOROUGH, or THIRDBOROW. An under-constable. Cowell.

THIRDINGS. The third part of the corn growing on the land, due to the lord for a heriot on the death of his tenant, within the manor of Turfat, in Hereford. Blount.

THIRDS. The designation, in colloquial language, of that portion of a decedent's personal estate (one-third) which goes to the widow where there is also a child or children.

THIRLAGE. In Scotch law. A servitude by which lands are astricted or "thirled" to a particular mill, to which the possessors must carry the grain of the growth of the astricted lands to be ground, for the payment of such duties as are either expressed or implied in the constitution of the right. Ersk. Inst. 2, 9, 18.

THIRTY-NINE ARTICLES. See **ARTICLES OF RELIGION**.

THIS. When "this" and "that" refer to different things before expressed, "this" refers to the thing last mentioned, and "that" to the thing first mentioned. 66 Pa. St. 251.

THIS DAY SIX MONTHS. Fixing "this day six months," or "three months," for the next stage of a bill, is one of the modes in which the house of lords and the house of commons reject bills of which they disapprove. A bill rejected in this manner cannot be reintroduced in the same session. Wharton.

THISTLE-TAKE. It was a custom within the manor of Halton, in Chester, that if, in driving beasts over a common, the driver permitted them to graze or take but a thistle, he should pay a halfpenny a-piece to the lord of the fee. And at Fiskerton, in Nottinghamshire, by ancient custom, if a

native or a cottager killed a swine above a year old, he paid to the lord a penny, which purchase of leave to kill a hog was also called "thistle-take." Cowell.

THOROUGHFARE. The term means, according to its derivation, a street or passage *through* which one can *fare*, (travel;) that is, a street or highway affording an unobstructed exit at each end into another street or public passage. If the passage is closed at one end, admitting no exit there, it is called a "*cul de sac*."

THRAVE. In old English law. A measure of corn or grain, consisting of twenty-four sheaves or four shocks, six sheaves to every shock. Cowell.

THREAD. A middle line; a line running through the middle of a stream or road. See **FILUM**; **FILUM AQUÆ**; **FILUM VLÆ**.

THREAT. In criminal law. A menace; a declaration of one's purpose or intention to work injury to the person, property, or rights of another.

A 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. Abbott.

THREATENING LETTERS. Sending threatening letters is the name of the offense of sending letters containing threats of the kinds recognized by the statute as criminal.

THREE-DOLLAR PIECE. A gold coin of the United States, of the value of three dollars; authorized by the seventh section of the act of Feb. 21, 1853.

THRENGES. Vassals, but not of the lowest degree; those who held lands of the chief lord.

THRITHING. In Saxon and old English law. The third part of a county; a division of a county consisting of three or more hundreds. Cowell. Corrupted to the modern "riding," which is still used in Yorkshire. 1 Bl. Comm. 116.

THROAT. In medical jurisprudence. The front or anterior part of the neck. Where one was indicted for murder by "cutting the throat" of the deceased, it was held that the word "throat" was not to be confined to that part of the neck which is scientifically so called, but must be taken in its common acceptance. 6 Car. & P. 401.

THROUGH. This word is sometimes equivalent to "over;" as in a statute in ref-

erence to laying out a road "through" certain grounds. 119 Ill. 147, 7 N. E. Rep. 627.

THROW OUT. To ignore, (a bill of indictment.)

THRUSTING. Within the meaning of a criminal statute, "thrusting" is not necessarily an attack with a pointed weapon; it means pushing or driving with force, whether the point of the weapon be sharp or not. 33 La. Ann. 1224.

THRYMSA. A Saxon coin worth fourpence. Du Fresne.

THUDE-WEALD. A woodward, or person that looks after a wood.

THURINGIAN CODE. One of the "barbarian codes," as they are termed; supposed by Montesquieu to have been given by Theodoric, king of Austrasia, to the Thuringians, who were his subjects. *Esprit des Lois*, lib. 28, c. 1.

THWERTNICK. In old English law. The custom of giving entertainments to a sheriff, etc., for three nights.

TICK. A colloquial expression for credit or trust; credit given for goods purchased.

TICKET. In contracts. A slip of paper containing a certificate that the person to whom it is issued, or the holder, is entitled to some right or privilege therein mentioned or described; such, for example, are railroad tickets, theater tickets, pawn tickets, lottery tickets, etc.

In election law. A ticket is a paper upon which is written or printed the names of the persons for whom the elector intends to vote, with a designation of the office to which each person so named is intended by him to be chosen. Pol. Code Cal. § 1185.

TICKET OF LEAVE. In English law. A license or permit given to a convict, as a reward for good conduct, particularly in the penal settlements, which allows him to go at large, and labor for himself, before the expiration of his sentence, subject to certain specific conditions, and revocable upon subsequent misconduct.

TICKET-OF-LEAVE MAN. A convict who has obtained a ticket of leave.

TIDAL. In order that a river may be "tidal" at a given spot, it may not be necessary that the water should be salt, but the spot must be one where the tide, in the ordinary and regular course of things, flows and refluxes. 8 Q. B. Div. 630.

N

TIDE. The ebb and flow of the sea.

O

TIDE-WATER. Water which falls and rises with the ebb and flow of the tide. The term is not usually applied to the open sea, but to coves, bays, rivers, etc.

P

TIDESMEN, in English law, are certain officers of the custom-house, appointed to watch or attend upon ships till the customs are paid; and they are so called because they go aboard the ships at their arrival in the mouth of the Thames, and come up with the tide. Jacob.

Q

TIE, v. To bind. "The parson is not *tyed* to find the parish clerk." 1 Leon. 94.

R

TIE, n. When, at an election, neither candidate receives a majority of the votes cast, but each has the same number, there is said to be a "tie." So when the number of votes cast in favor of any measure, in a legislative or deliberative body, is equal to the number cast against it.

S

TIEL. L. Fr. Such. *Nul tiel record*, no such record.

T

TIEMPO INHABIL. Span. A time of inability; a time when the person is not able to pay his debts, (when, for instance, he may not alienate property to the prejudice of his creditors.) The term is used in Louisiana. 3 Mart. (N. S.) 270; 4 Mart. (N. S.) 292.

TIERCE. L. Fr. Third. *Tierce mein*, third hand. Britt. c. 120.

TIERCE. A liquid measure, containing the third part of a pipe, or forty-two gallons.

TIGH. In old records. A close or inclosure; a croft. Cowell.

TIGHT. As colloquially applied to a note, bond, mortgage, lease, etc., this term signifies that the clauses providing the creditor's remedy in case of default (as, by foreclosure, execution, distress, etc.) are summary and stringent.

TIGNI IMMITTENDI. Lat. In the civil law. The name of a servitude which is the right of inserting a beam or timber from the wall of one house into that of a neighboring house, in order that it may rest on the latter, and that the wall of the latter may bear this weight. Wharton. See Dig. 8, 2, 36.

TIGNUM. A civil-law term for building material; timber.

TIHLER. In old Saxon law. An accusation.

TILLAGE. A place tilled or cultivated; land under cultivation, as opposed to lands lying fallow or in pasture.

TIMBER. Wood felled for building or other such like use. In a legal sense it generally means (in England) oak, ash, and elm, but in some parts of England, and generally in America, it is used in a wider sense, which is recognized by the law.

The term "timber," as used in commerce, refers generally only to large sticks of wood, squared or capable of being squared for building houses or vessels; and certain trees only having been formerly used for such purposes, namely, the oak, the ash, and the elm, they alone were recognized as timber trees. But the numerous uses to which wood has come to be applied, and the general employment of all kinds of trees for some valuable purpose, has wrought a change in the general acceptance of terms in connection therewith, and we find that Webster defines "timber" to be "that sort of wood which is proper for buildings or for tools, utensils, furniture, carriages, fences, ships, and the like." This would include all sorts of wood from which any useful articles may be made, or which may be used to advantage in any class of manufacture or construction. 14 Fed. Rep. 824.

TIMBER-TREES. Oak, ash, elm, in all places, and, by local custom, such other trees as are used in building. 2 Bl. Comm. 281. See **TIMBER**.

TIMBERLODE. A service by which tenants were bound to carry timber felled from the woods to the lord's house. Cowell.

TIME. The measure of duration.

The word is expressive both of a precise *point* or *terminus* and of an *interval* between two points.

In ploading. A point in or space of duration at or during which some fact is alleged to have been committed.

TIME-BARGAIN. In the language of the stock exchange, a time-bargain is an agreement to buy or sell stock at a future time, or within a fixed time, at a certain price. It is in reality nothing more than a bargain to pay differences.

TIME IMMEMORIAL. Time whereof the memory of a man is not to the contrary.

TIME OF MEMORY. In English law. Time commencing from the beginning of the reign of Richard I. 2 Bl. Comm. 31.

Lord Coke defines *time of memory* to be "when no man alive hath had any proof to the contrary, nor hath any consuance to the contrary." Co. Litt. 86a, 86b.

TIME OUT OF MEMORY. Time beyond memory; time out of mind; time to which memory does not extend.

TIME-POLICY. A policy of marine insurance in which the risk is limited, not to a given voyage, but to a certain fixed term or period of time.

TIME, REASONABLE. "Reasonable time" has never been held to be any determined number of days or years as applied to every case, like the statute of limitations, but must be decided in each case upon all the elements of it which affect that question. 91 U. S. 591.

TIME THE ESSENCE OF THE CONTRACT. A case in which "time is of the essence of the contract" is one where the parties evidently contemplated a punctual performance, at the precise time named, as vital to the agreement, and one of its essential elements. Time is *not* of the essence of the contract in any case where a moderate delay in performance would not be regarded as an absolute violation of the contract.

TIMOCRACY. An aristocracy of property; government by men of property who are possessed of a certain income.

Timores vani sunt æstimandi qui non cadunt in constantem virum. 7 Coke, 17. Fears which do not assail a resolute man are to be accounted vain.

TINBOUNDING is a custom regulating the manner in which tin is obtained from waste-land, or land which has formerly been waste-land, within certain districts in Cornwall and Devon. The custom is described in the leading case on the subject as follows: "Any person may enter on the waste-land of another, and may mark out by four corner boundaries a certain area. A written description of the plot of land so marked out with metes and bounds, and the name of the person, is recorded in the local stannaries court, and is proclaimed on three successive court-days. If no objection is sustained by any other person, the court awards a writ to the bailiff to deliver possession of the said 'bounds of tin-work' to the 'bounder,' who thereupon has the exclusive right to search for, dig, and take for his own use all tin and tin-ore within the inclosed limits, paying as a royalty to the owner of the waste a certain proportion of the produce under the name of 'toll-tin.'" 10 Q. B. 26, cited in *Elton Commons*, 113. The right of tinbounding is not a right of common, but is an interest in land, and, in Devonshire, a corporeal hereditament. In Cornwall tin bounds are personal estate. Sweet.

TINEL. L. Fr. A place where justice was administered. Kelham.

TINEMAN. Sax. In old forest law. A petty officer of the forest who had the care of vert and venison by night, and performed other servile duties.

TINET. In old records. Brush-wood and thorns for fencing and hedging. Cowell; Blount.

TINEWALD. The ancient parliament or annual convention in the Isle of Man, held upon Midsummer-day, at St. John's chapel. Cowell.

TINKERMEN. Fishermen who destroyed the young fry on the river Thames by nets and unlawful engines. Cowell.

TINNELLUS. In old Scotch law. The sea-mark; high-water mark. Tide-mouth. Skene.

TINPENNY. A tribute paid for the liberty of digging in tin-mines. Cowell.

TINSEL OF THE FEU. In Scotch law. The loss of the feu, from allowing two years of feu duty to run into the third unpaid. Bell.

TIPPLING HOUSE. A place where intoxicating drinks are sold in drams or small quantities to be drunk on the premises, and where men resort for drinking purposes. See 47 Ill. 370.

TIPSTAFF. In English law. An officer appointed by the marshal of the king's bench to attend upon the judges with a kind of rod or staff tipped with silver, who take into their custody all prisoners, either committed or turned over by the judges at their chambers, etc. Jacob.

In American law. An officer appointed by the court, whose duty is to wait upon the court when it is in session, preserve order, serve process, guard juries, etc.

TITHE RENT-CHARGE. A rent-charge established in lieu of tithes, under the tithes commutation act, 1836, (St. 6 & 7 Wm. IV. 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 section 70 of the above act. And a tithe rent-charge unpaid is recoverable by distress as rent in arrear. *Mozley & Whitley*.

TITHE-FREE. Exempted from the payment of tithes.

N TITHER. One who gathers tithes.

O TITHES. In English law. The *tenth* part of the increase, yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants. 2 Bl. Comm. 24. A species of incorporeal hereditament, being an ecclesiastical inheritance collateral to the estate of the land, and due only to an ecclesiastical person by ecclesiastical law. 1 Crabb, Real Prop. § 133.

P *Prædial tithes* are such as arise immediately from the ground; as grain of all sorts, hay, wood, fruits, and herbs. *Mixed tithes* are such as do not arise immediately from the ground, but from things nourished by the ground; as calves, lambs, chickens, colts, milk, cheese, and eggs. *Personal tithes* are such as arise by the industry of man, being the tenth part of the clear gain, after charges deducted. 1 Crabb, Real Prop. § 133.

Q TITHING. One of the civil divisions of England, being a portion of that greater division called a "hundred." It was so called because ten freeholders with their families composed one. It is said that they were all knit together in one society, and bound to the king for the peaceable behavior of each other. In each of these societies there was one chief or principal person, who, from his office, was called "teothing-man," now "tithing-man." Brown.

R TITHING-MAN. In Saxon law. This was the name of the head or chief of a decenary. In modern English law, he is the same as an under-constable or peace-officer.

In modern law. A constable. "After the introduction of justices of the peace, the offices of constable and *tithing-man* became so similar that we now regard them as precisely the same." Willc. Const. Introd.

In New England. A parish officer annually elected to preserve good order in the church during divine service, and to make complaint of any disorderly conduct. Webster.

S TITHING-PENNY. In Saxon and old English law. Money paid to the sheriff by the several tithings of his county. Cowell.

T TITIUS. In Roman law. A proper name, frequently used in designating an indefinite or fictitious person, or a person referred to by way of illustration. "Titius" and "Seius," in this use, correspond to

"John Doe" and "Richard Roe," or to "A. B." and "C. D."

T TITLE. The radical meaning of this word appears to be that of a mark, style, or designation; a distinctive appellation; the name by which anything is known. Thus, in the law of persons, a title is an appellation of dignity or distinction, a name denoting the social rank of the person bearing it; as "duke" or "count." So, in legislation, the title of a statute is the heading or preliminary part, furnishing the name by which the act is individually known. It is usually prefixed to the statute in the form of a brief summary of its contents; as "An act for the prevention of gaming." Again, the title of a patent is the short description of the invention, which is copied in the letters patent from the inventor's petition; *e. g.*, "a new and improved method of drying and preparing malt." Johns. Pat. Man. 90.

In the law of trade-marks, a title may become a subject of property; as one who has adopted a particular title for a newspaper, or other business enterprise, may, by long and prior user, or by compliance with statutory provisions as to registration and notice, acquire a right to be protected in the exclusive use of it. Abbott.

The title of a book, or any literary composition, is its name; that is, the heading or caption prefixed to it, and disclosing the distinctive appellation by which it is to be known. This usually comprises a brief description of its subject-matter and the name of its author.

"Title" is also used as the name of one of the subdivisions employed in many literary works, standing intermediate between the divisions denoted by the term "books" or "parts," and those designated as "chapters" and "sections."

In real property law. Title is the means whereby the owner of lands has the just possession of his property. Co. Litt. 345; 2 Bl. Comm. 195.

Title is the means whereby a person's right to property is established. Code Ga. 1882, § 2348.

Title may be defined generally to be the evidence of right which a person has to the possession of property. The word "title" certainly does not merely signify the right which a person has to the possession of property; because there are many instances in which a person may have the right to the possession of property, and at the same time have no title to the same. In its ordinary legal acceptance, however, it generally seems to imply a right of possession also. It therefore appears, on the whole, to signify the outward evi-

dence of the right, rather than the mere right itself. Thus, when it is said that the "most imperfect degree of title consists in the mere naked possession or actual occupation of an estate," it means that the mere circumstance of occupying the estate is the weakest species of evidence of the occupier's right to such possession. The word is defined by Sir Edward Coke thus: *Titulus est justa causa possidendi id quod nostrum est*, (1 Inst. 34;) that is to say, the ground, whether purchase, gift, or other such ground of acquiring; "titulus" being distinguished in this respect from "*modus acquirendi*," which is the *traditio*, i. e., delivery or conveyance of the thing. Brown.

Title is when a man hath lawful cause of entry into lands whereof another is seised; and it signifies also the means whereby a man comes to lands or tenements, as by feoffment, last will and testament, etc. The word "title" includes a right, but is the more general word. Every right is a title, though every title is not a right for which an action lies. Jacob.

A *title* is a lawful cause or ground of possessing that which is ours. An *interest*, though primarily it includes the terms "estate," "right," and "title," has latterly come often to mean less, and to be the same as "concern," "share," and the like. 73 N. Y. 456.

The investigation of titles is one of the principal branches of conveyancing, and in that practice the word "title" has acquired the sense of "history," rather than of "right." Thus, we speak of an abstract of title, and of investigating a title, and describe a document as forming part of the title to property. Sweet.

In pleading. The right of action which the plaintiff has. The declaration must show the plaintiff's title, and, if such title be not shown in that instrument, the defect cannot be cured by any of the future pleadings. Bac. Abr. "Pleas," etc., B 1.

In procedure, every action, petition, or other proceeding has a title, which consists of the name of the court in which it is pending, the names of the parties, etc. Administration actions are further distinguished by the name of the deceased person whose estate is being administered. Every pleading, summons, affidavit, etc., commences with the title. In many cases it is sufficient to give what is called the "short title" of an action, namely, the court, the reference to the record, and the surnames of the first plaintiff and the first defendant. Sweet.

TITLE, COVENANTS FOR. Covenants usually inserted in a conveyance of land, on the part of the grantor, and binding him for the completeness, security, and continuance of the title transferred to the grantee. They comprise "covenants for seisin,

for right to convey, against incumbrances, for quiet enjoyment, sometimes for further assurance, and almost always of warranty." Rawle, Cov. § 21.

TITLE-DEEDS. Deeds which constitute or are the evidence of title to lands.

TITLE OF A CAUSE. The distinctive appellation by which any cause in court, or other juridical proceeding, is known and discriminated from others.

TITLE OF AN ACT. The heading, or introductory clause, of a statute, wherein is briefly recited its purpose or nature, or the subject to which it relates.

TITLE OF CLERGYMEN, (to orders.) Some certain place where they may exercise their functions; also an assurance of being preferred to some ecclesiastical benefice. 2 Steph. Comm. 661.

TITLE OF DECLARATION. That preliminary clause of a declaration which states the name of the court and the term to which the process is returnable.

TITLE OF ENTRY. The right to enter upon lands. Cowell.

TITLE TO ORDERS. In English ecclesiastical law, a title to orders is a certificate of preferment or provision required by the thirty-third 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. Comm. 661.

TITULADA. In Spanish law. Title. White, New Recop. b. 1, tit. 5, c. 3, § 2.

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.

TITULUS. Lat. In the civil law. Title; the source or ground of possession; the means whereby possession of a thing is acquired, whether such possession be lawful or not.

In old ecclesiastical law. A temple or church; the material edifice. So called be-

N cause the priest in charge of it derived therefrom his name and *title*. Spelman.

O Titulus est justa causa possidendi id quod nostrum est; dicitur a tuendo. 8 Coke, 153. A title is the just right of possessing that which is our own; it is so called from "*tuendo*," defending.

P **TO**. This is a word of exclusion, when used in describing premises; it excludes the terminus mentioned. 69 Me. 514.

Q **TO HAVE AND TO HOLD**. The words in a conveyance which show the estate intended to be conveyed. Thus, in a conveyance of land in fee-simple, the grant is to "A. and his heirs, to have and to hold the said [land] unto and to the use of the said A., his heirs and assigns forever." Williams, Real Prop. 198.

R Strictly speaking, however, the words "to have" denote the estate to be taken, while the words "to hold" signify that it is to be held of some superior lord, *i. e.*, by way of tenure, (*q. v.*) The former clause is called the "*habendum*;" the latter, the "*tenendum*." Co. Litt. 6a.

S **T** **TOALIA**. A towel. There is a tenure of lands by the service of waiting with a towel at the king's coronation. Cowell.

TOBACCONIST. Any person, firm, or corporation whose business it is to manufacture cigars, snuff, or tobacco in any form. Act of congress of July 13, 1866, § 9; 14 St. at Large, 120.

TOFT. A place or piece of ground on which a house formerly stood, which has been destroyed by accident or decay. 2 Broom & H. Comm. 17.

TOFTMAN. In old English law. The owner of a toft. Cowell; Spelman.

TOGATI. Lat. In Roman law. Advocates; so called under the empire because they were required, when appearing in court to plead a cause, to wear the *toga*, which had then ceased to be the customary dress in Rome. Vicat.

TOKEN. A sign or mark; a material evidence of the existence of a fact. Thus, cheating by "false tokens" implies the use of fabricated or deceitfully contrived material objects to assist the person's own fraud and falsehood in accomplishing the cheat.

TOKEN-MONEY. A conventional medium of exchange consisting of pieces of metal, fashioned in the shape and size of

coins, and circulating among private persons, by consent, at a certain value. No longer permitted or recognized as money. 2 Chit. Com. Law, 182.

TOLERATION. The allowance of religious opinions and modes of worship in a state which are contrary to, or different from, those of the established church or belief. Webster.

TOLERATION ACT. The statute 1 W. & M. St. 1, c. 18, for exempting Protestant dissenters from the penalties of certain laws is so called. Brown.

TOLL, v. To bar, defeat, or take away; thus, to toll the entry means to deny or take away the right of entry.

TOLL, n. In English law. Toll means an excise of goods; a seizure of some part for permission of the rest. It has two significations: A liberty to buy and sell within the precincts of the manor, which seems to import as much as a fair or market; a tribute or custom paid for passage. Wharton.

A Saxon word, signifying, properly, a payment in towns, markets, and fairs for goods and cattle bought and sold. It is a reasonable sum of money due to the owner of the fair or market, upon sale of things tollable within the same. The word is used for a liberty as well to take as to be free from toll. Jacob.

In modern English law. A reasonable sum due to the lord of a fair or market for things sold there which are tollable. 1 Crabb, Real Prop. p. 350, § 683.

In contracts. A sum of money for the use of something, generally applied to the consideration which is paid for the use of a road, bridge, or the like, of a public nature.

TOLL AND TEAM. Sax. Words constantly associated with Saxon and old English grants of liberties to the lords of manors. Bract. fols. 56, 104b, 124b, 154b. They appear to have imported the privileges of having a market, and jurisdiction of villeins. See **TEAM**.

TOLL-GATHERER. The officer who takes or collects toll.

TOLL-THOROUGH. In English law. A toll for passing through a highway, or over a ferry or bridge. Cowell. A toll paid to a town for such a number of beasts, or for every beast that goes through the town, or over a bridge or ferry belonging to it. Com. Dig. "Toll," C. A toll claimed by an individual where he is bound to repair some particular highway. 3 Steph. Comm. 257.

TOLL-TRAVERSE. In English law. A toll for passing over a private man's ground. Cowell. A toll for passing over the private soil of another, or for driving beasts across his ground. Cro. Eliz. 710.

TOLL-TURN. In English law. A toll on beasts returning from a market. 1 Crabb, Real Prop. p. 101, § 102. A toll paid at the return of beasts from fair or market, though they were not sold. Cowell.

TOLLAGE. Payment of toll; money charged or paid as toll; the liberty or franchise of charging toll.

TOLLBOOTH. A prison; a custom-house; an exchange; also the place where goods are weighed. Wharton.

TOLLDISH. A vessel by which the toll of corn for grinding is measured.

Tolle voluntatem et erit omnis actus indifferens. Take away the will, and every action will be indifferent. Bract. fol. 2.

TOLLER. One who collects tribute or taxes.

TOLLERE. Lat. In the civil law. To lift up or raise; to elevate; to build up.

TOLLS. In a general sense, tolls signify any manner of customs, subsidy, prestation, imposition, or sum of money demanded for exporting or importing of any wares or merchandise to be taken of the buyer. 2 Inst. 58.

TOLLSESTER. An old excise; a duty paid by tenants of some manors to the lord for liberty to brew and sell ale. Cowell.

TOLSEY. The same as "tollbooth." Also a place where merchants meet; a local tribunal for small civil causes held at the Guildhall, Bristol.

TOLT. A writ whereby a cause depending in a court baron was taken and removed into a county court. Old Nat. Brev. 4.

TOLTA. Wrong; rapine; extortion. Cowell.

TON. A measure of weight; differently fixed, by different statutes, at two thousand pounds avoirdupois, (1 Rev. St. N. Y. 609, § 35,) or at twenty hundred-weights, each hundred-weight being one hundred and twelve pounds avoirdupois, (Rev. St. U. S. § 2951.)

TONNAGE. The capacity of a vessel for carrying freight or other loads, calculated in tons. But the way of estimating the ton-

nage varies in different countries. In England, tonnage denotes the actual weight in tons which the vessel can safely carry; in America, her carrying capacity estimated from the cubic dimensions of the hold. See 40 N. Y. 259.

The "tonnage" of a vessel is her capacity to carry cargo, and a charter of "the whole tonnage" of a ship transfers to the charterer only the space necessary for that purpose. 103 Mass. 405.

The tonnage of a vessel is her internal cubical capacity, in tons. 94 U. S. 233.

TONNAGE DUTY. In English law. A duty imposed by parliament upon merchandise exported and imported, according to a certain rate upon every ton. Brown.

In American law. A tax laid upon vessels according to their tonnage or cubical capacity.

A tonnage duty is a duty imposed on vessels in proportion to their capacity. The vital principle of a tonnage duty is that it is imposed, whatever the subject, solely according to the rule of weight, either as to the capacity to carry or the actual weight of the thing itself. 94 U. S. 238.

The term "tonnage duty," as used in the constitutional prohibition upon state laws imposing tonnage duties, describes a duty proportioned to the tonnage of the vessel; a certain rate on each ton. But it is not to be taken in this restricted sense in the constitutional provision. The general prohibition upon the states against levying duties on imports or exports would have been ineffectual if it had not been extended to duties on the ships which serve as the vehicles of conveyance. The prohibition extends to any duty on the ship, whether a fixed sum upon its whole tonnage or a sum to be ascertained by comparing the amount of tonnage with the rate of duty. 6 Wall. 31.

A tonnage tax is defined to be a duty levied on a vessel according to the tonnage or capacity. It is a tax upon the boat as an instrument of navigation, and not a tax upon the property of a citizen of the state. 6 Biss. 505.

TONNAGE-RENT. When the rent reserved by a mining lease or the like consists of a royalty on every ton of minerals gotten in the mine, it is often called a "tonnage-rent." There is generally a dead rent in addition. Sweet.

TONNAGIUM. In old English law. A custom or impost upon wines and other merchandise exported or imported, according to a certain rate per ton. Spelman; Cowell.

TONNETIGHT. In old English law. The quantity of a ton or tun, in a ship's freight or bulk, for which tonnage or tunnage was paid to the king. Cowell.

TONODERACH. In old Scotch law. A thief-taker.

TONSURA. Lat. In old English law. A shaving, or polling; the having the crown

N of the head shaven; tonsure. One of the peculiar badges of a clerk or clergyman.

O **TONSURE.** In old English law. A being shaven; the having the head shaven; a shaven head. 4 Bl. Comm. 367.

P **TONTINE.** In French law. A species of association or partnership formed among persons who are in receipt of perpetual or life annuities, with the agreement that the shares or annuities of those who die shall accrue to the survivors. This plan is said to be thus named from Tonti, an Italian, who invented it in the seventeenth century. The principle is used in some forms of life insurance. Merl. Repert.

Q **TOOK AND CARRIED AWAY.** In criminal pleading. Technical words necessary in an indictment for simple larceny.

R **TOOL.** The usual meaning of the word "tool" is "an instrument of manual operation;" that is, an instrument to be used and managed by the hand instead of being moved and controlled by machinery. 124 Mass. 420.

S **TOP ANNUAL.** In Scotch law. An annual rent out of a house built in a burgh. Whishaw. A duty which, from the act 1551, c. 10, appears to have been due from certain lands in Edinburgh, the nature of which is not now known. Bell.

T **TORT.** Wrong; injury; the opposite of right. So called, according to Lord Coke, because it is *wrested*, or crooked, being contrary to that which is right and straight. Co. Litt. 158b.

In modern practice, *tort* is constantly used as an English word to denote a wrong or wrongful act, for which an action will lie, as distinguished from a *contract*. 3 Bl. Comm. 117.

A tort is a legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrues to the individual; (3) the violation of some private obligation by which like damage accrues to the individual. In the former case, no special damage is necessary to entitle the party to recover. In the two latter cases, such damage is necessary. Code Ga. 1882, § 2951.

TORT-FEASOR. A wrong-doer; one who commits or is guilty of a tort.

TORTIOUS. Wrongful; of the nature of a tort. Formerly certain modes of con-

veyance (*e. g.*, feoffments, fines, etc.) had the effect of passing not merely the estate of the person making the conveyance, but the whole fee-simple, to the injury of the person really entitled to the fee; and they were hence called "tortious conveyances." Litt. § 611; Co. Litt. 271b, n. 1; 330b, n. 1. But this operation has been taken away. Sweet.

Tortura legum pessima. The torture or wresting of laws is the worst [kind of torture.] 4 Bacon's Works, 434.

TORTURE. In old criminal law. The question; the infliction of violent bodily pain upon a person, by means of the rack, wheel, or other engine, under judicial sanction and superintendence, in connection with the interrogation or examination of the person, as a means of extorting a confession of guilt, or of compelling him to disclose his accomplices.

T O R Y. Originally a nickname for the wild Irish in Ulster. Afterwards given to, and adopted by, one of the two great parliamentary parties which have alternately governed Great Britain since the Revolution in 1688. Wharton.

The name was also given, in America, during the struggle of the colonies for independence, to the party of those residents who favored the side of the king and opposed the war.

TOT. In old English practice. A word written by the foreign opposer or other officer opposite to a debt due the king, to denote that it was a *good* debt; which was hence said to be *totted*.

TOTA CURIA. L. Lat. In the old reports. The whole court.

TOTAL LOSS. In marine insurance, a total loss is the entire destruction or loss, to the insured, of the subject-matter of the policy, by the risks insured against. An *actual* total loss is the absolute destruction or perishing of the subject, so that nothing remains of it. A *constructive* total loss occurs where the damage to the property is such that, although it may still subsist *in specie*, or there may be salvage from it or claims or equities growing out of the circumstances of its loss, the assured has the right, either by express stipulation or implication of law, to abandon and surrender to the underwriters the surviving portion of the property, or his rights and claims in regard to it, and thereupon recover the same amount of insurance as under an actual total loss.

In fire insurance, a total loss is the complete destruction of the insured property by fire, so that nothing of value remains from it; as distinguished from a *partial* loss, where the property is damaged, but not entirely destroyed.

Total loss, in marine insurance, signifies the total destruction of the thing insured, or such damage to the thing insured as renders it, though it may specifically remain, of little or no value to the owner. 1 Mass. 264.

An *actual* total loss is where the vessel ceases to exist *in specie*, and becomes a "mere congeries of planks," incapable of being repaired; or where, by the peril insured against, it is placed beyond the control of the insured and beyond his power of recovery. A *constructive* loss is where the vessel remains *in specie*, and is susceptible of repairs or recovery, but at an expense, according to the rule of the English common law, exceeding its value when restored. 25 Ohio St. 64.

The words "total loss," in their literal sense, mean complete physical annihilation and destruction of the thing, but, in a sense adopted in insurance, they signify a loss which is total to the owner; as where the goods are seized and taken away, or have been rendered worthless for the uses or purposes for which they are designed. 3 Rob. Adm. 528.

TOTIDEM VERBIS. In so many words.

TOTIES QUOTIES. As often as occasion shall arise.

TOTIS VIRIBUS. With all one's might or power; with all his might; very strenuously.

TOTTED. A good debt to the crown, *f. e.*, a debt paid to the sheriff, to be by him paid over to the king. Cowell; Mozley & Whitley.

Totum præfertur unicuique parti. 3 Coke, 41. The whole is preferable to any single part.

TOUCH. In insurance law. To stop at a port. If there be liberty granted by the policy to *touch*, or to *touch and stay*, at an intermediate port on the passage, the better opinion now is that the insured may *trade* there, when consistent with the object and the furtherance of the adventure, by breaking bulk, or by discharging and taking in cargo, provided it produces no unnecessary delay, nor enhances nor varies the risk. 3 Kent, Comm. 314.

TOUCHING A DEAD BODY. It was an ancient superstition that the body of a murdered man would bleed freshly when touched by his murderer. Hence, in old criminal law, this was resorted to as a means of ascertaining the guilt or innocence of a person suspected of the murder.

TOUJOURS ET UNCORE PRIST. L. Fr. Always and still ready. This is the name of a plea of tender.

TOUR D'ECHELLE. In French law. An easement consisting of the right to rest ladders upon the adjoining estate, when necessary in order to repair a party-wall or buildings supported by it.

Also the vacant space surrounding a building left unoccupied in order to facilitate its reparation when necessary. Merl. Repert.

TOURN. In old English law. A court of record, having criminal jurisdiction, in each county, held before the sheriff, twice a year, in one place after another, following a certain circuit or rotation.

TOUT. Fr. All; whole; entirely. *Tout temps prist*, always ready.

Tout ce que la loi ne defend pas est permis. Everything is permitted which is not forbidden by law.

TOUT TEMPS PRIST. L. Fr. Always ready. The emphatic words of the old plea of tender; the defendant alleging that he has always been ready, and still is ready, to discharge the debt. 3 Bl. Comm. 303; 2 Salk. 622.

TOUT UN SOUND. L. Fr. All one sound; sounding the same; *idem sonans*.

Toute exception non surveillée tend à prendre la place du principe. Every exception not watched tends to assume the place of the principle.

TOWAGE. The act or service of towing ships and vessels, usually by means of a small steamer called a "tug." That which is given for towing ships in rivers.

Towage is the drawing a ship or barge along the water by another ship or boat, fastened to her, or by men or horses, etc., on land. It is also money which is given by bargemen to the owner of ground next a river, where they tow a barge or other vessel. Jacob.

TOWAGE SERVICE. In admiralty law. A service rendered to a vessel, by towing, for the mere purpose of expediting her voyage, without reference to any circumstances of danger. It is confined to vessels that have received no injury or damage. 1 W. Rob. 177; 9 Fed. Rep. 53.

TO-WIT. That is to say; namely; *scilicet*; *videlicet*.

TOWN. In English law. Originally, a vill or tithing; but now a generic term, which comprehends under it the several spe-

N cies of cities, boroughs, and common towns. 1 Bl. Comm. 114.

O In American law. A civil and political division of a state, varying in extent and importance, but usually one of the divisions of a county. In the New England states, the town is the political unit, and is a municipal corporation. In some other states, where the county is the unit, the town is merely one of its subdivisions, but possesses some powers of local self-government. In still other states, such subdivisions of a county are called "townships," and "town" is the name of a village, borough, or smaller city.

Q A village and a town are not identical. A village is ordinarily less than a town, and more occupied by agriculturists; yet the two cannot be definitely distinguished by the size of the place or employment of the inhabitants. 46 Iowa, 256.

R **TOWN CAUSE.** In English practice. A cause tried at the sittings for London and Middlesex. 3 Steph. Comm. 517.

S **TOWN-CLERK.** In those states where the *town* is the unit for local self-government, the town-clerk is a principal officer who keeps the records, issues calls for town-meetings, and performs generally the duties of a secretary to the political organization.

T **TOWN COLLECTOR.** One of the officers of a town charged with collecting the taxes assessed for town purposes.

TOWN COMMISSIONER. In some of the states where the town is the political unit, the town commissioners constitute a board of administrative officers, charged with the general management of the town's business.

TOWN-CRIER. An officer in a town whose business it is to make proclamations.

TOWN-HALL. The building maintained by a town for town-meetings and the offices of the municipal authorities.

TOWN-MEETING. Under the municipal organization of the New England states, the town-meeting is a legal assembly of the qualified voters of a town, held at stated intervals or on call, for the purpose of electing town officers, and of discussing and deciding on questions relating to the public business, property, and expenses of the town.

TOWN ORDER or WARRANT. An official direction in writing by the auditing officers of a town, directing the treasurer to pay a sum of money.

TOWN POUND. A place of confinement maintained by a town for estrays.

TOWN PURPOSE. When it is said that taxation by a town, or the expenditure of the town's money, must be for town purposes, it is meant that the purposes must be public with respect to the town; *i. e.*, concern the welfare and advantage of the town as a whole.

TOWN-REEVE. The reeve or chief officer of a town.

TOWN TAX. Such tax as a town may levy for its peculiar expenses; as distinguished from a county or state tax.

TOWN TREASURER. The treasurer of a town which is an organized municipal corporation.

TOWNSHIP. 1. In surveys of the public land of the United States, a "township" is a division of territory six miles square, containing thirty-six sections.

2. In some of the states, this is the name given to the civil and political subdivisions of a county. See **TOWN**.

TOWNSHIP TRUSTEE. One of a board of officers to whom, in some states, affairs of a township are intrusted.

TOXICAL. Poisonous; containing poison.

TOXICOLOGY. The science of poisons.

TRABES. Lat. In the civil law. A beam or rafter of a house. Calvin.

In old English law. A measure of grain, containing twenty-four sheaves; a thrave. Spelman.

TRACEA. In old English law. The track or trace of a felon, by which he was pursued with the hue and cry; a foot-step, hoof-print, or wheel-track. Bract. fols. 116, 121b.

TRACT. A lot, piece, or parcel of land, of greater or less size, the term not importing, in itself, any precise dimension. See 28 N. J. Law, 45.

Tractent fabrilia fabri. Let smiths perform the work of smiths. 3 Co. Epist.

TRADAS IN BALLIUM. You deliver to bail. In old English practice. The name of a writ which might be issued in behalf of a party who, upon the writ *de odio et atia*, had been found to have been maliciously accused of a crime, commanding the sheriff that, if the prisoner found twelve good and

lawful men of the county who would be mainpernors for him, he should *deliver* him *in bail* to those twelve, until the next assize. Bract. fol. 123; 1 Reeve, Eng. Law, 252.

TRADE. The act or business of exchanging commodities by barter; or the business of buying and selling for money; traffic; barter. Webster.

The business which a person has learned and which he carries on for procuring subsistence, or for profit; occupation, particularly mechanical employment; distinguished from the liberal arts and learned professions, and from agriculture. *Id.*

Traffic; commerce, exchange of goods for other goods, or for money. All wholesale trade, all buying in order to sell again by wholesale, may be reduced to three sorts: The home trade, the foreign trade of consumption, and the carrying trade. 2 Smith, Wealth Nat. b. 2, c. 5.

TRADE DOLLAR. A silver coin of the United States, of the weight of four hundred and twenty grains, troy. Rev. St. § 3513.

TRADE-MARK. A distinctive mark, motto, device, or emblem, which a manufacturer stamps, prints, or otherwise affixes to the goods he produces, so that they may be identified in the market, and their origin be vouched for.

TRADE-MARKS REGISTRATION ACT, 1875. This is the statute 38 & 39 Vict. c. 91, amended by the acts of 1876 and 1877. It provides for the establishment of a register of trade-marks under the superintendence of the commissioners of patents, and for the registration of trade-marks as belonging to particular classes of goods, and for their assignment in connection with the goodwill of the business in which they are used. Sweet.

TRADE-NAME. A trade-name is a name which by user and reputation has acquired the property of indicating that a certain trade or occupation is carried on by a particular person. The name may be that of a person, place, or thing, or it may be what is called a "fancy name," (*i. e.*, a name having no sense as applied to the particular trade,) or word invented for the occasion, and having no sense at all. Seb. Trade-Marks, 37. Sweet.

TRADE UNION. A combination or association of men employed in the same trade, (usually a manual or mechanical trade,) united for the purpose of regulating the customs

and standards of their trade, fixing prices or hours of labor, influencing the relations of employer and employed, enlarging or maintaining their rights and privileges, and other similar objects.

TRADE-UNION ACT. The statute 34 & 35 Vict. c. 31, passed in 1871, for the purpose of giving legal recognition to trade unions, is known as the "trade-union act," or "trade-union funds protection act." It provides 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 that the agreements of trade unions shall not on that account be void or voidable. Provisions are also made with reference to the registration and registered offices of trade unions, and other purposes connected therewith. Mozley & Whitley.

TRADE USAGE. The usage or customs commonly observed by persons conversant in, or connected with, a particular trade.

TRADER. A person engaged in trade; one whose business is to buy and sell merchandise, or any class of goods, deriving a profit from his dealings. 2 Kent, Comm. 389; 80 N. C. 481.

TRADESMAN. In England, a shop-keeper; a small shop-keeper.

In the United States, a mechanic or artificer of any kind, whose livelihood depends upon the labor of his hands. 4 Pa. St. 472.

"Primarily the words 'trader' and 'tradesman' mean one who trades, and they have been treated by the courts in many instances as synonymous. But, in their general application and usage, I think they describe different vocations. By 'tradesman' is usually meant a shop-keeper. Such is the definition given the word in Burrill's Law Dictionary. It is used in this sense by Adam Smith. He says, (Wealth of Nations:) 'A tradesman in London is obliged to hire a whole house in that part of the town where his customers live. His shop is on the ground floor,' etc. Dr. Johnson gives it the same meaning, and quotes Prior and Goldsmith as authorities." 7 Biss. 155.

TRADICION. Span. In Spanish law. Delivery. White, New Recop. b. 2, tit. 2, c. 9.

TRADITIO. Lat. In the civil law. Delivery; transfer of possession; a derivative mode of acquiring, by which the owner of a corporeal thing, having the right and the will of alienating it, transfers it for a lawful consideration to the receiver. Heinecc. Elem. lib. 2, tit. 1, § 380.

N **TRADITIO BREVI MANU.** In the civil law. A species of constructive or implied delivery. When he who already holds possession of a thing in another's name agrees with that other that thenceforth he shall possess it in his own name, in this case a delivery and redelivery are not necessary. And this species of delivery is termed "*traditio brevi manu.*" Mackeld. Rom. Law, § 284.

P **TRADITIO CLAVIUM.** In the civil law. Delivery of keys; a symbolical kind of delivery, by which the ownership of merchandise in a warehouse might be transferred to a buyer. Inst. 2, 1, 44.

Q **TRADITIO LONGA MANU.** In the civil law. A species of delivery which takes place where the transferor places the article in the hands of the transferee, or, on his order, delivers it at his house. Mackeld. Rom. Law, § 284.

S **Traditio loqui facit chartam.** Delivery makes a deed speak. 5 Coke, 1a. Delivery gives effect to the words of a deed. Id.

T **Traditio nihil amplius transferre debet vel potest, ad eum qui accipit, quam est apud eum qui tradit.** Delivery ought to, and can, transfer nothing more to him who receives than is with him who delivers. Dig. 41, 1, 20, pr.

TRADITIO REI. Delivery of the thing. See 5 Maule & S. 82.

TRADITION. Delivery. A close translation or formation from the Latin "*traditio.*" 2 Bl. Comm. 307.

The tradition or delivery is the transferring of the thing sold into the power and possession of the buyer. Civil Code La. art. 2477.

TRADITOR. In old English law, A traitor; one guilty of high treason. Fleta, lib. 1, c. 21, § 8.

TRADITUR IN BALLIUM. In old practice. Is delivered to bail. Emphatic words of the old Latin bail-piece. 1 Salk. 105.

TRAFFIC. Commerce; trade; dealings in merchandise, bills, money, and the like.

TRAHENS. Lat. In French law. The drawer of a bill. Story, Bills, § 12, note.

TRAIL-BASTON. Justices of trail-baston were justices appointed by King Ed-

ward 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. Cowell; Tomlins.

TRAINBANDS. The militia; the part of a community trained to martial exercises.

TRAISTIS. In old Scotch law. A roll containing the particular dittay taken up upon malefactors, which, with the *porteous*, is delivered by the justice clerk to the coroner, to the effect that the persons whose names are contained in the porteous may be attached, conform to the dittay contained in the traistis. So called, because committed to the *traist*, [trust,] faith, and credit of the clerks and coroner. Skene; Burrill.

TRAITOR. One who, being trusted, betrays; one guilty of treason.

TRAITOROUSLY. In criminal pleading. An essential word in indictments for treason. The offense must be laid to have been committed *traitorously*. Whart. Crim. Law, 100.

TRAJECTITIUS. Lat. In the civil law. Sent across the sea.

TRAM-WAYS. Rails for conveyance of traffic along a road not owned, as a railway is, by those who lay down the rails and convey the traffic. Wharton.

TRAMP. A strolling beggar; a vagrant or vagabond.

TRANSACT. In Scotch law. To compound. Amb. 185.

TRANSACTIO. Lat. In the civil law. The settlement of a suit or matter in controversy, by the litigating parties, between themselves, without referring it to arbitration. Hallifax, Civil Law, b. 3, c. 8, no. 14. An agreement by which a suit, either pending or about to be commenced, was forborne or discontinued on certain terms. Calvin.

TRANSACTION. In the civil law. A transaction or compromise is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on, and which every

one of them prefers to the hope of gaining, balanced by the danger of losing. This contract must be reduced into writing. Civil Code La. art. 3071.

In common law. Whatever may be done by one person which affects another's rights, and out of which a cause of action may arise. 18 Kan. 406.

"Transaction" is a broader term than "contract." A contract is a transaction, but a transaction is not necessarily a contract. 70 Cal. 113, 11 Pac. Rep. 599.

TRANSCRIPT. An official copy of certain proceedings in a court. Thus, any person interested in a judgment or other record of a court can obtain a transcript of it.

TRANSCRIPTIO PEDIS FINIS LEVATI MITTENDO IN CANCEL-LARIUM. A writ which certified the foot of a fine levied before justices in eyre, etc., into the chancery. Reg. Orig. 669.

TRANSCRIPTIO RECOGNITIONIS FACTÆ CORAM JUSTICIARIIS ITINERANTIBUS, Etc. An old writ to certify a cognizance taken by justices in eyre, Reg. Orig. 152.

TRANSFER, v. To carry or pass over; to pass a thing over to another; to convey.

TRANSFER, n. The passing of a thing or of property from one person to another; alienation; conveyance. 2 Bl. Comm. 294.

Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another. Civil Code Cal. § 1039.

In procedure, "transfer" is applied to an action or other proceeding, when it is taken from the jurisdiction of one court or judge, and placed under that of another.

TRANSFER OF A CAUSE. The removal of a cause from the jurisdiction of one court or judge to another by lawful authority.

TRANSFERABLE. A term used in a *quasi* legal sense, to indicate that the character of assignability or negotiability attaches to the particular instrument, or that it may pass from hand to hand, carrying all rights of the original holder. The words "not transferable" are sometimes printed upon a ticket, receipt, or bill of lading, to show that the same will not be good in the hands of any person other than the one to whom first issued.

TRANSFEREE. He to whom a transfer is made.

TRANSFERENCE. In Scotch law. The proceeding to be taken upon the death of one of the parties to a pending suit, whereby the action is transferred or continued, in its then condition, from the decedent to his representatives. Transference is either *active* or *passive*; the former, when it is the pursuer (plaintiff) who dies; the latter, upon the death of the defender. Ersk. Inst. 4, 1, 60.

The transferring of a legacy from the person to whom it was originally given to another; this is a species of ademption, but the latter is the more general term, and includes cases not covered by the former.

TRANSFEROR. One who makes a transfer.

Transferuntur dominia sine titulo et traditione, per usucaptionem, scil, per longam continuam et pacificam possessionem. Co. Litt. 113. Rights of dominion are transferred without title or delivery, by usucaption, to-wit, long and quiet possession.

TRANSFRETATIO. Lat. In old English law. A crossing of the strait, [of Dover;] a passing or sailing over from England to France. The royal passages or voyages to Gascony, Brittany, and other parts of France were so called, and time was sometimes computed from them.

TRANSGRESSIO. In old English law. A violation of law. Also trespass; the action of trespass.

Transgressio est cum modus non servatur nec mensura, debit enim quilibet in suo facto modum habere et mensuram. Co. Litt. 37. Transgression is when neither mode nor measure is preserved, for every one in his act ought to have a mode and measure.

TRANSGRESSIONE. In old English law. A writ or action of trespass.

Transgressione multiplicata, crescat pœnæ infictio. When transgression is multiplied, let the infliction of punishment be increased. 2 Inst. 479.

TRANSHIPMENT. In maritime law. The act of taking the cargo out of one ship and loading it in another.

TRANSIENT. In poor-laws. A "transient person" is not exactly a person on a

N journey from one known place to another, but rather a wanderer ever on the tramp. 6 Vt. 203; 51 Vt. 423.

O In Spanish law. A "transient foreigner" is one who visits the country, without the intention of remaining. 10 Tex. 170.

P TRANSIRE, *v.* Lat. To go, or pass over; to pass from one thing, person, or place to another.

P TRANSIRE, *n.* In English law. A warrant or permit for the custom-house to let goods pass.

Q Transit in *rem judicatam*. It passes into a matter adjudged; it becomes converted into a *res judicata* or judgment. A contract upon which a judgment is obtained is said to pass *in rem judicatam*. 2 Sumn. 436; 3 East, 251; 18 Johns. 480.

R Transit terra cum onere. Land passes subject to any burden affecting it. Co. Litt. 231a; Broom, Max. 495, 706.

S TRANSITIVE COVENANT. One which binds not only the covenantor, but also passes over, with obligatory force, to his representatives.

T TRANSITORY. Passing from place to place; that may pass or be changed from one place to another; not confined to one place; the opposite of "local."

TRANSITORY ACTION. Actions are said to be either local or transitory. An action is "local," when the principal facts on which it is founded pertain to a particular place. An action is termed "transitory," when the principal fact on which it is founded is of a transitory kind, and might be supposed to have happened anywhere; and therefore all actions founded on debts, contracts, and such like matters relating to the person or personal property, come under this latter denomination. Steph. Pl. 316, 317.

TRANSITUS. Lat. Passage from one place to another; transit. *In transitu*, on the passage, transit, or way. 2 Kent, Comm. 543.

TRANSLADO. Span. A transcript.

TRANSLATION. The reproduction in one language of a book, document, or speech delivered in another language.

The transfer of property; but in this sense it is seldom used. 2 Bl. Comm. 294.

In ecclesiastical law. As applied to a bishop, the term denotes his removal from one diocese to another.

TRANSLATITIVUM EDICTUM. In Roman law. The prætor, on his accession to office, did not usually publish an entirely new edict, but retained the whole or a part of that promulgated by his predecessor, as being of an approved or permanently useful character. The portion thus repeated or handed down from year to year was called the "*edictum translaticivum*." See Mackeld. Rom. Law, § 36.

TRANSLATIVE FACT. A fact by means of which a right is transferred or passes from one person to another; one, that is, which fulfills the double function of terminating the right of one person to an object, and of originating the right of another to it.

TRANSMISSION. In the civil law. The right which heirs or legatees may have of passing to their successors the inheritance or legacy to which they were entitled, if they happen to die without having exercised their rights. Domat, liv. 3, t. 1, s. 10; 4 Toullier, no. 186; Dig. 50, 17, 54; Code, 6, 51.

TRANSPORT. In old New York law. A conveyance of land.

TRANSPORTATION. The removal of goods or persons from one place to another, by a carrier.

In criminal law. A species of punishment consisting in removing the criminal from his own country to another, (usually a penal colony,) there to remain in exile for a prescribed period.

TRANSMUMPTS. In Scotch law, an action of transumpt is an action competent to any one having a partial interest in a writing, or immediate use for it, to support his title or defenses in other actions. It is directed against the custodian of the writing, calling upon him to exhibit it, in order that a transumpt, *i. e.*, a copy, may be judicially made and delivered to the pursuer. Bell.

TRASLADO. In Spanish law. A copy, a sight. White, New Recop. b. 3, tit. 7, c. 3.

A copy of a document taken by the notary from the original, or a subsequent copy taken from the protocol, and not a copy taken directly from the matrix or protocol. (Tex.) 16 S. W. Rep. 54.

TRASSANS. Drawing; one who draws. The drawer of a bill of exchange.

TRASSATUS. One who is drawn, or drawn upon. The drawee of a bill of exchange. Heinecc. de Camb. c. 6, §§ 5, 6.

TRAVAIL. The act of child-bearing. A woman is said to be in her travail from the time the pains of child-bearing commence until her delivery. 5 Pick. 63.

TRAVEL. To go from one place to another at a distance; to journey; spoken of voluntary change of place.

TRAVELER. The term is used in a broad sense to designate those who patronize inns. Traveler is one who travels in any way. Distance is not material. A townsman or neighbor may be a traveler, and therefore a guest at an inn, as well as he who comes from a distance or from a foreign country. 35 Conn. 185.

TRAVERSE. In the language of pleading, a traverse signifies a denial. Thus, where a defendant denies any material allegation of fact in the plaintiff's declaration, he is said to traverse it, and the plea itself is thence frequently termed a "traverse." Brown.

A *common* traverse is a simple and direct denial of the material allegations of the opposite pleading, concluding to the country, and without inducement or *absque hoc*. Gould, Pl. 7, 11.

A *general* traverse is one preceded by a general inducement, and denying all that is last before alleged on the opposite side, in general terms, instead of pursuing the words of the allegation which it denies. Id. 7, 5.

A *special* traverse is one which commences with the words "*absque hoc*," and pursues the material portion of the words of the allegation which it denies. Id. 7, 6.

A traverse upon a traverse is one growing out of the same point or subject-matter as is embraced in a preceding traverse on the other side. Id. 7, 42*n*.

In criminal practice. To put off or delay the trial of an indictment till a succeeding term. More properly, to deny or take issue upon an indictment. 4 Bl. Comm. 351.

TRAVERSE JURY. A petit jury; a trial jury; a jury impaneled to try an action or prosecution, as distinguished from a grand jury.

TRAVERSE OF INDICTMENT or PRESENTMENT. The taking issue upon and contradicting or denying some chief point of it. Jacob.

TRAVERSE OF OFFICE. The proving that an inquisition made of lands or goods by the escheator is defective and untruly made. Tomlins.

It is the challenging, by a subject, of an inquest of office, as being defective and untruly made. Mozley & Whitley.

TRAVERSER. In pleading. One who traverses or denies. A prisoner or party indicted; so called from his traversing the indictment.

TRAVERSING NOTE. This is a pleading in chancery, and consists of a denial put in by the plaintiff on behalf of the defendant, generally denying all the statements in the plaintiff's bill. The effect of it is to put the plaintiff upon proof of the whole contents of his bill, and is only resorted to for the purpose of saving time, and in a case where the plaintiff can safely dispense with an answer. A copy of the note must be served on the defendant. Brown.

TREACHER, TRECHETOUR, or TREACHOUR. A traitor.

TREAD-MILL, or TREAD-WHEEL, is an instrument of prison discipline, being a wheel or cylinder with an 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. Enc. Brit.

TREASON. The offense of attempting to overthrow the government of the state to which the offender owes allegiance; or of betraying the state into the hands of a foreign power. Webster.

In England, treason is an offense particularly directed against the person of the sovereign, and consists (1) in compassing or imagining the death of the king or queen, or their eldest son and heir; (2) in violating the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; (3) in levying war against the king in his realm; (4) in adhering to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and (5) slaying 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. 4 Steph. Comm. 185-193; 4 Bl. Comm. 76-84.

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." U. S. Const. art. 3, § 3, cl. 1.

N **TREASON-FELONY**, under the English statute 11 & 12 Vict. c. 12, passed in 1848, is the offense of compassing, devising, etc., to depose her majesty from the crown; or to levy war in order to intimidate either house of parliament, etc., or to stir up foreigners by any printing or writing to invade the kingdom. This offense is punishable with penal servitude for life, or for any term not less than five years, etc., under statutes 11 & 12 Vict. c. 12, § 3; 20 & 21 Vict. c. 3, § 2; 27 & 28 Vict. c. 47, § 2. By the statute first above mentioned, the government is enabled to treat as felony many offenses which must formerly have been treated as high treason. Mozley & Whitley.

TREASONABLE. Having the nature or guilt of treason.

R **TREASURE**. A treasure is a thing hidden or buried in the earth, on which no one can prove his property, and which is discovered by chance. Civil Code La. art. 3423, par. 2. See **TREASURE-TROVE**.

S **TREASURE-TROVE**. Literally, treasure found. Money or coin, gold, silver, plate or bullion found hidden in the earth or other private place, the owner thereof being unknown. 1 Bl. Comm. 295. Called in Latin "*thesaurus inventus*;" and in Saxon "*fyn-deringa*."

T **TREASURER**. An officer of a public or private corporation, company, or government, charged with the receipt, custody, and disbursement of its moneys or funds.

TREASURER, LORD HIGH. Formerly the chief treasurer of England, who had charge of the moneys in the exchequer, the chancellor of the exchequer being under him. He appointed all revenue officers and escheators, and leased crown lands. The office is obsolete, and his duties are now performed by the lords commissioners of the treasury. Slim. Gloss.

TREASURER OF A COUNTY. See **COUNTY TREASURER**.

TREASURER'S REMEMBRANCER. In English law. He whose charge was to put the lord treasurer and the rest of the judges of the exchequer in remembrance of such things as were called on and dealt in for the sovereign's behoof. There is still one in Scotland. Wharton.

TREASURY. A place or building in which stores of wealth are repositied; particularly, a place where the public revenues

are deposited and kept, and where money is disbursed to defray the expenses of government. Webster.

That department of government which is charged with the receipt, custody, and disbursement (pursuant to appropriations) of the public revenues or funds.

TREASURY BENCH. In the English house of commons, the first row of seats on the right hand of the speaker is so called, because occupied by the first lord of the treasury or principal minister of the crown. Brown.

TREASURY CHEST FUND. A fund, in England, originating in the unusual balances of certain grants of public money, and which is used for banking and loan purposes by the commissioners of the treasury. Its amount was limited by St. 24 & 25 Vict. c. 127, and has been further reduced to one million pounds, the residue being transferred to the consolidated fund, by St. 36 & 37 Vict. c. 56. Wharton.

TREATY. In international law. An agreement between two or more independent states. Brande. An agreement, league, or contract between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the several sovereigns or the supreme power of each state. Webster.

In private law, "treaty" signifies the discussion of terms which immediately precedes the conclusion of a contract or other transaction. A warranty on the sale of goods, to be valid, must be made during the "treaty" preceding the sale. Chit. Cont. 419; Sweet.

TREATY OF PEACE. A treaty of peace is an agreement or contract made by belligerent powers, in which they agree to lay down their arms, and by which they stipulate the conditions of peace and regulate the manner in which it is to be restored and supported. Vattel, b. 4, c. 2, § 9.

TREBELLANIC PORTION. "In consequence of this article, the trebellanic portion of the civil law—that is to say, the portion of the property of the testator which the instituted heir had a right to detain when he was charged with a *fidei commissa* or fiduciary bequest—is no longer a part of our law." Civil Code La. art. 1520, par. 3.

TREBLE COSTS. In practice. A rate of costs given in certain actions, consisting, according to its technical import, of the common costs, half of these, and half of the lat-

ter. 2 Tidd, Pr. 988. The word "treble," in this application, is not understood in its literal sense of thrice the amount of single costs, but signifies merely the addition together of the three sums fixed as above. *Id.* Treble costs have been abolished in England, by St. 5 & 6 Vict. c. 97.

In American law. In Pennsylvania the rule is different. When an act of assembly gives treble costs, the party is allowed three times the usual costs, with the exception that the fees of the officers are not to be trebled when they are not regularly or usually payable by the defendant. 2 Rawle, 201.

TREBLE DAMAGES. In practice. Damages given by statute in certain cases, consisting of the single damages found by the jury, actually tripled in amount. The usual practice has been for the jury to find the single amount of the damages, and for the court, on motion, to order that amount to be trebled. 2 Tidd, Pr. 893, 894.

TREBUCKET. A tumbrel, castigatory, or cucking-stool.

TREET. In old English law. Fine wheat.

TREMAGIUM, TREMESIUM. The season or time of sowing summer corn, being about March, the third month, to which the word may allude. Cowell.

Tres faciunt collegium. Three make a corporation; three members are requisite to constitute a corporation. Dig. 50, 16, 8; 1 Bl. Comm. 469.

TRESAEL. L. Fr. A great-great-grandfather. Britt. c. 119. Otherwise written "*tresael*," and "*tresayle*." 3 Bl. Comm. 186; Litt. § 20.

TRESAYLE. An abolished writ sued on ouster by abatement, on the death of the grandfather's grandfather.

TRESPASS. Any misfeasance or act of one man whereby another is injuriously treated or damnified. 3 Bl. Comm. 208.

An injury or misfeasance to the person, property, or rights of another person, done with force and violence, either actual or implied in law.

In the strictest sense, an entry on another's ground, without a lawful authority, and doing some damage, however inconsiderable, to his real property. 3 Bl. Comm. 209.

Trespass, in its most comprehensive sense, signifies any transgression or offense against the law of nature, of society, or of the country in which

we live; and this, whether it relates to a man's person or to his property. In its more limited and ordinary sense, it signifies an injury committed with violence, and this violence may be either actual or implied; and the law will imply violence though none is actually used, when the injury is of a direct and immediate kind, and committed on the person or tangible and corporeal property of the plaintiff. Of actual violence, an assault and battery is an instance; of implied, a peaceable but wrongful entry upon a person's land. Brown.

A *continuing* trespass is one which is permanent in its nature; as, where a person builds on his own land so that part of the building overhangs his neighbor's land.

In practice. A form of action, at the common law, which lies for redress in the shape of money damages for any unlawful injury done to the plaintiff, in respect either to his person, property, or rights, by the immediate force and violence of the defendant.

TRESPASS DE BONIS ASPORTATIS. (Trespass for goods carried away.) In practice. The technical name of that species of action of trespass for injuries to personal property which lies where the injury consists in *carrying away* the goods or property. See 3 Bl. Comm. 150, 151.

TRESPASS FOR MESNE PROFITS. A form of action supplemental to an action of ejectment, brought against the tenant in possession to recover the profits which he has wrongfully received during the time of his occupation. 3 Bl. Comm. 205.

TRESPASS ON THE CASE. The form of action, at common law, adapted to the recovery of damages for some injury resulting to a party from the wrongful act of another, unaccompanied by direct or immediate force, or which is the indirect or secondary consequence of such act. Commonly called, by abbreviation, "Case."

TRESPASS QUARE CLAUSUM FREGIT. "Trespass wherefore he broke the close." The common-law action for damages for an unlawful entry or trespass upon the plaintiff's land. In the Latin form of the writ, the defendant was called upon to show why he broke the plaintiff's close; *i. e.*, the real or imaginary structure inclosing the land, whence the name. It is commonly abbreviated to "*trespass qu. cl. fr.*"

TRESPASS TO TRY TITLE. The name of the action used in several of the states for the recovery of the possession of real property, with damages for any trespass committed upon the same by the defendant.

N **TRESPASS VI ET ARMIS.** Trespass with force and arms. The common-law action for damages for any injury committed by the defendant with direct and immediate force or violence against the plaintiff or his property.

O **TRESPASSER.** One who has committed trespass; one who unlawfully enters or intrudes upon another's land, or unlawfully and forcibly takes another's personal property.

P **TRESPASSER AB INITIO.** Trespasser from the beginning. A term applied to a tort-feasor whose acts relate back so as to make a previous act, at the time innocent, unlawful; as, if he enter peaceably, and subsequently commit a breach of the peace, his entry is considered a trespass. *Stim. Gloss.*

Q **TRESTORNARE.** In old English law. To turn aside; to divert a stream from its course. *Bract. fols. 115, 234b.* To turn or alter the course of a road. *Cowell.*

R **TRESVIRI.** Lat. In Roman law. Officers who had the charge of prisons, and the execution of condemned criminals. *Calvin.*

S **TRET.** An allowance made for the water or dust that may be mixed with any commodity. It differs from *tare*, (*q. v.*)

T **TRETHINGA.** In old English law. A trithing; the court of a trithing.

TREYT. Withdrawn, as a juror. Written also *treat*. *Cowell.*

TRIA CAPITA, in Roman law, were *civitas, libertas, and familia; i. e.,* citizenship, freedom, and family rights.

TRIAL. The examination before a competent tribunal, according to the law of the land, of the facts or law put in issue in a cause, for the purpose of determining such issue. 32 Cal. 267; 4 Mason, 232; 39 Ind. 1.

A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact. Code N. Y. § 252; Code N. C. § 397.

The examination of a cause, civil or criminal, before a judge who has jurisdiction over it, according to the laws of the land. 1 Inst. 124.

TRIAL AT BAR. A species of trial now seldom resorted to, excepting in cases where the matter in dispute is one of great importance and difficulty. It is a trial which takes place before all the judges at the bar of

the court in which the action is brought. *Brown.* See 2 Tidd, Pr. 747; *Steph. Pl.* 84.

TRIAL AT NISI PRIUS. In practice. The ordinary kind of trial which takes place at the sittings, assizes, or circuit, before a single judge. 2 Tidd, Pr. 751, 819.

TRIAL BY CERTIFICATE. A form of trial allowed in cases where the evidence of the person certifying was the only proper criterion of the point in dispute. Under such circumstances, the issue might be determined by the certificate alone, because, if sent to a jury, it would be conclusive upon them, and therefore their intervention was unnecessary. *Tomlins.*

TRIAL BY GRAND ASSIZE is a peculiar mode of trial allowed in writs of right. See **ASSIZE; GRAND ASSIZE.**

TRIAL BY INSPECTION OR EXAMINATION is a form of trial in which the judges of the court, upon the testimony of their own senses, decide the point in dispute.

TRIAL BY JURY. A trial in which the issues of fact are to be determined by the verdict of a jury of twelve men, duly selected, impaneled, and sworn.

The terms "jury" and "trial by jury" are, and for ages have been, well known in the language of the law. They were used at the adoption of the constitution, and always, it is believed, before that time, and almost always since, in a single sense. A jury for the trial of a cause was a body of twelve men, described as upright, well-qualified, and lawful men, disinterested and impartial, not of kin nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court, drawn and selected by officers free from all bias in favor of or against either party, duly impaneled under the direction of a competent court, sworn to render a true verdict according to the law and the evidence given them, who, after hearing the parties and their evidence, and receiving the instructions of the court relative to the law involved in the trial, and deliberating, when necessary, apart from all extraneous influences, must return their unanimous verdict upon the issue submitted to them. All the books of the law describe a trial jury substantially as we have stated it; and a "trial by jury" is a trial by such a body so constituted and conducted. 11 Nev. 60.

TRIAL BY PROVISO. A proceeding allowed where the plaintiff in an action desists from prosecuting his suit, and does not bring it to trial in convenient time. The defendant, in such case, may take out the *venire facias* to the sheriff, containing these words, "*provisio quod,*" etc., *i. e.,* provided that. If plaintiff take out any writ to that purpose, the sheriff shall summon but one

jury on them both. This is called "going to trial by proviso." Jacob, tit. "Proviso."

TRIAL BY THE RECORD. A form of trial resorted to where issue is taken upon a plea of *nul tiel record*, in which case the party asserting the existence of a record as pleaded is bound to produce it in court on a day assigned. If the record is forthcoming, the issue is tried by inspection and examination of it. If the record is not produced, judgment is given for his adversary. 3 Bl. Comm. 330.

TRIAL BY WAGER OF BATTEL. This was a species of trial introduced into England, among other Norman customs, by William the Conqueror, in which the person accused fought with his accuser, under the apprehension that Heaven would give the victory to him who was in the right. 3 Bl. Comm. 337-341.

TRIAL BY WAGER OF LAW. In old English law. A method of trial, where the defendant, coming into court, made oath that he did not owe the claim demanded of him, and eleven of his neighbors, as compurgators, swore that they believed him to speak the truth. 3 Bl. Comm. 343. See WAGER OF LAW.

TRIAL BY WITNESSES. The name "trial *per testes*" has been used for a trial without the intervention of a jury, is the only method of trial known to the civil law, and is adopted by depositions in chancery. The judge is thus left to form, in his own breast, his sentence upon the credit of the witnesses examined. But it is very rarely used at common law. Tomlins.

TRIAL LIST. A list of cases marked down for trial for any one term.

TRIAL WITH ASSESSORS. Admiralty actions involving nautical questions, *e. g.*, actions of collision, are generally tried in England before a judge, with Trinity Masters sitting as assessors. Rosc. Adm. 179.

Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam. Trial ought always to be had where the jurors can have the best information. 7 Coke, 1.

TRIBUERE. Lat. In the civil law. To give; to distribute.

TRIBUNAL. The seat of a judge; the place where he administers justice; a judicial court; the bench of judges.

In Roman law. An elevated seat occupied by the prætor, when he judged, or heard causes in form. Originally a kind of stage made of wood in the form of a square, and movable, but afterwards built of stone in the form of a semi-circle. Adams, Rom. Ant. 132, 133.

TRIBUNAUX DE COMMERCE. In French law. Certain courts composed of a president, judges, and substitutes, which take cognizance of all cases between merchants, and of disagreements among partners. Appeals lie from them to the courts of justice. Brown.

TRIBUTE. A contribution which is raised by a prince or sovereign from his subjects to sustain the expenses of the state.

A sum of money paid by an inferior sovereign or state to a superior potentate, to secure the friendship or protection of the latter. Brande.

TRICESIMA. An ancient custom in a borough in the county of Hereford, so called, because thirty burgesses paid 1d. rent for their houses to the bishop, who was lord of the manor. Wharton.

TRIDING-MOTE. The court held for a triding or trithing. Cowell.

TRIDUUM. In old English law. The space of three days. Fleta, lib. 1, c. 31, § 7.

TRIENNIAL ACT. An act limiting the duration of every parliament to three years, unless sooner dissolved. It was passed by the long parliament in 1640, and afterwards repealed, and the term was fixed at seven years by the septennial act, (St. 1 Geo. I. St. 2, c. 38.)

TRIENS. Lat. In Roman law. A subdivision of the *as*, containing four *uncia*; the proportion of four-twelfths or one-third. 2 Bl. Comm. 462, note *m*. A copper coin of the value of one-third of the *as*. Brande.

In feudal law. Dower or third. 2 Bl. Comm. 129.

TRIGAMUS. In old English law. One who has been thrice married; one who, at different times and successively, has had three wives; a trigamist. 3 Inst. 88.

TRIGILD. In Saxon law. A triple gild, geld, or payment; three times the value of a thing, paid as a composition or satisfaction. Spelman.

TRINEPOS. Lat. In the civil law. A great-grandson's or great-granddaughter's

N great-grandson. A male descendant in the sixth degree. Inst. 3, 6, 4.

O **TRINEPTIS.** Lat. In the civil law. A great-grandson's or great-granddaughter's great-granddaughter. A female descendant in the sixth degree. Inst. 3, 6, 4.

P **TRINITY HOUSE.** In English law. A society at Deptford Strond, incorporated by Hen. VIII. in 1515, for the promotion of commerce and navigation by licensing and regulating pilots, and ordering and erecting beacons, light-houses, buoys, etc. Wharton.

Q **TRINITY MASTERS** are elder brethren of the Trinity House. If a question arising in an admiralty action depends upon technical skill and experience in navigation, the judge or court is usually assisted at the hearing by two Trinity Masters, who sit as assessors, and advise the court on questions of a nautical character. Williams & B. Adm. Jur. 271; Sweet.

S **TRINITY SITTINGS.** Sittings of the English court of appeal and of the high court of justice in London and Middlesex, commencing on the Tuesday after Whitsun week, and terminating on the 8th of August.

T **TRINITY TERM.** One of the four terms of the English courts of common law, beginning on the 22d day of May, and ending on the 12th of June. 3 Steph. Comm. 562.

TRINIUMGELDUM. In old European law. An extraordinary kind of composition for an offense, consisting of *three times nine*, or twenty-seven times the single geld or payment. Spelman.

TRINODA NECESSITAS. In Saxon law. A threefold necessity or burden. A term used to denote the three things from contributing to the performance of which no lands were exempted, viz., *pontis reparatio*, (the repair of bridges,) *arcis constructio*, (the building of castles,) *et expeditio contra hostem*, (military service against an enemy.) 1 Bl. Comm. 263, 357.

TRIORES. In practice. Persons who are appointed to try challenges to jurors, *i. e.*, to hear and determine whether a juror challenged for favor is or is not qualified to serve.

The lords chosen to try a peer, when indicted for felony, in the court of the lord high steward, are also called "triors." Mozley & Whitley.

TRIPARTITE. In conveyancing. Of three parts; a term applied to an indenture

to which there are three several parties, (of the first, second, and third parts,) and which is executed in triplicate.

TRIPLICACION. L. Fr. In old pleading. A rejoinder in pleading; the defendant's answer to the plaintiff's replication. Britt. c. 77.

TRIPLICATIO. In the civil law. The reply of the plaintiff to the rejoinder of the defendant. It corresponds to the surrejoinder of common law. Inst. 4, 14; Bract. 1, 5, t. 5, c. 1.

TRIPLUM. Lat. In the civil law. The triple value of a thing. *Actio in tripulum*, an action for the triple value. Inst. 4, 6, 21, 24.

TRIPPLY. In Scotch practice. A pleading corresponding with the Latin "*triplicatio*," from which the term also was taken. 3 How. State Tr. 478, 637, 638.

TRISTRIS. In old forest law. A freedom from the duty of attending the lord of a forest when engaged in the chase. Spelman.

TRITAVIA. Lat. In the civil law. A great-grandmother's great-grandmother; the female ascendant in the sixth degree.

TRITAVUS. Lat. In the civil law. A great-grandfather's great-grandfather; the male ascendant in the sixth degree.

TRITHING. In Saxon law. One of the territorial divisions of England, being the *third* part of a county, and comprising three or more hundreds. Within the trithing there was a court held (called "trithing-mote") which resembled the court-leet, but was inferior to the county court.

TRITHING-MOTE. The court held for a trithing or riding.

TRITHING-REEVE. The officer who superintended a trithing or riding.

TRIUMVIR. In old English law. A trithing man or constable of three hundred Cowell.

TRIUMVIRI CAPITALIS. In Roman law. Officers who had charge of the prison, through whose intervention punishments were inflicted. They had eight lictors to execute their orders. Vicat, Voc. Jur.

TRIVERBIAL DAYS. In the civil law. Juridical days; days allowed to the prætor for deciding causes; days on which the prætor might speak the *three* characteristic words of his office, viz., *do, dico, addico*. Calvin.

Otherwise called "*dies fasti.*" 3 Bl. Comm. 424, and note *u.*

TRIVIAL. Trifling; inconsiderable; of small worth or importance. In equity, a demurrer will lie to a bill on the ground of the *triviality* of the matter in dispute, as being below the dignity of the court. 4 Bouv. Inst. no. 4237.

TRONAGE. In English law. A customary duty or toll for weighing wool; so called because it was weighed by a common *trona*, or beam. Fleta, lib. 2, c. 12.

TRONATOR. A weigher of wool. Cowell.

TROPHY MONEY. Money formerly collected and raised in London, and the several counties of England, towards providing harness and maintenance for the militia, etc.

TROVER. In common-law practice, the action of trover (or trover and conversion) is a species of action on the case, and originally lay for the recovery of damages against a person who had *found* another's goods and wrongfully converted them to his own use. Subsequently the allegation of the loss of the goods by the plaintiff and the finding of them by the defendant was merely fictitious, and the action became the remedy for any wrongful interference with or detention of the goods of another. 3 Steph. Comm. 425. Sweet.

TROY WEIGHT. A weight of twelve ounces to the pound, having its name from Troyes, a city in Aube, France.

TRUCE. In international law. A suspension or temporary cessation of hostilities by agreement between belligerent powers; an armistice. Wheat. Int. Law, 442.

TRUCE OF GOD. In medieval law. A truce or suspension of arms promulgated by the church, putting a stop to private hostilities at certain periods or during certain sacred seasons.

TRUCK ACT. In English law. This name is given to the statute 1 & 2 Wm. IV. c. 37, passed to abolish what is commonly called the "truck system," under which employers were in the practice of paying the wages of their work people in goods, or of requiring them to purchase goods at certain shops. This led to laborers being compelled to take goods of inferior quality at a high price. The act applies to all artificers, workmen, and laborers, except those en-

gaged in certain trades, especially iron and metal works, quarries, cloth, silk, and glass manufactories. It does not apply to domestic or agricultural servants. Sweet.

TRUE. Conformable to fact; correct; exact; actual; genuine; honest.

"In one sense, that only is *true* which is conformable to the actual state of things. In that sense, a statement is untrue which does not express things exactly as they are. But in another and broader sense, the word 'true' is often used as a synonym of 'honest,' 'sincere,' 'not fraudulent.'" 111 U. S. 345, 4 Sup. Ct. Rep. 466.

TRUE BILL. In criminal practice. The indorsement made by a grand jury upon a bill of indictment, when they find it sustained by the evidence laid before them, and are satisfied of the truth of the accusation. 4 Bl. Comm. 306.

TRUE, PUBLIC, AND NOTORIOUS. These three qualities used to be formally predicated in the libel in the ecclesiastical courts, of the charges which it contained, at the end of each article severally. Wharton.

TRUST. An equitable or beneficial right or title to land or other property, held for the beneficiary by another person, in whom resides the legal title or ownership, recognized and enforced by chancery courts.

An obligation upon a person, arising out of a confidence reposed in him, to apply property faithfully, and according to such confidence. Willis, Trustees, c. 1, p. 2.

"A trust, in the general and enlarged sense, is a right on the part of the *cestui que trust* to receive the profits, and to dispose of the lands in equity." 4 Kent, Comm. 304.

Classification. Trusts are either *express* or *implied*; the former being trusts which are created in so many fit and appropriate terms; the latter being trusts founded on the presumable, though unexpressed, intention of the party who creates them.

Express trusts are those created and manifested by agreement of the parties. Implied trusts are such as are inferred by law from the nature of the transaction, or the conduct of the parties. Code Ga. 1882, § 2309.

Trusts are also either *executed* or *executory*. An executed trust is one which the person creating it has fully and finally declared, whence also it is called a "complete" trust; while an executory trust is one which the person creating it has not fully or finally declared, but has given merely an outline of it by way of direction to the conveyancer, whence also it is called sometimes an "incomplete" and sometimes a "directory" trust. Brown.

Trusts are again classified as *special* (or

N active) and *simple*, (or passive, or dry.) The special trust is where the machinery of a trustee is introduced for the execution of some purpose particularly pointed out, and the trustee is not, as before, a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as where a conveyance is to trustees upon trust to sell for payment of debts. Lewin, Trusts, 18. A simple trust is one which requires the performance of no duty by the trustee to carry out the trust, but by force of which the mere legal title rests in the trustee.

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P

Q Trusts are also either *voluntary* or *involuntary*. A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another. An involuntary trust is one which is created by operation of law. Civil Code Cal. §§ 2216, 2217.

R According to another use of the term, "voluntary trusts" are such as are made in favor of a volunteer; that is, a person who gives nothing in exchange for the trust, but receives it as a pure gift. And in this use the term is distinguished from "trusts for value," the latter being such as are in favor of purchasers, mortgagees, etc.

S

T *Constructive* trusts are such as are founded neither on an expressed nor on any presumable intention of the party, but which are raised by construction of equity without any regard to intention, and simply for the purpose of satisfying the demands of justice and good conscience. Brown.

Public trusts. "By 'public' must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trusts for *charitable* purposes, and indeed 'public trusts' and 'charitable trusts' may be considered in general as synonymous expressions." Lewin, Trusts, 20.

Private trusts. "In private trusts the beneficial interest is vested absolutely in one or more individuals, who are, or within a certain time may be, definitely ascertained, and to whom, therefore, collectively, unless under some legal disability, it is, or within the allowed limit will be, competent to control, modify, or determine the trust." Lewin, Trusts, 20.

For a discussion of the differences between "trust" and "use," see 50 N. H. 491.

In mercantile law. An organization of persons or corporations, formed mainly for

the purpose of regulating the supply and price of commodities, etc.

TRUST-DEED. 1. A species of mortgage given to a trustee for the purpose of securing a numerous class of creditors, as the bondholders of a railroad corporation, with power to foreclose and sell on failure of the payment of their bonds, notes, or other claims.

2. In some of the states, and in the District of Columbia, a trust-deed is a security resembling a mortgage, being a conveyance of lands to trustees to secure the payment of a debt, with a power of sale upon default, and upon a trust to apply the net proceeds to paying the debt and to turn over the surplus to the grantor.

TRUSTEE. The person appointed, or required by law, to execute a trust; one in whom an estate, interest, or power is vested, under an express or implied agreement to administer or exercise it for the benefit or to the use of another.

"Trustee" is also used in a wide and perhaps inaccurate sense, to denote that a person has the duty of carrying out a transaction, in which he and another person are interested, in such manner as will be most for the benefit of the latter, and not in such a way that he himself might be tempted, for the sake of his personal advantage, to neglect the interests of the other. In this sense, directors of companies are said to be "trustees for the shareholders." Sweet.

TRUSTEE ACTS. The statutes 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. Mozley & Whitley.

TRUSTEE EX MALEFICIO. A person who, being guilty of wrongful or fraudulent conduct, is held by equity to the duty and liability of a trustee, in relation to the subject-matter, to prevent him from profiting by his own wrong.

TRUSTEE IN BANKRUPTCY. A trustee in bankruptcy is a person in whom the property of a bankrupt is vested in trust for the creditors.

TRUSTEE PROCESS. The name given, in the New England states, to the process of garnishment or foreign attachment.

TRUSTEE RELIEF ACTS. The statute 10 & 11 Vict. c. 96, passed in 1847, and statute 12 & 13 Vict. c. 74, passed in 1849, by which a trustee is enabled to pay money into court, in cases where a difficulty arises respecting the title to the trust fund. Mozley & Whitley.

TRUSTER. In Scotch law. The maker or creator of a trust.

TRUSTIS. In old European law. Trust; faith; confidence; fidelity.

TRUSTOR. A word occasionally, though rarely, used as a designation of the creator, donor, or founder of a trust.

TRY. To examine judicially; to examine and investigate a controversy, by the legal method called "trial," for the purpose of determining the issues it involves.

TUAS RES TIBI HABETO. Lat. Have or take your things to yourself. The form of words by which, according to the old Roman law, a man divorced his wife. Calvin.

TUB. In mercantile law. A measure containing sixty pounds of tea, and from fifty-six to eighty-six pounds of camphor. Jacob.

TUB-MAN. In English law. A barrister who has a preaudience in the exchequer, and also one who has a particular place in court, is so called. Brown.

TUCHAS. In Spanish law. Objections or exceptions to witnesses. White, New Recop. b. 3, tit. 7, c. 10.

TUERTO. In Spanish law. Tort. Las Partidas, pt. 7, tit. 6, l. 5.

TUG. A steam vessel built for towing; synonymous with "tow-boat."

TULLIANUM. Lat. In Roman law. That part of a prison which was under ground. Supposed to be so called from Servius Tullius, who built that part of the first prison in Rome. Adams, Rom. Ant. 290.

TUMBREL. A castigatory, trebucket, or ducking-stool, anciently used as a punishment for common scolds.

TUMULTUOUS PETITIONING. Under St. 13 Car. II. St. 1, c. 5, this was a

misdeemeanor, and consisted in more than twenty persons signing 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 had been approved by three justices, or the majority of the grand jury at assizes or quarter sessions. No petition could be delivered by more than ten persons. 4 Bl. Comm. 147; Mozley & Whitley.

TUN. A measure of wine or oil, containing four hogsheads.

TUNGREVE. A town-reeve or bailiff. Cowell.

TURBA. Lat. In the civil law. A multitude; a crowd or mob; a tumultuous assembly of persons. Said to consist of ten or fifteen, at the least. Calvin.

TURBARY. Turbary, or common of turbary, is the right or liberty of digging turf upon another man's ground. Brown.

TURN, or TOURN. The great court-leet of the county, as the old county court was the court-baron. Of this the sheriff is judge, and the court is incident to his office; wherefore it is called the "sheriff's tourn;" and it had its name originally from the sheriff making a turn of circuit about his shire, and holding this court in each respective hundred. Wharton.

TURNED TO A RIGHT. This phrase means 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. Mozley & Whitley.

TURNKEY. A person, under the superintendence of a jailer, who has the charge of the keys of the prison, for the purpose of opening and fastening the doors.

TURNPIKE. A gate set across a road, to stop travelers and carriages until toll is paid for the privilege of passage thereon.

TURNPIKE ROADS. These are roads on which parties have by law a right to erect gates and bars, for the purpose of taking toll, and of refusing the permission to pass along them to all persons who refuse to pay. 6 Mees. & W. 428.

A turnpike road is a public highway, established by public authority for public use, and is to be regarded as a public easement, and not as private property. The only difference between this and a common highway is that, instead of being made at the public expense in the first instance, it is authorized and laid out by public authority, and

N made at the expense of individuals in the first instance; and the cost of construction and maintenance is reimbursed by a toll, levied by public authority for the purpose. 16 Pick. 175.

O **TURPIS.** Lat. In the civil law. Base; mean; vile; disgraceful; infamous; unlawful. Applied both to things and persons. Calvin.

P **TURPIS CAUSA.** Lat. A base cause; a vile or immoral consideration; a consideration which, on account of its immorality, is not allowed by law to be sufficient either to support a contract or found an action; *e. g.*, future illicit intercourse.

Q **TURPIS CONTRACTUS.** Lat. An immoral or iniquitous contract.

R *Turpis est pars quæ non convenit cum suo toto.* The part which does not agree with its whole is of mean account, [entitled to small or no consideration.] Plowd. 101; Shep. Touch. 87.

S **TURPITUDE.** Everything done contrary to justice, honesty, modesty, or good morals is said to be done with turpitude.

TURPITUDO. Lat. Baseness; infamy; immorality; turpitude.

T *Tuta est custodia quæ sibimet creditur.* Hob. 340. That guardianship is secure which is intrusted to itself alone.

TUTELA. Lat. In the civil law. Tutelage; that species of guardianship which continued to the age of puberty; the guardian being called "*tutor*," and the ward, "*pupillus*." 1 Dom. Civil Law, b. 2, tit. 1, p. 260.

TUTELA LEGITIMA. Lat. In the civil law. Legal tutelage; tutelage created by act of law, as where none had been created by testament. Inst. 1, 15, pr.

TUTELA TESTAMENTARIA. Lat. In the civil law. Testamentary tutelage or guardianship; that kind of tutelage which was created by will. Calvin.

TUTELÆ ACTIO. Lat. In the civil law. An action of tutelage; an action which lay for a ward or pupil, on the termination of tutelage, against the *tutor* or guardian, to compel an account. Calvin.

TUTELAGE. Guardianship; state of being under a guardian.

TUTELAM REDDERE. Lat. In the civil law. To render an account of tutelage. Calvin. *Tutelam reposcere*, to demand an account of tutelage.

TUTEUR. In French law. A kind of guardian.

TUTUER OFFICIEUX. In French law, a person over fifty years of age may be appointed a tutor of this sort to a child over fifteen years of age, with the consent of the parents of such child, or, in their default, the *conseil de famille*. The duties which such a tutor becomes subject to are analogous to those in English law of a person who puts himself *in loco parentis* to any one. Brown.

TUTEUR SUBROGÉ. In French law. The title of a second guardian appointed for an infant under guardianship. His functions are exercised in case the interests of the infant and his principal guardian conflict. Code Nap. 420; Brown.

Tutius erratur ex parte mitiore. 3 Inst. 220. It is safer to err on the gentler side.

Tutius semper est errare acquietando, quam in puniendo, ex parte misericordiæ quam ex parte justitiæ. It is always safer to err in acquitting than punishing, on the side of mercy than on the side of justice. Branch, Princ.; 2 Hale, P. C. 290; Broom, Max. 326; 9 Metc. (Mass.) 116.

TUTOR. In the civil law. This term corresponds nearly to "guardian," (*i. e.*, a person appointed to have the care of the person of a minor and the administration of his estate,) except that the guardian of a minor who has passed a certain age is called "*curator*," and has powers and duties differing somewhat from those of a tutor.

By the laws of Louisiana, minors under the age of fourteen years, if males, and under the age of twelve years, if females, are, both as to their persons and their estates, placed under the authority of a tutor. Above that age, and until their majority or emancipation, they are placed under the authority of a curator. Civil Code La. 1838, art. 263.

TUTOR ALIENUS. In English law. The name given to a stranger who enters upon the lands of an infant within the age of fourteen, and takes the profits. Co. Litt. 89b, 90a.

TUTOR PROPRIUS. The name given to one who is rightly a guardian in socage, in contradistinction to a *tutor alienus*.

TUTORSHIP. The office and power of a tutor.

TUTORSHIP BY NATURE. After the dissolution of marriage by the death of

either husband or wife, the tutorship of minor children belongs of right to the surviving mother or father. This is what is called "tutorship by nature." Civil Code La. art. 250.

TUTORSHIP BY WILL. The right of appointing a tutor, whether a relation or a stranger, belongs exclusively to the father or mother dying last. This is called "tutorship by will," because generally it is given by testament; but it may likewise be given by any declaration by the surviving father or mother, executed before a notary and two witnesses. Civil Code La. art. 257.

TUTRIX. A female tutor.

TWA NIGHT GUEST. In Saxon law. A guest on the second night. By the laws of Edward the Confessor it was provided that a man who lodged at an inn, or at the house of another, should be considered, on the first night of his being there, a stranger, (*uncuth*;) on the second night, a guest; on the third night, a member of the family. This had reference to the responsibility of the host or entertainer for offenses committed by the guest.

TWELFHINDI. The highest rank of men in the Saxon government, who were valued at 1200s. If any injury were done to such persons, satisfaction was to be made according to their worth. Cowell.

TWELVE TABLES. The earliest statute or code of Roman law, framed by a commission of ten men, B. C. 450, upon the return of a commission of three who had been sent abroad to study foreign laws and institutions. The Twelve Tables consisted partly of laws transcribed from the institutions of other nations, partly of such as were altered and accommodated to the manners of the Romans, partly of new provisions, and mainly, perhaps, of laws and usages under their ancient kings. They formed the source and foundation for the whole later development of Roman jurisprudence. They exist

now only in fragmentary form. See 1 Kent, Comm. 520.

TWELVE-DAY WRIT. A writ issued under the St. 18 & 19 Vict. c. 67, for summary procedure on bills of exchange and promissory notes, abolished by rule of court in 1880. Wharton.

TWELVE - MONTH, in the singular number, includes all the year; but *twelve months* are to be computed according to twenty-eight days for every month. 6 Coke, 62.

TWICE IN JEOPARDY. See JEOPARDY; ONCE IN JEOPARDY.

TWYHINDI. The lower order of Saxons, valued at 200s. in the scale of pecuniary mulcts inflicted for crimes. Cowell.

TYBURN TICKET. A certificate which was given to the prosecutor of a felon to conviction.

TYHTLAN. In Saxon law. An accusation, impeachment, or charge of any offense.

TYLWITH. Brit. A tribe or family branching or issuing out of another. Cowell.

TYRANNY. Arbitrary or despotic government; the severe and autocratic exercise of sovereign power, either vested constitutionally in one ruler, or usurped by him by breaking down the division and distribution of governmental powers.

TYRANT. A despot; a sovereign or ruler, legitimate or otherwise, who uses his power unjustly and arbitrarily, to the oppression of his subjects.

TYRRA, or TOIRA. A mount or hill. Cowell.

TYTHE. Tithe, or tenth part.

TYTHING. A company of ten; a district; a tenth part. See TITHING.

TZAR, TZARINA. The emperor and empress of Russia. See CZAR.