C

C. The initial letter of the word "*Codex*," used by some writers in citing the Code of Justinian. Tayl. Civil Law, 24.

It was also the letter inscribed on the ballots by which, among the Romans, jurors voted to condemn an accused party. It was the initial letter of *condemno*, I condemn. Tayl. Civil Law, 192.

C, as the third letter of the alphabet, is used as a numeral, in like manner with that use of A and B, (*q. v.*)

The letter is also used to designate the *third* of a series of propositions, sections, etc., as A, B, and the others are used as numerals.

It is used as an abbreviation of many words of which it is the initial letter; such as cases, civil, circuit, code, common, court, criminal, chancellor, crown.

C.—CT.—CTS. These abbreviations stand for "cent" or "cents," and any of them, placed at the top or head of a column of figures, sufficiently indicates the denomination of the figures below. Jackson v. Cummings, 15 Ill. 453; Hunt v. Smith, 9 Kan. 137; Linck v. Litchfield, 141 Ill. 469, 31 N. E. 123.

C. A. V. An abbreviation for *curia advisari vult*, the court will be advised, will consider, will deliberate.

C. B. In reports and legal documents, an abbreviation for common bench. Also an abbreviation for chief baron.

C. C. Various terms or phrases may be denoted by this abbreviation; such as circuit court, (or city or county court;) criminal cases, (or crown or civil or chancery cases;) civil code; chief commissioner; and the return of *cepi corpus*.

C. C. P. An abbreviation for Code of Civil Procedure; also for court of common pleas.

C. J. An abbreviation for chief justice; also for circuit judge.

C. L. An abbreviation for civil law.

C. L. P. Common law procedure, in reference to the English acts so entitled.

C. O. D. "Collect on delivery." These letters are not cabalistic, but have a determinate meaning. They import the carrier's liability to return to the consignor either the goods or the charges. U. S. Exp. Co. v. Keefer, 59 Ind. 267; Fleming v. Com., 130 Pa. 138, 18 Atl. 622; Express Co. v. Wolf, 79 Ill. 434.

C. P. An abbreviation for common pleas.

C. R. An abbreviation for *curia regis*; also for chancery reports.

C. T. A. An abbreviation for *cum testamento annexo*, in describing a species of administration.

CABAL. A small association for the purpose of intrigue; an intrigue. This name was given to that ministry in the reign of Charles II. formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted a scheme for the restoration of popery. The initials of these five names form the word "cabal;" hence the appellation. Hume, Hist. Eng. ix. 69.

CABALIST. In French commercial law. A factor or broker.

CABALLARIA. Pertaining to a horse. It was a feudal tenure of lands, the tenant furnishing a horseman suitably equipped in time of war, or when the lord had occasion for his service.

CABALLERIA. In Spanish law. An allotment of land acquired by conquest, to a horse soldier. It was a strip one hundred feet wide by two hundred feet deep. The term has been sometimes used in those parts of the United States which were derived from Spain. See 12 Pet. 444, note.

CABALLERO. In Spanish law. A knight. So called on account of its being more honorable to go on horseback (*à caballo*) than on any other beast.

CABINET. The advisory board or council of a king or other chief executive. In the government of the United States the cabinet is composed of the secretary of state, the secretary of the treasury, the secretary of the interior, the secretary of war, the secretary of the navy, the secretary of agriculture, the secretary of commerce and labor, the attorney general, and the postmaster general.

The select or secret council of a prince or executive government; so called from the apartment in which it was originally held. Webster.

CABINET COUNCIL. In English law. A private and confidential assembly of the most considerable ministers of state, to concert measures for the administration of public affairs; first established by Charles I. Wharton.

CABLE. A large and strong rope or chain, such as is attached to a vessel's anchors, or the traction-rope of a street railway operated by the cable system, (Hooper v. Railway Co., 85 Md. 509, 37 Atl. 359, 38 L. R. A. 509,)

or used in submarine telegraphy. (see 25 Stat. 41 [U. S. Comp. St. 1901, p. 3586].)

CABLISH. Brush-wood, or more properly windfall-wood.

CACHEPOLUS, or CACHERELLAS. An inferior bailiff, or catchpoll. Jacob.

CACHET, LETTRES DE. Letters issued and signed by the kings of France, and countersigned by a secretary of state, authorizing the imprisonment of a person. Abolished during the revolution of 1789.

CACICAZGOS. In Spanish-American law. Property entailed on the *caciques*, or heads of Indian villages, and their descendants. Schm. Civil Law, 309.

CADASTRE. In Spanish law. An official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. 12 Pet. 428, note.

CADASTU. In French law. An official statement of the quantity and value of realty made for purposes of taxation; same as *cadastre*, (*q. v.*)

CADAVER. A dead human body; a corpse. *Cadaver nullius in bonis*, no one can have a right of property in a corpse. 3 Co. Inst. 110, 2 Bl. Comm. 429; Griffith v. Railroad Co., 23 S. C. 32, 55 Am. Rep. 1.

CADERE. Lat. To end; cease; fail. As in the phrases *cadit actio*, (or *breve*,) the action (or writ) fails; *cadit assisa*, the assise abates; *cadit quæstio*, the discussion ends, there is no room for further argument.

To be changed; to be turned into. *Cadit assisa in juratum*, the assise is changed into a jury.

CADET. In the United States laws, students in the military academy at West Point are styled "cadets;" students in the naval academy at Annapolis, "cadet midshipmen." Rev. St. §§ 1309, 1512 (U. S. Comp. St. 1901, pp. 927, 1042).

In England. The younger son of a gentleman; particularly applied to a volunteer in the army, waiting for some post. Jacob.

CADI. The name of a Turkish civil magistrate.

CADIT. Lat. It falls, abates, fails, ends, ceases. See CADERE.

CADUCA. In the civil law. Property of an inheritable quality; property such as descends to an heir. Also the lapse of a testamentary disposition or legacy. Also an escheat; escheated property.

CADUCARY. Relating to or of the nature of escheat, forfeiture, or confiscation. 2 Bl. Comm. 245.

CÆDUA. In the civil and old common law. Kept for cutting; intended or used to be cut. A term applied to wood.

CÆSAR. In the Roman law. A cognomen in the Gens Julia, which was assumed by the successors of Julius. Tayl. Civil Law, 31.

CÆSAREAN OPERATION. A surgical operation whereby the fœtus, which can neither make its way into the world by the ordinary and natural passage, nor be extracted by the attempts of art, whether the mother and fœtus be yet alive, or whether either of them be dead, is, by a cautious and well-timed operation, taken from the mother, with a view to save the lives of both, or either of them. This consists in making an incision into the abdomen and uterus of the mother and withdrawing the fœtus thereby. If this operation be performed after the mother's death, the husband cannot be tenant by the curtesy; since his right begins from the birth of the issue, and is consummated by the death of the wife; but, if mother and child are saved, then the husband would be entitled after her death. Wharton.

CÆTERUS. Lat. Other; another; the rest.

—Cæteris paribus. Other things being equal. **—Cæteris tacentibus.** The others being silent; the other judges expressing no opinion. Comb. 186.**—Cæterorum.** When a limited administration has been granted, and all the property cannot be administered under it, administration *cæterorum* (as to the residue) may be granted.

CAHIER. In old French law. A list of grievances prepared for deputies in the states-general. A petition for the redress of grievances enumerated.

CAIRNS' ACT. An English statute for enabling the court of chancery to award damages. 21 & 22 Vict. c. 27.

CALABOOSE. A term used vulgarly, and occasionally in judicial proceedings and law reports, to designate a jail or prison, particularly a town or city jail or lock-up. Supposed to be a corruption of the Spanish *calabozo*, a dungeon. See Gilham v. Wells, 64 Ga. 194.

CALCETUM, CALCEA. A causeway, or common hard-way, maintained and repaired with stones and rubbish.

CALE. In old French law. A punishment of sailors, resembling the modern "keelhauling."

CALEFAGIUM. In old law. A right to take fuel yearly. Cowell.

CALENDAR. **1.** The established order of the division of time into years, months, weeks, and days; or a systematized enumeration of such arrangement; an almanac. Rives v. Guthrie, 46 N. C. 86.

—Calendar days. So many days reckoned according to the course of the calendar. For example, a note dated January 1st and payable "thirty calendar days after date," without grace, is payable on the 31st day of January, though if expressed to be payable simply "thirty days after date," it would be payable February 1st.**—Calendar month.** One of the months of the year as enumerated in the calendar,—January, February, March, etc.,—without reference to the number of days it may contain; as distinguished from a lunar month, of twenty-eight days, or a month for business purposes, which may contain thirty, at whatever part of the year it occurs. Daley v. Anderson, 7 Wyo. 1, 48 Pac. 840, 75 Am. St. Rep. 870; Migotti v. Colvil, 4 C. P. Div. 233; In re Parker's Estate, 14 Wkly. Notes Cas. (Pa.) 566.**—Calendar year.** The calendar year is composed of twelve months, varying in length according to the common or Gregorian calendar. In re Parker's Estate, 14 Wkly. Notes Cas. (Pa.) 566.

2. A list or systematic enumeration of causes or motions arranged for trial or hearing in a court.

—Calendar of causes. In practice. A list of the causes instituted in the particular court, and now ready for trial, drawn up by the clerk shortly before the beginning of the term, exhibiting the titles of the suits, arranged in their order for trial, with the nature of each action, the date of issue, and the names of the counsel engaged; designed for the information and convenience of the court and bar. It is sometimes called the "trial list," or "docket."**—Calendar of prisoners.** In English practice. A list kept by the sheriffs containing the names of all the prisoners in their custody, with the several judgments against each in the margin. Staundef. P. C. 182; 4 Bl. Comm. 403.**—Special calendar.** A calendar or list of causes, containing those set down specially for hearing, trial, or argument.

CALENDS. Among the Romans the first day of every month, being spoken of by itself, or the very day of the new moon, which usually happen together. And if *pridie*, the day before, be added to it, then it is the last day of the foregoing month, as *pridie calend. Septemb.* is the last day of August. If any number be placed with it, it signifies that day in the former month which comes so much before the month named, as the tenth calends of October is the 20th day of September; for if one reckons backwards, beginning at October, that 20th day of September makes the 10th day before October. In March, May, July, and October, the calends begin at the sixteenth day, but in other months at the fourteenth; which calends must ever bear the name of the month following, and be numbered backwards from the first day of the said following months. Jacob. See Rives v. Guthrie, 46 N. C. 87.

CALENDS, GREEK. A metaphorical expression for a time never likely to arrive.

CALL, *n.* **1. In English law.** The election of students to the degree of barrister at law, hence the ceremony or epoch of election, and the number of persons elected.

2. In conveyancing. A visible natural object or landmark designated in a patent, entry, grant, or other conveyance of lands, as a limit or boundary to the land described, with which the points of surveying must correspond. Also the courses and distances designated. King v. Watkins (C. C.) 98 Fed. 922; Stockton v. Morris, 39 W. Va. 432, 19 S. E. 531.

3. In corporation law. A demand made by the directors of a stock company upon the persons who have subscribed for shares, requiring a certain portion or installment of the amount subscribed to be paid in. The word, in this sense, in synonymous with "assessment," (*q. v.*)

A call is an assessment on shares of stock, usually for unpaid installments of the subscription thereto. The word is said to be capable of three meanings: (1) The resolution of the directors to levy the assessment; (2) its notification to the persons liable to pay; (3) the time when it becomes payable. Railway Co. v. Mitchell, 4 Exch. 543; Hatch v. Dana, 101 U. S. 205, 25 L. Ed. 885; Railroad Co. v. Spreckles, 65 Cal. 193, 3 Pac. 661, 802; Stewart v. Pub. Co., 1 Wash. St. 521, 20 Pac. 605.

4. In the language of the stock exchange, a "call" is an option to claim stock at a fixed price on a certain day. White v. Treat (C. C.) 100 Fed. 290; Lumber Co. v. Whitebreast Coal Co., 160 Ill. 85, 43 N. E. 774, 31 L. R. A. 529.

CALL, *v.* To summon or demand by name; to demand the presence and participation of a number of persons by calling aloud their names, either in a pre-arranged and systematic order or in a succession determined by chance.

—Call of the house. A call of the names of all the members of a legislative body, made by the clerk in pursuance of a resolution requiring the attendance of members. The names of absentees being thus ascertained, they are imperatively summoned (and, if necessary, compelled) to attend the session.**—Calling a summons.** In Scotch practice. See this described in Bell, Dict.**—Calling the docket.** The public calling of the docket or list of causes at the commencement of a term of court, for the purpose of disposing of the same with regard to setting a time for trial or entering orders of continuance, default, nonsuit, etc. Blanchard v. Ferdinand, 132 Mass. 391.**—Calling the jury.** Successively drawing out of a box into which they have been previously put the names of the jurors on the panels annexed to the *nisi prius* record, and calling them over in the order in which they are so drawn. The twelve persons whose names are first called, and who appear, are sworn as the jury, unless some just cause of challenge or excuse, with respect to any of them, shall be brought forward.**—Calling the plaintiff.** In practice. A formal method of causing a nonsuit to be entered. When a plaintiff or his counsel, seeing that sufficient evidence has not been given to maintain the issue, withdraws the crier is ordered to call or demand the plaintiff, and if neither he, nor any person

for him appear, he is nonsuited, the jurors are discharged without giving a verdict, the action is at an end, and the defendant recovers his costs. —**Calling to the bar.** In English practice. Conferring the dignity or degree of barrister at law upon a member of one of the inns of court. Holthouse.—**Calling upon a prisoner.** When a prisoner has been found guilty on an indictment, the clerk of the court addresses him and calls upon him to say why judgment should not be passed upon him.

CALPES. In Scotch law. A gift to the head of a clan, as an acknowledgment for protection and maintenance.

CALUMNIA. In the civil law. Calumny, malice, or ill design; a false accusation; a malicious prosecution. Lanning v. Christy, 30 Ohio St. 115, 27 Am. Rep. 431.

In the old common law. A claim, demand, challenge to jurors.

CALUMNIÆ JURAMENTUM. In the old canon law. An oath similar to the *calumniæ jusjurandum*, (*q. v.*)

CALUMNIÆ JUSJURANDUM. The oath of calumny. An oath imposed upon the parties to a suit that they did not sue or defend with the intention of calumniating, (*calumniandi animo,*) *i. e.*, with a malicious design, but from a firm belief that they had a good cause. Inst. 4, 16.

CALUMNIATOR. In the civil law. One who accused another of a crime without cause; one who brought a false accusation. Cod. 9, 46.

CALUMNY. Defamation; slander; false accusation of a crime or offense. See CALUMNIA.

CAMARA. In Spanish law. A treasury. Las Partidas, pt. 6, tit. 3, 1, 2.

The exchequer. White, New Recop. b. 3, tit. 8, c. 1.

CAMBELLANUS, or CAMBELLARIUS. A chamberlain. Spelman.

CAMBIATOR. In old English law. An exchanger. *Cambiatores monetæ*, exchangers of money; money-changers.

CAMBIO. In Spanish law. Exchange. Schm. Civil Law, 148.

CAMBIPARTIA. Champerty; from *campus*, a field, and *partus*, divided. Spelman.

CAMBIPARTICEPS. A champertor.

CAMBIST. In mercantile law. A person skilled in exchanges; one who trades in promissory notes and bills of exchange.

CAMBIUM. In the civil law. Change or exchange. A term applied indifferently to the exchange of land, money, or debts.

Cambium reale or *manuale* was the term generally used to denote the technical common-law exchange of lands; *cambium locale, mercantile*, or *trajectitium*, was used to designate the modern mercantile contract of exchange, whereby a man agrees, in consideration of a sum of money paid him in one place, to pay a like sum in another place. Pot. *de Change*, n. 12; Story, Bills, § 2, et seq.

CAMERA. In old English law. A chamber, room, or apartment; a judge's chamber; a treasury; a chest or coffer. Also, a stipend payable from vassal to lord; an annuity.

—**Camera regis.** In old English law. A chamber of the king; a place of peculiar privileges especially in a commercial point of view. —**Camera scaccarii.** The old name of the exchequer chamber, (*q. v.*)—**Camera stellata.** The star chamber, (*q. v.*)

CAMERALISTICS. The science of finance or public revenue, comprehending the means of raising and disposing of it.

CAMERARIUS. A chamberlain; a keeper of the public money; a treasurer.

Also a bailiff or receiver.

CAMINO. In Spanish law. A road or highway. Las Partidas, pt. 3, tit. 2, l. 6.

CAMPANA. In old European law. A bell. Spelman.

—**Campana bajula.** A small handbell used in the ceremonies of the Romish church; and, among Protestants, by sextons, parish clerks, and criers. Cowell.

CAMPANARIUM, CAMPANILE. A belfry, bell tower, or steeple; a place where bells are hung. Spelman; Townsh. Pl. 191, 213.

CAMPARTUM. A part of a larger field or ground, which would otherwise be in gross or in common.

CAMPBELL'S (LORD) ACTS. English statutes, for amending the practice in prosecutions for libel, 9 & 10 Vict. c. 93; also 6 & 7 Vict. c. 96, providing for compensation to relatives in the case of a person having been killed through negligence; also 20 & 21 Vict. c. 83, in regard to the sale of obscene books, etc.

CAMPERS. A share; a champertor's share; a champertous division or sharing of land.

CAMPERTUM. A corn-field; a field of grain. Blount; Cowell; Jacob.

CAMPFIGHT. In old English law. The fighting of two champions or combatants in the field; the judicial combat, or *duellum*. 3 Inst. 221.

CAMPUS. In old European law. An assembly of the people; so called from being anciently held in the open air, in some *plain* capable of containing a large number of persons.

In feudal and old English law. A field, or plain. The field, ground, or lists marked out for the combatants in the *duellum*, or trial by battle.

—Campus Maii. The field of May. An anniversary assembly of the Saxons, held on May-day, when they confederated for the defense of the kingdom against all its enemies. **—Campus Martii.** The field of March. See CHAMP DE MARS.

CANA. A Spanish measure of length varying (in different localities) from about five to seven feet.

CANAL. An artificial ditch or trench in the earth, for confining water to a defined channel, to be used for purposes of transportation.

The meaning of this word, when applied to artificial passages for water, is a trench or excavation in the earth, for conducting water and confining it to narrow limits. It is unlike the words "river," "pond," "lake," and other words used to designate natural bodies of water, the ordinary meaning of which is confined to the water itself; but it includes also the banks, and has reference rather to the excavation or channel as a receptacle for the water; it is an artificial thing. Navigation Co. v. Berks County, 11 Pa. 202; Bishop v. Seeley, 18 Conn. 393; Kennedy v. Indianapolis, 103 U. S. 604, 26 L. Ed. 550.

CANCEL. To obliterate, strike, or cross out; to destroy the effect of an instrument by defacing, obliterating, expunging, or erasing it.

In equity. Courts of equity frequently cancel instruments which have answered the end for which they were created, or instruments which are void or voidable, in order to prevent them from being vexatiously used against the person apparently bound by them. Snell, Eq. 498.

The original and proper meaning of the word "cancellation" is the defacement of a writing by drawing lines across it in the form of crossbars or lattice work; but the same legal result may be accomplished by drawing lines through any essential part, erasing the signature, writing the word "canceled" on the face of the instrument, tearing off seals, or any similar act which puts the instrument in a condition where its invalidity appears on its face. In re Akers' Will, 74 App. Div. 461, 77 N. Y. Supp. 643; Baldwin v. Howell, 45 N. J. Eq. 519, 15 Atl. 236; In re Alger's Will, 38 Misc. Rep. 143, 77 N. Y. Supp. 166; Evans' Appeal, 58 Pa. 244; Glass v. Scott, 14 Colo. App. 377, 60 Pac. 186; In re Olmsted's Estate, 122 Cal. 224, 54 Pac. 745; Doe v. Perkes, 3 Barn. & A. 492. A revenue stamp is canceled by writing on its face the initials of the person using or affixing it. Spear v. Alexander, 42 Ala. 575.

There is also a secondary or derivative meaning of the word, in which it signifies annulment or abrogation by the act or agreement of parties concerned, though without physical defacement. Golden v. Fowler, 26 Ga. 464; Winton v. Spring, 18 Cal. 455. And "cancel" may sometimes be taken as equivalent to "discharge" or "pay," as in an agreement by one person to cancel the indebtedness of another to a third person. Auburn City Bank v. Leonard, 40 Barb. (N. Y.) 119.

Synonyms. Cancellation is properly distinguished from obliteration in this, that the former is a crossing out, while the latter is a blotting out; the former leaves the words still legible, while the latter renders them illegible. Townshend v. Howard, 86 Me. 285, 29 Atl. 1077. "Spoliation" is the erasure or alteration of a writing by a stranger, and may amount to a cancellation if of such a nature as to invalidate it on its face; but defacement of an instrument is not properly called "spoliation" if performed by one having control of the instrument as its maker or one duly authorized to destroy it. "Revocation" is an act of the mind, of which cancellation may be a physical manifestation; but cancellation does not revoke unless done with that intention. Dan v. Brown, 4 Cow. (N. Y.) 490, 15 Am. Dec. 395; In re Woods' Will (Sur.) 11 N. Y. Supp. 157.

CANCELLARIA. Chancery; the court of chancery. *Curia cancellaria* is also used in the same sense. See 4 Bl. Comm. 46; Cowell.

Cancellarii Angliæ dignitas est, ut secundus a rege in regno habetur. The dignity of the chancellor of England is that he is deemed the second from the sovereign in the kingdom. 4 Inst. 78.

CANCELLARIUS. A chancellor; a scrivener, or notary. A janitor, or one who stood at the door of the court and was accustomed to carry out the commands of the judges.

CANCELLATURA. In old English law. A cancelling. Bract. 398b.

CANCELLI. The rails or lattice work or balusters inclosing the bar of a court of justice or the communion table. Also the lines drawn on the face of a will or other writing, with the intention of revoking or annulling it. See CANCEL.

CANDIDATE. A person who offers himself, or is presented by others, to be elected to an office. Derived from the Latin *candidus*, (white,) because in Rome it was the custom for those who sought office to clothe themselves in white garments.

One who seeks or aspires to some office or privilege, or who offers himself for the same. A man is a candidate for an office when he is seeking such office. It is not necessary that he should have been *nominated* for the office. Leonard v. Com., 112 Pa. 624, 4 Atl. 224. See State v. Hirsch, 125 Ind. 207, 24 N. E. 1062, 9 L. R. A. 170.

CANDLEMAS-DAY. In English law. A festival appointed by the church to be observed on the second day of February in every year, in honor of the purification of the Virgin Mary, being forty days after her miraculous delivery. At this festival, form-

erly, the Protestants went, and the Papists now go, in procession with lighted candles; they also consecrate candles on this day for the service of the ensuing year. It is the fourth of the four cross quarter-days of the year. Wharton

CANFARA. In old records. A trial by hot iron, formerly used in England. Whishaw.

CANON. **1.** A law, rule, or ordinance in general, and of the church in particular. An ecclesiastical law or statute.

—Canon law. A body of ecclesiastical jurisprudence which, in countries where the Roman Catholic church is established, is composed of maxims and rules drawn from patristic sources, ordinances and decrees of general councils, and the decretals and bulls of the popes. In England, according to Blackstone, there is a kind of national canon law, composed of legatine and provincial constitutions enacted in England prior to the reformation, and adapted to the exigencies of the English church and kingdom. 1 Bl. Comm. 82. The canon law consists partly of certain rules taken out of the Scripture, partly of the writings of the ancient fathers of the church, partly of the ordinances of general and provincial councils, and partly of the decrees of the popes in former ages; and it is contained in two principal parts,—the decrees and the decretals. The decrees are ecclesiastical constitutions made by the popes and cardinals. The decretals are canonical epistles written by the pope, or by the pope and cardinals, at the suit of one or more persons, for the ordering and determining of some matter of controversy, and have the authority of a law. As the decrees set out the origin of the canon law, and the rights, dignities, and decrees of ecclesiastical persons, with their manner of election, ordination, etc., so the decretals contain the law to be used in the ecclesiastical courts. Jacob.—**Canon religiosorum.** In ecclesiastical records. A book wherein the religious of every greater convent had a fair transcript of the rules of their order, frequently read among them as their local statutes. Kennett, Gloss.; Cowell.

2. A system or aggregation of correlated rules, whether of statutory origin or otherwise, relating to and governing a particular department of legal science or a particular branch of the substantive law.

—Canons of construction. The system of fundamental rules and maxims which are recognized as governing the construction or interpretation of written instruments.—**Canons of descent.** The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir.—**Canons of inheritance.** The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir. 2 Bl. Comm. 208.

3. A dignitary of the English church, being a prebendary or member of a cathedral chapter.

4. In the civil, Spanish, and Mexican law, an annual charge or rent; an emphyteutic rent.

5. In old English records, a prestation, pension, or customary payment.

CANONICAL. Pertaining to, or in conformity to, the canons of the church.

—Canonical obedience. That duty which a clergyman owes to the bishop who ordained him, to the bishop in whose diocese he is beneficed, and also to the metropolitan of such bishop. Wharton.

CANONICUS. In old English law. A canon. Fleta, lib. 2, c. 69, § 2.

CANONIST. One versed and skilled in the canon law; a professor of ecclesiastical law.

CANONRY. In English ecclesiastical law. An ecclesiastical benefice, attaching to the office of canon. Holthouse.

CANT. In the civil law. A method of dividing property held in common by two or more joint owners. See Hayes v. Cuny, 9 Mart. O. S. (La.) 87.

CANTEL, or CANTLE. A lump, or that which is added above measure; also a piece of anything, as "cantel of bread," or the like. Blount.

CANTERBURY, ARCHBISHOP OF. In English ecclesiastical law. The primate of all England; the chief ecclesiastical dignitary in the church. His customary privilege is to crown the kings and queens of England; while the Archbishop of York has the privilege to crown the queen consort, and be her perpetual chaplain. The Archbishop of Canterbury has also, by 25 Hen. VIII. c. 21, the power of granting dispensations in any case not contrary to the holy scriptures and the law of God, where the pope used formerly to grant them, which is the foundation of his granting special licenses to marry at any place or time; to hold two livings, (which must be confirmed under the great seal,) and the like; and on this also is founded the right he exercises of conferring degrees in prejudice of the two universities. Wharton.

CANTRED. A district comprising a hundred villages; a hundred. A term used in Wales in the same sense as "hundred" is in England. Cowell; Termes de la Ley.

CANUM. In feudal law. A species of duty or tribute payable from tenant to lord, usually consisting of produce of the land.

CANVASS. The act of examining and counting the returns of votes cast at a public election. Bowler v. Eisenhood, 1 S. Dak. 577, 48 N. W. 136, 12 L. R. A. 705; Clark v. Tracy, 95 Iowa, 410, 64 N. W. 290; Hudson v. Solomon, 19 Kan. 180; People v. Sausalito, 106 Cal. 500, 39 Pac. 937; In re Stewart, 24 App. Div. 201, 48 N. Y. Supp. 957.

CAP OF MAINTENANCE. One of the regalia or ornaments of state belonging to

the sovereigns of England, before whom it is carried at the coronation and other great solemnities. Caps of maintenance are also carried before the mayors of several cities in England. Enc. Lond.

CAPACITY. Legal capacity is the attribute of a person who can acquire new rights, or transfer rights, or assume duties, according to the mere dictates of his own will, as manifested in juristic acts, without any restraint or hindrance arising from his *status* or legal condition.

Ability; qualification; legal power or right. Applied in this sense to the attribute of persons (natural or artificial) growing out of their *status* or juristic condition, which enables them to perform civil acts; as capacity to hold lands, capacity to devise, etc. Burgett v. Barrick, 25 Kan. 530; Sargent v. Burdett, 96 Ga. 111, 22 S. E. 667.

CAPAX DOLI. Lat. Capable of committing crime; or capable of criminal intent. The phrase describes the condition of one who has sufficient intelligence and comprehension to be held criminally responsible for his deeds.

CAPAX NEGOTII. Competent to transact affairs; having business capacity.

CAPE. In English practice. A judicial writ touching a plea of lands or tenements, divided into *cape magnum*, or the *grand cape*, which lay before appearance to summon the tenant to answer the default, and also over to the demandant; the *cape ad valentiam* was a species of grand cape, and *cape parvum*, or *petit cape*, after appearance or view granted, summoning the tenant to answer the default only. Termes de la Ley; 3 Steph. Comm. 606, note.

—Cape ad valentiam. A species of *cape magnum*.**—Grand cape.** A judicial writ in the old real actions, which issued for the demandant where the tenant, after being duly summoned, neglected to appear on the return of the writ, or to cast an essoin, or, in case of an essoin being cast, neglected to appear on the adjournment day of the essoin; its object being to compel an appearance. Rosc. Real Act. 165, et seq. It was called a "cape," from the word with which it commenced, and a "grand cape" (or *cape magnum*) to distinguish it from the *petit cape*, which lay after appearance.

CAPELLA. In old records. A box, cabinet, or repository in which were preserved the relics of martyrs. Spelman. A small building in which relics were preserved; an oratory or chapel. Id.

In old English law. A chapel. Fleta, lib. 5, c. 12, § 1; Spelman; Cowell.

CAPERS. Vessels of war owned by private persons, and different from ordinary privateers only in size, being smaller. Beawes, Lex Merc. 230.

CAPIAS. Lat. "That you take." The general name for several species of writs, the common characteristic of which is that they require the officer to take the body of the defendant into custody; they are writs of attachment or arrest.

In English practice. A *capias* is the process on an indictment when the person charged is not in custody, and in cases not otherwise provided for by statute. 4 Steph. Comm. 383.

—Capias ad audiendum judicium. A writ issued, in a case of misdemeanor, after the defendant has appeared and is found guilty, to bring him to hear judgment if he is not present when called. 4 Bl. Comm. 368.**—Capias ad computandum.** In the action of account render, after judgment of *quod computet*, if the defendant refuses to appear personally before the auditors and make his account, a writ by this name may issue to compel him.**—Capias ad respondendum.** A judicial writ, (usually simply termed a "*capias*,") by which actions at law were frequently commenced; and which commands the sheriff to *take* the defendant, and him safely keep, so that he may have his body before the court on a certain day, to *answer* the plaintiff in the action. 3 Bl. Comm. 282; 1 Tidd, Pr. 128. The name of this writ is commonly abbreviated to *ca. resp.*.**—Capias ad satisfaciendum.** A writ of execution, (usually termed, for brevity, a "*ca. sa.*,") which a party may issue after having recovered judgment against another in certain actions at law. It commands the sheriff to *take* the party named, and keep him safely, so that he may have his body before the court on a certain day, *to satisfy* the party by whom it is issued, the damages or debt and damages recovered by the judgment. Its effect is to deprive the party taken of his liberty until he makes the satisfaction awarded. 3 Bl. Comm. 414, 415; 2 Tidd, Pr. 993, 1025; Litt. § 504; Co. Litt. 289*a*; Strong v. Linn, 5 N. J. Law, 803.**—Capias extendi facias.** A writ of execution issuable in England against a debtor to the crown, which commands the sheriff to "take" or arrest the body, and "cause to be extended" the lands and goods of the debtor. Man. Exch. Pr. 5.**—Capias in withernam.** A writ, in the nature of a reprisal, which lies for one whose goods or cattle, taken under a distress, are removed from the county, so that they cannot be replevied, commanding the sheriff to seize other goods or cattle of the distrainor of equal value.**—Capias pro fine.** (That you take for the fine or in mercy.) Formerly, if the verdict was for the defendant, the plaintiff was adjudged to be amerced for his false claim; but, if the verdict was for the plaintiff, then in all actions *vi et armis*, or where the defendant, in his pleading, had falsely denied his own deed, the judgment contained an award of a *capiatur pro fine;* and in all other cases the defendant was adjudged to be amerced. The insertion of the *misericordia* or of the *capiatur* in the judgment is now unnecessary. Wharton.**—Capias utlagatum.** (You take the outlaw.) In English practice. A writ which lies against a person who has been *outlawed* in an action, by which the sheriff is commanded to *take* him, and keep him in custody until the day of the return, and then present him to the court, there to be dealt with for his contempt. Reg. Orig. 133*b;* 3 Bl. Comm. 284.

CAPIATUR PRO FINE. (Let him be taken for the fine.) In English practice. A clause inserted at the end of old judgment records in actions of debt, where the defendant denied his deed, and it was found against

him upon his false plea, and the jury were troubled with the trial of it. Cro. Jac. 64.

CAPITA. Heads, and, figuratively, entire bodies, whether of persons or animals. Spelman.

Persons individually considered, without relation to others, (polls;) as distinguished from *stirpes* or stocks of descent. The term in this sense, making part of the common phrases, *in capita, per capita,* is derived from the civil law. Inst. 3, 1, 6.

—Capita, per. By heads; by the poll; as individuals. In the distribution of an intestate's personalty, the persons legally entitled to take are said to take *per capita* when they claim, each in his own right, as in equal degree of kindred; in contradistinction to claiming by right of representation, or *per stirpes.*

CAPITAL, *n.* In political economy, that portion of the produce of industry existing in a country, which may be made directly available, either for the support of human existence, or the facilitating of production; but, in commerce, and as applied to individuals, it is understood to mean the sum of money which a merchant, banker, or trader adventures in any undertaking, or which he contributes to the common stock of a partnership. Also the fund of a trading company or corporation, in which sense the word "stock" is generally added to it. Pearce v. Augusta, 37 Ga. 599; People v. Feitner, 56 App. Div. 280, 67 N. Y. Supp. 893; Webb v. Armistead (C. C.) 26 Fed. 70.

The actual estate, whether in money or property, which is owned by an individual or a corporation. In reference to a corporation, it is the aggregate of the sum subscribed and paid in, or secured to be paid in, by the shareholders, with the addition of all gains or profits realized in the use and investment of those sums, or, if losses have been incurred, then it is the residue after deducting such losses. See CAPITAL STOCK.

When used with respect to the property of a corporation or association, the term has a settled meaning. It applies only to the property or means contributed by the stockholders as the fund or basis for the business or enterprise for which the corporation or association was formed. As to them the term does not embrace temporary loans, though the moneys borrowed be directly appropriated in their business or undertakings. And, when used with respect to the property of individuals in any particular business, the term has substantially the same import; it then means the property taken from other investments or uses and set apart for and invested in the special business, and in the increase, proceeds, or earnings of which property beyond expenditures incurred in its use consist the profits made in the business. It does not, any more than when used with respect to corporations, embrace temporary loans made in the regular course of business. Bailey v. Clark, 21 Wall. 286, 22 L. Ed. 651.

The principal sum of a fund of money; money invested at interest.

Also the political and governmental metropolis of a state or country; the seat of government; the place where the legislative department holds its sessions, and where the chief offices of the executive are located.

CAPITAL, *adj.* Affecting or relating to the head or life of a person; entailing the ultimate penalty. Thus, a capital crime is one punishable with death. Walker v. State, 28 Tex. App. 503, 13 S. W. 860; Ex parte McCrary, 22 Ala. 72; Ex parte Dusenberry, 97 Mo. 504, 11 S. W. 217. Capital punishment is the punishment of death.

Also principal; leading; chief; as "capital burgess." 10 Mod. 100.

CAPITAL STOCK. The common stock or fund of a corporation. The sum of money raised by the subscriptions of the stockholders, and divided into shares. It is said to be the sum upon which calls may be made upon the stockholders, and dividends are to be paid. Christensen v. Eno, 106 N. Y. 97, 12 N. E. 648, 60 Am. Rep. 429; People v. Com'rs, 23 N. Y. 219; State v. Jones, 51 Ohio St. 492, 37 N. E. 945; Burrall v. Railroad Co., 75 N. Y. 216.

Originally "the capital stock of the bank" was all the property of every kind, everything, which the bank possessed. And this "capital stock," all of it, in reality belonged to the contributors, it being intrusted to the bank to be used and traded with for their exclusive benefit; and thus the bank became the agent of the contributors, so that the transmutation of the money originally advanced by the subscribers into property of other kinds, though it altered the form of the investment, left its beneficial ownership unaffected; and every new acquisition of property, by exchange or otherwise, was an acquisition for the original subscribers or their representatives, their respective interests in it all always continuing in the same proportion as in the aggregate capital originally advanced. So that, whether in the form of money, bills of exchange, or any other property in possession or in action into which the money originally contributed has been changed, or which it has produced, all is, as the original contribution was, the capital stock of the bank, held, as the original contribution was, for the exclusive benefit of the original contributors and those who represent them. The original contributors and those who represent them are the stockholders. New Haven v. City Bank, 31 Conn. 109. Capital stock, as employed in acts of incorporation, is never used to indicate the value of the property of the company. It is very generally, if not universally, used to designate the amount of capital prescribed to be contributed at the outset by the stockholders, for the purposes of the corporation. The value of the corporate assets may be greatly increased by surplus profits, or be diminished by losses, but the amount of the capital stock remains the same. The funds of the company may fluctuate; its capital stock remains invariable, unless changed by legislative authority. Canfield v. Fire Ass'n, 23 N. J. Law, 195.

CAPITALE. A thing which is stolen, or the value of it. Blount.

CAPITALE VIVENS. Live cattle. Blount.

CAPITALIS. In old English law. Chief, principal; at the *head.* A term applied to

persons, places, judicial proceedings, and some kinds of property.

—Capitalis baro. In old English law. Chief baron. *Capitalis baro scaccarii domini regis*, chief baron of the exchequer. Townsh. Pl. 211. **—Capitalis custos.** Chief warden or magistrate; mayor. Fleta, lib. 2, c. 64, § 2.**—Capitalis debitor.** The chief or principal debtor, as distinguished from a surety, (*plegius.*)**—Capitalis dominus.** Chief lord. Fleta, lib. 1, c. 12, § 4; Id. c. 28, § 5.**—Capitalis justiciarius.** The chief justiciary; the principal minister of state, and guardian of the realm in the king's absence. This office originated under William the Conqueror; but its power was greatly diminished by *Magna Charta*, and finally distributed among several courts by Edward I. Spelman; 3 Bl. Comm. 38.**—Capitalis justiciarius ad placita coram rege tenenda.** Chief justice for holding pleas before the king. The title of the chief justice of the king's bench, first assumed in the latter part of the reign of Henry III. 2 Reeve, Eng. Law, 91, 285.**—Capitalis justiciarius banci.** Chief justice of the bench. The title of the chief justice of the (now) court of common pleas, first mentioned in the first year of Edward I. 2 Reeve, Eng. Law, 48.**—Capitalis justiciarius totius angliæ.** Chief justice of all England. The title of the presiding justice in the court of *aula regis*. 3 Bl. Comm. 38; 1 Reeve, Eng. Law, 48.**—Capitalis plegius.** A chief pledge; a head borough. Townsh. Pl. 35.**—Capitalis reditus.** A chief rent.**—Capitalis terra.** A head-land. A piece of land lying at the head of other land.

CAPITANEUS. A tenant *in capite*. He who held his land or title directly from the king himself. A captain; a naval commander.

CAPITARE. In old law and surveys. To head, front, or abut; to touch at the head, or end.

CAPITATIM. Lat. By the head; by the poll; severally to each individual.

CAPITATION TAX. One which is levied upon the person simply, without any reference to his property, real or personal, or to any business in which he may be engaged, or to any employment which he may follow. Gardner v. Hall, 61 N. C. 22; Leedy v. Bourbon, 12 Ind. App. 486, 40 N. E. 640; Head-Money Cases (C. C.) 18 Fed. 139.

A tax or imposition raised on each person in consideration of his labor, industry, office, rank, etc. It is a very ancient kind of tribute, and answers to what the Latins called "*tributum*," by which taxes on persons are distinguished from taxes on merchandise, called "*vectigalia*." Wharton.

CAPITE. Lat. By the head. Tenure *in capite* was an ancient feudal tenure, whereby a man held lands of the king immediately. It was of two sorts,—the one, principal and general, or of the king as the source of all tenure; the other, special and subaltern, or of a particular subject. It is now abolished. Jacob. As to distribution *per capita*, see CAPITA.

CAPITE MINUTUS. In the civil law. One who had suffered *capitis diminutio*, one who lost *status* or legal attributes. See Dig. 4, 5.

CAPITIS DIMINUTIO. In Roman law. A diminishing or abridgment of personality. This was a loss or curtailment of a man's *status* or aggregate of legal attributes and qualifications, following upon certain changes in his civil condition. It was of three kinds, enumerated as follows:

Capitis diminutio maxima. The highest or most comprehensive loss of *status*. This occurred when a man's condition was changed from one of freedom to one of bondage, when he became a slave. It swept away with it all rights of citizenship and all family rights.

Capitis diminutio media. A lesser or medium loss of status. This occurred where a man lost his rights of citizenship, but without losing his liberty. It carried away also the family rights.

Capitis diminutio minima. The lowest or least comprehensive degree of loss of *status*. This occurred where a man's family relations alone were changed. It happened upon the arrogation of a person who had been his own master, (*sui juris*,) or upon the emancipation of one who had been under the *patria potestas*. It left the rights of liberty and citizenship unaltered. See Inst. 1, 16, pr.; 1, 2, 3; Dig. 4, 5, 11; Mackeld. Rom. Law, § 144.

CAPITITIUM. A covering for the head, mentioned in St. 1 Hen. IV. and other old statutes, which prescribe what dresses shall be worn by all degrees of persons. Jacob.

CAPITULA. Collections of laws and ordinances drawn up under heads of divisions. Spelman.

The term is used in the civil and old English law, and applies to the ecclesiastical law also, meaning chapters or assemblies of ecclesiastical persons. Du Cange.

—Capitula coronæ. Chapters of the crown. Chapters or heads of inquiry, resembling the *capitula itineris*, (*infra*) but of a more minute character.**—Capitula de Judæis.** A register of mortgages made to the Jews. 2 Bl. Comm. 343; Crabb, Eng. Law, 130, et seq.**—Capitula itineris.** Articles of inquiry which were anciently delivered to the justices in eyre when they set out on their circuits. These schedules were designed to include all possible varieties of crime. 2 Reeve, Eng. Law, p. 4, c. 8.**—Capitula ruralia.** Assemblies or chapters, held by rural deans and parochial clergy, within the precinct of every deanery; which at first were every three weeks, afterwards once a month, and subsequently once a quarter. Cowell.

CAPITULARY. In French law. A collection and code of the laws and ordinances promulgated by the kings of the Merovingian and Carlovingian dynasties.

Any orderly and systematic collection or code of laws.

In ecclesiastical law. A collection of laws and ordinances orderly arranged by divisions. A book containing the beginning and end of each Gospel which is to be read every day in the ceremony of saying mass. Du Cange.

CAPITULATION. In military law. The surrender of a fort or fortified town to a besieging army; the treaty or agreement between the commanding officers which embodies the terms and conditions on which the surrender is made.

In the civil law. An agreement by which the prince and the people, or those who have the right of the people, regulate the manner in which the government is to be administered. Wolffius, § 989.

CAPITULI AGRI. Head-fields; lands lying at the head or upper end of furrows etc.

Capitulum est clericorum congregatio sub uno decano in ecclesia cathedrali. A chapter is a congregation of clergy under one dean in a cathedral church. Co. Litt. 98.

CAPPA. In old records. A cap. *Cappa honoris*, the cap of honor. One of the solemnities or ceremonies of creating an earl or marquis.

CAPTAIN. A head-man; commander; commanding officer. The captain of a war-vessel is the officer first in command. In the United States navy, the rank of "captain" is intermediate between that of "commander" and "commodore." The governor or controlling officer of a vessel in the merchant service is usually styled "captain" by the inferior officers and seamen, but in maritime business and admiralty law is more commonly designated as "master." In foreign jurisprudence his title is often that of "patron." In the United States army (and the militia) the captain is the commander of a company of soldiers, one of the divisions of a regiment. The term is also used to designate the commander of a squad of municipal police.

The "captain of the watch" on a vessel is a kind of foreman or overseer, who, under the supervision of the mate, has charge of one of the two watches into which the crew is divided for the convenience of work. He calls them out and in, and directs them where to store freight, which packages to move, when to go or come ashore, and generally directs their work, and is an "officer" of the vessel within the meaning of statutes regulating the conduct of officers to the seamen. U. S. v. Trice (D. C.) 30 Fed. 491.

CAPTATION. In French law. The act of one who succeeds in controlling the will of another, so as to become master of it; used in an invidious sense. Zerega v. Percival, 46 La. Ann. 590, 15 South. 476.

CAPTATOR. A person who obtains a gift or legacy through artifice.

CAPTIO. In old English law and practice. A taking or seizure; arrest; receiving; holding of court.

CAPTION. In practice. That part of a legal instrument, as a commission, indictment, etc., which shows where, when, and by what authority it is taken, found, or executed. State v. Sutton, 5 N. C. 281; U. S. v. Beebe, 2 Dak. 292, 11 N. W. 505; State v. Jones, 9 N. J. Law, 365, 17 Am. Dec. 483.

When used with reference to an indictment, caption signifies the style or preamble or commencement of the indictment; when used with reference to a commission, it signifies the certificate to which the commissioners' names are subscribed, declaring when and where it was executed. Brown.

The caption of a pleading, deposition, or other paper connected with a case in court, is the heading or introductory clause which shows the names of the parties, name of the court, number of the case on the docket or calendar, etc.

Also signifies a taking, seizure, or arrest of a person. 2 Salk. 498. The word in this sense is now obsolete in English law.

In Scotch law. Caption is an order to incarcerate a debtor who has disobeyed an order, given to him by what are called "letters of horning," to pay a debt or to perform some act enjoined thereby. Bell.

CAPTIVES. Prisoners of war. As in the goods of an enemy, so also in his person, a sort of qualified property may be acquired, by taking him a prisoner of war, at least till his ransom be paid. 2 Bl. Comm. 402.

CAPTOR. In international law. One who takes or seizes property in time of war; one who takes the property of an enemy. In a stricter sense, one who takes a prize at sea. 2 Bl. Comm. 401; 1 Kent, Comm. 86, 96, 103.

CAPTURE. In international law. The taking or wresting of property from one of two belligerents by the other. It occurs either on land or at sea. In the former case, the property captured is called "booty;" in the latter case, "prize."

Capture, in technical language, is a taking by military power; a seizure is a taking by civil authority. U. S. v. Athens Armory, 35 Ga. 344, Fed. Cas. No. 14,473.

In some cases, this is a mode of acquiring property. Thus, every one may, as a general rule, on his own land, or on the sea, capture any wild animal, and acquire a qualified ownership in it by confining it, or absolute ownership by killing it. 2 Steph. Comm. 79.

CAPUT. A head; the head of a person; the whole person; the life of a person; one's personality; *status;* civil condition.

At common law. A head.

Caput comitatis, the head of the county; the sheriff; the king. Spelman.

A person; a life. The upper part of a town. Cowell. A castle. Spelman.

In the civil law. It signified a person's civil condition or *status,* and among the Romans consisted of three component parts or elements,—*libertas,* liberty; *civitas,* citizenship; and *familia,* family.

—Capitis æstimatio. In Saxon law. The estimation or value of the head, that is, the price or value of a man's life.—**Caput anni.** The first day of the year.—**Caput baroniæ.** The castle or chief seat of a baron.—**Caput jejunii.** The beginning of the Lent fast, *i. e.,* Ash Wednesday.—**Caput loci.** The head or upper part of a place.—**Caput lupinum.** In old English law. A wolf's head. An outlawed felon was said to be *caput lupinum,* and might be knocked on the head, like a wolf.—**Caput mortuum.** A dead head; dead; obsolete.—**Caput portus.** In old English law. The head of a port. The town to which a port belongs, and which gives the denomination to the port, and is the head of it. Hale de Jure Mar. pt. 2, (*de portubus maris,*) c. 2.—**Caput, principium, et finis.** The head, beginning, and end. A term applied in English law to the king, as head of parliament. 4 Inst. 3; 1 Bl. Comm. 188.

CAPUTAGIUM. In old English law. Head or poll money, or the payment of it. Cowell; Blount.

CAPUTIUM. In old English law. A head of land; a headland. Cowell.

CARABUS. In old English law. A kind of raft or boat. Spelman.

CARAT. A measure of weight for diamonds and other precious stones, equivalent to three and one-sixth grains Troy, though divided by jewelers into four parts called "diamond grains." Also a standard of fineness of gold, twenty-four carats being conventionally taken as expressing absolute purity, and the proportion of gold to alloy in a mixture being represented as so many carats.

CARCAN. In French law. An instrument of punishment, somewhat resembling a pillory. It sometimes signifies the punishment itself. Biret, Vocab.

CARCANUM. A gaol; a prison.

CARCARE. In old English law. To load; to load a vessel; to freight.

CARCATUS. Loaded; freighted, as a ship.

CARCEL-AGE. Gaol-dues; prison-fees.

CARCER. A prison or gaol. Strictly, a place of detention and safe-keeping, and not of punishment. Co. Litt. 620.

Carcer ad homines custodiendos, non ad puniendos, dari debet. A prison should be used for keeping persons, not for punishing them. Co. Litt. 260*a*.

Carcer non supplicii causâ sed custodiæ constitutus. A prison is ordained not for the sake of punishment, but of detention and guarding. Lofft, 119.

CARDINAL. In ecclesiastical law. A dignitary of the court of Rome, next in rank to the pope.

CARDS. In criminal law. Small papers or pasteboards of an oblong or rectangular shape, on which are printed figures or points, used in playing certain games. See Estes v. State, 2 Humph. (Tenn.) 496; Commonwealth v. Arnold, 4 Pick. (Mass.) 251; State v. Herryford, 19 Mo. 377; State v. Lewis, 12 Wis. 434.

CARE. As a legal term, this word means diligence, prudence, discretion, attentiveness, watchfulness, vigilance. It is the opposite of negligence or carelessness.

There are three degrees of care in the law, corresponding (inversely) to the three degrees of negligence, viz.: slight care, ordinary care, and great care.

The exact boundaries between the several degrees of care, and their correlative degrees of carelessness, or negligence, are not always clearly defined or easily pointed out. We think, however, that by "ordinary care" is meant that degree of care which may reasonably be expected from a person in the party's situation,—that is, "reasonable care;" and that "gross negligence" imports not a malicious intention or design to produce a particular injury, but a thoughtless disregard of consequences, the absence, rather than the actual exercise, of volition with reference to results. Neal v. Gillett, 23 Conn. 443.

Slight care is such as persons of ordinary prudence usually exercise about their own affairs of slight importance. Rev. Codes N. D. 1899, § 5109; Rev. St. Okl. 1903, § 2782. Or it is that degree of care which a person exercises about his own concerns, though he may be a person of less than common prudence or of careless and inattentive disposition. Litchfield v. White, 7 N. Y. 442, 57 Am. Dec. 534; Bank v. Guilmartin, 93 Ga. 503, 21 S. E. 55, 44 Am. St. Rep. 182.

Ordinary care is that degree of care which persons of ordinary care and prudence are accustomed to use and employ, under the same or similar circumstances, in order to conduct the enterprise in which they are engaged to a safe and successful termination having due regard to the rights of others and the objects to be accomplished. Gunn v. Railroad Co., 36 W. Va. 165, 14 S. E. 465, 32 Am. St. Rep. 842; Sullivan v. Scripture, 3 Allen (Mass.) 566; Osborn v. Woodford, 31 Kan. 290, 1 Pac. 548; Railroad Co. v. Terry, 8 Ohio St. 570; Railroad Co. v. McCoy, 81 Ky. 403; Railroad Co. v. Howard, 79 Ga. 44, 3 S. E. 426; Paden v. Van Blarcom, 100 Mo. App. 185, 74 S. W. 124.

Great care is such as persons of ordinary prudence usually exercise about affairs of their

own which are of great importance; or it is that degree of care usually bestowed upon the matter in hand by the most competent, prudent, and careful persons having to do with the particular subject. Railway Co. v. Rollins, 5 Kan. 180; Litchfield v. White, 7 N. Y. 442, 57 Am. Dec. 534; Railway Co. v. Smith, 87 Tex. 348, 28 S. W. 520; Telegraph Co. v. Cook, 61 Fed. 628, 9 C. C. A. 680.

Reasonable care is such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject-matter, and the circumstances surrounding the transaction. "Reasonable care and skill" is a relative phrase, and, in its application as a rule or measure of duty, will vary in its requirements, according to the circumstances under which the care and skill are to be exerted. See Johnson v. Hudson River R. Co. 6 Duer (N. Y.) 646; Cunningham v. Hall, 4 Allen (Mass.) 276; Dexter v. McCready, 54 Conn. 171, 5 Atl. 855; Appel v. Eaton & Price Co., 97 Mo. App. 428, 71 S. W. 741; Illinois Cent. R. Co. v. Noble, 142 Ill. 578, 32 N. E. 684.

CARENA. A term used in the old ecclesiastical law to denote a period of forty days.

CARENCE. In French law. Lack of assets; insolvency. A *procès-verbal de carence* is a document setting out that the *huissier* attended to issue execution upon a judgment, but found nothing upon which to levy. Arg. Fr. Merc. Law, 547.

CARETA, (spelled, also, *Carreta* and *Carecta.*) A cart; a cart-load.

CARETORIUS, or CARECTARIUS. A carter. Blount.

CARGA. In Spanish law. An incumbrance; a charge. White, New Recop. b. 2, tit. 13, c. 2, § 2.

CARGAISON. In French commercial law. Cargo; lading.

CARGARE. In old English law. To charge. Spelman.

CARGO. In mercantile law. The load or lading of a vessel; goods and merchandise put on board a ship to be carried to a certain port.

The lading or freight of a ship; the goods, merchandise, or whatever is conveyed in a ship or other merchant vessel. Seamans v. Loring, 21 Fed. Cas. 920; Wolcott v. Insurance Co., 4 Pick. (Mass.) 429; Macy v. Insurance Co., 9 Metc. (Mass.) 366; Thwing v. Insurance Co., 103 Mass. 401, 4 Am. Rep. 567.

A cargo is the loading of a ship or other vessel, the bulk of which is to be ascertained from the capacity of the ship or vessel. The word embraces all that the vessel is capable of carrying. Flanagan v. Demarest, 3 Rob. (N. Y.) 173.

The term may be applied in such a sense as to include passengers, as well as freight, but in a technical sense it designates goods only.

CARIAGIUM. In old English law. Carriage; the carrying of goods or other things for the king.

CARISTIA. Dearth, scarcity, dearness. Cowell.

CARK. In old English law. A quantity of wool, whereof thirty make a sarplar. (The latter is equal to 2,240 pounds in weight.) St. 27 Hen. VI. c. 2. Jacob.

CARLISLE TABLES. Life and annuity tables, compiled at Carlisle, England, about 1780. Used by actuaries, etc.

CARMEN. In the Roman law. Literally, a verse or song. A formula or form of words used on various occasions, as of divorce. Tayl. Civil Law, 349.

CARNAL. Of the body; relating to the body; fleshly; sexual.

—Carnal knowledge. The act of a man in having sexual bodily connection with a woman. Carnal knowledge and sexual intercourse held equivalent expressions. Noble v. State, 22 Ohio St. 541. From very early times, in the law, as in common speech, the meaning of the words "carnal knowledge" of a woman by a man has been sexual bodily connection; and these words, without more, have been used in that sense by writers of the highest authority on criminal law, when undertaking to give a full and precise definition of the crime of rape, the highest crime of this character. Com. v. Squires, 97 Mass. 61.

CARNALITER. In old criminal law. Carnally. *Carnaliter cognovit,* carnally knew. Technical words in indictments for rape, and held essential. 1 Hale, P. C. 637–639.

CARNALLY KNEW. In pleading. A technical phrase essential in an indictment to charge the defendant with the crime of rape.

CARNO. In old English law. An immunity or privilege. Cowell.

CAROOME. In English law. A license by the lord mayor of London to keep a cart.

CARPEMEALS. Cloth made in the northern parts of England, of a coarse kind, mentioned in 7 Jac. I. c. 16. Jacob.

CARRERA. In Spanish law. A carriage-way; the right of a carriage-way. Las Partidas, pt. 3, tit. 31, l. 3.

CARRIAGE. A vehicle used for the transportation of persons either for pleasure or business, and drawn by horses or other draught animals over the ordinary streets and highways of the country; not including cars used exclusively upon railroads or street railroads expressly constructed for the use of such cars. Snyder v. North Lawrence, 8

Kan. 84; Conway v. Jefferson, 46 N. H. 526; Turnpike Co. v. Marshall, 11 Conn. 190; Cream City R. Co. v. Chicago, etc., R. Co., 63 Wis. 93, 23 N. W. 425, 53 Am. Rep. 267; Isaacs v. Railroad Co., 47 N. Y. 122, 7 Am. Rep. 418.

The act of carrying, or a contract for transportation of persons or goods.

The contract of carriage is a contract for the conveyance of property, persons, or messages from one place to another. Civ. Code Cal. § 2085; Civ. Code Dak. § 1208.

CARRICLE, or CARRACLE. A ship of great burden.

CARRIER. One who undertakes to transport persons or property from place to place, by any means of conveyance, and with or without compensation.

—Common and private carriers. Carriers are either common or private. Private carriers are persons who undertake for the transportation in a particular instance only, not making it their vocation, nor holding themselves out to the public as ready to act for all who desire their services. Allen v. Sackrider, 37 N. Y. 341. To bring a person within the description of a common carrier, he must exercise it as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to transport goods for hire, as a business, not as a casual occupation, *pro hâc vice*. Alexander v. Greene, 7 Hill (N. Y.) 564; Bell v. Pidgeon, (D. C.) 5 Fed. 634; Wyatt v. Irr. Co., 1 Colo. App. 480, 29 Pac. 906. A common carrier may therefore be defined as one who, by virtue of his calling and as a regular business, undertakes for hire to transport persons or commodities from place to place, offering his services to all such as may choose to employ him and pay his charges. Iron Works v. Hurlbut, 158 N. Y. 34, 52 N. E. 665, 70 Am. St. Rep. 432; Dwight v. Brewster, 1 Pick. (Mass.) 53, 11 Am. Dec. 133; Railroad Co. v. Waterbury Button Co., 24 Conn. 479; Fuller v. Bradley, 25 Pa. 120; McDuffee v. Railroad Co., 52 N. H. 447, 13 Am. Rep. 72; Piedmont Mfg. Co. v. Railroad Co., 19 S. C. 364. By statute in several states it is declared that every one who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry. Civ. Code Cal. § 2168; Civ. Code Mont. § 2870; Rev. St. Okl. 1903, § 700; Rev. Codes N. D. 1899, § 4224; Civ. Code S. D. 1903, § 1577. Common carriers are of two kinds,—by *land*, as owners of stages, stage-wagons, railroad cars, teamsters, cartmen, draymen, and porters; and by *water*, as owners of ships, steam-boats, barges, ferrymen, lightermen, and canal boatmen. 2 Kent, Comm. 597.**—Common carriers of passengers.** Common carriers of passengers are such as undertake for hire to carry all persons indifferently who may apply for passage. Gillingham v. Railroad Co., 35 W. Va. 588, 14 S. E. 243, 14 L. R. A. 798, 29 Am. St. Rep. 827; Electric Co. v. Simon, 20 Or. 60, 25 Pac. 147, 10 L. R. A. 251, 23 Am. St. Rep. 86; Richmond v. Southern Pac. Co., 41 Or. 54, 67 Pac. 947, 57 L. R. A. 616, 93 Am. St. Rep. 694.

CARRY. To bear, bear about, sustain, transport, remove, or convey.

—Carry away. In criminal law. The act of removal or asportation, by which the crime of larceny is completed, and which is essential to constitute it. Com. v. Adams, 7 Gray (Mass.) 45; Com. v. Pratt, 132 Mass. 246; Gettinger v. State, 13 Neb. 308, 14 N. W. 403.**—Carry arms or weapons.** To wear, bear, or carry them upon the person or in the clothing or in a pocket, for the purpose of use, or for the purpose of being armed and ready for offensive or defensive action in case of a conflict with another person. State v. Carter, 36 Tex. 89; State v. Roberts, 39 Mo. App. 47; State v. Murray, 39 Mo. App. 128; Moorefield v. State, 5 Lea (Tenn.) 348; Owen v. State, 31 Ala. 389. **—Carry costs.** A verdict is said to carry costs when the party for whom the verdict is given becomes entitled to the payment of his costs as incident to such verdict.**—Carry on business.** To prosecute or pursue a particular avocation or form of business as a continuous and permanent occupation and substantial employment. A single act or business transaction is not sufficient, but the systematic and habitual repetition of the same act may be. Dry Goods Co. v. Lester, 60 Ark. 120, 29 S. W. 34, 27 L. R. A. 505, 46 Am. St. Rep. 162; State v. Tolman, 106 La. 662, 31 South. 320; Holmes v. Holmes, 40 Conn. 120; Railroad Co. v. Attalla, 118 Ala. 362, 24 South. 450; Territory v. Harris, 8 Mont. 140, 19 Pac. 286; Sangster v. Kay, 5 Exch. 386; Lawson v. State, 55 Ala. 118; Abel v. State, 90 Ala. 633, 8 South. 760; State v. Shipley, 98 Md. 657, 57 Atl. 12.**—Carry stock.** To provide funds or credit for its payment for the period agreed upon from the date of purchase. Saltus v. Genin, 16 N. Y. Super. Ct. 260. And see Pickering v. Demerritt, 100 Mass. 421.

CART. A carriage for luggage or burden, with two wheels, as distinguished from a wagon, which has four wheels. The vehicle in which criminals are taken to execution.

This word, in its ordinary and primary acceptation, signifies a carriage with two wheels; yet it has also a more extended signification, and may mean a carriage in general. Favers v. Glass, 22 Ala. 624, 58 Am. Dec. 272.

CART BOTE. Wood or timber which a tenant is allowed by law to take from an estate, for the purpose of repairing instruments, (including necessary vehicles,) of husbandry. 2 Bl. Comm. 35.

CARTA. In old English law. A charter, or deed. Any written instrument.

In Spanish law. A letter; a deed; a power of attorney. Las Partidas, pt. 3, tit. 18, l. 30.

CARTA DE FORESTA. In old English law. The charter of the forest. More commonly called "*Charta de Foresta*," (*q. v.*)

CARTE. In French marine law. A chart.

CARTE BLANCHE. A white sheet of paper; an instrument signed, but otherwise left blank. A sheet given to an agent, with the principal's signature appended, to be filled up with any contract or engagement as the agent may see fit. Hence, metaphorically, unlimited authority.

CARTEL. An agreement between two hostile powers for the delivery of prisoners

or deserters. Also a written challenge to fight a duel.

—**Cartel-ship.** A vessel commissioned in time of war to exchange the prisoners of any two hostile powers; also to carry any particular proposal from one to another. For this reason, the officer who commands her is particularly ordered to carry no cargo, ammunition, or implements of war, except a single gun for the purpose of signals. Crawford v. The William Penn, 6 Fed. Cas. 778.

CARTMEN. Carriers who transport goods and merchandise in carts, usually for short distances, for hire.

CARTULARY. A place where papers or records are kept.

CARUCA, or CARUA. A plow.

CARUCAGE. In old English law. A kind of tax or tribute anciently imposed upon every plow, (*carue* or plow-land,) for the public service. Spelman.

CARUCATA. A certain quantity of land used as the basis for taxation. As much land as may be tilled by a single plow in a year and a day. Also, a team of cattle, or a cart-load.

CARUCATARIUS. One who held lands in *carvage*, or plow-tenure. Cowell.

CARUE. A carve of land; plow-land. Britt. c. 84.

CARVAGE. The name as carucage, (*q. v.*) Cowell.

CARVE. In old English law. A carucate or plow-land.

CAS FORTUIT. Fr. In the law of insurance. A fortuitous event; an inevitable accident.

CASATA. In old English law. A house with land sufficient for the support of one family. Otherwise called "*hida*," a hide of land, and by Bede, "*familia*." Spelman.

CASATUS. A vassal or feudal tenant possessing a *casata;* that is, having a house, household, and property of his own.

CASE. **1.** A general term for an action, cause, suit, or controversy, at law or in equity; a question contested before a court of justice; an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice. Smith v. Waterbury, 54 Conn. 174, 7 Atl. 17; Kundolf v. Thalheimer, 12 N. Y. 596; Gebhard v. Sattler, 40 Iowa, 156.

—**Cases and controversies.** This term, as used in the constitution of the United States, embraces claims or contentions of litigants brought before the court for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs; and whenever the claim or contention of a party takes such a form that the judicial power is capable of acting upon it, it has become a case or controversy. Interstate Commerce Com'n v. Brimson, 154 U. S. 447, 14 Sup. Ct. 1125, 38 L. Ed. 1047; Smith v. Adams, 130 U. S. 167, 9 Sup. Ct. 566, 32 L. Ed. 895; In re Railway Com'n (C. C.) 32 Fed. 255. But these two terms are to be distinguished; for there may be a "separable controversy" within a "case," which may be removed from a state court to a federal court, though the case as a whole is not removable. Snow v. Smith (C. C.) 88 Fed. 658.

2. A statement of the facts involved in a transaction or series of transactions, drawn up in writing in a technical form, for submission to a court or judge for decision or opinion. Under this meaning of the term are included a "case made" for a motion for new trial, a "case reserved" on the trial of a cause, an "agreed case" for decision without trial, etc.

—**Case agreed on.** A formal written enumeration of the facts in a case, assented to by both parties as correct and complete, and submitted to the court by their agreement, in order that a decision may be rendered without a trial, upon the court's conclusions of law upon the facts as stated.—**Case for motion.** In English divorce and probate practice, when a party desires to make a motion, he must file, among other papers, a case for motion, containing an abstract of the proceedings in the suit or action, a statement of the circumstances on which the motion is founded, and the prayer, or nature of the decree or order desired. Browne, Div. 251; Browne, Prob. Pr. 295.—**Case on appeal.** In American practice. Before the argument in the appellate court of a case brought there for review, the appellant's counsel prepares a document or brief, bearing this name, for the information of the court, detailing the testimony and the proceedings below. In English practice. The "case on appeal" is a printed statement prepared by each of the parties to an appeal to the house of lords or the privy council, setting out methodically the facts which make up his case, with appropriate references to the evidence printed in the "appendix." The term also denotes a written statement, prepared and transmitted by an inferior court or judge raising a question of law for the opinion of a superior court.—**Case reserved.** A statement in writing of the facts proved on the trial of a cause, drawn up and settled by the attorneys and counsel for the respective parties under the supervision of the judge, for the purpose of having certain points of law, which arose at the trial and could not then be satisfactorily decided, determined upon full argument before the court in *banc*. This is otherwise called a "special case;" and it is usual for the parties, where the law of the case is doubtful, to agree that the jury shall find a general verdict for the plaintiff, subject to the opinion of the court upon such a case to be made, instead of obtaining from the jury a special verdict. 3 Bl. Comm. 378; 3 Steph. Comm. 621; Steph. Pl. 92, 93; 1 Burrill, Pr. 242, 463.—**Case stated.** In practice. An agreement in writing, between a plaintiff and defendant, that the facts in dispute between them are as therein agreed upon and set forth. Diehl v. Ihrie, 3 Whart. (Pa.) 143. A case agreed upon.—**Case to move for new trial.** In practice. A case prepared by the party against whom a verdict has been given, upon which to move the court to set aside the verdict and grant a new trial.

3. A form of action which lies to recover damages for injuries for which the more an-

cient forms of action will not lie. Steph. Pl. 15. An abbreviated form of the title "trespass on the case," *q. v.* Munal v. Brown (C. C.) 70 Fed. 968.

CASE LAW. A professional name for the aggregate of reported cases as forming a body of jurisprudence; or for the law of a particular subject as evidenced or formed by the adjudged cases; in distinction to statutes and other sources of law.

CASH. Ready money; whatever can be used as money without being converted into another form; that which circulates as money, including bank-bills. Hooper v. Flood, 54 Cal. 221; Dazet v. Landry, 21 Nev. 291, 30 Pac. 1064; Blair v. Wilson, 28 Grat. (Va.) 165; Haviland v. Chace, 39 Barb. (N. Y.) 284.

—Cash-account. A record, in book-keeping, of all cash transactions; an account of moneys received and expended.**—Cash-book.** In book-keeping, an account-book in which is kept a record of all cash transactions, or all cash received and expended. The object of the cash-book is to afford a constant facility to ascertain the true state of a man's cash. Pardessus, n. 87.**—Cash-note.** In England. A bank-note of a provincial bank or of the Bank of England. **—Cash-price.** A price payable in cash at the time of sale of property, in opposition to a barter or a sale on credit.**—Cash value.** The cash value of an article or piece of property is the price which it would bring at private sale (as distinguished from a forced or auction sale) the terms of sale requiring the payment of the whole price in ready money, with no deferred payments. Ankeny v. Blakley, 44 Or. 78, 74 Pac. 485; State v. Railway Co., 10 Nev. 68; Tax Com'rs v. Holliday, 150 Ind. 216, 49 N. E. 14, 42 L. R. A. 826; Cummings v. Bank, 101 U. S. 162, 25 L. Ed. 903.

CASHIER, *n.* An officer of a moneyed institution, or commercial house, or bank, who is intrusted with, and whose duty it is to take care of, the cash or money of such institution or bank.

The cashier of a bank is the executive officer, through whom the whole financial operations of the bank are conducted. He receives and pays out its moneys, collects and pays its debts, and receives and transfers its commercial securities. Tellers and other subordinate officers may be appointed, but they are under his direction, and are, as it were, the arms by which designated portions of his various functions are discharged. The directors may limit his authority as they deem proper, but this would not affect those to whom the limitation was unknown. Merchants' Nat. Bank v. State Nat. Bank, 10 Wall. 650, 19 L. Ed. 1008.

CASHIER, *v.* In military law. To deprive a military officer of his rank and office.

CASHLITE. An amercement or fine; a mulct.

CASSARE. To quash; to render void; to break.

CASSATION. In French law. Annulling; reversal; breaking the force and validity of a judgment. A decision emanating from the sovereign authority, by which a decree or judgment in the court of last resort is broken or annulled. Merl. Repert.

CASSATION, COURT OF. (Fr. *cour de cassation.*) The highest court in France; so termed from possessing the power to quash (*casser*) the decrees of inferior courts. It is a court of appeal in criminal as well as civil cases.

CASSETUR BILLA. (Lat. That the bill be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by bill, (*billa.*) 3 Bl. Comm. 303; Steph. Pl. 128, 131. The form of an entry made by a plaintiff on the record, after a plea in abatement, where he found that the plea could not be confessed and avoided, nor traversed, nor demurred to; amounting in fact to a discontinuance of the action. 2 Archb. Pr. K. B. 3, 236; 1 Tidd, Pr. 683.

CASSETUR BREVE. (Lat. That the writ be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by original writ, (*breve.*) 3 Bl. Comm. 303; Steph. Pl. 107, 109.

CASSOCK, or CASSULA. A garment worn by a priest.

CAST, *v.* In old English practice. To allege, offer, or present; to proffer by way of excuse, (as to "cast an essoin.")

This word is now used as a popular, rather than a technical, term, in the sense of to overcome, overthrow, or defeat in a civil action at law.

—Cast away. To cast away a ship is to do such an act upon or in regard to it as causes it to perish or be lost, so as to be irrecoverable by ordinary means. The term is synonymous with "destroy," which means to unfit a vessel for service beyond the hope of recovery by ordinary means. U. S. v. Johns, 26 Fed. Cas. 616; U. S. v. Vanranst, 28 Fed. Cas. 360.

CAST, *p. p.* Overthrown, worsted, or defeated in an action.

CASTEL, or CASTLE. A fortress in a town; the principal mansion of a nobleman. 3 Inst. 31.

CASTELLAIN. In old English law. The lord, owner, or captain of a castle; the constable of a fortified house; a person having the custody of one of the crown mansions; an officer of the forest.

CASTELLANUS. A castellain; the keeper or constable of a castle. Spelman.

CASTELLARIUM, CASTELLATUS. In old English law. The precinct or jurisdiction of a castle. Blount.

CASTELLORUM OPERATIO. In Saxon and old English law. Castle work. Service and labor done by inferior tenants for the building and upholding castles and public places of defense. One of the three necessary charges, (*trinoda necessitas,*) to which all lands among the Saxons were expressly subject. Cowell.

CASTIGATORY. An engine used to punish women who have been convicted of being common scolds. It is sometimes called the "trebucket," "tumbrel," "ducking-stool," or "cucking-stool." U. S. v. Royall, 27 Fed. Cas. 907.

CASTING. Offering; alleging by way of excuse. Casting an essoin was alleging an excuse for not appearing in court to answer an action. Holthouse.

CASTING VOTE. Where the votes of a deliberative assembly or legislative body are equally divided on any question or motion, it is the privilege of the presiding officer to cast one vote (if otherwise he would not be entitled to any vote) on either side, or to cast one additional vote, if he has already voted as a member of the body. This is called the "casting vote."

By the common law, a casting vote sometimes signifies the single vote of a person who never votes; but, in the case of an equality, sometimes the double vote of a person who first votes with the rest, and then, upon an equality, creates a majority by giving a second vote. People v. Church of Atonement, 48 Barb. (N. Y.) 606; Brown v. Foster, 88 Me. 49, 33 Atl. 662, 31 L. R. A. 116; Wooster v. Mullins, 64 Conn. 340, 30 Atl. 144, 25 L. R. A. 694.

CASTLEGUARD. In feudal law. An imposition anciently laid upon such persons as lived within a certain distance of any castle, towards the maintenance of such as watched and warded the castle.

—Castleguard rents. In old English law. Rents paid by those that dwelt within the precincts of a castle, towards the maintenance of such as watched and warded it.

CASTRENSIS. In the Roman law. Relating to the camp or military service.

Castrense peculium, a portion of property which a son acquired in war, or from his connection with the camp. Dig. 49, 17.

CASTRUM. Lat. **In Roman law.** A camp.

In old English law. A castle. Bract. fol. 69*b*. A castle, including a manor. 4 Coke, 88.

CASU CONSIMILI. In old English law. A writ of entry, granted where tenant by the curtesy, or tenant for life, alienated in fee, or in tail, or for another's life, which was brought by him in reversion against the party to whom such tenant so alienated to his prejudice, and in the tenant's life-time. Termes de la Ley.

CASU PROVISO. A writ of entry framed under the provisions of the statute of Gloucester, (6 Edw. I.,) c. 7, which lay for the benefit of the reversioner when a tenant in dower aliened in fee or for life.

CASUAL. That which happens accidentally, or is brought about by causes unknown; fortuitous; the result of chance. Lewis v. Lofley, 92 Ga. 804, 19 S. E. 57.

—Casual ejector. In practice. The nominal defendant in an action of ejectment; so called because, by a fiction of law peculiar to that action, he is supposed to come *casually* or by accident upon the premises, and to turn out or eject the lawful possessor. 3 Bl. Comm. 203; 3 Steph. Comm. 670; French v. Robb, 67 N. J. Law, 260, 51 Atl. 509, 57 L. R. A. 956, 91 Am. St. Rep. 433.**—Casual evidence.** A phrase used to denote (in contradistinction to "preappointed evidence") all such evidence as happens to be adducible of a fact or event, but which was not prescribed by statute or otherwise arranged beforehand to be the evidence of the fact or event. Brown.**—Casual pauper.** A poor person who, in England, applies for relief in a parish other than that of his settlement. The ward in the work-house to which they are admitted is called the "casual ward."**—Casual poor.** In English law. Those who are not settled in a parish. Such poor persons as are suddenly taken sick, or meet with some accident, when away from home, and who are thus providentially thrown upon the charities of those among whom they happen to be. Force v. Haines, 17 N. J. Law, 405.

CASUALTY. Inevitable accident; an event not to be foreseen or guarded against. A loss from such an event or cause; as by fire, shipwreck, lightning, etc. Story, Bailm. § 240; Gill v. Fugate, 117 Ky. 257, 78 S. W. 191; McCarty v. Railroad Co., 30 Pa. 251; Railroad Co. v. Car Co., 139 U. S. 79, 11 Sup. Ct. 490, 35 L. Ed. 97; Ennis v. Bldg. Ass'n, 102 Iowa, 520, 71 N. W. 426; Anthony v. Karbach, 64 Neb. 509, 90 N. W. 243, 97 Am. St. Rep. 662.

—Casualties of superiority. In Scotch law. Payments from an inferior to a superior, that is, from a tenant to his lord, which arise upon uncertain events, as opposed to the payment of rent at fixed and stated times. Bell. **—Casualties of wards.** In Scotch law. The mails and duties due to the superior in ward-holdings.

CASUS. Lat. Chance; accident; an event; a case; a case contemplated.

—Casus belli. An occurrence giving rise to or justifying war.**—Casus fœderis.** In international law. The case of the treaty. The particular event or situation contemplated by the treaty, or stipulated for, or which comes within its terms. In commercial law. The case or event contemplated by the parties to an individual contract or stipulated for by it, or coming within its terms.**—Casus fortuitus.** An inevitable accident, a chance occurrence, or fortuitous event. A loss happening in spite of all human effort and sagacity. 3 Kent, Comm. 217, 300; Whart. Neg. §§ 113, 553. The Majestic, 166 U. S. 375, 17 Sup. Ct. 597, 41 L. Ed. 1039. **—Casus major.** In the civil law. A casualty; an extraordinary casualty, as fire, ship-

wreck, etc. Dig. 44, 7, 1, 4.—**Casus omissus.** A case omitted; an event or contingency for which no provision is made; particularly a case not provided for by the statute on the general subject, and which is therefore left to be governed by the common law.

Casus fortuitus non est sperandus, et nemo tenetur devinare. A fortuitous event is not to be expected, and no one is bound to foresee it. 4 Coke, 66.

Casus fortuitus non est supponendus. A fortuitous event is not to be presumed. Hardr. 82, arg.

Casus omissus et oblivioni datus dispositioni juris communis relinquitur. A case omitted and given to oblivion (forgotten) is left to the disposal of the common law. 5 Coke, 38. A particular case, left unprovided for by statute, must be disposed of according to the law as it existed prior to such statute. Broom, Max. 46.

Casus omissus pro omisso habendus est. A case omitted is to be held as (intentionally) omitted. Tray. Lat. Max. 67.

CAT. An instrument with which criminals are flogged. It consists of nine lashes of whip-cord, tied on to a wooden handle.

CATALLA. In old English Law. Chattels. The word among the Normans primarily signified only beasts of husbandry, or, as they are still called, "cattle," but, in a secondary sense, the term was applied to all movables in general, and not only to these, but to whatever was not a fief or feud. Wharton.

—**Catalla otiosa.** Dead goods or chattels, as distinguished from animals. Idle cattle, that is, such as were not used for working, as distinguished from beasts of the plow; called also *animalia otiosa.* Bract. fols. 217, 217*b;* 3 Bl. Comm. 9.

Catalla juste possessa amitti non possunt. Chattels justly possessed cannot be lost. Jenk. Cent. 28.

Catalla reputantur inter minima in lege. Chattels are considered in law among the least things. Jenk. Cent. 52.

CATALLIS CAPTIS NOMINE DISTRICTIONIS. An obsolete writ that lay where a house was within a borough, for rent issuing out of the same, and which warranted the taking of doors, windows, etc., by way of distress.

CATALLIS REDDENDIS. For the return of the chattels; an obsolete writ that lay where goods delivered to a man to keep till a certain day were not upon demand redelivered at the day. Reg. Orig. 39.

CATALLUM. A chattel. Most frequently used in the plural form, *catalla, (q. v.)*

CATALS. Goods and chattels. See CATALLA.

CATANEUS. A tenant *in capite.* A tenant holding immediately of the crown. Spelman.

CATASCOPUS. An old name for an archdeacon.

CATCHING BARGAIN. See BARGAIN.

CATCHINGS. Things caught, and in the possession, custody, power, and dominion of the party, with a present capacity to use them for his own purposes. The term includes blubber, or pieces of whale flesh cut from the whale, and stowed on or under the deck of a ship. A policy of insurance upon outfits, and catchings substituted for the outfits, in a whaling voyage, protects the blubber. Rogers v. Insurance Co., 1 Story, 603; Fed. Cas. No. 12,016; 4 Law Rep. 297.

CATCHLAND. Land in Norfolk, so called because it is not known to what parish it belongs, and the minister who first seizes the tithes of it, by right of preoccupation, enjoys them for that year. Cowell.

CATCHPOLL. A name formerly given to a sheriff's deputy, or to a constable, or other officer whose duty it is to arrest persons. He was a sort of serjeant. The word is not now in use as an official designation. Minshew.

CATER COUSIN. (From Fr. *Quatre-cousin.*) A cousin in the fourth degree; hence any distant or remote relative.

CATHEDRAL. In English ecclesiastical law. The church of the bishop of the diocese, in which is his *cathedra,* or throne, and his special jurisdiction; in that respect the principal church of the diocese.

—**Cathedral preferments.** In English ecclesiastical law. All deaneries, archdeaconries, and canonries, and generally all dignities and offices in any cathedral or collegiate church, below the rank of a bishop.

CATHEDRATIC. In English ecclesiastical law. A sum of 2s. paid to the bishop by the inferior clergy; but from its being usually paid at the bishop's *synod,* or visitation, it is commonly named *synodals.* Wharton.

CATHOLIC CREDITOR. In Scotch law. A creditor whose debt is secured on all or several distinct parts of the debtor's property. Bell.

CATHOLIC EMANCIPATION ACT. The statute of 10 Geo. IV. c. 7, by which Roman Catholics were restored, in general, to the full enjoyment of all civil rights, except that of holding ecclesiastical offices, and certain high appointments in the state. 3 Steph. Comm. 109.

CATONIANA REGULA. In Roman law. The rule which is commonly expressed in the maxim, *Quod ab initio non valet tractu temporis non convalebit*, meaning that what is at the beginning void by reason of some technical (or other) legal defect will not become valid merely by length of time. The rule applied to the institution of *hæredes*, the bequest of legacies, and such like. The rule is not without its application also in English law; *e. g.*, a married woman's will (being void when made) is not made valid merely because she lives to become a widow. Brown.

CATTLE. A term which includes the domestic animals generally; all the animals used by man for labor or food.

Animals of the bovine genus. In a wider sense, all domestic animals used by man for labor or food, including sheep and hogs. Mathews v. State, 39 Tex. Cr. R. 553, 47 S. W. 647; State v. Brookhouse, 10 Wash. 87, 38 Pac. 862; State v. Credle, 91 N. C. 640; State v. Groves, 119 N. C. 822, 25 S. E. 819; First Nat. Bank v. Home Sav. Bank, 21 Wall. 299, 22 L. Ed. 560; U. S. v. Mattock, 26 Fed. Cas. 1208.

—Cattle-gate. In English law. A right to pasture cattle in the land of another. It is a distinct and several interest in the land, passing by lease and release. 13 East, 159; 5 Taunt. 811.**—Cattle-guard.** A device to prevent cattle from straying along a railroad-track at a highway-crossing. Heskett v. Railway Co., 61 Iowa, 467, 16 N. W. 525; Railway Co. v. Manson, 31 Kan. 337, 2 Pac. 800.

CAUDA TERRÆ. A land's end, or the bottom of a ridge in arable land. Cowell.

CAULCEIS. Highroads or ways pitched with flint or other stones.

CAUPO. In the civil law. An innkeeper. Dig. 4, 9, 4, 5.

CAUPONA. In the civil law. An inn or tavern. Inst. 4, 5, 3.

CAUPONES. In the civil law. Innkeepers. Dig. 4, 9; Id. 47, 5; Story, Ag. § 458.

CAURSINES. Italian merchants who came into England in the reign of Henry III., where they established themselves as money lenders, but were soon expelled for their usury and extortion. Cowell; Blount.

CAUCUS. A meeting of the legal voters of any political party assembled for the purpose of choosing delegates or for the nomination of candidates for office. Pub. St. N. H. 1901, p. 140, c. 78, § 1; Rev. Laws Mass. 1902, p. 104, c. 11, § 1.

CAUSA. Lat. **1.** A cause, reason, occasion, motive, or inducement.

2. In the civil law and in old English law. The word signified a source, ground, or mode of acquiring property; hence a title; one's title to property. Thus, *"Titulus est justa causa possidendi id quod nostrum est;"* title is the lawful ground of possessing that which is ours. 8 Coke, 153. See Mackeld. Rom. Law, §§ 242, 283.

3. A condition; a consideration; motive for performing a juristic act. Used of contracts, and found in this sense in the Scotch law also. Bell.

4. In old English law. A cause; a suit or action pending. *Causa testamentaria*, a testamentary cause. *Causa matrimonialis*, a matrimonial cause. Bract. fol. 61.

5. In old European law. Any movable thing or article of property.

6. Used with the force of a preposition, it means by virtue of, on account of. Also with reference to, in contemplation of. *Causa mortis*, in anticipation of death.

—Causa causans. The immediate cause; the last link in the chain of causation.**—Causa data et non secuta.** In the civil law. Consideration given and not followed, that is, by the event upon which it was given. The name of an action by which a thing given in the view of a certain event was reclaimed if that event did not take place. Dig. 12, 4; Cod. 4, 6. **—Causa hospitandi.** For the purpose of being entertained as a guest. 4 Maule & S. 310. **—Causa jactitationis maritagii.** A form of action which anciently lay against a party who boasted or gave out that he or she was married to the plaintiff, whereby a common reputation of their marriage might ensue. 3 Bl. Comm. 93.**—Causa matrimonii prælocuti.** A writ lying where a woman has given lands to a man in fee-simple with the intention that he shall marry her, and he refuses so to do within a reasonable time, upon suitable request. Cowell. Now obsolete. 3 Bl. Comm. 183, note. **—Causa mortis.** In contemplation of approaching death. In view of death. Commonly occurring in the phrase *donatio causa mortis*, (*q. v.*)**—Causa patet.** The reason is open, obvious, plain, clear, or manifest. A common expression in old writers. Perk. c. 1, §§ 11, 14, 97.**—Causa proxima.** The immediate, nearest, or latest cause.**—Causa rei.** In the civil law. The accessions, appurtenances, or fruits of a thing; comprehending all that the claimant of a principal thing can demand from a defendant in addition thereto, and especially what he would have had, if the thing had not been withheld from him. Inst. 4, 17, 3; Mackeld. Rom. Law, § 166.**—Causa remota.** A remote or mediate cause; a cause operating indirectly by the intervention of other causes.**—Causa scientiæ patet.** The reason of the knowledge is evident. A technical phrase in Scotch practice, used in depositions of witnesses.**—Causa sine qua non.** A necessary or inevitable cause; a cause without which the effect in question could not have happened. Hayes v. Railroad Co., 111 U. S. 228, 4 Sup. Ct. 369, 28 L. Ed. 410.**—Causa turpis.** A base (immoral or illegal) cause or consideration.

Causa causæ est causa causati. The cause of a cause is the cause of the thing caused. 12 Mod. 639. The cause of the cause is to be considered as the cause of the effect also.

Causa causantis, causa est causati. The cause of the thing causing is the cause

of the effect. 4 Camp. 284; Marble v. City of Worcester, 4 Gray (Mass.) 398.

Causa ecclesiæ publicis æquiparatur; et summa est ratio quæ pro religione facit. The cause of the church is equal to public cause; and paramount is the reason which makes for religion. Co. Litt. 341.

Causa et origo est materia negotii. The cause and origin is the substance of the thing; the cause and origin of a thing are a material part of it. The law regards the original act. 1 Coke, 99.

Causa proxima, non remota, spectatur. The immediate, not the remote, cause, is looked at, or considered. 12 East, 648; 3 Kent, Comm. 302; Story, Bailm. § 515; Bac. Max. reg. 1.

Causa vaga et incerta non est causa rationabilis. 5 Coke, 57. A vague and uncertain cause is not a reasonable cause.

Causæ dotis, vitæ, libertatis, fisci sunt inter favorabilia in lege. Causes of dower, life, liberty, revenue, are among the things favored in law. Co. Litt. 341.

CAUSAM NOBIS SIGNIFICES QUARE. A writ addressed to a mayor of a town, etc., who was by the king's writ commanded to give seisin of lands to the king's grantee, on his delaying to do it, requiring him to show cause why he so delayed the performance of his duty. Blount; Cowell.

CAUSARE. In the civil and old English law. To be engaged in a suit; to litigate; to conduct a cause.

CAUSATOR. In old European law. One who manages or litigates another's cause. Spelman.

CAUSE. That which produces an effect; whatever moves, impels, or leads. The origin or foundation of a thing, as of a suit or action; a ground of action. Corning v. McCullough, 1 N. Y. 47, 49 Am. Dec. 287; State v. Dougherty, 4 Or. 203.

The consideration of a contract, that is, the inducement to it, or motive of the contracting party for entering into it, is, in the civil and Scotch law, called the "cause."

The civilians use the term "cause," in relation to obligations, in the same sense as the word "consideration" is used in the jurisprudence of England and the United States. It means the motive, the inducement to the agreement,—*id quod inducet ad contrahendum.* In contracts of mutual interest, the cause of the engagement is the thing given or done, or engaged to be given or done, or the risk incurred by one of the parties. Mouton v. Noble, 1 La. Ann. 192.

In pleading. Reason; motive; matter of excuse or justification.

In practice. A suit, litigation, or action. Any question, civil or criminal, contested before a court of justice.

Cause imports a judicial proceeding entire, and is nearly synonymous with *lis* in Latin, or suit in English. Although allied to the word "case," it differs from it in the application of its meaning. A cause is pending, postponed, appealed, gained, lost, etc.; whereas a case is made, rested, argued, decided, etc. Case is of a more limited signification, importing a collection of facts, with the conclusion of law thereon. Both terms may be used with propriety in the same sentence; *e. g.*, on the trial of the *cause*, the plaintiff introduced certain evidence, and there rested his *case*. See Shirts v. Irons, 47 Ind. 445; Blyew v. U. S., 13 Wall. 581, 20 L. Ed. 638; Erwin v. U. S., 37 Fed. 470, 2 L. R. A. 229.

A distinction is sometimes taken between "cause" and "action." Burrill observes that a cause is not, like an action or suit, said to be commenced, nor is an action, like a cause, said to be tried. But, if there is any substantial difference between these terms, it must lie in the fact that "action" refers more peculiarly to the *legal procedure* of a controversy; "cause" to its *merits* or the state of facts involved. Thus, we cannot say "the *cause* should have been replevin." Nor would it be correct to say "the plaintiff pleaded his own *action*."

As to "Probable Cause" and "Proximate Cause," see those titles. As to challenge "for cause," see "Challenge."

CAUSE-BOOKS. Books kept in the central office of the English supreme court, in which are entered all writs of summons issued in the office. Rules of Court, v 8.

CAUSE LIST. In English practice. A printed roll of actions, to be tried in the order of their entry, with the names of the solicitors for each litigant. Similar to the calendar of causes, or docket, used in American courts.

CAUSE OF ACTION. Matter for which an action may be brought. The ground on which an action may be sustained. The right to bring a suit.

Cause of action is properly the ground on which an action can be maintained; as when we say that such a person has no cause of action. But the phrase is often used to signify the matter of the complaint or claim on which a given action is in fact grounded, whether or not legally maintainable. Mozley & Whitley.

It sometimes means a person having a right of action. Thus, where a legacy is left to a married woman, and she and her husband bring an action to recover it, she is called in the old books the "meritorious cause of action." 1 H. Bl. 108.

The term is synonymous with right of action, right of recovery. Graham v. Scripture, 26 How. Prac. (N. Y.) 501.

Cause of action is not synonymous with chose in action; the latter includes debts, etc., not due, and even stocks. Bank of Commerce v. Rutland & W. R. Co., 10 How. Prac. (N. Y.) 1.

CAUSES CÉLÈBRES. Celebrated cases. A work containing reports of the decisions of interest and importance in French courts in the seventeenth and eighteenth centuries.

Secondarily a single trial or decision is

often called a "*cause célèbre*," when it is remarkable on account of the parties involved or the unusual, interesting, or sensational character of the facts.

CAUSIDICUS. In the civil law. A pleader; one who argued a cause *ore tenus*.

CAUTELA. Lat. Care; caution; vigilance; prevision.

CAUTIO. In the civil and French law. Security given for the performance of any thing; bail; a bond or undertaking by way of surety. Also the person who becomes a surety.

In Scotch law. A pledge, bond, or other security for the performance of an obligation, or completion of the satisfaction to be obtained by a judicial process. Bell.

—Cautio fidejussoria. Security by means of bonds or pledges entered into by third parties. Du Cange.—**Cautio Muciana.** Security given by an heir or legatee, in order to obtain immediate possession of the inheritance or legacy, binding him and his surety for his observance of a condition annexed to the bequest, where the act which is the object of the condition is one which he must avoid committing during his whole life, *e. g.*, that he will never marry, never leave the country, never engage in a particular trade, etc. See Mackeld. Rom. Law, § 705.—**Cautio pignoratitia.** Security given by pledge, or deposit, as plate, money, or other goods.—**Cautio pro expensis.** Security for costs, charges, or expenses.—**Cautio usufructuaria.** Security, which tenants for life give, to preserve the property rented free from waste and injury. Ersk. Inst. 2, 9, 59.

CAUTION. In Scotch law, and in admiralty law. Surety; security; bail; an undertaking by way of surety. 6 Mod. 162. See CAUTIO.

—Caution juratory. In Scotch law. Security given by oath. That which a suspender swears is the best he can afford in order to obtain a suspension. Ersk. Pract. 4, 3, 6.

CAUTIONARY. In Scotch law. An instrument in which a person binds himself as surety for another.

CAUTIONE ADMITTENDA. In English ecclesiastical law. A writ that lies against a bishop who holds an excommunicated person in prison for contempt, notwithstanding he offers sufficient caution or security to obey the orders and commandment of the church for the future. Reg. Orig. 66; Cowell.

CAUTIONER. In Scotch law. A surety; a bondsman. One who binds himself in a bond with the principal for greater security. He is still a cautioner whether the bond be to pay a debt, or whether he undertake to produce the person of the party for whom he is bound. Bell.

CAUTIONNEMENT. In French law. The same as becoming surety in English law.

CAUTIONRY. In Scotch law. Suretyship.

CAVEAT. Lat. Let him beware. A formal notice or warning given by a party interested to a court, judge, or ministerial officer against the performance of certain acts within his power and jurisdiction. This process may be used in the proper courts to prevent (temporarily or provisionally) the proving of a will or the grant of administration, or to arrest the enrollment of a decree in chancery when the party intends to take an appeal, to prevent the grant of letters patent, etc. It is also used, in the American practice, as a kind of equitable process, to stay the granting of a patent for lands. Wilson v. Gaston, 92 Pa. 207; Slocum v. Grandin, 38 N. J. Eq. 485; Ex parte Crafts, 28 S. C. 281, 5 S. E. 718; In re Miller's Estate, 166 Pa. 97, 31 Atl. 58.

In patent law. A caveat is a formal written notice given to the officers of the patent-office, requiring them to refuse letters patent on a particular invention or device to any other person, until the party filing the caveat (called the "caveator") shall have an opportunity to establish his claim to priority of invention.

CAVEAT ACTOR. Let the doer, or actor, beware.

CAVEAT EMPTOR. Let the buyer take care. This maxim summarizes the rule that the purchaser of an article must examine, judge, and test it for himself, being bound to discover any obvious defects or imperfections. Miller v. Tiffany, 1 Wall. 309, 17 L. Ed. 540; Barnard v. Kellogg, 10 Wall. 388, 19 L. Ed. 987; Slaughter v. Gerson, 13 Wall. 383, 20 L. Ed. 627; Hargous v. Stone, 5 N. Y. 82; Wissler v. Craig, 80 Va. 32; Wright v. Hart, 18 Wend. (N. Y.) 453.

Caveat emptor, qui ignorare non debuit quod jus alienum emit. Hob. 99. Let a purchaser beware, who ought not to be ignorant that he is purchasing the rights of another.

CAVEAT VENDITOR. In Roman law. A maxim, or rule, casting the responsibility for defects or deficiencies upon the *seller* of goods, and expressing the exact opposite of the common law rule of *caveat emptor*. See Wright v. Hart, 18 Wend. (N. Y.) 449.

In English and American jurisprudence. *Caveat venditor* is sometimes used as expressing, in a rough way, the rule which governs all those cases of sales to which *caveat emptor* does not apply.

CAVEAT VIATOR. Let the traveler beware. This phrase has been used as a concise expression of the duty of a traveler on the highway to use due care to detect and avoid

defects in the way. Cornwell v. Com'rs, 10 Exch. 771, 774.

CAVEATOR. One who files a caveat.

Cavendum est a fragmentis. Beware of fragments. Bac. Aph. 26.

CAVERE. Lat. In the civil and common law. To take care; to exercise caution; to take care or provide for; to provide by law; to provide against; to forbid by law; to give security; to give caution or security on arrest.

CAVERS. Persons stealing ore from mines in Derbyshire, punishable in the berghmote or miners' court; also officers belonging to the same mines. Wharton.

CAYA. In old English law. A quay, kay, key, or wharf. Cowell.

CAYAGIUM. In old English law. Cayage or kayage; a toll or duty anciently paid for landing goods at a quay or wharf. Cowell.

CEAP. A bargain; anything for sale; a chattel; also cattle, as being the usual medium of barter. Sometimes used instead of ceapgild, (*q. v.*)

CEAPGILD. Payment or forfeiture of an animal. An ancient species of forfeiture.

CEDE. To yield up; to assign; to grant. Generally used to designate the transfer of territory from one government to another. Goetz v. United States (C. C.) 103 Fed. 72; Baltimore v. Turnpike Road, 80 Md. 535, 31 Atl. 420; Somers v. Pierson, 16 N. J. Law, 181.

CEDENT. In Scotch law. An assignor. One who transfers a chose in action.

CEDO. I grant. The word ordinarily used in Mexican conveyances to pass title to lands. Mulford v. Le Franc, 26 Cal. 88, 108.

CEDULA. **In old English law.** A schedule.

In Spanish law. An act under private signature, by which a debtor admits the amount of the debt, and binds himself to discharge the same on a specified day or on demand.

Also the notice or citation affixed to the door of a fugitive criminal requiring him to appear before the court where the accusation is pending.

CEDULE. In French law. The technical name of an act under private signature. Campbell v. Nicholson, 3 La. Ann. 458.

CELATION. In medical jurisprudence. Concealment of pregnancy or delivery.

CELDRA. In old English law, a chaldron. In old Scotch law, a measure of grain, otherwise called a "chalder." See 1 Kames, Eq. 215.

CELEBRATION OF MARRIAGE. The formal act by which a man and woman take each other for husband and wife, according to law; the solemnization of a marriage. The term is usually applied to a marriage ceremony attended with ecclesiastical functions. See Pearson v. Howey, 11 N. J. Law, 19.

CELIBACY. The condition or state of life of an unmarried person.

CELLERARIUS. A butler in a monastery; sometimes in universities called "manciple" or "caterer."

CEMETERY. A place of burial, differing from a churchyard by its locality and incidents,—by its locality, as it is separate and apart from any sacred building used for the performance of divine service; by its incidents that, inasmuch as no vault or burying-place in an ordinary churchyard can be purchased for a perpetuity, in a cemetery a permanent burial place can be obtained. Wharton. See Winters v. State, 9 Ind. 174; Cemetery Ass'n v. Board of Assessors, 37 La. Ann. 35; Jenkins v. Andover, 103 Mass. 104; Cemetery Ass'n v. New Haven, 43 Conn. 243, 21 Am. Rep. 643.

Six or more human bodies being buried at one place constitutes the place a cemetery. Pol. Code Cal. § 3106.

CENDULÆ. Small pieces of wood laid in the form of tiles to cover the roof of a house; shingles. Cowell.

CENEGILD. In Saxon law. An expiatory mulct or fine paid to the relations of a murdered person by the murderer or his relations. Spelman.

CENELLÆ. In old records. Acorns.

CENNINGA. A notice given by a buyer to a seller that the things which had been sold were claimed by another, in order that he might appear and justify the sale. Blount; Whishaw.

CENS. In French Canadian law. An annual tribute or due reserved to a seignior or lord, and imposed merely in recognition of his superiority. Guyot, Inst. c. 9.

CENSARIA. In old English law. A farm, or house and land let at a standing rent. Cowell.

CENSARII. In old English law. Farmers, or such persons as were liable to pay a census, (tax.) Blount; Cowell.

CENSERE. In the Roman law. To ordain; to decree. Dig. 50, 16, 111.

CENSITAIRE. In Canadian law. A tenant by *cens*, (*q. v.*)

CENSIVE. In Canadian law. Tenure by *cens*, (*q. v.*)

CENSO. In Spanish and Mexican law. An annuity. A ground rent. The right which a person acquires to receive a certain annual pension, for the delivery which he makes to another of a determined sum of money or of an immovable thing. Civ. Code Mex. art. 3206. See Schm. Civil Law, 149, 309; White, New Recop. bk. 2, c. 7, § 4.

—Censo al quitar. A redeemable annuity; otherwise called "censo redimible." Trevino v. Fernandez, 13 Tex. 630.**—Censo consignativo.** A *censo* (*q. v.*) is called "*consignativo*" when he who receives the money assigns for the payment of the pension (annuity) the estate the fee in which he reserves. Civ. Code Mex. art. 3207.**—Censo enfiteutico.** In Spanish and Mexican law. An emphyteutic annuity. That species of *censo* (annuity) which exists where there is a right to require of another a certain canon or pension annually, on account of having transferred to that person forever certain real estate, but reserving the fee in the land. The owner who thus transfers the land is called the "*censualisto*," and the person who pays the annuity is called the "*censatario*." Hall, Mex. Law, § 756; Hart v. Burnett, 15 Cal. 557.

CENSUALES. In old European law. A species of *oblati* or voluntary slaves of churches or monasteries; those who, to procure the protection of the church, bound themselves to pay an annual tax or quit-rent only of their estates to a church or monastery.

CENSUERE. In Roman law. They have decreed. The term of art, or technical term for the judgment, resolution, or decree of the senate. Tayl. Civil Law, 566.

CENSUMETHIDUS, or CENSUMORTHIDUS. A dead rent, like that which is called "mortmain." Blount; Cowell.

CENSURE. In ecclesiastical law. A spiritual punishment, consisting in withdrawing from a baptized person (whether belonging to the clergy or the laity) a privilege which the church gives him, or in wholly expelling him from the Christian communion. The principal varieties of censures are admonition, degradation, deprivation, excommunication, penance, sequestration, suspension. Phillim. Ecc. Law, 1367.

A custom observed in certain manors in Devon and Cornwall, where all persons above the age of sixteen years are cited to swear fealty to the lord, and to pay 11d. per poll, and 1d. per annum.

CENSUS. The official counting or enumeration of the people of a state or nation, with statistics of wealth, commerce, education, etc. Huntington v. Cast, 149 Ind. 255, 48 N. E. 1025; Republic v. Paris, 10 Hawaii, 581.

In Roman law. A numbering or enrollment of the people, with a valuation of their fortunes.

In old European law. A tax, or tribute; a toll. Montesq. Esprit des Lois, liv. 30, c. 14.

CENSUS REGALIS. In English law. The annual revenue or income of the crown.

CENT. A coin of the United States, the least in value of those now minted. It is the one-hundredth part of a dollar. Its weight is 72 gr., and it is composed of copper and nickel in the ratio of 88 to 12.

CENTENA. A hundred. A district or division containing originally a hundred freemen, established among the Goths, Germans, Franks, and Lombards, for military and civil purposes, and answering to the Saxon "hundred." Spelman; 1 Bl. Comm. 115.

Also, in old records and pleadings, a hundred weight.

CENTENARII. Petty judges, under-sheriffs of counties, that had rule of a hundred, (*centena*,) and judged smaller matters among them. 1 Vent. 211.

CENTENI. The principal inhabitants of a *centena*, or district composed of different villages, originally in number a hundred, but afterwards only called by that name.

CENTESIMA. In Roman law. The hundredth part.

Usuriæ centesimæ. Twelve per cent. per annum; that is, a hundredth part of the principal was due each month,—the month being the unit of time from which the Romans reckoned interest. 2 Bl. Comm. 462, note.

CENTIME. The name of a denomination of French money, being the one-hundredth part of a franc.

CENTRAL CRIMINAL COURT. An English court, having jurisdiction for the trial of crimes and misdemeanors committed in London and certain adjoining parts of Kent, Essex, and Sussex, and of such other criminal cases as may be sent to it out of the king's bench, though arising beyond its proper jurisdiction. It was constituted by the acts 4 & 5 Wm. IV. c. 36, and 19 & 20 Vict. c. 16, and superseded the "Old Bailey."

CENTRAL OFFICE. The central office of the supreme court of judicature in England is the office established in pursuance of the recommendation of the legal depart-

ments commission in order to consolidate the offices of the masters and associates of the common-law divisions, the crown office of the king's bench division, the record and writ clerk's report, and enrollment offices of the chancery division, and a few others. The central office is divided into the following departments, and the business and staff of the office are distributed accordingly: (1) Writ, appearance, and judgment; (2) summons and order, for the common-law divisions only; (3) filing and record, including the old chancery report office; (4) taxing, for the common-law divisions only; (5) enrollment; (6) judgments, for the registry of judgments, executions, etc.; (7) bills of sale; (8) married women's acknowledgments; (9) king's remembrancer; (10) crown office; and (11) associates. Sweet.

CENTRALIZATION. This word is used to express the system of government prevailing in a country where the management of local matters is in the hands of functionaries appointed by the ministers of state, paid by the state, and in constant communication and under the constant control and inspiration of the ministers of state, and where the funds of the state are largely applied to local purposes. Wharton.

CENTUMVIRI. In Roman law. The name of an important court consisting of a body of one hundred and five judges. It was made up by choosing three representatives from each of the thirty-five Roman tribes. The judges sat as one body for the trial of certain important or difficult questions, (called, "*causæ centumvirales*,") but ordinarily they were separated into four distinct tribunals.

CENTURY. One hundred. A body of one hundred men. The Romans were divided into *centuries*, as the English were divided into hundreds.

Also a cycle of one hundred years.

CEORL. In Anglo Saxon law. The freemen were divided into two classes,—thanes and ceorls. The thanes were the proprietors of the soil, which was entirely at their disposal. The ceorls were men personally free, but possessing no landed property. Guizot, Rep. Govt.

A tenant at will of free condition, who held land of the thane on condition of paying rent or services. Cowell.

A freeman of inferior rank occupied in husbandry. Spelman.

CEPI. Lat. I have taken. This word was of frequent use in the returns of sheriffs when they were made in Latin, and particularly in the return to a writ of *capias*.

The full return (in Latin) to a writ of *capias* was commonly made in one of the following forms: *Cepi corpus*, I have taken the body, i. e., arrested the body of the defendant; *Cepi corpus et bail*, I have taken the body and released the defendant on a bail-bond; *Cepi corpus et committitur*, I have taken the body and he has been committed (to prison); *Cepi corpus et est in custodia*, I have taken the defendant and he is in custody; *Cepi corpus et est languidus*, I have taken the defendant and he is sick, i. e., so sick that he cannot safely be removed from the place where the arrest was made; *Cepi corpus et paratum habeo*, I have taken the body and have it (him) ready, i. e., in custody and ready to be produced when ordered.

CEPIT. In civil practice. He took. This was the characteristic word employed in (Latin) writs of trespass for goods taken, and in declarations in trespass and replevin.

Replevin *in the cepit* is a form of replevin which is brought for carrying away goods merely. Wells, Repl. § 53.

In criminal practice. This was a technical word necessary in an indictment for larceny. The charge must be that the defendant took the thing stolen with a felonious design. Bac. Abr. "Indictment," G, 1.

—Cepit et abduxit. He took and led away. The emphatic words in writs in trespass or indictments for larceny, where the thing taken was a living chattel, *i. e.*, an animal.**—Cepit et asportavit.** He took and carried away. Applicable in a declaration in trespass or an indictment for larceny where the defendant has carried away goods without right. 4 Bl. Comm. 231.**—Cepit in alio loco.** In pleading. A plea in replevin, by which the defendant alleges that he took the thing replevied in another place than that mentioned in the declaration. 1 Chit. Pl. 490.

CEPPAGIUM. In old English law. The stumps or roots of trees which remain in the ground after the trees are felled. Fleta, lib. 2, c. 41, § 24.

CERA, or CERE. In old English law. Wax; a seal.

CERA IMPRESSA. Lat. An impressed seal. It does not necessarily refer to an impression on wax, but may include an impression made on wafers or other adhesive substances capable of receiving an impression, or even paper. Pierce v. Indseth, 106 U. S. 546, 1 Sup. Ct. 418, 27 L. Ed. 254.

CERAGRUM. In old English law. A payment to provide candles in the church. Blount.

CEREVISIA. In old English law. Ale or beer.

CERT MONEY. In old English law. Head money or common fine. Money paid yearly by the residents of several manors to the lords thereof, for the certain keeping of the leet, (*pro certo letæ;*) and sometimes to the hundred. Blount; 6 Coke, 78.

Certa debet esse intentio, et narratio, et certum fundamentum, et certa res

quæ deducitur in judicium. The design and narration ought to be certain, and the foundation certain, and the matter certain, which is brought into court to be tried. Co. Litt. 303*a*.

CERTA RES. In old English law. A certain thing. Fleta, lib. 2, c. 60, §§ 24, 25.

CERTAIN. Ascertained; precise; identified; definitive; clearly known; unambiguous; or, in law, capable of being identified or made known, without liability to mistake or ambiguity, from data already given. Cooper v. Bigly, 13 Mich. 479; Losecco v. Gregory, 108 La. 648, 32 South. 986; Smith v. Fyler, 2 Hill (N. Y.) 649; Civ. Code La. 1900, art. 3556.

—Certain services. In feudal and old English law. Such services as were stinted (limited or defined) in quantity, and could not be exceeded on any pretense; as to pay a stated annual rent, or to plow such a field for three days. 2 Bl. Comm. 61.

CERTAINTY. In pleading. Distinctness; clearness of statement; particularity. Such precision and explicitness in the statement of alleged facts that the pleader's averments and contention may be readily understood by the pleader on the other side, as well as by the court and jury. State v. Hayward, 83 Mo. 309; State v. Burke, 151 Mo. 143, 52 S. W. 226; David v. David, 66 Ala. 148.

This word is technically used in pleading in two different senses, signifying either distinctness, or particularity, as opposed to undue generality.

Certainty is said to be of three sorts: (1) *Certainty to a common intent* is such as is attained by using words in their ordinary meaning, but is not exclusive of another meaning which might be made out by argument or inference. (2) *Certainty to a certain intent in general* is that which allows of no misunderstanding if a fair and reasonable construction is put upon the language employed, without bringing in facts which are possible, but not apparent. (3) *Certainty to a certain intent in particular* is the highest degree of technical accuracy and precision. Co. Litt. 303; 2 H. Bl. 530; Spencer v. Southwick, 9 Johns. (N. Y.) 317; State v. Parker, 34 Ark. 158, 36 Am. Rep. 5.

In contracts. The quality of being specific, accurate, and distinct.

A thing is certain when its essence, quality, and quantity are described, distinctly set forth, etc. Dig. 12, 1, 6. It is uncertain when the description is not that of an individual object, but designates only the kind. Civ. Code La. art. 3522, no. 8; 5 Coke, 121.

CERTIFICANDO DE RECOGNITIONE STAPULÆ. In English law. A writ commanding the mayor of the staple to certify to the lord chancellor a statute-staple taken before him where the party himself detains it, and refuses to bring in the same. There is a like writ to certify a statute-merchant, and in divers other cases. Reg. Orig. 148, 151, 152.

CERTIFICATE. A written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality been complied with. Particularly, such written assurance made or issuing from some court, and designed as a notice of things done therein, or as a warrant or authority, to some other court, judge, or officer. People v. Foster, 27 Misc. Rep. 576, 58 N. Y. Supp. 574; U. S. v. Ambrose, 108 U. S. 336, 2 Sup. Ct. 682, 27 L. Ed. 746; Ticonic Bank v. Stackpole, 41 Me. 305.

A document in use in the English custom-house. No goods can be exported *by certificate*, except foreign goods formerly imported, on which the whole or a part of the customs paid on importation is to be drawn back. Wharton.

—Certificate for costs. In English practice. A certificate or memorandum drawn up and signed by the judge before whom a case was tried, setting out certain facts the existence of which must be thus proved before the party is entitled, under the statutes, to recover costs. **—Certificate into chancery.** In English practice. This is a document containing the opinion of the common-law judges on a question of law submitted to them for their decision by the chancery court. **—Certificate of acknowledgment.** The certificate of a notary public, justice of the peace, or other authorized officer, attached to a deed, mortgage, or other instrument, setting forth that the parties thereto personally appeared before him on such a date and acknowledged the instrument to be their free and voluntary act and deed. Read v. Loan Co., 68 Ohio, St. 280, 67 N. E. 729, 62 L. R. A. 790, 96 Am. St. Rep. 663. **—Certificate of deposit.** In the practice of bankers. This is a writing acknowledging that the person named has deposited in the bank a specified sum of money, and that the same is held subject to be drawn out on his own check or order, or that of some other person named in the instrument as payee. Murphy v. Pacific Bank, 130 Cal. 542, 62 Pac. 1059; First Nat. Bank v. Greenville Nat. Bank, 84 Tex. 40, 19 S. W. 334; Neall v. U. S., 118 Fed. 706, 56 C. C. A. 31; Hotchkiss v. Mosher, 48 N. Y. 482. **—Certificate of holder of attached property.** A certificate required by statute, in some states, to be given by a third person who is found in possession of property subject to an attachment in the sheriff's hands, setting forth the amount and character of such property and the nature of the defendant's interest in it. Code Civil Proc. N. Y. § 650. **—Certificate of incorporation.** The instrument by which a private corporation is formed, under general statutes, executed by several persons as incorporators, and setting forth the name of the proposed corporation, the objects for which it is formed, and such other particulars as may be required or authorized by law, and filed in some designated public office as evidence of the corporate existence. This is properly distinguished from a "charter," which is a direct legislative grant of corporate existence and powers to named individuals; but practically the certificate of incorporation or "articles of incorporation" will contain the same enumeration of corporate powers and description of objects and purposes as a charter. **—Certificate of indebtedness.** A form of obligation sometimes issued by public or private corporations having practically the same force and effect as a bond, though not usually secured on any specific prop-

erty. Christie v. Duluth, 82 Minn. 202, 84 N. W. 754.—**Certificate of purchase.** A certificate issued by the proper public officer to the successful bidder at a judicial sale (such as a tax sale) setting forth the fact and details of his purchase, and which will entitle him to receive a deed upon confirmation of the sale by the court, or (as the case may be) if the land is not redeemed within the time limited for that purpose. Lightcap v. Bradley, 186 Ill. 510, 58 N. E. 221; Taylor v. Weston, 77 Cal. 534, 20 Pac. 62.—**Certificate of registry.** In maritime law. A certificate of the registration of a vessel according to the registry acts, for the purpose of giving her a national character. 3 Steph. Comm. 274; 3 Kent, Comm. 139–150.—**Certificate of sale.** The same as "certificate of purchase," *supra*, (*q. v.*)—**Certificate of stock.** A certificate of a corporation or joint-stock company that the person named is the owner of a designated number of shares of its stock; given when the subscription is fully paid and the "scrip-certificate" taken up. Gibbons v. Mahon, 136 U. S. 549, 10 Sup. Ct. 1057, 34 L. Ed. 525; Merritt v. Barge Co., 79 Fed. 235, 24 C. C. A. 530.—**Certificate, trial by.** This is a mode of trial now little in use; it is resorted to in cases where the fact in issue lies out of the cognizance of the court, and the judges, in order to determine the question, are obliged to rely upon the solemn averment or information of persons in such a station as affords them the clearest and most competent knowledge of the truth. Brown.

CERTIFICATION. In Scotch practice. This is the assurance given to a party of the course to be followed in case he does not appear or obey the order of the court.

CERTIFICATION OF ASSISE. In English practice. A writ anciently granted for the re-examining or retrial of a matter passed by assise before justices, now entirely superseded by the remedy afforded by means of a new trial.

CERTIFICATS DE COÛTUME. In French law. Certificates given by a foreign lawyer, establishing the law of the country to which he belongs upon one or more fixed points. These certificates can be produced before the French courts, and are received as evidence in suits upon questions of foreign law. Arg. Fr. Merc. Law, 548.

CERTIFIED CHECK. In the practice of bankers. This is a depositor's check recognized and accepted by the proper officer of the bank as a valid appropriation of the amount specified to the payee named, and as drawn against funds of such depositor held by the bank. The usual method of certification is for the cashier or teller to write across the face of the check, over his signature, a statement that it is "good when properly indorsed" for the amount of money written in the body of the check.

CERTIFIED COPY. A copy of a document, signed and certified as a true copy by the officer to whose custody the original is intrusted. Doremus v. Smith, 4 N. J. Law, 143; People v. Foster, 27 Misc. Rep. 576, 58 N. Y. Supp. 574; Nelson v. Blakey, 54 Ind. 36.

CERTIORARI. Lat. (To be informed of, to be made certain in regard to.) The name of a writ issued by a superior court directing an inferior court to send up to the former some pending proceeding, or all the record and proceedings in a cause before verdict, with its certificate to the correctness and completeness of the record, for review or trial; or it may serve to bring up the record of a case already terminated below, if the inferior court is one not of record, or in cases where the procedure is not according to the course of the common law. State v. Sullivan (C. C.) 50 Fed. 593; Dean v. State, 63 Ala. 154; Railroad Co. v. Trust Co. (C. C.) 78 Fed. 661; Fowler v. Lindsey, 3 Dall. 413, 1 L. Ed. 658; Basnet v. Jacksonville, 18 Fla. 526; Walpole v. Ink, 9 Ohio, 144; People v. Livingston County, 43 Barb. (N. Y.) 234.

Originally, and in English practice, a *certiorari* is an original writ, issuing out of the court of chancery or the king's bench, and directed in the king's name to the judges or officers of inferior courts, commanding them to certify or to return the records or proceedings in a cause depending before them, for the purpose of a judicial review of their action. Jacob.

In Massachusetts it is defined by statute as a writ issued by the supreme judicial court to any inferior tribunal, commanding it to certify and return to the supreme judicial court its records in a particular case, in order that any errors or irregularities which appear in the proceedings may be corrected. Pub. St. Mass. 1882, p. 1288.

CERTIORARI, BILL OF. In English chancery practice. An original bill praying relief. It was filed for the purpose of removing a suit pending in some inferior court of equity into the court of chancery, on account of some alleged incompetency or inconvenience.

Certum est quod certum reddi potest. That is certain which can be rendered certain. 9 Coke, 47; Broom, Max. 623.

CERURA. A mound, fence, or inclosure.

CERVISARII. In Saxon law. Tenants who were bound to supply drink for their lord's table. Cowell.

CERVISIA. Ale, or beer. Sometimes spelled *"cerevisia."*

CERVISIARIUS. In old records. An ale-house keeper. A beer or ale brewer. Blount.

CERVUS. Lat. A stag or deer.

CESIONARIO. In Spanish law. An assignee. White, New Recop. b. 3, tit. 10, c. 1, § 3.

CESS, *v.* In old English law. To cease, stop, determine, fail.

CESS, n. An assessment or tax. In Ireland, it was anciently applied to an exaction of victuals, at a certain rate, for soldiers in garrison.

Cessa regnare, si non vis judicare. Cease to reign, if you wish not to adjudicate. Hob. 155.

Cessante causa, cessat effectus. The cause ceasing, the effect ceases. Broom, Max. 160.

Cessante ratione legis, cessat et ipsa lex. The reason of the law ceasing, the law itself ceases also. Co. Litt. 70*b*; 2 Bl. Comm. 390, 391; Broom, Max. 159.

Cessante statu primitivo, cessat derivativus. When the primitive or original estate determines, the derivative estate determines also. 8 Coke, 34; Broom, Max. 495.

CESSARE. L. Lat. To cease, stop, or stay.

CESSAVIT PER BIENNIUM. In practice. An obsolete writ, which could formerly have been sued out when the defendant had for two years *ceased* or neglected to perform such service or to pay such rent as he was bound to do by his tenure, and had not upon his lands sufficient goods or chattels to be distrained. Fitzh. Nat. Brev. 208. It also lay where a religious house held lands on condition of performing certain spiritual services which it failed to do. 3 Bl. Comm. 232. Emig v. Cunningham, 62 Md. 460.

CESSE. (1) An assessment or tax; (2) a tenant of land was said to *cesse* when he neglected or *ceased* to perform the services due to the lord. Co. Litt. 373*a*, 380*b*.

CESSER. Neglect; a ceasing from, or omission to do, a thing. 3 Bl. Comm. 232.

The determination of an estate. 1 Coke, 84; 4 Kent, Comm. 33, 90, 105, 295.

The "cesser" of a term, annuity, or the like, takes place when it determines or comes to an end. The expression is chiefly used (in England) with reference to long terms of a thousand years or some similar period, created by a settlement for the purpose of securing the income, portions, etc., given to the objects of the settlement. When the trusts of a term of this kind are satisfied, it is desirable that the term should be put an end to, and with this object it was formerly usual to provide in the settlement itself that, as soon as the trusts of the term had been satisfied, it should cease and determine. This was called a "proviso for cesser." Sweet.

—Cesser, proviso for. Where terms for years are raised by settlement, it is usual to introduce a proviso that they shall *cease* when the trusts end. This proviso generally expresses three events: (1) The trusts never arising; (2) their becoming unnecessary or incapable of taking effect; (3) the performance of them. Sugd. Vend. (14th Ed.) 621–623.

CESSET EXECUTIO. (Let execution stay.) In practice. A stay of execution; or an order for such stay; the entry of such stay on record. 2 Tidd, Pr. 1104.

CESSET PROCESSUS. (Let process stay.) A stay of proceedings entered on the record.

CESSIO. Lat. A cession; a giving up, or relinquishment; a surrender; an assignment.

CESSIO BONORUM. In Roman law. Cession of goods. A surrender, relinquishment, or assignment of all his property and effects made by an insolvent debtor for the benefit of his creditors. The effect of this voluntary action on the debtor's part was to secure him against imprisonment or any bodily punishment, and from infamy, and to cancel his debts to the extent of the property ceded. It much resembled our voluntary bankruptcy or assignment for creditors. The term is commonly employed in modern continental jurisprudence to designate a bankrupt's assignment of property to be distributed among his creditors, and is used in the same sense by some English and American writers, but here rather as a convenient than as a strictly technical term. See 2 Bl. Comm. 473; 1 Kent, Comm. 247, 422; Ersk. Inst. 4, 3, 26.

CESSIO IN JURE. In Roman law. A fictitious suit, in which the person who was to acquire the thing claimed (*vindicabat*) the thing as his own, the person who was to transfer it acknowledged the justice of the claim, and the magistrate pronounced it to be the property (*addicebat*) of the claimant. Sandars' Just. Inst. (5th Ed.) 89, 122.

CESSION. The act of ceding; a yielding or giving up; surrender; relinquishment of property or rights.

In the civil law. An assignment. The act by which a party transfers property to another. The surrender or assignment of property for the benefit of one's creditors.

In ecclesiastical law. A giving up or vacating a benefice, by accepting another without a proper dispensation. 1 Bl. Comm. 392; Latch, 234.

In public law. The assignment, transfer, or yielding up of territory by one state or government to another.

CESSION DES BIENS. In French law. The surrender which a debtor makes of all his goods to his creditors, when he finds himself in insolvent circumstances. It is of two kinds, either voluntary or compulsory, (*judiciaire,*) corresponding very nearly to liquidation by arrangement and bankruptcy in English and American law.

CESSION OF GOODS. The surrender of property; the relinquishment that a debtor makes of all his property to his creditors, when he finds himself unable to pay his debts. Civil Code La. art. 2170.

CESSIONARY. In Scotch law. An assignee. Bell.

CESSIONARY BANKRUPT. One who gives up his estate to be divided among his creditors.

CESSMENT. An assessment, or tax.

CESSOR. One who ceases or neglects so long to perform a duty that he thereby incurs the danger of the law. O. N. B. 136.

CESSURE. L. Fr. A receiver; a bailiff. Kelham.

C'EST ASCAVOIR. L. Fr. That is to say, or to-wit. Generally written as one word, *cestascavoir, cestascavoire.*

C'est le crime qui fait la honte, et non pas l'echafaud. Fr. It is the offense which causes the shame, and not the scaffold.

CESTUI, CESTUY. He. Used frequently in composition in law French phrases.

—Cestui que trust. He who has a right to a beneficial interest in and out of an estate the legal title to which is vested in another. 2 Washb. Real Prop. 163. The person who possesses the equitable right to property and receives the rents, issues, and profits thereof, the legal estate of which is vested in a trustee. It has been proposed to substitute for this uncouth term the English word "beneficiary," and the latter, though still far from universally adopted, has come to be quite frequently used. It is equal in precision to the antiquated and unwieldy Norman phrase, and far better adapted to the genius of our language.**—Cestui que use.** He for whose use and benefit lands or tenements are held by another. The *cestui que use* has the right to receive the profits and benefits of the estate, but the legal title and possession (as well as the duty of defending the same) reside in the other.**—Cestui que vie.** He whose life is the measure of the duration of an estate. 1 Washb. Real Prop. 88. The person for whose life any lands, tenements, or hereditaments are held.

Cestuy que doit inheriter al père doit inheriter al fils. He who would have been heir to the father of the deceased shall also be heir of the son. Fitzh. Abr. "Descent," 2; 2 Bl. Comm. 239, 250.

CF. An abbreviated form of the Latin word *confer*, meaning "compare." Directs the reader's attention to another part of the work, to another volume, case, etc., where contrasted, analogous, or explanatory views or statements may be found.

CH. This abbreviation most commonly stands for "chapter," or "chancellor," but it may also mean "chancery," or "chief."

CHACE. L. Fr. A chase or hunting ground.

CHACEA. In old English law. A station of game, more extended than a park, and less than a forest; also the liberty of chasing or hunting within a certain district; also the way through which cattle are driven to pasture, otherwise called a "droveway." Blount.

Chacea est ad communem legem. A chase is by common law. Reg. Brev. 806.

CHACEABLE. L. Fr. That may be chased or hunted.

CHACER. L. Fr. To drive, compel, or oblige; also to chase or hunt.

CHACURUS. L. Lat. A horse for the chase, or a hound, dog, or courser.

CHAFEWAX. An officer in the English chancery whose duty was to fit the wax to seal the writs, commissions, and other instruments thence issuing. The office was abolished by St. 15 & 16 Vict. c. 87, § 23.

CHAFFERS. An ancient term for goods, wares, and merchandise.

CHAFFERY. Traffic; the practice of buying and selling.

CHAIN. A measure used by engineers and surveyors, being twenty-two yards in length.

CHAIN OF TITLE. A term applied metaphorically to the series of conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively, from the government or original source of title down to the present holder, each of the instruments included being called a "link." Payne v. Markle, 89 Ill. 69.

CHAIRMAN. A name given to the presiding officer of an assembly, public meeting, convention, deliberative or legislative body, board of directors, committee, etc.

CHAIRMAN OF COMMITTEES OF THE WHOLE HOUSE. In English parliamentary practice. In the commons, this officer, always a member, is elected by the house on the assembling of every new parliament. When the house is in committee on bills introduced by the government, or in committee of ways and means, or supply, or in committee to consider preliminary resolutions, it is his duty to preside.

CHALDRON, CHALDERN, or CHALDER. Twelve sacks of coals, each holding three bushels, weighing about a ton and a half. In Wales they reckon 12 barrels or

pitchers a ton or chaldron, and 29 cwt. of 120 lbs. to the ton. Wharton.

CHALLENGE. 1. To object or except to; to prefer objections to a person, right, or instrument; to formally call into question the capability of a person for a particular function, or the existence of a right claimed, or the sufficiency or validity of an instrument.

2. As a noun, the word signifies the objection or exception so advanced.

3. An exception taken against legal documents, as a declaration, count, or writ. But this use of the word is now obsolescent.

4. An exception or objection preferred against a person who presents himself at the polls as a voter, in order that his right to cast a ballot may be inquired into.

5. An objection or exception to the personal qualification of a judge or magistrate about to preside at the trial of a cause; as on account of personal interest, his having been of counsel, bias, etc.

6. An exception or objection taken to the jurors summoned and returned for the trial of a cause, either individually, (to the polls,) or collectively, (to the array.) People v. Travers, 88 Cal. 233, 26 Pac. 88; People v. Fitspatrick, 1 N. Y. Cr. R. 425.

AT COMMON LAW. The causes for principal challenges fall under four heads: (1) *Propter honoris respectum.* On account of respect for the party's social rank. (2) *Propter defectum.* On account of some legal disqualification, such as infancy or alienage. (3) *Propter affectum.* On account of partiality; that is, either expressed or implied bias or prejudice. (4) *Propter delictum.* On account of crime; that is, disqualification arising from the conviction of an infamous crime.

—Challenge for cause. A challenge to a juror for which some cause or reason is alleged. Termes de la Ley; 4 Bl. Comm. 353. Thus distinguished from a peremptory challenge. Turner v. State, 114 Ga. 421, 40 S. E. 308; Cr. Code N. Y. 1903, § 374.**—Challenge propter affectum.** A challenge interposed on account of an ascertained or suspected bias or partiality, and which may be either a principal challenge or a challenge to the favor. Harrisburg Bank v. Forster, 8 Watts (Pa.) 306; State v. Sawtelle, 66 N. H. 488, 32 Atl. 831; Jewell v. Jewell, 84 Me. 304, 24 Atl. 858, 18 L. R. A. 473.**—Challenge to the array.** An exception to the whole panel in which the jury are *arrayed*, or set in order by the sheriff in his return, upon account of partiality, or some default in the sheriff, coroner, or other officer who arrayed the panel or made the return. 3 Bl. Comm. 359; Co. Litt. 155*b*; Moore v. Guano Co., 130 N. C. 229, 41 S. E. 293; Thompson v. State, 109 Ga. 272, 34 S. E. 579; Durrah v. State, 44 Miss. 789.**—Challenge to the favor.** Is where the party has no principal challenge, but objects only some probable circumstances of suspicion, as acquaintance, and the like, the validity of which must be left to the determination of triors, whose office it is to decide whether the juror be favorable or unfavorable. 3 Bl. Comm. 363; 4 Bl. Comm. 353; Thompson v. State, 109 Ga. 272, 34 S. E. 579; State v. Sawtelle, 66 N. H. 488, 32 Atl. 831; State v. Baldwin, 1 Tread. Const. (S. C.) 292.**—Challenge to the panel.** The same as a challenge to the array. See *supra*. And see Pen. Code Cal. 1903, § 1058.**—Challenge to the poll.** A challenge made separately to an individual juror; as distinguished from a challenge to the array. Harrisburg Bank v. Forster, 8 Watts (Pa.) 306.**—General challenge.** A species of challenge for cause, being an objection to a particular juror, to the effect that the juror is disqualified from serving in any case. Pen. Code Cal. § 1071.**—Peremptory challenge.** In criminal practice. A species of challenge which a prisoner is allowed to have against a certain number of jurors, without assigning any cause. Lewis v. U. S., 146 U. S. 370, 13 Sup. Ct. 136, 36 L. Ed. 1011; Turpin v. State, 55 Md. 462; Leary v. Railway Co., 69 N. J. Law, 67, 54 Atl. 527; State v. Hays, 23 Mo. 287.**—Principal challenge.** A challenge of a juror for a cause which carries with it, *prima facie*, evident marks of suspicion either of malice or favor; as that a juror is of kin to either party within the ninth degree; that he has an interest in the cause, etc. 3 Bl. Comm. 363. A species of challenge to the array made on account of partiality or some default in the sheriff or his under-officer who arrayed the panel.

CHALLENGE TO FIGHT. A summons or invitation, given by one person to another, to engage in a personal combat; a request to fight a duel. A criminal offense. See Steph. Crim. Dig. 40; 3 East, 581; State v. Perkins, 6 Blackf. (Ind.) 20.

CHAMBER. A room or apartment in a house. A private repository of money; a treasury. Sometimes used to designate a court, a commission, or an association of persons habitually meeting together in an apartment, *e. g.*, the "star chamber," "chamber of deputies," "chamber of commerce."

CHAMBER OF ACCOUNTS. In French law. A sovereign court, of great antiquity, in France, which took cognizance of and registered the accounts of the king's revenue; nearly the same as the English court of exchequer. Enc. Brit.

CHAMBER OF COMMERCE. An association (which may or may not be incorporated) comprising the principal merchants, manufacturers, and traders of a city, designed for convenience in buying, selling, and exchanging goods, and to foster the commercial and industrial interests of the place.

CHAMBER, WIDOW'S. A portion of the effects of a deceased person, reserved for the use of his widow, and consisting of her apparel, and the furniture of her bed-chamber, is called in London the "widow's chamber." 2 Bl. Comm. 518.

CHAMBER BUSINESS. A term applied to all such judicial business as may properly be transacted by a judge at his chambers or elsewhere, as distinguished from such as must be done by the court in session. In re Neagle (C. C.) 39 Fed. 855, 5 L. R. A. 78.

CHAMBER SURVEYS. At an early day in Pennsylvania, surveyors often made drafts on paper of pretended surveys of public lands, and returned them to the land office as duly surveyed, instead of going on the ground and establishing lines and marking corners; and these false and fraudulent pretenses of surveys never actually made were called "chamber surveys." Schraeder Min. & Mfg. Co. v. Packer, 129 U. S. 688, 9 Sup. St. 385, 32 L. Ed. 760.

CHAMBERDEKINS, or CHAMBER DEACONS. In old English law. Certain poor Irish scholars, clothed in mean habit, and living under no rule; also beggars banished from England. (1 Hen. V. cc. 7, 8.) Wharton.

CHAMBERLAIN. Keeper of the chamber. Originally the chamberlain was the keeper of the treasure chamber (*camera*) of the prince or state; otherwise called "treasurer." Cowell.

The name of several high officers of state in England, as the lord great chamberlain of England, lord chamberlain of the household, chamberlain of the exchequer. Cowell; Blount.

The word is also used in some American cities as the title of an officer corresponding to "treasurer."

CHAMBERLARIA. Chamberlainship; the office of a chamberlain. Cowell.

CHAMBERS. In practice. The private room or office of a judge; any place in which a judge hears motions, signs papers, or does other business pertaining to his office, when he is not holding a session of court. Business so transacted is said to be done "in chambers." In re Neagle (C. C.) 39 Fed. 855, 5 L. R. A. 78; Von Schmidt v. Widber, 99 Cal. 511, 34 Pac. 109; Hoskins v. Baxter, 64 Minn. 226, 66 N. W. 969. The term is also applied, in England, to the private office of a barrister.

In international law. Portions of the sea cut off by lines drawn from one promontory to another, or included within lines extending from the point of one cape to the next, situate on the sea-coast of the same nation, and which are claimed by that nation as asylums for merchant vessels, and exempt from the operations of belligerents.

CHAMBIUM. In old English law. Change, or exchange. Bract. fols. 117, 118.

CHAMBRE DEPEINTE. A name anciently given to St. Edward's chamber, called the "Painted Chamber," destroyed by fire with the houses of parliament.

CHAMP DE MAI. (Lat. *Campus Maii.*) The field or assembly of May. The national assembly of the Franks, held in the month of May.

CHAMP DE MARS. (Lat. *Campus Martii.*) The field or assembly of March. The national assembly of the Franks, held in the month of March, in the open air.

CHAMPART. In French law. The grant of a piece of land by the owner to another, on condition that the latter would deliver to him a portion of the crops. 18 Toullier, n. 182.

CHAMPERT. In old English law. A share or division of land; champerty.

In old Scotch law. A gift or bribe, taken by any great man or judge from any person, for delay of just actions, or furthering of wrongous actions, whether it be lands or any goods movable. Skene.

CHAMPERTOR. In criminal law. One who makes pleas or suits, or causes them to be moved, either directly or indirectly, and sues them at his proper costs, upon condition of having a part of the gain. One guilty of champerty. St. 33 Edw. I. c. 2.

CHAMPERTOUS. Of the nature of champerty; affected with champerty.

CHAMPERTY. A bargain made by a stranger with one of the parties to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if he wins the suit, a part of the land or other subject sought to be recovered by the action. Small v. Mott, 22 Wend. (N. Y.) 405; Jewel v. Neidy, 61 Iowa, 299, 16 N. W. 141; Weakly v. Hall, 13 Ohio, 175, 42 Am. Dec. 194; Poe v. Davis, 29 Ala. 683; Gilman v. Jones, 87 Ala. 691, 5 South. 785, 7 South. 48, 4 L. R. A. 113; Torrence v. Shedd, 112 Ill. 466; Casserleigh v. Wood, 119 Fed. 308, 56 C. C. A. 212.

The purchase of an interest in a thing in dispute, with the object of maintaining and taking part in the litigation. 7 Bing. 378.

The act of assisting the plaintiff or defendant in a legal proceeding in which the person giving the assistance has no valuable interest, on an agreement that, if the proceeding is successful, the proceeds shall be divided between the plaintiff or defendant, as the case may be, and the assisting person. Sweet.

Champerty is the carrying on a suit in the name of another, but at one's own expense, with the view of receiving as compensation a certain share of the avails of the suit. Ogden v. Des Arts, 4 Duer (N. Y.) 275.

The distinction between *champerty* and *maintenance* lies in the interest which the interfering party is to have in the issue of the suit. In the former case, he is to receive a share or portion of what may be recovered; in the latter case, he is in no way benefited by the success of the party aided, but simply

intermeddles officiously. Thus every champerty includes maintenance, but not every maintenance is champerty. See 2 Inst. 208; Stotsenburg v. Marks, 79 Ind. 196; Lytle v. State, 17 Ark. 624.

CHAMPION. A person who fights a combat in his own cause, or in place of another. The person who, in the trial by battel, fought either for the tenant or demandant. 3 Bl. Comm. 339.

—Champion of the king or queen. An ancient officer, whose duty it was to ride armed *cap-à-pié*, into Westminster Hall at the coronation, while the king was at dinner, and, by the proclamation of a herald, make a challenge "that, if any man shall deny the king's title to the crown, he is there ready to defend it in single combat." The king drank to him, and sent him a gilt cup covered, full of wine, which the champion drank, retaining the cup for his fee. This ceremony, long discontinued, was revived at the coronation of George IV., but not afterwards. Wharton.

CHANCE. In criminal law. An accident; an unexpected, unforeseen, or unintended consequence of an act; a fortuitous event. The opposite of intention, design, or contrivance.

There is a wide difference between *chance* and *accident*. The one is the intervention of some unlooked-for circumstance to prevent an expected result; the other is the uncalculated effect of mere luck. The shot discharged at random strikes its object by chance; that which is turned aside from its well-directed aim by some unforeseen circumstance misses its mark by accident. Pure chance consists in the entire absence of all the means of calculating results; accident, in the unusual prevention of an effect naturally resulting from the means employed. Harless v. U. S., Morris (Iowa) 173.

—Chance verdict. One determined by hazard or lot, and not by the deliberate understanding and agreement of the jury. Goodman v. Cody, 1 Wash. T. 335, 34 Am. Rep. 808; Dixon v. Pluns, 98 Cal. 384, 33 Pac. 268, 20 L. R. A. 698, 35 Am. St. Rep. 180; Improvement Co. v. Adams, 1 Colo. App. 250, 28 Pac. 662.

CHANCE-MEDLEY. In criminal law. A sudden affray. This word is sometimes applied to any kind of homicide by misadventure, but in strictness it is applicable to such killing only as happens in defending one's self. 4 Bl. Comm. 184.

CHANCEL. In ecclesiastical law. The part of a church in which the communion table stands; it belongs to the rector or the impropriator. 2 Broom & H. Comm. 420.

CHANCELLOR. In American law, this is the name given in some states to the judge (or the presiding judge) of a court of chancery. In England, besides being the designation of the chief judge of the court of chancery, the term is used as the title of several judicial officers attached to bishops or other high dignitaries and to the universities. (See *infra.*) In Scotch practice, it denotes the foreman of an assise or jury.

—Chancellor of a cathedral. In English ecclesiastical law. One of the *quatuor personæ*, or four chief dignitaries of the cathedrals of the old foundation. The duties assigned to the office by the statutes of the different chapters vary, but they are chiefly of an educational character, with a special reference to the cultivation of theology.**—Chancellor of a diocese.** In ecclesiastical law, the officer appointed to assist a bishop in matters of law, and to hold his consistory courts for him. 1 Bl. Comm. 382; 2 Steph. Comm. 672.**—Chancellor of a university.** In English law. The official head of a university. His principal prerogative is to hold a court with jurisdiction over the members of the university, in which court the vice-chancellor presides. The office is for the most part honorary.**—Chancellor of the duchy of Lancaster.** In English law. An officer before whom, or his deputy, the court of the duchy chamber of Lancaster is held. This is a special jurisdiction concerning all manner of equity relating to lands holden of the king in right of the duchy of Lancaster. Hob. 77; 3 Bl. Comm. 78.**—Chancellor of the exchequer.** In English law. A high officer of the crown, who formerly sat in the exchequer court, and, together with the regular judges of the court, saw that things were conducted to the king's benefit. In modern times, however, his duties are not of a judicial character, but such as pertain to a minister of state charged with the management of the national revenue and expenditure.**—Chancellor of the order of the garter,** and other military orders, in England, is an officer who seals the commissions and the mandates of the chapter and assembly of the knights, keeps the register of their proceedings, and delivers their acts under the seal of their order.**—Chancellor, the lord high.** In England, this is the highest judicial functionary in the kingdom, and superior, in point of precedency, to every temporal lord. He is appointed by the delivery of the king's great seal into his custody. He may not be a Roman Catholic. He is a cabinet minister, a privy counsellor, and prolocutor of the house of lords by prescription, (but not necessarily, though usually, a peer of the realm,) and vacates his office with the ministry by which he was appointed. To him belongs the appointment of all justices of the peace throughout the kingdom. Being, in the earlier periods of English history, usually an ecclesiastic, (for none else were then capable of an office so conversant in writings,) and presiding over the royal chapel, he became keeper of the sovereign's conscience, visitor, in right of the crown, of the hospitals and colleges of royal foundation, and patron of all the crown livings under the value of twenty marks *per annum* in the king's books. He is the general guardian of all infants, idiots, and lunatics, and has the general superintendence of all charitable uses, and all this, over and above the vast and extensive jurisdiction which he exercises in his judicial capacity in the supreme court of judicature, of which he is the head. Wharton.**—Vice-chancellor.** In English law. A judge of the court of chancery, acting as assistant to the lord chancellor, and holding a separate court, from whose judgment an appeal lay to the chancellor. 3 Steph. Comm. 418.

CHANCELLOR'S COURTS IN THE TWO UNIVERSITIES. In English law. Courts of local jurisdiction in and for the two universities of Oxford and Cambridge in England.

CHANCERY. Equity; equitable jurisdiction; a court of equity; the system of jurisprudence administered in courts of equity. Kenyon v. Kenyon, 3 Utah, 431, 24 Pac. 829; Sullivan v. Thomas, 3 Rich. (S. C.) 531. See COURT OF CHANCERY.

CHANGE. 1. An alteration; substitution of one thing for another. This word does not connote either improvement or deterioration as a result. In this respect it differs from *amendment*, which, in law, always imports a change for the better.

2. Exchange of money against money of a different denomination. Also small coin. Also an abbreviation of *exchange*.

—Change of venue. Properly speaking, the removal of a suit begun in one county or district to another county or district for trial, though the term is also sometimes applied to the removal of a suit from one court to another court of the same county or district. Dudley v. Power Co., 139 Ala. 453, 36 South. 700; Felts v. Railroad Co., 195 Pa. 21, 45 Atl. 493; State v. Wofford, 119 Mo. 375, 24 S. W. 764.

CHANGER. An officer formerly belonging to the king's mint, in England, whose business was chiefly to *exchange* coin for bullion brought in by merchants and others.

CHANNEL. This term refers rather to the bed in which the main stream of a river flows than to the deep water of the stream as followed in navigation. Bridge Co. v. Dubuque County, 55 Iowa, 558, 8 N. W. 443. See The Oliver (D. C.) 22 Fed. 849; Iowa v. Illinois, 147 U. S. 1, 13 Sup. Ct. 239, 37 L. Ed. 55; Cessill v. State, 40 Ark. 504.

The "main channel" of a river is that bed of the river over which the principal volume of water flows. Many great rivers discharge themselves into the sea through more than one channel. They all, however, have a main channel, through which the principal volume of water passes. Packet Co. v. Bridge Co. (C. C.) 31 Fed. Rep. 757.

—Natural channel. The channel of a stream as determined by the natural conformation of the country through which it flows; that is, the bed over which the waters of the stream flow when not in any manner diverted or interfered with by man. See Larrabee v. Cloverdale, 131 Cal. 96, 63 Pac. 143.

CHANTER. The chief singer in the choir of a cathedral. Mentioned in 13 Eliz. c. 10.

CHANTRY. A church or chapel endowed with lands for the maintenance of priests to say mass daily for the souls of the donors. Termes de la Ley; Cowell.

CHAPEL. A place of worship; a lesser or inferior church, sometimes a part of or subordinate to another church. Webster. Rex v. Nixon, 7 Car. & P. 442.

—Chapel of ease. In English ecclesiastical law. A chapel founded in general at some period later than the parochial church itself, and designed for the accommodation of such of the parishioners as, in course of time, had begun to fix their residence at some distance from its site; and so termed because built *in aid* of the original church. 3 Steph. Comm. 151. **—Private chapel.** Chapels owned by private persons, and used by themselves and their families, are called "private," as opposed to chapels of ease, which are built for the accommodation of particular districts within a parish, in ease of the original parish church. 2 Steph. Comm. 745. **—Proprietary chapels.** In English law. Those belonging to private persons who have purchased or erected them with a view to profit or otherwise. **—Public chapels.** In English law, are chapels founded at some period later than the church itself. They were designed for the accommodation of such of the parishioners as in course of time had begun to fix their residence at a distance from its site; and chapels so circumstanced were described as "chapels of ease," because built in aid of the original church. 3 Steph. Comm. (7th Ed.) 745.

CHAPELRY. The precinct and limits of a chapel. The same thing to a chapel as a parish is to a church. Cowell; Blount.

CHAPERON. A hood or bonnet anciently worn by the Knights of the Garter, as part of the habit of that order; also a little escutcheon fixed in the forehead of horses drawing a hearse at a funeral. Wharton.

CHAPITRE. A summary of matters to be inquired of or presented before justices in eyre, justices of assise, or of the peace, in their sessions. Also articles delivered by the justice in his charge to the inquest. Brit. c. iii.

CHAPLAIN. An ecclesiastic who performs divine service in a chapel; but it more commonly means one who attends upon a king, prince, or other person of quality, for the performance of clerical duties in a private chapel. 4 Coke, 90.

A clergyman officially attached to a ship of war, to an army, (or regiment,) or to some public institution, for the purpose of performing divine service. Webster.

CHAPMAN. An itinerant vendor of small wares. A trader who trades from place to place. Say. 191, 192.

CHAPTER. In ecclesiastical law. A congregation of ecclesiastical persons in a cathedral church, consisting of canons, or prebendaries, whereof the dean is the head, all subordinate to the bishop, to whom they act as assistants in matters relating to the church, for the better ordering and disposing the things thereof, and the confirmation of such leases of the temporalty and offices relating to the bishopric, as the bishop shall make from time to time. And they are termed "*capitulum*," as a kind of head, instituted not only to assist the bishop in manner aforesaid, but also anciently to rule and govern the diocese in the time of vacation. Burn, Dict.

CHARACTER. The aggregate of the moral qualities which belong to and distinguish an individual person; the general result of the one's distinguishing attributes.

That moral predisposition or habit, or aggregate of ethical qualities, which is believed to attach to a person, on the strength of the common opinion and report concerning him.

The opinion generally entertained of a per-

son derived from the common report of the people who are acquainted with him. Smith v. State, 88 Ala. 73, 7 South. 52; State v. Turner, 36 S. C. 534, 15 S. E. 602; Fahnestock v. State, 23 Ind. 238; State v. Parker, 96 Mo. 382, 9 S. W. 728; Sullivan v. State, 66 Ala. 48; Kimmel v. Kimmel, 3 Serg. & R. (Pa.) 337, 8 Am. Dec. 672.

Character and *reputation* are not synonymous terms. Character is what a man or woman is morally, while reputation is what he or she is reputed to be. Yet reputation is the estimate which the community has of a person's character; and it is the belief that moral character is wanting in an individual that renders him unworthy of belief; that is to say, that reputation is evidence of character, and if the reputation is bad for truth, or reputation is bad in other respects affecting the moral character, then the jury may infer that the character is bad and the witness not reliable. General character has always been proved by proving general reputation. Leverich v. Frank, 6 Or. 213.

The word "character" no doubt has an objective and subjective import, which are quite distinct. As to the object, character is its quality. As to man, it is the quality of his mind, and his affections, his capacity and temperament. But as a subjective term, certainly in the minds of others, one's character is the aggregate, or the abstract of other men's opinions of one. And in this sense when a witness speaks of the character of another witness for truth, he draws not upon his memory alone, but his judgment also. It is the conclusion of the mind of the witness, in summing up the amount of all the reports he has heard of the man, and declaring his character for truth, as held in the minds of his neighbors and acquaintances, and in this sense character, general character, and general report or reputation are the same, as held in the books. Powers v. Leach, 26 Vt. 278.

CHARGE, *v.* To impose a burden, obligation, or lien; to create a claim against property; to claim, to demand; to accuse; to instruct a jury on matters of law.

In the first sense above given, a jury in a criminal case is "charged" with the duty of trying the prisoner (or, as otherwise expressed, with his fate or his "deliverance") as soon as they are impaneled and sworn, and at this moment the prisoner's legal "jeopardy" begins. This is altogether a different matter from "charging" the jury in the sense of giving them instructions on matters of law, which is a function of the court. Tomasson v. State, 112 Tenn. 596, 79 S. W. 803.

CHARGE, *n.* **In general.** An incumbrance, lien, or burden; an obligation or duty; a liability; an accusation. Darling v. Rogers, 22 Wend. (N. Y.) 491.

In contracts. An obligation, binding upon him who enters into it, which may be removed or taken away by a discharge. Termes de la Ley.

An undertaking to keep the custody of another person's goods. State v. Clark, 86 Me. 194, 29 Atl. 984.

An obligation entered into by the owner of an estate, which binds the estate for its performance. Com. Dig. "Rent," c. 6; 2 Ball & B. 223.

In the law of wills. A responsibility or liability imposed by the testator upon a devisee personally, or upon the land devised.

In equity pleading. An allegation in the bill of matters which disprove or avoid a defense which it is alleged the defendant is supposed to pretend or intend to set up. Story, Eq. Pl. § 31.

In equity practice. A paper presented to a master in chancery by a party to a cause, being a written statement of the items with which the opposite party should be debited or should account for, or of the claim of the party making it. It is more comprehensive than a *claim*, which implies only the amount due to the person producing it, while a charge may embrace the whole liabilities of the accounting party. Hoff. Mast. 36.

In common-law practice. The final address made by a judge to the jury trying a case, before they make up their verdict, in which he sums up the case, and instructs the jury as to the rules of law which apply to its various issues, and which they must observe, in deciding upon their verdict, when they shall have determined the controverted matters of fact. The term also applies to the address of the court to a grand jury, in which the latter are instructed as to their duties.

In Scotch law. The command of the king's letters to perform some act; as a *charge* to enter heir. Also a messenger's execution, requiring a person to obey the order of the king's letters; as a *charge* on letters of horning, or a *charge* against a superior. Bell.

—General charge. A charge or instruction by the court to the jury upon the case as a whole, or upon its general features or characteristics.—**Special charge.** A charge or instruction given by the court to the jury, upon some particular point or question involved in the case, and usually in response to counsel's request for such instruction.

CHARGE AND DISCHARGE. Under the former system of equity practice, this phrase was used to characterize the usual method of taking an account before a master. After the plaintiff had presented his "charge," a written statement of the items of account for which he asked credit, the defendant filed a counter-statement, called a "discharge," exhibiting any claims or demands he held against the plaintiff. These served to define the field of investigation, and constituted the basis of the report.

CHARGÉ DES AFFAIRES, or CHARGÉ D'AFFAIRES. The title of a diplomatic representative of inferior rank. He has not the title or dignity of a minister, though he may be charged with the functions and offices of the latter, either as a temporary substitute for a minister or at a court to which his government does not accredit a minister. In re Baiz, 135 U. S. 403, 10 Sup.

Ct. 854, 34 L. Ed. 222; Hollander v. Baiz (D. C.) 41 Fed. 732.

CHARGE-SHEET. A paper kept at a police-station to receive each night the names of the persons brought and given into custody, the nature of the accusation, and the name of the accuser in each case. It is under the care of the inspector on duty. Wharton.

CHARGE TO ENTER HEIR. In Scotch law. A writ commanding a person to enter heir to his predecessor within forty days, otherwise an action to be raised against him as if he had entered.

CHARGEABLE. This word, in its ordinary acceptation, as applicable to the imposition of a duty or burden, signifies capable of being charged, subject to be charged, liable to be charged, or proper to be charged. Gilfillan v. Chatterton, 38 Minn. 335, 37 N. W. 583; Walbridge v. Walbridge, 46 Vt. 625.

CHARGEANT. Weighty; heavy; penal; expensive. Kelham.

CHARGES. The expenses which have been incurred, or disbursements made, in connection with a contract, suit, or business transaction. Spoken of an action, it is said that the term includes more than what falls under the technical description of "costs."

CHARGING LIEN. An attorney's lien, for his proper compensation, on the fund or judgment which his client has recovered by means of his professional aid and services. Goodrich v. McDonald, 112 N. Y. 157, 19 N. E. 649; Young v. Renshaw, 102 Mo. App. 173, 76 S. W. 701; Ex parte Lehman, 59 Ala. 632; Koons v. Beach, 147 Ind. 137, 45 N. E. 601, 46 N. E. 587; In re Wilson (D. C.) 12 Fed. 239; Sewing Mach. Co. v. Boutelle, 56 Vt. 576, 48 Am. Rep. 762.

CHARGING ORDER. See ORDER.

CHARITABLE. Having the character or purpose of a charity, (*q. v.*)

—Charitable institution. One administering a public or private charity; an eleemosynary institution. See People v. Fitch, 16 Misc. Rep. 464, 39 N. Y. Supp. 926; Balch v. Shaw, 174 Mass. 144, 54 N. E. 490; People v. New York Soc., etc., 162 N. Y. 429, 56 N. E. 1004; In re Vineland Historical, etc., Soc., 66 N. J. Eq. 291, 56 Atl. 1040.**—Charitable uses or purposes.** Originally those enumerated in the statute 43 Eliz. c. 4, and afterwards those which, by analogy, come within its spirit and purpose. In its present usage, the term is so broad as to include almost everything which tends to promote the physical or moral welfare of men, provided only the distribution of benefits is to be free and not a source of profit. In respect to gifts and devises, and also in respect to freedom from taxation, charitable uses and purposes may include not only the relief of poverty by alms-giving and the relief of the indigent sick and of homeless persons by means of hospitals and asylums, but also religious instruction and the support of churches, the dissemination of knowledge by means of schools and colleges, libraries, scientific academies, and museums, the special care of children and of prisoners and released convicts, the benefit of handicraftsmen, the erection of public buildings, and reclamation of criminals in penitentiaries and reformatories. Hence the word "charitable" in this connection is not to be understood as strictly equivalent to "eleemosynary," but as the synonym of "benevolent" or "philanthropic." Beckwith v. Parish, 69 Ga. 569; Price v. Maxwell, 28 Pa. 23; Webster v. Sughrow, 69 N. H. 380, 45 Atl. 139, 48 L. R. A. 100; Jackson v. Phillips, 14 Allen (Mass.) 539; Harrington v. Pier, 105 Wis. 485, 82 N. W. 345, 50 L. R. A. 307, 76 Am. St. Rep. 924; Historical Soc. v. Academy of Science, 94 Mo. 459, 8 S. W. 346; Ould v. Hospital, 95 U. S. 303, 24 L. Ed. 450; Academy v. Taylor, 150 Pa. 565, 25 Atl. 55; Gerke v. Purcell, 25 Ohio St. 229; Philadelphia Library Co. v. Donohugh, 12 Phila. (Pa.) 284; Stuart v. Easton, 74 Fed. 854, 21 C. C. A. 146; State v. Laramie County, 8 Wyo. 104, 55 Pac. 451; Gladding v. Church, 25 R. I. 628, 57 Atl. 860, 65 L. R. A. 225, 105 Am. St. Rep. 904.

CHARITY. Subjectively, the sentiment or motive of benevolence and philanthropy; the disposition to relieve the distressed. Objectively, alms-giving; acts of benevolence; relief, assistance, or services accorded to the needy without return. Also gifts for the promotion of philanthropic and humanitarian purposes. Jackson v. Phillips, 14 Allen (Mass.) 556; Vidal v. Girard, 2 How. 127, 11 L. Ed. 205; Historical Soc. v. Academy of Science, 94 Mo. 459, 8 S. W. 346.

The meaning of the word "charity," in its legal sense, is different from the signification which it ordinarily bears. In its legal sense, it includes not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, and, it is said, for any other useful and public purpose. Gerke v. Purcell, 25 Ohio St. 243.

Charity, in its widest sense, denotes all the good affections men ought to bear towards each other; in a restricted and common sense, relief of the poor. Morice v. Bishop of Durham, 9 Ves. 399.

Charity, as used in the Massachusetts Sunday law, includes whatever proceeds from a sense of moral duty or a feeling of kindness and humanity, and is intended wholly for the purpose of the relief or comfort of another, and not for one's own benefit or pleasure. Doyle v. Railroad Co., 118 Mass. 195, 197, 19 Am. Rep. 431.

—Foreign charity. One created or endowed in a state or country foreign to that of the domicile of the benefactor. Taylor's Ex'rs v. Trustees of Bryn Maur College, 34 N. J. Eq. 101.**—Public charity.** In this phrase the word "public" is used, not in the sense that it must be executed openly and in public, but in the sense of being so general and indefinite in its objects as to be deemed of common and public benefit. Each individual immediately benefited may be private, and the charity may be distributed in private and by a private hand. It is public and general in its scope and purpose, and becomes definite and private only after the individual objects have been selected. Saltonstall v. Sanders, 11 Allen (Mass.) 456.**—Pure charity.** One which is entirely gratuitous, and which dispenses its benefits without any charge or pecuniary return whatever. See In re Keech's Estate (Surr.) 7 N. Y. Supp. 331; In re Lenox's Estate (Surr.) 9 N.

Y. Supp. 895; Kentucky Female Orphan School v. Louisville, 100 Ky. 470, 36 S. W. 921, 40 L. R. A. 119.

CHARRE OF LEAD. A quantity consisting of 36 pigs of lead, each pig weighing about 70 pounds.

CHART. The word "chart," as used in the copyright law, does not include sheets of paper exhibiting tabulated or methodically arranged information. Taylor v. Gilman (C. C.) 24 Fed. 632.

CHARTA. In old English law. A charter or deed; an instrument written and sealed; the formal evidence of conveyances and contracts. Also any signal or token by which an estate was held. The term came to be applied, by way of eminence, to such documents as proceeded from the sovereign, granting liberties or privileges, and either where the recipient of the grant was the whole nation, as in the case of *Magna Charta*, or a public body, or private individual, in which case it corresponded to the modern word "charter."

In the civil law. Paper, suitable for the inscription of documents or books; hence, any instrument or writing. See Dig. 32, 52, 6; Nov. 44, 2.

—Charta communis. In old English law. A common or mutual charter or deed; one containing mutual covenants, or involving mutuality of obligation; one to which both parties might have occasion to refer, to establish their respective rights. Bract. fols. 33b, 34.—**Charta cyrographata.** In old English law. A chirographed charter; a charter executed in two parts, and cut through the middle, (*scinditur per medium,*) where the word "*cyrographum,*" or "*chirographum,*" was written in large letters. Bract. fol. 34; Fleta, lib. 3, c. 14, § 3.—**Charta de foresta.** A collection of the laws of the forest, made in the 9th Hen. III. and said to have been originally a part of *Magna Charta.*—**Charta de una parte.** A deed-poll.—**Charta partita.** (Literally, a deed divided.) A charter-party. 3 Kent, Comm. 201.

Charta non est nisi vestimentum donationis. A deed is nothing else than the vestment of a gift. Co. Litt. 36.

CHARTÆ LIBERTATUM. The charters (grants) of liberties. These are *Magna Charta* and *Charta de Foresta.*

Chartarum super fidem, mortuis testibus, ad patriam de necessitudine recurrendum est. Co. Litt. 36. The witnesses being dead, the truth of charters must of necessity be referred to the country, *i. e.*, a jury.

CHARTE. Fr. A chart, or plan, which mariners use at sea.

CHARTE-PARTIE. Fr. In French marine law. A charter-party.

CHARTEL. A challenge to a single combat; also an instrument or writing between two states for settling the exchange of prisoners of war.

CHARTER, *v.* In mercantile law. To hire or lease a vessel for a voyage. A "chartered" is distinguished from a "seeking" ship. 7 East, 24.

CHARTER, *n.* An instrument emanating from the sovereign power, in the nature of a grant, either to the whole nation, or to a class or portion of the people, or to a colony or dependency, and assuring to them certain rights, liberties, or powers. Such was the "Great Charter" or "*Magna Charta,*" and such also were the charters granted to certain of the English colonies in America. See Story, Const. § 161.

An act of the legislative department of government, creating a corporation, is called the "charter" of the corporation. Merrick v. Van Santvoord, 34 N. Y. 214; Bent v. Underdown, 156 Ind. 516, 60 N. E. 307; Morris & E. R. Co. v. Com'rs, 37 N. J. Law, 237.

In old English law. The term denoted a deed or other written instrument under seal; a conveyance, covenant, or contract.

In old Scotch law. A disposition made by a superior to his vassal, for something to be performed or paid by him. 1 Forb. Inst. pt. 2, b. 2, c. 1, tit. 1. A writing which contains the grant or transmission of the feudal right to the vassal. Ersk. Inst. 2, 3, 19.

—Charter of pardon. In English law. An instrument under the great seal, by which a pardon is granted to a man for a felony or other offense.—**Charter of the forest.** See CHARTA DE FORESTA.—**Charter rolls.** Ancient English records of royal charters, granted between the years 1199 and 1516.

CHARTER-HOUSE. Formerly a convent of Carthusian monks in London; now a college founded and endowed by Thomas Sutton. The governors of the charter-house are a corporation aggregate without a head, president, or superior, all the members being of equal authority. 3 Steph. Comm. (7th Ed.) 14, 97.

CHARTER-LAND. Otherwise called "book-land," is property held by deed under certain rents and free services. It, in effect, differs nothing from the free socage lands, and hence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same. 2 Bl. Comm. 90.

CHARTER-PARTY. A contract by which an entire ship, or some principal part thereof, is let to a merchant for the conveyance of goods on a determined voyage to one or more places. The Harvey and Henry, 86 Fed. 656, 30 C. C. A. 330; The New York (D. C.) 93 Fed. 497; Vandewater v. The Yankee Blade, 28 Fed. Cas. 980; Spring v. Gray, 6 Pet. 151, 8 L. Ed. 352; Fish v. Sullivan, 40

La. Ann. 193, 3 South. 730; Drinkwater v. The Spartan, 7 Fed. Cas. 1085. A contract of affreightment in writing, by which the owner of a ship lets the whole or a part of her to a merchant, for the conveyance of goods on a particular voyage, in consideration of the payment of freight. 3 Kent, Comm. 201.

A written agreement, not usually under seal, by which a ship-owner lets an entire ship, or a part of it, to a merchant for the conveyance of goods, binding himself to transport them to a particular place for a sum of money which the merchant undertakes to pay as freight for their carriage. Maude & P. Mer. Shipp. 227.

The contract by which a ship is let is termed a "charter-party." By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer. Civil Code Cal. § 1959; Civil Code Dak. § 1127.

CHARTERED SHIP. A ship hired or freighted; a ship which is the subject-matter of a charter-party.

CHARTERER. In mercantile law. One who charters (*i. e.*, hires or engages) a vessel for a voyage; a freighter. 2 Steph. Comm. 184; 3 Kent, Comm. 137; Turner v. Cross, 83 Tex. 218, 18 S. W. 578, 15 L. R. A. 262.

CHARTIS REDDENDIS. (For returning the charters.) An ancient writ which lay against one who had charters of feoffment intrusted to his keeping and refused to deliver them. Reg. Orig. 159.

CHARTOPHYLAX. In old European law. A keeper of records or public instruments; a chartulary; a registrar. Spelman.

CHARUE. In old English law. A plow. *Bestes des charues;* beasts of the plow.

CHASE. The liberty or franchise of hunting, one's self, and keeping protected against all other persons, beasts of the chase within a specified district, without regard to the ownership of the land. 2 Bl. Comm. 414–416.

A privileged place for the preservation of deer and beasts of the forest, of a middle nature between a forest and a park. It is commonly less than a forest, and not endowed with so many liberties, as officers, laws, courts; and yet it is of larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differs from a park in that it is not inclosed, yet it must have certain metes and bounds, but it may be in other men's grounds, as well as in one's own. Manwood, 49.

—Common chase. In old English law. A place where all alike were entitled to hunt wild animals.

CHASTITY. Purity; continence. That virtue which prevents the unlawful intercourse of the sexes. Also the state of purity or abstinence from unlawful sexual connection. People v. Brown, 71 Hun, 601, 24 N. Y. Supp. 1111; People v. Kehoe, 123 Cal. 224, 55 Pac. 911, 69 Am. St. Rep. 52; State v. Carron, 18 Iowa, 375, 87 Am. Dec. 401.

—Chaste character. This term, as used in statutes, means actual personal virtue, and not reputation or good name. It may include the character of one who was formerly unchaste but is reformed. Kenyon v. People, 26 N. Y. 203, 84 Am. Dec. 177; Boak v. State, 5 Iowa, 430; People v. Nelson, 153 N. Y. 90, 46 N. E. 1040, 60 Am. St. Rep. 592; People v. Mills, 94 Mich. 630, 54 N. W. 488.

CHATTEL. An article of personal property; any species of property not amounting to a freehold or fee in land. People v. Holbrook, 13 Johns. (N. Y.) 94; Hornblower v. Proud, 2 Barn. & Ald. 335; State v. Bartlett, 55 Me. 211; State v. Brown, 9 Baxt. (Tenn.) 54, 40 Am. Rep. 81.

The name given to things which in law are deemed personal property. Chattels are divided into chattels real and chattels personal; chattels real being interests in land which devolve after the manner of personal estate, as leaseholds. As opposed to freeholds, they are regarded as personal estate. But, as being interests in real estate, they are called "chattels real," to distinguish them from movables, which are called "chattels personal." Mozley & Whitley.

Chattels personal are movables only; chattels real are such as savor only of the realty. Putnam v. Westcott, 19 Johns. (N. Y.) 73; Hawkins v. Trust Co. (C. C.) 79 Fed. 50; Insurance Co. v. Haven, 95 U. S. 251, 24 L. Ed. 473; Knapp v. Jones, 143 Ill. 375, 32 N. E. 382.

The term "chattels" is a more comprehensive one than "goods," as it includes animate as well as inanimate property. 2 Chit. Bl. Comm. 383, note. In a devise, however, they seem to be of the same import. Shep. Touch. 447; 2 Fonbl. Eq. 335.

—Chattel interest. An interest in corporeal hereditaments less than a freehold. 2 Kent, Comm. 342.—**Personal chattels.** Things movable which may be annexed to or attendant on the person of the owner, and carried about with him from one part of the world to another. 2 Bl. Comm. 387.—**Real chattels.** Such as concern, or savor of, the realty, such as leasehold estates; interests issuing out of, or annexed to, real estate; such chattel interests as devolve after the manner of realty. 2 Bl. Comm. 386.

CHATTEL MORTGAGE. An instrument of sale of personalty conveying the title of the property to the mortgagee with terms of defeasance; and, if the terms of redemption are not complied with, then, at common law, the title becomes absolute in the mort-

gagee. Means v. Montgomery (C. C.) 23 Fed. 421; Stewart v. Slater, 6 Duer (N. Y.) 99.

A transfer of personal property as security for a debt or obligation in such form that, upon failure of the mortgagor to comply with the terms of the contract, the title to the property will be in the mortgagee. Thomas, Mortg. 427.

An absolute pledge, to become an absolute interest if not redeemed at a fixed time. Cortelyou v. Lansing, 2 Caines, Cas. (N. Y.) 200, per Kent, Ch.

A conditional sale of a chattel as security for the payment of a debt or the performance of some other obligation. Jones, Chat. Mortg. § 1. Alferitz v. Ingalls (C. C.) 83 Fed. 964; People v. Remington, 59 Hun, 282, 12 N. Y. Supp. 824, 14 N. Y. Supp. 98; Allen v. Steiger, 17 Colo. 552, 31 Pac. 226.

A chattel mortgage is a conditional transfer or conveyance of the property itself. The chief distinctions between it and a pledge are that in the latter the title, even after condition broken, does not pass to the pledgee, who has only a lien on the property, but remains in the pledgeor, who has the right to redeem the property at any time before its sale. Besides, the possession of the property must, in all cases, accompany the pledge, and, at a sale thereof by the pledgee to satisfy his demand, he cannot become the purchaser; while by a chattel mortgage the title of the mortgagee becomes absolute at law, on the default of the mortgagor, and it is not essential to the validity of the instrument that possession of the property should be delivered, and, on the foreclosure of the mortga e, the mortgagee is at liberty to become the purchaser. Mitchell v. Roberts (C. C.) 17 Fed. 778; Campbell v. Parker, 22 N. Y. Super. Ct. 322; People v. Remington, 59 Hun, 282, 12 N. Y. Supp. 824, 14 N. Y. Supp. 98; McCoy v. Lassiter, 95 N. C. 91; Wright v. Ross, 36 Cal. 414; Thurber v. Oliver (C. C.) 26 Fed. 224; Thompson v. Dolliver, 132 Mass. 103; Lobban v. Garnett, 9 Dana (Ky.) 389.

The material distinction between a pledge and a mortgage of chattels is that a mortgage is a conveyance of the legal title upon condition, and it becomes absolute in law if not redeemed by a given time; a pledge is a deposit of goods, redeemable on certain terms, either with or without a fixed period for redemption. In pledge, the general property does not pass, as in the case of mortgage, and the pawnee has only a special property in the thing deposited. The pawnee must choose between two remedies,—a bill in chancery for a judicial sale under a decree of foreclosure, or a sale without judicial process, on the refusal of the debtor to redeem, after reasonable notice to do so. Evans v. Darlington, 5 Blackf. (Ind.) 320.

In a *conditional sale* the purchaser has merely a right to repurchase, and no debt or obligation exists on the part of the vendor; this distinguishes such a sale from a mortgage. Weathersly v. Weathersly, 40 Miss. 462, 90 Am. Dec. 344.

CHAUD-MEDLEY. A homicide committed in the heat of an affray and while under the influence of passion; it is thus distinguished from *chance-medley*, which is the killing of a man in a casual affray in self-defense. 4 Bl. Comm. 184. See 1 Russ. Crimes, 660.

CHAUMPERT. A kind of tenure mentioned in a patent of 35 Edw. III. Cowell; Blount.

CHAUNTRY RENTS. Money paid to the crown by the servants or purchasers of chauntry-lands. See CHANTRY.

CHEAT. Swindling; defrauding. "Deceitful practices in defrauding or *endeavoring* to defraud another of his known right, by some *willful device*, contrary to the plain rules of common honesty." Hawk. P. C. b. 2, c. 23, § 1. "The fraudulent obtaining the property of another by any deceitful and illegal practice or token (short of felony) which affects or may affect the public." Steph. Crim. Law, 93.

Cheats, punishable at common law, are such cheats (not amounting to felony) as are effected by deceitful or illegal symbols or tokens which may affect the public at large, and against which common prudence could not have guarded. 2 Whart. Crim. Law, § 1116; 2 East, P. C. 818; People v. Babcock, 7 Johns. (N. Y.) 201, 5 Am. Dec. 256; Von Mumm v. Frash (C. C.) 56 Fed. 836; State v. Parker, 43 N. H. 85.

CHEATERS, or ESCHEATORS, were officers appointed to look after the king's escheats, a duty which gave them great opportunities of fraud and oppression, and in consequence many complaints were made of their misconduct. Hence it seems that a *cheater* came to signify a fraudulent person, and thence the verb to *cheat* was derived. Wharton.

CHECK, *v.* To control or restrain; to hold within bounds. To verify or audit. Particularly used with reference to the control or supervision of one department, bureau, or office over another.

—Check-roll. In English law. A list or book, containing the names of such as are attendants on, or in the pay of, the queen or other great personages, as their household servants.

CHECK, *n.* A draft or order upon a bank or banking-house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to a certain person therein named, or to him or his order, or to bearer, and payable instantly on demand. 2 Daniel, Neg. Inst. § 1566; Bank v. Patton, 109 Ill. 484; Douglass v. Wilkeson, 6 Wend. (N. Y.) 643; Thompson v. State, 49 Ala. 18; Bank v. Wheaton, 4 R. I. 33.

A check is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest. Civ. Code Cal. § 3254; Civ. Code Dak. § 1933.

A check differs from an ordinary bill of exchange in the following particulars: (1) It is drawn on a bank or bankers, and is payable immediately on presentment, without any days of grace. (2) It is payable immediately on presentment, and no acceptance as distinct from payment is required. (3) By its terms it is supposed to be drawn upon a previous deposit of funds, and is an absolute appropriation of so

much money in the hands of the bankers to the holder of the check, to remain there until called for, and cannot after notice be withdrawn by the drawer. Merchants' Nat. Bank v. State Nat. Bank, 10 Wall. 647, 19 L. Ed. 1008; In re Brown, 4 Fed. Cas. 342; People v. Compton, 123 Cal. 403, 56 Pac. 44.

—Check-book. A book containing blank checks on a particular bank or banker, with an inner margin, called a "stub," on which to note the number of each check, its amount and date, and the payee's name, and a memorandum of the balance in bank.**—Crossed check.** A check crossed with two lines, between which are either the name of a bank or the words "and company," in full or abbreviated. In the former case, the banker on whom it is drawn must not pay the money for the check to any other than the banker named; in the latter case, he must not pay it to any other than a banker. 2 Steph. Comm. 118, note *c*.**—Memorandum check.** A check given by a borrower to a lender, for the amount of a short loan, with the understanding that it is not to be presented at the bank, but will be redeemed by the maker himself when the loan falls due. This understanding is evidenced by writing the word "*Mem.*" on the check. This is not unusual among merchants. See U. S. v. Isham, 17 Wall. 502, 21 L. Ed. 728; Turnbull v. Osborne, 12 Abb. Prac. (N. S.) (N. Y.) 202; Franklin Bank v. Freeman, 16 Pick. (Mass.) 539.

CHECKER. The old Scotch form of exchequer.

CHEFE. In Anglo-Norman law. Were or weregild; the price of the head or person, (*capitis pretium.*)

CHEMERAGE. In old French law. The privilege or prerogative of the eldest. A provincial term derived from *chemier*, (*q. v.*) Guyot, Inst.

CHEMIER. In old French law. The eldest born. A term used in Poitou and other places. Guyot, Inst.

CHEMIN. Fr. The road wherein every man goes; the king's highway.

CHEMIS. In old Scotch law. A chief dwelling or mansion house.

CHEVAGE. A sum of money paid by villeins to their lords in acknowledgment of their bondage.

Chevage seems also to have been used for a sum of money yearly given to a man of power for his countenance and protection as a chief or leader. Termes de la Ley; Cowell.

CHEVANTIA. In old records. A loan or advance of money upon credit. Cowell.

CHEVISANCE. An agreement or composition; an end or order set down between a creditor or debtor; an indirect gain in point of usury, etc.; also an unlawful bargain or contract. Wharton.

CHEVITIÆ. In old records. Pieces of ground, or *heads* at the end of plowed lands. Cowell.

CHEZÉ. A homestead or homesfall which is accessory to a house.

CHICANE. Swindling; shrewd cunning. The use of tricks and artifice.

CHIEF. Principal; leading; head; eminent in power or importance; the most important or valuable of several.

Declaration in chief is a declaration for the principal cause of action. 1 Tidd, Pr. 419.

Examination in chief is the first examination of a witness by the party who produces him. 1 Greenl. Ev. § 445.

—Chief baron. The presiding judge of the English court of exchequer; answering to the chief justice of other courts. 3 Bl. Comm. 44; 3 Steph. Comm. 401.**—Chief Clerk.** The principal clerical officer of a bureau or department, who is generally charged, subject to the direction of his superior officer, with the superintendence of the administration of the business of the office.**—Chief judge.** The judge of the London bankruptcy court is so called. In general, the term is equivalent to "presiding justice" or "presiding magistrate." Bean v. Loryea, 81 Cal. 151, 22 Pac. 513.**—Chief justice.** The presiding, eldest, or principal judge of a court of justice.**—Chief justice of England.** The presiding judge in the king's bench division of the high court of justice, and, in the absence of the lord chancellor, president of the high court, and also an *ex officio* judge of the court of appeals. The full title is "Lord Chief Justice of England." **—Chief justice of the common pleas.** In England. The presiding judge in the court of common pleas, and afterwards in the common pleas division of the high court of justice, and one of the *ex officio* judges of the high court of appeal.**—Chief justiciar.** In old English law. A high judicial officer and special magistrate, who presided over the *aula regis* of the Norman kings, and who was also the principal minister of state, the second man in the kingdom, and, by virtue of his office, guardian of the realm in the king's absence. 3 Bl. Comm. 38.**—Chief lord.** The immediate lord of the fee, to whom the tenants were directly and personally responsible.**—Chief magistrate.** The head of the executive department of government of a nation, state, or municipal corporation. McIntire v. Ward, 3 Yeates (Pa.) 424.**—Chief pledge.** The borsholder, or chief of the borough. Spelman. **—Chief rents.** In English law. Were the annual payments of freeholders of manors; and were also called "quit-rents," because by paying them the tenant was freed from all other rents or services. 2 Bl. Comm. 42.**—Chief, tenant in.** In English feudal law. All the land in the kingdom was supposed to be holden mediately or immediately of the king, who was styled the "Lord Paramount," or "Lord Above All;" and those that held immediately under him, in right of his crown and dignity, were called his tenants "*in capite*" or "in chief," which was the most honorable species of tenure, but at the same time subjected the tenant to greater and more burdensome services than inferior tenures did. Brown.

CHIEFRIE. In feudal law. A small rent paid to the lord paramount.

CHILD. This word has two meanings in law: (1) In the law of the domestic relations, and as to descent and distribution, it is used strictly as the correlative of "parent," and means a son or daughter considered as in relation with the father or mother. (2) In the law of negligence, and in laws for the protection of children, etc., it is used as the

opposite of "adult," and means the young of the human species, (generally under the age of puberty,) without any reference to parentage and without distinction of sex. Miller v. Finegan, 26 Fla. 29, 7 South. 140, 6 L. R. A. 813.

—Child's part. A "child's part," which a widow, by statute in some states, is entitled to take in lieu of dower or the provision made for her by will, is a full share to which a child of the decedent would be entitled, subject to the debts of the estate and the cost of administration up to and including distribution. Benedict v. Wilmarth, 46 Fla. 535, 35 South. 84.**—Natural child.** A bastard; a child born out of lawful wedlock. But in a statute declaring that adopted shall have all the rights of "natural" children, the word "natural" was used in the sense of "legitimate." Barns v. Allen, 9 Am. Law Reg. (O. S.) 747. In Louisiana. Illegitimate children who have been adopted by the father. Civ. Code La. art. 220. In the civil law. A child by natural relation or procreation; a child by birth, as distinguished from a child by adoption. Inst. 1, 11, pr.; Id. 3, 1, 2; Id. 3, 8, pr. A child by concubinage, in contradistinction to a child by marriage. Cod. 5, 27.**—Quasi posthumous child.** In the civil law. One who, born during the life of his grandfather or other male ascendant, was not his heir at the time he made his testament, but who by the death of his father became his heir in his life-time. Inst. 2, 13, 2; Dig. 28, 3, 13.

CHILDREN. Offspring; progeny. Legitimate offspring; children born in wedlock. Bell v. Phyn, 7 Ves. 458.

The general rule is that "children," in a bequest or devise, means legitimate children. Under a devise or bequest to children, as a class, natural children are not included, unless the testator's intention to include them is manifest, either by express designation or necessary implication. Heater v. Van Auken, 14 N. J. Eq. 159; Gardner v. Heyer, 2 Paige (N. Y.) 11.

In deeds, the word "children" signifies the immediate descendants of a person, in the ordinary sense of the word, as contradistinguished from *issue;* unless there be some accompanying expressions, evidencing that the word is used in an enlarged sense. Lewis, Perp. 196.

In wills, where greater latitude of construction is allowed, in order to effect the obvious intention of the testator, the meaning of the word has sometimes been extended, so as to include *grandchildren,* and it has been held to be synonymous with *issue.* Lewis, Perp. 195, 196; 2 Crabb, Real Prop. pp. 38, 39, §§ 988, 989; 4 Kent, Comm. 345, 346, note.

The word "heirs," in its natural signification, is a word of limitation; and it is presumed to be used in that sense, unless a contrary intention appears. But the term "children," in its natural sense, is a word of purchase, and is to be taken to have been used as such, unless there are other expressions in the will showing that the testator intended to use it as a word of limitation only. Sanders, Matter of, 4 Paige (N. Y.) 293; Rogers v. Rogers, 3 Wend. (N. Y.) 503, 20 Am. Dec. 716.

In the natural and primary sense of the word "children," it implies immediate offspring, and, in its legal acceptation, is not a word of limitation, unless it is absolutely necessary so to construe it in order to give effect to the testator's intention. Echols v. Jordan, 39 Ala. 24.

"Children" is ordinarily a word of description, limited to persons standing in the same relation, and has the same effect as if all the names were given; but heirs, in the absence of controlling or explanatory words, includes more remote descendants, and is to be applied *per stirpes.* Balcom v. Haynes, 14 Allen (Mass.) 204.

CHILDWIT. In Saxon law. The right which a lord had of taking a fine of his bondwoman gotten with child without his license. Termes de la Ley; Cowell.

CHILTERN HUNDREDS. In English law. The stewardship of the Chiltern Hundreds is a nominal office in the gift of the crown, usually accepted by members of the house of commons desirous of vacating their seats. By law a member once duly elected to parliament is compelled to discharge the duties of the trust conferred upon him, and is not enabled at will to resign it. But by statute, if any member accepts any office of profit from the crown, (except officers in the army or navy accepting a new commission,) his seat is vacated. If, therefore, any member wishes to retire from the representation of the county or borough by which he was sent to parliament, he applies to the lords of the treasury for the stewardship of one of the Chiltern Hundreds, which having received, and thereby accomplished his purpose, he again resigns the office. Brown.

CHIMIN. In old English law. A road, way, highway. It is either the king's highway (*chiminus regis*) or a private way. The first is that over which the subjects of the realm, and all others under the protection of the crown, have free liberty to pass, though the property in the soil itself belong to some private individual; the last is that in which one person or more have liberty to pass over the land of another, by prescription or charter. Wharton.

CHIMINAGE. A toll for passing on a way through a forest; called in the civil law "*pedagium.*" Cowell.

CHIMINUS. The way by which the king and all his subjects and all under his protection have a right to pass, though the property of the soil of each side where the way lieth may belong to a private man. Cowell.

CHIMNEY MONEY, or HEARTH MONEY. A tax upon chimneys or hearths; an ancient tax or duty upon houses in England, now repealed.

CHIPPINGAVEL. In old English law. A tax upon trade; a toll imposed upon traffic, or upon goods brought to a place to be sold.

CHIRGEMOT, CHIRCHGEMOT. In Saxon law. An ecclesiastical assembly or court. Spelman. A synod or meeting in a church or vestry. 4 Inst. 321.

CHIROGRAPH. In old English law. A deed or indenture; also the last part of a fine of land.

An instrument of gift or conveyance attested by the subscription and crosses of the witnesses, which was in Saxon times called

"*chirographum*," and which, being somewhat changed in form and manner by the Normans, was by them styled "*charta*." Anciently when they made a chirograph or deed which required a counterpart, as we call it, they engrossed it twice upon one piece of parchment contrariwise, leaving a space between, in which they wrote in capital letters the word "chirograph," and then cut the parchment in two through the middle of the word, giving a part to each party. Cowell.

In Scotch law. A written voucher for a debt. Bell.

In civil and canon law. An instrument written out and subscribed by the hand of the party who made it, whether the king or a private person. Cowell.

CHIROGRAPHA. In Roman law. Writings emanating from a single party, the debtor.

CHIROGRAPHER OF FINES. In English law. The title of the officer of the common pleas who engrossed fines in that court so as to be acknowledged into a perpetual record. Cowell.

CHIROGRAPHUM. In Roman law. A handwriting; that which was written with a person's own hand. An obligation which a person wrote or subscribed with his own hand; an acknowledgment of debt, as of money received, with a promise to repay.

An evidence or voucher of debt; a security for debt. Dig. 26, 7, 57, pr.

A right of action for debt.

Chirographum apud debitorem repertum præsumitur solutum. An evidence of debt found in the debtor's possession is presumed to be paid. Halk. Max. 20; Bell, Dict.

Chirographum non extans præsumitur solutum. An evidence of debt not existing is presumed to have been discharged. Tray. Lat. Max. 73.

CHIRURGEON. The ancient denomination of a surgeon.

CHIVALRY. In feudal law. Knight-service. Tenure in chivalry was the same as tenure by knight-service. 2 Bl. Comm. 61, 62.

CHIVALRY, COURT OF. In English law. The name of a court anciently held as a court of honor merely, before the earl-marshal, and as a criminal court before the lord high constable, jointly with the earl-marshal. It had jurisdiction as to contracts and other matters touching deeds of arms or war, as well as pleas of life or member. It also corrected encroachments in matters of coat-armor, precedency, and other distinctions of families. It is now grown entirely out of use, on account of the feebleness of its jurisdiction and want of power to enforce its judgments, as it could neither fine nor imprison, not being a court of record. 3 Bl. Comm. 68; 4 Broom & H. Comm. 360, note.

CHOP-CHURCH. A word mentioned in 9 Hen. VI. c. 65, by the sense of which it was in those days a kind of trade, and by the judges declared to be lawful. But Brooke, in his abridgment, says it was only permissible by law. It was, without doubt, a nickname given to those who used to change benefices, as to "chop and change" is a common expression. Jacob.

CHOPS. The mouth of a harbor. Pub. St. Mass. 1882, p. 1288.

CHORAL. In ancient times a person admitted to sit and worship in the choir; a chorister.

CHOREPISCOPUS. In old European law. A rural bishop, or bishop's vicar. Spelman; Cowell.

CHOSE. Fr. A thing; an article of property. A chose is a chattel personal, (Williams, Pers. Prop. 4,) and is either in possession or in action. See the following titles.

—Chose local. A local thing; a thing annexed to a place, as a mill. Kitchin, fol. 18; Cowell; Blount.—**Chose transitory.** A thing which is movable, and may be taken away or carried from place to place. Cowell; Blount.

CHOSE IN ACTION. A right to personal things of which the owner has not the possession, but merely a right of action for their possession. 2 Bl. Comm. 389, 397; 1 Chit. Pr. 99.

A right to receive or recover a debt, demand, or damages on a cause of action *ex contractu*, or for a tort connected with contract, but which cannot be made available without recourse to an action. Bushnell v. Kennedy, 9 Wall. 390, 19 L. Ed. 736; Turner v. State, 1 Ohio St. 426; Sheldon v. Sill, 8 How. 441, 12 L. Ed. 1147; People v. Tioga Common Pleas, 19 Wend. (N. Y.) 73; Sterling v. Sims, 72 Ga. 53; Bank v. Holland, 99 Va. 495, 39 S. E. 126, 55 L. R. A. 155, 86 Am. St. Rep. 898.

Personalty to which the owner has a right of possession in future, or a right of immediate possession, wrongfully withheld, is termed by the law a "chose in action." Code Ga. 1882, § 2239.

Chose in action is a phrase which is sometimes used to signify a right of bringing an action, and, at others, the thing itself which forms the subject-matter of that right, or with regard to which that right is exercised; but it more properly includes the idea both of the thing itself and of the right of action as annexed to it. Thus, when it is said that a debt is a chose in action, the phrase conveys the idea, not only of the thing itself, *i. e.*, the debt, but also of the right of action or of recovery possessed by the

person to whom the debt is due. When it is said that a chose in action cannot be assigned, it means that a thing to which a right of action is annexed cannot be transferred to another, together with such right. Brown.

A chose in action is any right to damages, whether arising from the commission of a tort, the omission of a duty, or the breach of a contract. Pitts v. Curtis, 4 Ala. 350; Magee v. Toland, 8 Port. (Ala.) 40.

CHOSE IN POSSESSION. A thing in possession, as distinguished from a thing in action. Sterling v. Sims, 72 Ga. 53; Vawter v. Griffin, 40 Ind. 601. See CHOSE IN ACTION. Taxes and customs, if paid, are a chose in possession; if unpaid, a chose in action. 2 Bl. Comm. 408.

CHOSEN FREEHOLDERS. Under the municipal organization of the state of New Jersey, each county has a board of officers, called by this name, composed of representatives from the cities and townships within its limits, and charged with administering the revenues of the county. They correspond to the "county commissioners" or "supervisors" in other states.

CHOUT. In Hindu law. A fourth, a fourth part of the sum in litigation. The "Mahratta chout" is a fourth of the revenues exacted as tribute by the Mahrattas.

CHRENECRUDA. Under the Salic law. This was a ceremony performed by a person who was too poor to pay his debt or fine, whereby he applied to a rich relative to pay it for him. It consisted (after certain preliminaries) in throwing green herbs upon the party, the effect of which was to bind him to pay the whole demand.

CHRISTIAN. Pertaining to Jesus Christ or the religion founded by him; professing Christianity. The adjective is also used in senses more remote from its original meaning. Thus a "court Christian" is an ecclesiastical court; a "Christian name" is that conferred upon a person at baptism into the Christian church. As a noun, it signifies one who accepts and professes to live by the doctrines and principles of the Christian religion. Hale v. Everett, 53 N. H. 53, 16 Am. Rep. 82; State v. Buswell, 40 Neb. 158, 58 N. W. 728, 24 L. R. A. 68.

—Christian name. The baptismal name distinct from the surname. Stratton v. Foster, 11 Me. 467. It has been said from the bench that a Christian name may consist of a single letter. Wharton.

CHRISTIANITATIS CURIA. The court Christian. An ecclesiastical court, as opposed to a civil or lay tribunal. Cowell.

CHRISTIANITY. The religion founded and established by Jesus Christ. Hale v. Everett, 53 N. H. 9, 54, 16 Am. Rep. 82; People v. Ruggles, 8 Johns. (N. Y.) 297, 5 Am. Dec. 335.

Concerning the maxim that Christianity is a part of the common law, or of the law of the land, see State v. Chandler, 2 Har. (Del.) 553; Board of Education v. Minor, 23 Ohio St. 211, 13 Am. Rep. 233; Vidal v. Girard, 2 How. 127, 11 L. Ed. 205; Updegraph v. Comm., 11 Serg. & R. (Pa.) 394; Mohney v. Cook, 26 Pa. 342, 67 Am. Dec. 419; Lindenmuller v. People, 33 Barb. (N. Y.) 548; Rex v. Woolston, 2 Strange, 834; Bloom v. Richards, 2 Ohio St. 387; City Council v. Benjamin, 2 Strob. (S. C.) 508, 49 Am. Dec. 608; State v. Bott, 31 La. Ann. 663, 33 Am. Rep. 224; State v. Hallock, 16 Nev. 373.

CHRISTMAS-DAY. A festival of the Christian church, observed on the 25th of December, in memory of the birth of Jesus Christ.

CHURCH. In its most general sense, the religious society founded and established by Jesus Christ, to receive, preserve, and propagate his doctrines and ordinances.

A body or community of Christians, united under one form of government by the profession of the same faith, and the observance of the same ritual and ceremonies.

The term may denote either a society of persons who, professing Christianity, hold certain doctrines or observances which differentiate them from other like groups, and who use a common discipline, or the building in which such persons habitually assemble for public worship. Baker v. Fales, 16 Mass. 498; Tate v. Lawrence, 11 Heisk. (Tenn.) 531; In re Zinzow, 18 Misc. Rep. 653, 43 N. Y. Supp. 714; Neale v. St. Paul's Church, 8 Gill (Md.) 116; Gaff v. Greer, 88 Ind. 122, 45 Am. Rep. 449; Josey v. Trust Co., 106 Ga. 608, 32 S. E. 628.

The body of communicants gathered into church order, according to established usage in any town, parish, precinct, or religious society, established according to law, and actually connected and associated therewith for religious purposes, for the time being, is to be regarded as the church of such society, as to all questions of property depending upon that relation. Stebbins v. Jennings, 10 Pick. (Mass.) 193.

A congregational church is a voluntary association of Christians united for discipline and worship, connected with, and forming a part of, some religious society, having a legal existence. Anderson v. Brock, 3 Me. 248.

In English ecclesiastical law. An institution established by the law of the land in reference to religion. 3 Steph. Comm. 54. The word "church" is said to mean, in strictness, not the material fabric, but the cure of souls and the right of tithes. 1 Mod. 201.

—Church building acts. Statutes passed in England in and since the year 1818, with the object of extending the accommodation afforded by the national church, so as to make it more commensurate with the wants of the people. 3 Steph. Comm. 152–164.**—Church discipline act.** The statute 3 & 4 Vict. c. 86, containing regulations for trying clerks in holy orders charged with offenses against ecclesiastical law, and for enforcing sentences pronounced in such cases. Phillim. Ecc. Law, 1314.**—Church of England.** The church of England is a distinct branch of Christ's church, and is also an insti-

tution of the state, (see the first clause of *Magna Charta,*) of which the sovereign is the supreme head by act of parliament, (26 Hen. VIII. c. 1,) but in what sense is not agreed. The sovereign must be a member of the church, and every subject is in theory a member. Wharton. Pawlet v. Clark, 9 Cranch, 292, 3 L. Ed. 735. **—Church rate.** In English law. A sum assessed for the repair of parochial churches by the representatives of the parishioners in vestry assembled. **—Church reeve.** A church warden; an overseer of a church. Now obsolete. Cowell. **—Church-scot.** In old English law. Customary obligations paid to the parish priest; from which duties the religious sometimes purchased an exemption for themselves and their tenants. **—Church wardens.** A species of ecclesiastical officers who are intrusted with the care and guardianship of the church building and property. These, with the rector and vestry, represent the parish in its corporate capacity. **—Churchyard.** See CEMETERY.

CHURCHESSET. In old English law. A certain portion or measure of wheat, anciently paid to the church on St. Martin's day; and which, according to Fleta, was paid as well in the time of the Britons as of the English. Fleta, lib. 1, c. 47, § 28.

CHURL. In Saxon law. A freeman of inferior rank, chiefly employed in husbandry. 1 Reeve, Eng. Law, 5. A tenant at will of free condition, who held land from a thane, on condition of rents and services. Cowell. See CEORL.

CI. Fr. So; here. *Ci Dieiu vous eyde,* so help you God. *Ci devant,* heretofore. *Ci bien,* as well.

CIBARIA. Lat. In the civil law. Food; victuals. Dig. 34, 1.

CICATRIX. In medical jurisprudence. A scar; the mark left in the flesh or skin after the healing of a wound, and having the appearance of a seam or of a ridge of flesh.

CINQUE PORTS. Five (now seven) ports or havens on the south-east coast of England, towards France, formerly esteemed the most important in the kingdom. They are Dover, Sandwich, Romney, Hastings, and Hythe, to which Winchelsea and Rye have been since added. They had similar franchises, in some respects, with the counties palatine, and particularly an exclusive jurisdiction, (before the mayor and jurats, corresponding to aldermen, of the ports,) in which the king's ordinary writ did not run. 3 Bl. Comm. 79.

The 18 & 19 Vict. c. 48, (amended by 20 & 21 Vict. c. 1,) abolishes all jurisdiction and authority of the lord warden of the Cinque Ports and constable of Dover Castle, in or in relation to the administration of justice in actions, suits, or other civil proceedings at law or in equity.

CIPPI. An old English law term for the stocks, an instrument in which the wrists or ankles of petty offenders were confined.

CIRCADA. A tribute anciently paid to the bishop or archbishop for visiting churches. Du Fresne.

CIRCAR. In Hindu law. Head of affairs; the state or government; a grand division of a province; a headman. A name used by Europeans in Bengal to denote the Hindu writer and accountant employed by themselves, or in the public offices. Wharton.

CIRCUIT. A division of the country, appointed for a particular judge to visit for the trial of causes or for the administration of justice. Bouvier.

Circuits, as the term is used in England, may be otherwise defined to be the periodical progresses of the judges of the superior courts of common law, through the several counties of England and Wales, for the purpose of administering civil and criminal justice.

—Circuit judge. The judge of a circuit court. Crozier v. Lyons, 72 Iowa, 401, 34 N. W. 186. **—Circuit justice.** In federal law and practice. The justice of the supreme court who is allotted to a given circuit. U. S. Comp. St. 1901, p. 486. **—Circuit paper.** In English practice. A paper containing a statement of the time and place at which the several assises will be held, and other statistical information connected with the assises. Holthouse.

CIRCUIT COURTS. The name of a system of courts of the United States, invested with general original jurisdiction of such matters and causes as are of Federal cognizance, except the matters specially delegated to the district courts.

The United States circuit courts are held by one of the justices of the supreme court appointed for the circuit, (and bearing the name, in that capacity, of *circuit justice,*) together with the circuit judge and the district judge of the district in which they are held. Their business is not only the supervision of trials of issues in fact, but the hearing of causes as a court in *banc;* and they have equity as well as common-law jurisdiction, together with appellate jurisdiction from the decrees and judgments of the district courts. 1 Kent, Comm. 301–303.

In several of the states, *circuit court* is the name given to a tribunal, the territorial jurisdiction of which comprises several counties or districts, and whose sessions are held in such counties or districts alternately. These courts usually have general original jurisdiction. In re Johnson, 12 Kan. 102.

CIRCUIT COURTS OF APPEALS. A system of courts of the United States (one in each circuit) created by act of congress of March 3, 1891 (U. S. Comp. St. 1901, p. 488), composed of the circuit justice, the circuit judge, and an additional circuit judge appointed for each such court, and having appellate jurisdiction from the circuit and district courts except in certain specified classes of cases.

Circuitus est evitandus; et boni judicis est lites dirimere, ne lis ex lite oriatur. 5 Coke, 31. Circuity is to be avoided; and it is the duty of a good judge to determine litigations, lest one lawsuit arise out of another.

CIRCUITY OF ACTION. This occurs where a litigant, by a complex, indirect, or roundabout course of legal proceeding, makes two or more actions necessary, in order to effect that adjustment of rights between all the parties concerned in the transaction which, by a more direct course, might have been accomplished in a single suit.

CIRCULAR NOTES. Similar instruments to "letters of credit." They are drawn by resident bankers upon their foreign correspondents, in favor of persons traveling abroad. The correspondents must be satisfied of the identity of the applicant, before payment; and the requisite proof of such identity is usually furnished, upon the applicant's producing a letter with his signature, by a comparison of the signatures. Brown.

CIRCULATION. As used in statutes providing for taxes on the circulation of banks, this term includes all currency or circulating notes or bills, or certificates or bills intended to circulate as money. U. S. v. White (C. C.) 19 Fed. 723; U. S. v. Wilson, 106 U. S. 620, 2 Sup. Ct. 85, 27 L. Ed. 310.

—Circulating medium. This term is more comprehensive than the term "money," as it is the medium of exchanges, or purchases and sales, whether it be gold or silver coin or any other article.

CIRCUMDUCTION. In Scotch law. A closing of the period for lodging papers, or doing any other act required in a cause. Paters. Comp.

—Circumduction of the term. In Scotch practice. The sentence of a judge, declaring the time elapsed within which a proof ought to have been led, and precluding the party from bringing forward any further evidence. Bell.

CIRCUMSPECTE AGATIS. The title of a statute passed 13 Edw. I. A. D. 1285, and so called from the initial words of it, the object of which was to ascertain the boundaries of ecclesiastical jurisdiction in some particulars, or, in other words, to regulate the jurisdiction of the ecclesiastical and temporal courts. 2 Reeve, Eng. Law, 215, 216.

CIRCUMSTANCES. A principal fact or event being the object of investigation, the *circumstances* are the related or accessory facts or occurrences which attend upon it, which closely precede or follow it, which surround and accompany it, which depend upon it, or which support or qualify it. Pfaffenback v. Railroad, 142 Ind. 246, 41 N. E. 530; Clare v. People, 9 Colo. 122, 10 Pac. 799.

The terms "circumstance" and "fact" are, in many applications, synonymous; but the true distinction of a circumstance is its *relative* character. "Any fact may be a circumstance with reference to any other fact." 1 Benth. Jud. Evid. 42, note; Id. 142.

Thrift, integrity, good repute, business capacity, and stability of character, for example, are "circumstances" which may be very properly considered in determining the question of "adequate security." Martin v. Duke, 5 Redf. Sur. (N. Y.) 600.

CIRCUMSTANTIAL EVIDENCE. Evidence directed to the attending circumstances; evidence which inferentially proves the principal fact by establishing a condition of surrounding and limiting circumstances, whose existence is a premise from which the existence of the principal fact may be concluded by necessary laws of reasoning. State v. Avery, 113 Mo. 475, 21 S. W. 193; Howard v. State, 34 Ark. 433; State v. Evans, 1 Marvel (Del.) 477, 41 Atl. 136; Comm. v. Webster, 5 Cush. (Mass.) 319, 52 Am. Dec. 711; Gardner v. Preston, 2 Day (Conn.) 205, 2 Am. Dec. 91; State v. Miller, 9 Houst. (Del.) 564, 32 Atl. 137.

When the existence of any fact is attested by witnesses, as having come under the cognizance of their senses, or is stated in documents, the genuineness and veracity of which there seems no reason to question, the evidence of that fact is said to be direct or positive. When, on the contrary, the existence of the principal fact is only inferred from one or more circumstances which have been established directly, the evidence is said to be circumstantial. And when the existence of the principal fact does not follow from the evidentiary facts as a necessary consequence of the law of nature, but is deduced from them by a process of probable reasoning, the evidence and proof are said to be presumptive. Best, Pres. 246; Id. 12.

All presumptive evidence is circumstantial, because necessarily derived from or made up of *circumstances*, but all circumstantial evidence is not presumptive, that is, it does not operate in the way of *presumption*, being sometimes of a higher grade, and leading to necessary conclusions, instead of probable ones. Burrill.

CIRCUMSTANTIBUS, TALES DE. See TALES.

CIRCUMVENTION. In Scotch law. Any act of fraud whereby a person is reduced to a deed by decreet. It has the same sense in the civil law. Dig. 50, 17, 49, 155. And see Oregon v. Jennings, 119 U. S. 74, 7 Sup. Ct. 124, 30 L. Ed. 323.

CIRIC. In Anglo-Saxon and old English law a church.

—Ciric-bryce. Any violation of the privileges of a church.—**Ciric sceat.** Church-scot, or shot; an ecclesiastical due, payable on the day of St. Martin, consisting chiefly of corn.

CIRLISCUS. A ceorl, (*q. v.*)

CISTA. A box or chest for the deposit of charters, deeds, and things of value.

CITACION. In Spanish law. Citation; summons; an order of a court requiring a person against whom a suit has been brought to appear and defend within a given time.

CITATIO. Lat. A citation or summons to court.

—Citatio ad reassumendam causam. A summons to take up the cause. A process, in the civil law, which issued when one of the parties to a suit died before its determination, for the plaintiff against the defendant's heir, or for the plaintiff's heir against the defendant, as the case might be; analogous to a modern bill of revivor.

Citatio est de juri naturali. A summons is by natural right. Cases in Banco Regis Wm. III. 453.

CITATION. In practice. A writ issued out of a court of competent jurisdiction, commanding a person therein named to appear on a day named and do something therein mentioned, or show cause why he should not. Proc. Prac.

The act by which a person is so summoned or cited.

It is used in this sense, in American law, in the practice upon writs of error from the United States supreme court, and in the proceedings of courts of probate in many of the states. Leavitt v. Leavitt, 135 Mass. 193; State v. McCann, 67 Me. 374; Schwartz v. Lake, 109 La. 1081, 34 South. 96; Cohen v. Virginia, 6 Wheat. 410, 5 L. Ed. 257.

This is also the name of the process used in the English ecclesiastical, probate, and divorce courts to call the defendant or respondent before them. 3 Bl. Comm. 100; 3 Steph. Comm. 720.

In Scotch practice. The calling of a party to an action done by an officer of the court under a proper warrant.

The service of a writ or bill of summons. Paters. Comp.

CITATION OF AUTHORITIES. The reading of, or reference to, legal authorities and precedents, (such as constitutions, statutes, reported cases, and elementary treatises,) in arguments to courts, or in legal text-books, to establish or fortify the propositions advanced.

Law of citations. See LAW.

Citationes non concedantur priusquam exprimatur super qua re fieri debet citatio. Citations should not be granted before it is stated about what matter the citation is to be made. A maxim of ecclesiastical law. 12 Coke, 44.

CITE. L. Fr. City; a city. *Cite de Loundr'*, city of London.

CITE. To summon; to command the presence of a person; to notify a person of legal proceedings against him and require his appearance thereto.

To read or refer to legal authorities, in an argument to a court or elsewhere, in support of propositions of law sought to be established.

CITIZEN. In general. A member of a free city or jural society, (*civitas,*) possessing all the rights and privileges which can be enjoyed by any person under its constitution and government, and subject to the corresponding duties.

In American law. One who, under the constitution and laws of the United States, or of a particular state, and by virtue of birth or naturalization within the jurisdiction, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights. U. S. v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588; White v. Clements, 39 Ga. 259; Amy v. Smith, 1 Litt. (Ky.) 331; State v. County Court, 90 Mo. 593, 2 S. W. 788; Minor v. Happersett, 21 Wall. 162, 22 L. Ed. 627; U. S. v. Morris (D. C.) 125 Fed. 325.

The term "citizen" has come to us derived from antiquity. It appears to have been used in the Roman government to designate a person who had the freedom of the city, and the right to exercise all political and civil privileges of the government. There was also, at Rome, a partial citizenship, including civil, but not political, rights. Complete citizenship embraced both. Thomasson v. State, 15 Ind. 451.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. Amend. XIV, Const. U. S.

There is in our political system a government of each of the several states, and a government of the United States. Each is distinct from the others, and has citizens of its own, who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a state; but his rights of citizenship under one of these governments will be different from those he has under the other. The government of the United States, although it is, within the scope of its powers, supreme and beyond the states, can neither grant nor secure to its citizens rights or privileges which are not expressly or by implication placed under its jurisdiction. All that cannot be so granted or secured are left to the exclusive protection of the states. U. S. v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588.

"Citizen" and "inhabitant" are not synonymous. One may be a citizen of a state without being an inhabitant, or an inhabitant without being a citizen. Quinby v. Duncan, 4 Har. (Del.) 383.

"Citizen" is sometimes used as synonymous with "resident;" as in a statute authorizing funds to be distributed among the religious societies of a township, proportionably to the number of their members who are citizens of the township. State v. Trustees, 11 Ohio, 24.

In English law. An inhabitant of a city. 1 Rolle, 138. The representative of a city, in parliament. 1 Bl. Comm. 174. It will be perceived that, in the English usage, the

word adheres closely to its original meaning, as shown by its derivation, (*civis*, a free inhabitant of a city.) When it is designed to designate an inhabitant of the *country*, or one amenable to the laws of the nation, "subject" is the word there employed.

CITIZENSHIP. The *status* of being a citizen, (*q. v.*)

CITY. In England. An incorporated town or borough which is or has been the see of a bishop. Co. Litt. 108; 1 Bl. Comm. 114; Cowell. State v. Green, 126 N. C. 1032, 35 S. E. 462.

A large town incorporated with certain privileges. The inhabitants of a city. The citizens. Worcester.

In America. A city is a municipal corporation of a larger class, the distinctive feature of whose organization is its government by a chief executive (usually called "mayor") and a legislative body, composed of representatives of the citizens, (usually called a "council" or "board of aldermen,") and other officers having special functions. Wight Co. v. Wolff, 112 Ga. 169, 37 S. E. 395.

CITY OF LONDON COURT. A court having a local jurisdiction within the city of London. It is to all intents and purposes a county court, having the same jurisdiction and procedure.

CIUDADES. Sp. In Spanish law, cities; distinguished from towns (pueblos) and villages (villas.) Hart v. Burnett, 15 Cal. 537.

CIVIL. In its original sense, this word means pertaining or appropriate to a member of a *civitas* or free political community; natural or proper to a *citizen*. Also, relating to the community, or to the policy and government of the citizens and subjects of a state.

In the language of the law, it has various significations. In contradistinction to *barbarous* or *savage*, it indicates a state of society reduced to order and regular government; thus, we speak of civil life, civil society, civil government, and civil liberty. In contradistinction to *criminal*, it indicates the private rights and remedies of men, as members of the community, in contrast to those which are public and relate to the government; thus, we speak of civil process and criminal process, civil jurisdiction and criminal jurisdiction.

It is also used in contradistinction to *military* or *ecclesiastical*, to *natural* or *foreign;* thus, we speak of a civil station, as opposed to a military or an ecclesiastical station; a civil death, as opposed to a natural death; a civil war, as opposed to a foreign war. Story, Const. § 791.

—Civil responsibility. The liability to be called upon to respond to an action at law for an injury caused by a delict or crime, as opposed to criminal responsibility, or liability to be proceeded against in a criminal tribunal.—**Civil side.** When the same court has jurisdiction of both civil and criminal matters, proceedings of the first class are often said to be on the civil side; those of the second, on the criminal side.

As to civil "Commotion," "Corporations," "Death," "Injury," "Liberty," "Obligation," "Officer," "Remedy," "Rights," and "War," see those titles.

CIVIL ACTION. In the civil law. A personal action which is instituted to compel payment, or the doing some other thing which is purely civil.

At common law. As distinguished from a *criminal* action, it is one which seeks the establishment, recovery, or redress of private and civil rights.

Civil suits relate to and affect, as to the parties against whom they are brought, only individual rights which are within their individual control, and which they may part with at their pleasure. The design of such suits is the enforcement of merely private obligations and duties. Criminal prosecutions, on the other hand, involve public wrongs, or a breach and violation of public rights and duties, which affect the whole community, considered as such in its social and aggregate capacity. The end they have in view is the prevention of similar offenses, not atonement or expiation for crime committed. Cancemi v. People, 18 N. Y. 128.

Civil cases are those which involve disputes or contests between man and man, and which only terminate in the adjustment of the rights of plaintiffs and defendants. They include all cases which cannot legally be denominated "criminal cases." Fenstermacher v. State, 19 Or. 504, 25 Pac. 142.

In code practice. A civil action is a proceeding in a court of justice in which one party, known as the "plaintiff," demands against another party, known as the "defendant," the enforcement or protection of a private right, or the prevention or redress of a private wrong. It may also be brought for the recovery of a penalty or forfeiture. Rev. Code Iowa 1880, § 2505.

The distinction between actions at law and suits in equity, and the forms of all such actions and suits, heretofore existing, is abolished; and there shall be in this state, hereafter, but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a "civil action." Code N. Y. § 69.

CIVIL BILL COURT. A tribunal in Ireland with a jurisdiction analogous to that of the county courts in England. The judge of it is also chairman of quarter sessions, (where the jurisdiction is more extensive than in England,) and performs the duty of revising barrister. Wharton.

CIVIL DAMAGE ACTS. Acts passed in many of the United States which provide an action for damages against a vendor of intoxicating liquors, (and, in some cases, against his lessor,) on behalf of the wife or family of a person who has sustained injuries by rea-

son of his intoxication. Moran v. Goodwin, 130 Mass. 158, 39 Am. Rep. 443; Baker v. Pope, 2 Hun (N. Y.) 556; Headington v. Smith, 113 Iowa, 107, 84 N. W. 983.

CIVIL LAW. The "Roman Law" and the "Civil Law" are convertible phrases, meaning the same system of jurisprudence; it is now frequently denominated the "Roman Civil Law."

The word "civil," as applied to the laws in force in Louisiana, before the adoption of the Civil Code, is not used in contradistinction to the word "criminal," but must be restricted to the Roman law. It is used in contradistinction to the laws of England and those of the respective states. Jennison v. Warmack, 5 La. 493.

1. The system of jurisprudence held and administered in the Roman empire, particularly as set forth in the compilation of Justinian and his successors,—comprising the Institutes, Code, Digest, and Novels, and collectively denominated the "*Corpus Juris Civilis*,"—as distinguished from the common law of England and the canon law.

2. That rule of action which every particular nation, commonwealth, or city has established peculiarly for itself; more properly called "municipal" law, to distinguish it from the "law of nature," and from international law.

The law which a people enacts is called the "civil law" of that people, but that law which natural reason appoints for all mankind is called the "law of nations," because all nations use it. Bowyer, Mod. Civil Law, 19.

3. That division of municipal law which is occupied with the exposition and enforcement of *civil rights*, as distinguished from *criminal law*.

CIVIL LIST. In English public law. An annual sum granted by parliament, at the commencement of each reign, for the expense of the royal household and establishment, as distinguished from the general exigencies of the state, being a provision made for the crown out of the taxes in lieu of its proper patrimony, and in consideration of the assignment of that patrimony to the public use. 2 Steph. Comm. 591; 1 Bl. Comm. 332.

CIVIL SERVICE. This term properly includes all functions under the government, except military functions. In general it is confined to functions in the great administrative departments of state. See Hope v. New Orleans, 106 La. 345, 30 South. 842; People v. Cram, 29 Misc. Rep. 359, 61 N. Y. Supp. 858.

CIVILIAN. One who is skilled or versed in the civil law. A doctor, professor, or student of the civil law. Also a private citizen, as distinguished from such as belong to the army and navy or (in England) the church.

CIVILIS. Lat. Civil, as distinguished from criminal. *Civilis actio*, a civil action. Bract. fol. 101*b*.

CIVILISTA. In old English law. A civil lawyer, or civilian. Dyer, 267.

CIVILITER. Civilly. In a person's civil character or position, or by civil (not criminal) process or procedure. This term is used in distinction or opposition to the word "*criminaliter*,"—criminally,—to distinguish civil actions from criminal prosecutions.

—Civiliter mortuus. Civilly dead; dead in the view of the law. The condition of one who has lost his civil rights and capacities, and is accounted dead in law.

CIVILIZATION. In practice. A law; an act of justice, or judgment which renders a criminal process civil; performed by turning an information into an inquest, or the contrary. Wharton.

In public law. This is a term which covers several states of society; it is relative, and has not a fixed sense, but it implies an improved and progressive condition of the people, living under an organized government, with systematized labor, individual ownership of the soil, individual accumulations of property, humane and somewhat cultivated manners and customs, the institution of the family, with well-defined and respected domestic and social relations, institutions of learning, intellectual activity, etc. Roche v. Washington, 19 Ind. 56, 81 Am. Dec. 376.

CIVIS. Lat. In the Roman law. A citizen; as distinguished from *incola*, (an inhabitant;) origin or birth constituting the former, domicile the latter. Code, 10, 40, 7. And see U. S. v. Rhodes, 27 Fed. Cas. 788.

CIVITAS. Lat. In the Roman law. Any body of people living under the same laws; a state. *Jus civitatis*, the law of a state; civil law. Inst. 1, 2, 1, 2. *Civitates fœderatæ*, towns in alliance with Rome, and considered to be free. Butl. Hor. Jur. 29.

Citizenship; one of the three *status*, conditions, or qualifications of persons. Mackeld. Rom. Law, § 131.

Civitas et urbs in hoc differunt, quod incolæ dicuntur civitas, urbs vero complectitur ædificia. Co. Litt. 409. A city and a town differ, in this: that the inhabitants are called the "city," but town includes the buildings.

CLAIM, *v.* To demand as one's own; to assert a personal right to any property or any right; to demand the possession or enjoyment of something rightfully one's own, and wrongfully withheld. Hill v. Henry, 66 N. J. Eq. 150, 57 Atl. 555.

CLAIM, *n.* **1.** A challenge of the property or ownership of a thing which is wrongfully withheld from the possession of the claimant. Stowel v. Zouch, Plowd. 359; Robinson v. Wiley, 15 N. Y. 491; Fordyce v. Godman, 20 Ohio St. 14; Douglas v. Beasley, 40 Ala. 147; Prigg v. Pennsylvania, 16 Pet. 615, 10 L. Ed. 1060; U. S. v. Rhodes (C. C.) 30 Fed. 433; Silliman v. Eddy, 8 How. Prac. (N. Y.) 123.

A claim is a right or title, actual or supposed, to a debt, privilege, or other thing in the possession of another; not the possession, but the means by or through which the claimant obtains the possession or enjoyment. Lawrence v. Miller, 2 N. Y. 245, 254.

A claim is, in a just, juridical sense, a demand of some matter as of right made by one person upon another, to do or to forbear to do some act or thing as a matter of duty. A more limited, but at the same time an equally expressive, definition was given by Lord Dyer, that "a claim is a challenge by a man of the propriety or ownership of a thing, which he has not in possession, but which is wrongfully detained from him." Prigg v. Pennsylvania, 16 Pet. 615, 10 L. Ed. 1060.

"Claim" has generally been defined as a demand for a thing, the ownership of which, or an interest in which, is in the claimant, but the possession of which is wrongfully withheld by another. But a broader meaning must be accorded to it. A demand for damages for criminal conve sation with plaintiff's wife is a claim; but it would be doing violence to language to say that such damages are property of plaintiff which defendant withholds. In common parlance the noun "claim" means an assertion, a pretension; and the verb is often used (not quite correctly) as a synonym for "state," "urge," "insist," or "assert." In a statute authorizing the courts to order a bill of particulars of the "claim" of either party, "claim" is co-extensive with "case," and embraces all causes of action and all grounds of defense, the pleas of both parties, and pleas in confession and avoidance, no less than complaints and counter-claims. It warrants the court in requiring a defendant who justifies in a libel suit to furnish particulars of the facts relied upon in justification. Orvis v. Jennings, 6 Daly (N. Y.) 446.

2. Under the mechanic's lien law of Pennsylvania, a demand put on record by a mechanic or material-man against a building for work or material contributed to its erection is called a "claim."

3. Under the land laws of the United States, the tract of land taken up by a preemptioner or other settler (and also his possession of the same) is called a "claim." Railroad Co. v. Abink, 14 Neb. 95, 15 N. W. 317; Bowman v. Torr, 3 Iowa, 573.

4. In patent law, the claim is the specification by the applicant for a patent of the particular things in which he insists his invention is novel and patentable; it is the clause in the application in which the applicant defines precisely what his invention is. White v. Dunbar, 119 U. S. 47, 7 Sup. Ct. 72, 30 L. Ed. 303; Brammer v. Schroeder, 106 Fed. 930, 46 C. C. A. 41.

—Adverse claim. A claim set up by a stranger to goods upon which the sheriff has levied an execution or attachment.—**Claim and delivery.** An action at law for the recovery of specific personal chattels wrongfully taken and detained, with damages which the wrongful taking or detention has caused; in substance a modern modification of the common-law action of replevin. Fredericks v. Tracy, 98 Cal. 658, 33 Pac. 750; Railroad Co. v. Gila County, 8 Ariz. 292, 71 Pac. 913.

—Claim in equity. In English practice. In simple cases, where there was not any great conflict as to facts, and a discovery from a defendant was not sought, but a reference to chambers was nevertheless necessary before final decree, which would be as of course, all parties being before the court, the summary proceeding by claim was sometimes adopted, thus obviating the recourse to plenary and protracted pleadings. This summary practice was created by orders 22d April, 1850, which came into operation on the 22d May following. See Smith, Ch. Pr. 664. By Consolid. Ord. 1860, viii, r. 4, claims were abolished. Wharton.—**Claim of conusance.** In practice. An intervention by a third person in a suit, claiming that he has rightful jurisdiction of the cause which the plaintiff has commenced out of the claimant's court. Now obsolete. 2 Wils. 409; 3 Bl. Comm. 298.—**Claim of liberty.** In English practice. A suit or petition to the queen, in the court of exchequer, to have liberties and franchises confirmed the e by the attorney general.—**Counter-claim.** A claim set up and urged by the defendant in opposition to or reduction of the claim presented by the plaintiff. See, more fully, COUNTER-CLAIM.

CLAIMANT. In admiralty practice. The name given to a person who lays claim to property seized on a libel *in rem*, and who is authorized and admitted to defend the action. The Conqueror, 166 U. S. 110, 17 Sup. Ct. 510, 41 L. Ed. 937.

CLAM. Lat. In the civil law. Covertly; secretly.

—Clam, vi, aut precario. A technical phrase of the Roman law, meaning by force, stealth, or importunity.

Clam delinquentes magis puniuntur quam palam. 8 Coke, 127. Those sinning secretly are punished more severely than those sinning openly.

CLAMEA ADMITTENDA IN ITINERE PER ATTORNATUM. An ancient writ by which the king commanded the justices in eyre to admit the claim by attorney of a person who was in the royal service, and could not appear in person. Reg. Orig. 19.

CLAMOR. In old English law. A claim or complaint; an outcry; clamor.

In the civil law. A claimant. A debt; anything claimed from another. A proclamation; an accusation. Du Cange.

CLANDESTINE. Secret; hidden; concealed. The "clandestine importation" of goods is a term used in English statutes as equivalent to "smuggling." Keck v. U. S., 172 U. S. 434, 19 Sup. Ct. 254, 43 L. Ed. 505. A clandestine marriage is (legally) one contracted without observing the conditions precedent prescribed by law, such as publication of bans, procuring a license, or the like.

CLARE CONSTAT. (It clearly appears.) In Scotch law. The name of a precept for giving seisin of lands to an heir; so called from its initial words. Ersk. Inst. 3, 8, 71.

CLAREMETHEN. In old Scotch law. The warranty of stolen cattle or goods; the law regulating such warranty. Skene.

CLARENDON, CONSTITUTIONS OF. The constitutions of Clarendon were certain statutes made in the reign of Henry II. of England, at a parliament held at Clarendon, (A. D. 1164,) by which the king checked the power of the pope and his clergy, and greatly narrowed the exemption they claimed from secular jurisdiction. 4 Bl. Comm. 422.

CLARIFICATIO. Lat. In old Scotch law. A making clear; the purging or clearing (clenging) of an assise. Skene.

CLASS. The order or rank according to which persons or things are arranged or assorted. Also a group of persons or things, taken collectively, having certain qualities in common, and constituting a unit for certain purposes; *e. g.*, a class of legatees. In re Harpke, 116 Fed. 297, 54 C. C. A. 97; Swarts v. Bank, 117 Fed. 1, 54 C. C. A. 387; Farnam v. Farnam, 53 Conn. 261, 2 Atl. 325, 5 Atl. 682; Dulany v. Middleton, 72 Md. 67, 19 Atl. 146; In re Russell, 168 N. Y. 169, 61 N. E. 166.

—Class legislation. A term applied to statutory enactments which divide the people or subjects of legislation into classes, with reference either to the grant of privileges or the imposition of burdens, upon an arbitrary, unjust, or invidious principle of division, or which, though the principle of division may be sound and justifiable, make arbitrary discriminations between those persons or things coming within the same class. State v. Garbroski, 111 Iowa, 496, 82 N. W. 959, 56 L. R. A. 570, 82 Am. St. Rep. 524; In re Hang Kie, 69 Cal. 149, 10 Pac. 327; Hawkins v. Roberts, 122 Ala. 130, 27 South. 327; State v. Cooley, 56 Minn. 540, 58 N. W. 150; Wagner v. Milwaukee County, 112 Wis. 601, 88 N. W. 577; State v. Brewing Co., 104 Tenn. 715, 59 S. W. 1033, 78 Am. St. Rep. 941.

CLASSIARIUS. A seaman or soldier serving at sea.

CLASSICI. In the Roman law. Persons employed in servile duties on board of vessels. Cod. 11, 12.

CLASSIFICATION. In the practice of the English chancery division, where there are several parties to an administration action, including those who have been served with notice of the decree or judgment, and it appears to the judge (or chief clerk) that any of them form a class having the same interest, (*e. g.*, residuary legatees,) he may require them to be represented by one solicitor, in order to prevent the expense of each of them attending by separate solicitors. This is termed "classifying the interests of the parties attending," or, shortly, "classifying," or "classification." In practice the term is also applied to the directions given by the chief clerk as to which of the parties are to attend on each of the accounts and inquiries directed by the judgment. Sweet.

CLAUSE. A single paragraph or subdivision of a legal document, such as a contract, deed, will, constitution, or statute. Sometimes a sentence or part of a sentence. Appeal of Miles, 68 Conn. 237, 36 Atl. 39, 36 L. R. A. 176; Eschbach v. Collins, 61 Md. 499, 48 Am. Rep. 123.

—Clause irritant. In Scotch law. By this clause, in a deed or settlement, the acts or deeds of a tenant for life or other proprietor, contrary to the conditions of his right, become null and void; and by the "resolutive" clause such right becomes resolved and extinguished. Bell.—**Clause potestative.** In French law. The name given to the clause whereby one party to a contract reserves to himself the right to annul it.—**Clause rolls.** In English law. Rolls which contain all such matters of record as were committed to close writs; these rolls are preserved in the Tower.

CLAUSULA. A clause; a sentence or part of a sentence in a written instrument or law.

Clausula generalis de residuo non ea complectitur quæ non ejusdem sint generis cum iis quæ speciatim dicta fuerant. A general clause of remainder does not embrace those things which are not of the same kind with those which had been specially mentioned. Lofft, Appendix, 419.

Clausula generalis non refertur ad expressa. 8 Coke, 154. A general clause does not refer to things expressed.

Clausula quæ abrogationem excludit ab initio non valet. A clause [in a law] which precludes its abrogation is void from the beginning. Bac. Max. 77.

Clausula vel dispositio inutilis per præsumptionem remotam, vel causam ex post facto non fulcitur. A useless clause or disposition [one which expresses no more than the law by intendment would have supplied] is not supported by a remote presumption, [or foreign intendment of some purpose, in regard whereof it might be material,] or by a cause arising afterwards, [which may induce an operation of those idle words.] Bac. Max. 82, regula 21.

Clausulæ inconsuetæ semper inducunt suspicionem. Unusual clauses [in an instrument] always induce suspicion. 3 Coke, 81.

CLAUSUM. Lat. Close, closed up, sealed. Inclosed, as a parcel of land.

CLAUSUM FREGIT. L. Lat. (He broke the close.) In pleading and practice. Technical words formerly used in certain actions

of trespass, and still retained in the phrase *quare clausum fregit*, (*q. v.*)

CLAUSUM PASCHIÆ. In English law. The morrow of the *utas*, or eight days of Easter; the end of Easter; the Sunday after Easter-day. 2 Inst. 157.

CLAUSURA. In old English law. An inclosure. *Clausura heyæ*, the inclosure of a hedge. Cowell.

CLAVES CURIÆ. The keys of the court. They were the officers of the Scotch courts, such as clerk, doomster, and serjeant. Burrill.

CLAVES INSULÆ. In Manx law. The keys of the Island of Man, or twelve persons to whom all ambiguous and weighty causes are referred.

CLAVIA. In old English law. A club or mace; tenure *per serjeantiam claviæ*, by the serjeanty of the club or mace. Cowell.

CLAVIGERATUS. A treasurer of a church.

CLAWA. A close, or small inclosure. Cowell.

CLEAN. Irreproachable; innocent of fraud or wrongdoing; free from defect in form or substance; free from exceptions or reservations. See examples below.

—Clean bill of health. One certifying that no contagious or infectious disease exists, or certifying as to healthy conditions generally without exception or reservation.—**Clean bill of lading.** One without exception or reservation as to the place or manner of stowage of the goods, and importing that the goods are to be (or have been) safely and properly stowed under deck. The Delaware, 14 Wall. 596, 20 L. Ed. 779; The Kirkhill, 99 Fed. 575, 39 C. C. A. 658; The Wellington, 29 Fed. Cas. 626. **—Clean hands.** It is a rule of equity that a plaintiff must come with "clean hands," *i. e.*, he must be free from reproach in his conduct. But there is this limitation to the rule: that his conduct can only be excepted to in respect to the subject-matter of his claim; everything else is immaterial. American Ass'n v. Innis, 109 Ky. 595, 60 S. W. 388.

CLEAR. Plain; evident; free from doubt or conjecture; also, unincumbered; free from deductions or draw-backs.

—Clear annual value. The net yearly value to the possessor of the property, over and above taxes, interest on mortgages, and other charges and deductions. Groton v. Boxborough, 6 Mass. 56; Marsh v. Hammond, 103 Mass. 149; Shelton v. Campbell, 109 Tenn. 690, 72 S. W. 112.—**Clear annuity.** The devise of an annuity "clear" means an annuity free from taxes (Hodgworth v. Crawley, 2 Atk. 376) or free or clear of legacy or inheritance taxes. In re Bispham's Estate, 24 Wkly. Notes Cas. (Pa.) 79.—**Clear days.** If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively, as well of the first day as the last. Rex v. Justices, 3 Barn. & Ald. 581; Hodgins v. Hancock, 14 Mees. & W. 120; State v. Marvin, 12 Iowa, 502.—**Clear evidence or proof.** Evidence which is positive, precise and explicit, as opposed to ambiguous, equivocal, or contradictory proof, and which tends directly to establish the point to which it is adduced, instead of leaving it a matter of conjecture or presumption, and is sufficient to make out a prima facie case. Mortgage Co. v. Pace, 23 Tex. Civ. App. 222, 56 S. W. 377; Reynolds v. Blaisdell, 23 R. I. 16, 49 Atl. 42; Ward v. Waterman, 85 Cal. 488, 24 Pac. 930; Jermyn v. McClure, 195 Pa. 245, 45 Atl. 938; Winston v. Burnell, 44 Kan. 367, 24 Pac. 477, 21 Am. St. Rep. 289; Spencer v. Colt. 89 Pa. 318; People v. Wreden, 59 Cal. 395.—**Clear title.** One which is not subject to any incumbrance. Roberts v. Bassett, 105 Mass. 409.

CLEARANCE. In maritime law. A document in the nature of a certificate given by the collector of customs to an outward-bound vessel, to the effect that she has complied with the law, and is duly authorized to depart.

CLEARING. The departure of a vessel from port, after complying with the customs and health laws and like local regulations.

In mercantile law. A method of making exchanges and settling balances, adopted among banks and bankers.

CLEARING-HOUSE. An institution organized by the banks of a city, where their messengers may meet daily, adjust balances of accounts, and receive and pay differences. Crane v. Bank, 173 Pa. 566, 34 Atl. 296; National Exch. Bank v. National Bank of North America, 132 Mass. 147; Philler v. Patterson, 168 Pa. 468, 32 Atl. 26, 47 Am. St. Rep. 896.

CLEMENTINES. In canon law. The collection of decretals or constitutions of Pope Clement V., made by order of John XXII., his successor, who published it in 1317.

CLEMENT'S INN. An inn of chancery. See INNS OF CHANCERY.

CLENGE. In old Scotch law. To clear or acquit of a criminal charge. Literally, to cleanse or clean.

CLEP AND CALL. In old Scotch practice. A solemn form of words prescribed by law, and used in criminal cases, as in pleas of wrong and unlaw.

CLERGY. The whole body of clergymen or ministers of religion. Also an abbreviation for "benefit of clergy." See BENEFIT.

—Regular clergy. In old English law. Monks who lived *secundum regulas* (according to the *rules*) of their respective houses or societies were so denominated, in contradistinction to the parochial clergy, who performed their ministry in the world, *in seculo*, and who from thence were called "secular" clergy. 1 Chit. Bl. 387, note.

CLERGYABLE. In old English law. Admitting of clergy, or benefit of clergy. A

clergyable felony was one of that class in which clergy was allowable. 4 Bl. Comm. 371–373.

CLERICAL. Pertaining to clergymen; or pertaining to the office or labor of a clerk.

—Clerical error. A mistake in writing or copying; the mistake of a clerk or writer. 1 Ld. Raym. 183.—**Clerical tonsure.** The having the head shaven, which was formerly peculiar to clerks, or persons in orders, and which the coifs worn by serjeants at law are supposed to have been introduced to conceal. 1 Bl. Comm. 24, note *t;* 4 Bl. Comm. 367.

CLERICALE PRIVILEGIUM. In old English law. The clerical privilege; the privilege or benefit of clergy.

CLERICI DE CANCELLARIA. Clerks of the chancery.

Clerici non ponantur in officiis. Co. Litt. 96. Clergymen should not be placed in offices; *i. e.,* in secular offices. See Lofft, 508.

CLERICI PRÆNOTARII. The six clerks in chancery. 2 Reeve, Eng. Law, 251.

CLERICO ADMITTENDO. See ADMITTENDO CLERICO.

CLERICO CAPTO PER STATUTUM MERCATORUM. A writ for the delivery of a clerk out of prison, who was taken and incarcerated upon the breach of a statute merchant. Reg. Orig. 147.

CLERICO CONVICTO COMMISSO GAOLÆ IN DEFECTU ORDINARII DELIBERANDO. An ancient writ, that lay for the delivery to his ordinary of a clerk convicted of felony, where the ordinary did not challenge him according to the privilege of clerks. Reg. Orig. 69.

CLERICO INFRA SACROS ORDINES CONSTITUTO, NON ELIGENDO IN OFFICIUM. A writ directed to those who had thrust a bailiwick or other office upon one in holy orders, charging them to release him. Reg. Orig. 143.

CLERICUS. In Roman law. A minister of religion in the Christian church; an ecclesiastic or priest. Cod. 1, 3; Nov. 3, 123, 137. A general term, including bishops, priests, deacons, and others of inferior order. Brissonius.

In old English law. A clerk or priest; a person in holy orders; a secular priest; a clerk of a court.

An officer of the royal household, having charge of the receipt and payment of moneys, etc. Fleta enumerates several of them, with their appropriate duties; as *clericus coquinæ,* clerk of the kitchen; *clericus panetr' et butelr',* clerk of the pantry and buttery. Lib. 2, cc. 18, 19.

—Clericus mercati. In old English law. Clerk of the market. 2 Inst. 543.—**Clericus parochialis.** In old English law. A parish clerk.

Clericus et agricola et mercator, tempore belli, ut oret, colat, et commutet, pace fruuntur. 2 Inst. 58. Clergymen, husbandmen, and merchants, in order that they may preach, cultivate, and trade, enjoy peace in time of war.

Clericus non connumeretur in duabus ecclesiis. 1 Rolle. A clergyman should not be appointed to two churches.

CLERIGOS. In Spanish law. Clergy; men chosen for the service of God. White, New Recop. b. 1, tit. 5, ch. 4.

CLERK. In ecclesiastical law. A person in holy orders; a clergyman; an individual attached to the ecclesiastical state, and who has the clerical tonsure. See 4 Bl. Comm. 366, 367.

In practice. A person employed in a public office, or as an officer of a court, whose duty is to keep records or accounts.

In commercial law. A person employed by a merchant, or in a mercantile establishment, as a salesman, book-keeper, accountant, amanuensis, etc., invested with more or less authority in the administration of some branch or department of the business, while the principal himself superintends the whole. State v. Barter, 58 N. H. 604; Hamuel v. State, 5 Mo. 264; Railroad Co. v. Trust Co., 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97.

—Clerk of arraigns. In English law. An assistant to the clerk of assise. His duties are in the crown court on circuit.—**Clerk of assise.** In English law. Officers who officiate as associates on the circuits. They record all judicial proceedings done by the judges on the circuit.—**Clerk of court.** An officer of a court of justice who has charge of the clerical part of its business, who keeps its records and seal, issues process, enters judgments and orders, gives certified copies from the records, etc. Peterson v. State, 45 Wis. 540; Ross v. Heathcock, 57 Wis. 89, 15 N. W. 9; Gordon v. State, 2 Tex. App. 154; U. S. v. Warren, 12 Okl. 350, 71 Pac. 685.—**Clerk of enrollments.** In English law. The former chief officer of the English enrollment office, (*q. v.*) He now forms part of the staff of the central office.—**Clerk of the crown in chancery.** See CROWN OFFICE IN CHANCERY.—**Clerk of the house of commons.** An important officer of the English house of commons. He is appointed by the crown as under-clerk of the parliaments to attend upon the commons. He makes a declaration, on entering upon his office, to make true entries, remembrances, and journals of the things done and passed in the house. He signs all orders of the house, indorses the bills sent or returned to the lords, and reads whatever is required to be read in the house. He has the custody of all records and other documents. May, Parl. Pr. 236.—**Clerk of the market.** The overseer or superintendent of a public market. In old English law, he was a *quasi* judicial officer, having power to settle controversies arising in the

market between persons dealing there. Called "*clerious mercati*." 4 Bl. Comm. 275.—**Clerk of the parliaments.** One of the chief officers of the house of lords. He is appointed by the crown, by letters patent. On entering office he makes a declaration to make true entries and records of the things done and passed in the parliaments, and to keep secret all such matters as shall be treated therein. May, Parl. Pr. 238.—**Clerk of the peace.** In English law. An officer whose duties are to officiate at sessions of the peace, to prepare indictments, and to record the proceedings of the justices, and to perform a number of special duties in connection with the affairs of the county.—**Clerk of the petty bag.** See PETTY BAG.—**Clerk of the privy seal.** There are four of these officers, who attend the lord privy seal, or, in the absence of the lord privy seal, the principal secretary of state. Their duty is to write and make out all things that are sent by warrant from the signet to the privy seal, and which are to be passed to the great seal; and also to make out privy seals (as they are termed) upon any special occasion of his majesty's affairs, as for the loan of money and such like purposes. Cowell.—**Clerk of the signet.** An officer, in England, whose duty it is to attend on the king's principal secretary, who always has the custody of the privy signet, as well for the purpose of sealing his majesty's private letters, as also grants which pass his majesty's hand by bill signed; there are four of these officers. Cowell.—**Clerks of indictments.** Officers attached to the central criminal court in England, and to each circuit. They prepare and settle indictments against offenders, and assist the clerk of arraigns.—**Clerks of records and writs.** Officers formerly attached to the English court of chancery, whose duties consisted principally in sealing bills of complaint and writs of execution, filing affidavits, keeping a record of suits, and certifying office copies of pleadings and affidavits. They were three in number, and the business was distributed among them according to the letters of the alphabet. By the judicature acts, 1873, 1875, they were transferred to the chancery division of the high court. Now, by the judicature (officers') act, 1879, they have been transferred to the central office of the supreme court, under the title of "Masters of the Supreme Court," and the office of clerk of records and writs has been abolished. Sweet.—**Clerks of seats,** in the principal registry of the probate division of the English high court, discharge the duty of preparing and passing the grants of probate and letters of administration, under the supervision of the registrars. There are six seats, the business of which is regulated by an alphabetical arrangement, and each seat has four clerks. They have to take bonds from administrators, and to receive *caveats* against a grant being made in a case where a will is contested. They also draw the "acts," *i. e.*, a short summary of each grant made, containing the name of the deceased, amount of assets, and other particulars. Sweet.

CLERKSHIP. The period which must be spent by a law-student in the office of a practising attorney before admission to the bar. 1 Tidd, Pr. 61, et seq. In re Dunn, 43 N. J. Law, 359, 39 Am. Rep. 600.

In old English practice. The art of drawing pleadings and entering them on record in Latin, in the ancient court hand; otherwise called "skill of pleading in actions at the common law."

CLIENS. Lat. In the Roman law. A client or dependent. One who depended upon another as his patron or protector, adviser or defender, in suits at law and other difficulties; and was bound, in return, to pay him all respect and honor, and to serve him with his life and fortune in any extremity. Dionys. ii. 10; Adams, Rom. Ant. 33.

CLIENT. A person who employs or retains an attorney, or counsellor, to appear for him in courts, advise, assist, and defend him in legal proceedings, and to act for him in any legal business. McCreary v. Hoopes, 25 Miss. 428; McFarland v. Crary, 6 Wend. (N. Y.) 297; Cross v. Riggins, 50 Mo. 335.

CLIENTELA. In old English law. Clientship, the state of a client; and, correlatively, protection, patronage, guardianship.

CLIFFORD'S INN. An inn of chancery. See INNS OF CHANCERY.

CLITO. In Saxon law. The son of a king or emperor. The next heir to the throne; the Saxon adeling. Spelman.

CLOERE. A gaol; a prison or dungeon.

CLOSE, *v.* To finish, terminate, complete, wind up; as, to "close" an account, a bargain, an estate, or public books, such as tax books. Patton v. Ash, 7 Serg. & R. (Pa.) 116; Coleman v. Garrigues, 18 Barb. (N. Y.) 67; Clark v. New York, 13 N. Y. St. Rep. 292; Bilafsky v. Abraham, 183 Mass. 401, 67 N. E. 318.

To shut up, so as to prevent entrance or access by any person; as in statutes requiring saloons to be "closed" at certain times, which further implies an entire suspension of business. Kurtz v. People, 33 Mich. 282; People v. James, 100 Mich. 522, 59 N. W. 236; Harvey v. State, 65 Ga. 570; People v. Cummerford, 58 Mich. 328, 25 N. W. 203.

CLOSE, *n.* A portion of land, as a field, inclosed, as by a hedge, fence, or other visible inclosure. 3 Bl. Comm. 209. The interest of a person in any particular piece of ground, whether actually inclosed or not. Locklin v. Casler, 50 How. Prac. (N. Y.) 44; Meade v. Watson, 67 Cal. 591, 8 Pac. 311; Matthews v. Treat, 75 Me. 600; Wright v. Bennett, 4 Ill. 258; Blakeney v. Blakeney, 6 Port. (Ala.) 115, 30 Am. Dec. 574.

The noun "close," in its legal sense, imports a portion of land inclosed, but not necessarily inclosed by actual or visible barriers. The invisible, ideal boundary, founded on limit of title, which surrounds every man's land, constitutes it his close, irrespective of walls, fences, ditches, or the like.

In practice. The word means termination; winding up. Thus the close of the pleadings is where the pleadings are finished, *i. e.*, when issue has been joined.

CLOSE, *adj.* In practice. Closed or sealed up. A term applied to writs and letters,

as distinguished from those that are open or patent.

—Close copies. Copies of legal documents which might be written closely or loosely at pleasure; as distinguished from *office* copies, which were to contain only a prescribed number of words on each sheet.**—Close corporation.** One in which the directors and officers have the power to fill vacancies in their own number, without allowing to the general body of stockholders any choice or vote in their election. McKim v. Odom, 3 Bland (Md.) 416, note.**—Close rolls.** Rolls containing the record of the close writs (*literæ clausæ*) and grants of the king, kept with the public records. 2 Bl. Comm. 346.**—Close season.** In game and fish laws, this term means the season of the year in which the taking of particular game or fish is prohibited, or in which all hunting or fishing is forbidden by law. State v. Theriault, 70 Vt. 617, 41 Atl. 1030, 43 L. R. A. 290, 67 Am. St. Rep. 695.**—Close writs.** In English law. Certain letters of the king, sealed with his great seal, and directed to particular persons and for particular purposes, which, not being proper for public inspection, are closed up and sealed on the outside, and are thence called "writs close." 2 Bl. Comm. 346; Sewell, Sheriffs, 372. Writs directed to the sheriff, instead of to the lord. 3 Reeve, Eng. Law, 45.

CLOSE-HAULED. In admiralty law, this nautical term means the arrangement or trim of a vessel's sails when she endeavors to make a progress in the nearest direction possible towards that point of the compass from which the wind blows. But a vessel may be considered as close-hauled, although she is not quite so near to the wind as she could possibly lie. Chadwick v. Packet Co., 6 El. & Bl. 771.

CLOTURE. The procedure in deliberative assemblies whereby debate is closed. Introduced in the English parliament in the session of 1882.

CLOUD ON TITLE. An outstanding claim or incumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and which apparently and on its face has that effect, but which can be shown by extrinsic proof to be invalid or inapplicable to the estate in question. A conveyance, mortgage, judgment, tax-levy, etc., may all, in proper cases, constitute a cloud on title. Pixley v. Huggins, 15 Cal. 133; Schenck v. Wicks, 23 Utah, 576, 65 Pac. 732; Lick v. Ray, 43 Cal. 87; Stoddard v. Prescott, 58 Mich. 542, 25 N. W. 508; Phelps v. Harris, 101 U. S. 370, 25 L. Ed. 855; Fonda v. Sage, 48 N. Y. 181; Rigdon v. Shirk, 127 Ill. 411, 19 N. E. 698; Bissell v. Kellogg, 60 Barb. (N. Y.) 617; Bank v. Lawler, 46 Conn. 245.

CLOUGH. A valley. Also an allowance for the turn of the scale, on buying goods wholesale by weight.

CLUB. A voluntary, unincorporated association of persons for purposes of a social, literary, or political nature, or the like. A club is not a partnership. 2 Mees. & W. 172.

The word "club" has no very definite meaning. Clubs are formed for all sorts of purposes, and there is no uniformity in their constitutions and rules. It is well known that clubs exist which limit the number of the members and select them with great care, which own considerable property in common, and in which the furnishing of food and drink to the members for money is but one of many conveniences which the members enjoy. Com. v. Pomphret, 137 Mass. 567, 50 Am. Rep. 340.

CLUB-LAW. Rule of violence; regulation by force; the law of arms.

CLYPEUS, or CLIPEUS. In old English law. A shield; metaphorically one of a noble family. *Clypei prostrati*, noble families extinct. Mat. Paris, 463.

CO. A prefix to words, meaning "with" or "in conjunction" or "joint;" *e. g.*, cotrustees, co-executors. Also an abbreviation for "county," (Gilman v. Sheets, 78 Iowa, 499, 43 N. W. 299,) and for "company," (Railroad Co. v. People, 155 Ill. 299, 40 N. E. 599.)

COACH. Coach is a generic term. It is a kind of carriage, and is distinguished from other vehicles, chiefly, as being a covered box, hung on leathers, with four wheels. Turnpike Co. v. Neil, 9 Ohio, 12; Turnpike Co. v. Frink, 15 Pick. (Mass.) 444.

COADJUTOR. An assistant, helper, or ally; particularly a person appointed to assist a bishop who from age or infirmity is unable to perform his duty. Olcott v. Gabert, 86 Tex. 121, 23 S. W. 985. Also an overseer, (coadjutor of an executor,) and one who disseises a person of land not to his own use, but to that of another.

CO-ADMINISTRATOR. One who is a joint administrator with one or more others.

COADUNATIO. A uniting or combining together of persons; a conspiracy. 9 Coke, 56.

COAL NOTE. A species of promissory note, formerly in use in the port of London, containing the phrase "value received in coals." By the statute 3 Geo. II. c. 26, §§ 7, 8, these were to be protected and noted as inland bills of exchange. But this was repealed by the statute 47 Geo. III. sess. 2, c. 68, § 28.

COALITION. In French law. An unlawful agreement among several persons not to do a thing except on some conditions agreed upon; particularly, industrial combinations, strikes, etc.; a conspiracy.

CO-ASSIGNEE. One of two or more assignees of the same subject-matter.

COAST. The edge or margin of a country bounding on the sea. It is held that the term includes small islands and reefs naturally connected with the adjacent land, and rising above the surface of the water, although their composition may not be sufficiently firm and stable to admit of their be-

ing inhabited or fortified; but not shoals which are perpetually covered by the water. U. S. v. Pope, 28 Fed. Cas. 630; Hamilton v. Menifee, 11 Tex. 751.

This word is particularly appropriate to the edge of the sea, while "shore" may be used of the margins of inland waters.

—Coast waters. Tide waters navigable from the ocean by sea-going craft, the term embracing all waters opening directly or indirectly into the ocean and navigable by ships coming in from the ocean of draft as great as that of the larger ships which traverse the open seas. The Britannia, 153 U. S. 130, 14 Sup. Ct. 795, 38 L. Ed. 660; The Victory (D. C.) 63 Fed. 636; The Garden City (D. C.) 26 Fed. 773. **—Coaster.** A term applied to vessels plying exclusively between domestic ports, and usually to those engaged in domestic trade, as distinguished from vessels engaged in foreign trade and plying between a port of the United States and a port of a foreign country; not including pleasure yachts. Belden v. Chase, 150 U. S. 674, 14 Sup. Ct. 264, 37 L. Ed. 1218. **—Coasting trade.** In maritime law. Commerce and navigation between different places along the coast of the United States, as distinguished from commerce with ports in foreign countries. Commercial intercourse carried on between different districts in different states, different districts in the same state, or different places in the same district, on the sea-coast or on a navigable river. Steamboat Co. v. Livingston, 3 Cow. (N. Y.) 747; San Francisco v. California Steam Nav. Co., 10 Cal. 507; U. S. v. Pope, 28 Fed. Cas. 630; Ravesies v. U. S. (D. C.) 35 Fed. 919. **—Coastwise.** Vessels "plying coastwise" are those which are engaged in the domestic trade, or plying between port and port in the United States, as contradistinguished from those engaged in the foreign trade, or plying between a port of the United States and a port of a foreign country. San Francisco v. California Steam Nav. Co., 10 Cal. 504.

COAST-GUARD. In English law. A body of officers and men raised and equipped by the commissioners of the admiralty for the defense of the coasts of the realm, and for the more ready manning of the navy in case of war or sudden emergency, as well as for the protection of the revenue against smugglers. Mozley & Whitley.

COAT ARMOR. Heraldic ensigns, introduced by Richard I. from the Holy Land, where they were first invented. Originally they were painted on the shields of the Christian knights who went to the Holy Land during the crusades, for the purpose of identifying them, some such contrivance being necessary in order to distinguish knights when clad in armor from one another. Wharton.

COBRA-VENOM REACTION. In medical jurisprudence. A method of serum-diagnosis of insanity from hæmolysis (breaking up of the red corpuscles of the blood) by injections of the venom of cobras or other serpents. This test for insanity has recently been employed in Germany and some other European countries and in Japan.

COCKBILL. To place the yards of a ship at an angle with the deck. Pub. St. Mass. 1882, p. 1288.

COCKET. In English law. A seal belonging to the custom-house, or rather a scroll of parchment, sealed and delivered by the officers of the custom-house to merchants, as a warrant that their merchandises are entered; likewise a sort of measure. Fleta, lib. 2, c. ix.

COCKPIT. A name which used to be given to the judicial committee of the privy council, the council-room being built on the old cockpit of Whitehall Place.

COCKSETUS. A boatman; a cockswain. Cowell.

CODE. A collection or compendium of laws. A complete system of positive law, scientifically arranged, and promulgated by legislative authority. Johnson v. Harrison, 47 Minn. 575, 50 N. W. 923, 28 Am. St. Rep. 382; Railroad Co. v. State, 104 Ga. 831, 31 S. E. 531, 42 L. R. A. 518; Railroad Co. v. Weiner, 49 Miss. 739.

The collection of laws and constitutions made by order of the Emperor Justinian is distinguished by the appellation of "The Code," by way of eminence. See CODE OF JUSTINIAN.

A body of law established by the legislative authority, and intended to set forth, in generalized and systematic form, the principles of the entire law, whether written or unwritten, positive or customary, derived from enactment or from precedent. Abbott.

A *code* is to be distinguished from a *digest*. The subject-matter of the latter is usually reported decisions of the courts. But there are also digests of statutes. These consist of an orderly collection and classification of the existing statutes of a state or nation, while a code is promulgated as one new law covering the whole field of jurisprudence.

—Code civil. The code which embodies the civil law of France. Framed in the first instance by a commission of jurists appointed in 1800. This code, after having passed both the tribunate and the legislative body, was promulgated in 1804 as the "Code Civil des Français." When Napoleon became emperor, the name was changed to that of "Code Napoleon," by which it is still often designated, though it is now officially styled by its original name of "Code Civil." **—Code de commerce.** A French code, enacted in 1807, as a supplement to the Code Napoleon, regulating commercial transactions, the laws of business, bankruptcies, and the jurisdiction and procedure of the courts dealing with these subjects. **—Code de procédure civil.** That part of the Code Napoleon which regulates the system of courts, their organization, civil procedure, special and extraordinary remedies, and the execution of judgments. **—Code d'instruction criminelle.** A French code, enacted in 1808, regulating criminal procedure. **—Code Napoleon.** See CODE CIVIL. **—Code noir.** Fr. The black code. A body of laws which formerly regulated the institution of slavery in the French colonies. **—Code of Justinian.** The Code of Justinian (*Codex Justinianeus*) was a collection of imperial constitutions, compiled, by order of that emperor, by a commission of ten jurists, including Tribonian, and promulgated A. D. 529. It comprised twelve books, and was the first of the four

compilations of law which make up the *Corpus Juris Civilis*. This name is often met in a connection indicating that the entire *Corpus Juris Civilis* is intended, or, sometimes, the *Digest;* but its use should be confined to the *Codex.*—**Code pénal.** The penal or criminal code of France, enacted in 1810.—**Codification.** The process of collecting and arranging the laws of a country or state into a code, *i. e.*, into a complete system of positive law, scientifically ordered, and promulgated by legislative authority.

CODEX. Lat. A code or collection of laws; particularly the Code of Justinian. Also a roll or volume, and a book written on paper or parchment.

—**Codex Gregorianus.** A collection of imperial constitutions made by Gregorius, a Roman jurist of the fifth century, about the middle of the century. It contained the constitutions from Hadrian down to Constantine. Mackeld. Rom. Law, § 63.—**Codex Hermogenianus.** A collection of imperial constitutions made by Hermogenes, a jurist of the fifth century. It was nothing more than a supplement to the Codex Gregorianus, (supra,) containing the constitutions of Diocletian and Maximilian. Mackeld. Rom. Law, § 63.—**Codex Justinianeus.** A collection of imperial constitutions, made by a commission of ten persons appointed by Justinian, A. D. 528.—**Codex repetitæ prælectionis.** The new code of Justinian; or the new edition of the first or old code, promulgated A. D. 534, being the one now extant. Mackeld. Rom. Law, § 78. Tayl. Civil Law, 22.—**Codex Theodosianus.** A code compiled by the emperor Theodosius the younger, A. D. 438, being a methodical collection, in sixteen books, of all the imperial constitutions then in force. It was the only body of civil law publicly received as authentic in the western part of Europe till the twelfth century, the use and authority of the Code of Justinian being during that interval confined to the East. 1 Bl. Comm. 81.—**Codex vetus.** The old code. The first edition of the Code of Justinian; now lost. Mackeld. Rom. Law, § 70.

CODICIL. A testamentary disposition subsequent to a will, and by which the will is altered, explained, added to, subtracted from, or confirmed by way of republication, but in no case totally revoked. Lamb v. Lamb, 11 Pick. (Mass.) 376; Dunham v. Averill, 45 Conn. 79, 29 Am. Rep. 642; Green v. Lane, 45 N. C. 113; Grimball v. Patton, 70 Ala. 631; Proctor v. Clarke, 3 Redf. Sur. (N. Y.) 448.

A codicil is an addition or supplement to a will, either to add to, take from, or alter the provisions of the will. It must be executed with the same formality as a will, and, when admitted to probate, forms a part of the will. Code Ga. 1882, § 2404.

CODICILLUS. In the Roman law. A codicil; an informal and inferior kind of will, in use among the Romans.

COEMPTIO. Mutual purchase. One of the modes in which marriage was contracted among the Romans. The man and the woman delivered to each other a small piece of money. The man asked the woman whether she would become to him a *materfamilias*, (mistress of his family,) to which she replied that she would. In her turn she asked the man whether he would become to her a *paterfamilias*, (master of a family.) On his replying in the affirmative, she delivered her piece of money and herself into his hands, and so became his wife. Adams, Rom. Ant. 501.

CO-EMPTION. The act of purchasing the whole quantity of any commodity. Wharton.

COERCION. Compulsion; force; duress. It may be either *actual*, (direct or positive,) where physical force is put upon a man to compel him to do an act against his will, or *implied*, (legal or constructive,) where the relation of the parties is such that one is under subjection to the other, and is thereby constrained to do what his free will would refuse. State v. Darlington, 153 Ind. 1, 53 N. E. 925; Chappell v. Trent, 90 Va. 849, 19 S. E. 314; Radich v. Hutchins, 95 U. S. 213, 24 L. Ed. 409; Peyser v. New York, 70 N. Y. 497, 26 Am. Rep. 624; State v. Boyle, 13 R. I. 538.

CO-EXECUTOR. One who is a joint executor with one or more others.

COFFEE-HOUSE. A house of entertainment where guests are supplied with coffee and other refreshments, and sometimes with lodging. Century Dict. A coffee-house is not an inn. Thompson v. Lacy, 3 Barn. & Ald. 283; Pitt v. Laming, 4 Camp. 77; Insurance Co. v. Langdon, 6 Wend. (N. Y.) 627; Com. v. Woods, 4 Ky. Law Rep. 262.

COFFERER OF THE QUEEN'S HOUSEHOLD. In English law. A principal officer of the royal establishment, next under the controller, who, in the counting-house and elsewhere, had a special charge and oversight of the other officers, whose wages he paid.

Cogitationis pœnam nemo patitur. No one is punished for his thoughts. Dig. 48, 19, 18.

COGNATES. (Lat. *cognati.*) Relations by the mother's side, or by females. Mackeld. Rom. Law, § 144. A common term in Scotch law. Ersk. Inst. 1, 7, 4.

COGNATI. Lat. In the civil law, Cognates; relations by the mother's side. 2 Bl. Comm. 235. Relations in the line of the mother. Hale, Com. Law, c. xi. Relations by or through females.

COGNATIO. Lat. **In the civil law.** Cognation. Relationship, or kindred generally. Dig. 38, 10, 4, 2; Inst. 3, 6, pr.

Relationship through females, as distinguished from *agnatio*, or relationship through males. *Agnatio a patre sit, cognatio a matre.* Inst. 3, 5, 4. See AGNATIO.

In canon law. Consanguinity, as distinguished from affinity. 4 Reeve, Eng. Law, 56–58.

Consanguinity, as including affinity. Id.

COGNATION. In the civil law. Signifies generally the kindred which exists between two persons who are united by ties of blood or family, or both.

COGNATUS. Lat. In the civil law. A relation by the mother's side; a cognate.

A relation, or kinsman, generally.

COGNITIO. In old English law. The acknowledgment of a fine; the certificate of such acknowledgment.

In the Roman law. The judicial examination or hearing of a cause.

COGNITIONES. Ensigns and arms, or a military coat painted with arms. Mat. Par. 1250.

COGNITIONIBUS MITTENDIS. In English law. A writ to a justice of the common pleas, or other, who has power to take a fine, who, having taken the fine, defers to certify it, commanding him to certify it. Now abolished. Reg. Orig. 68.

COGNITIONIS CAUSÆ. In Scotch practice. A name given to a judgment or decree pronounced by a court, ascertaining the amount of a debt against the estate of a deceased landed proprietor, on cause shown, or after a due investigation. Bell.

COGNITOR. In the Roman law. An advocate or defender in a private cause; one who defended the cause of a person who was present. Calvin. Lex. Jurid.

COGNIZANCE. In old practice. That part of a fine in which the defendant *acknowledged* that the land in question was the right of the complainant. From this the fine itself derived its name, as being *sur* cognizance *de droit*, etc., and the parties their titles of *cognizor* and *cognizee*.

In modern practice. Judicial notice or knowledge; the judicial hearing of a cause; jurisdiction, or right to try and determine causes; acknowledgment; confession; recognition.

Of pleas. Jurisdiction of causes. A privilege granted by the king to a city or town to hold pleas within the same.

Claim of cognizance (or of conusance) is an intervention by a third person, demanding judicature in the cause against the plaintiff, who has chosen to commence his action out of claimant's court. 2 Wils. 409; 2 Bl. Comm. 350, note.

In pleading. A species of answer in the action of replevin, by which the defendant acknowledges the taking of the goods which are the subject-matter of the action, and also that he has no title to them, but justifies the taking on the ground that it was done by the command of one who was entitled to the property.

In the process of levying a fine, it is an acknowledgment by the deforciant that the lands in question belong to the complainant.

In the language of American jurisprudence, this word is used chiefly in the sense of jurisdiction, or the exercise of jurisdiction; the judicial examination of a matter, or power and authority to make it. Webster v. Com., 5 Cush. (Mass.) 400; Clarion County v. Hospital, 111 Pa. 339, 3 Atl. 97.

Judicial cognizance is judicial notice, or knowledge upon which a judge is bound to act without having it proved in evidence.

—Cognizee. The party to whom a fine was levied. 2 Bl. Comm. 351.—**Cognizor.** In old conveyancing. The party levying a fine. 2 Bl. Comm. 350, 351.

COGNOMEN. In Roman law. A man's family name. The first name (*prænomen*) was the proper name of the individual; the second (*nomen*) indicated the *gens* or tribe to which he belonged; while the third (*cognomen*) denoted his family or house.

In English law. A surname. A name added to the *nomen* proper, or name of the individual; a name descriptive of the family.

Cognomen majorum est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum ab eventu. 6 Coke, 65. The cognomen is derived from the blood of ancestors, and is intrinsic; an agnomen arises from an event, and is extrinsic.

COGNOVIT ACTIONEM. (He has confessed the action.) A defendant's written confession of an action brought against him, to which he has no available defense. It is usually upon condition that he shall be allowed a certain time for the payment of the debt or damages, and costs. It is supposed to be given in court, and it impliedly authorizes the plaintiff's attorney to sign judgment and issue execution. Mallory v. Kirkpatrick, 54 N. J. Eq. 50, 33 Atl. 205.

COHABITATION. Living together; living together as husband and wife.

Cohabitation means having the same habitation, not a sojourn, a habit of visiting or remaining for a time; there must be something more than mere meretricious intercourse. In re Yardley's Estate, 75 Pa. 211; Cox v. State, 117 Ala. 103, 23 South. 806, 41 L. R. A. 760, 67 Am. St. Rep. 166; Turney v. State, 60 Ark. 259, 29 S. W. 893; Com. v. Lucas, 158 Mass. 81, 32 N. E. 1033; Jones v. Com., 80 Va. 20; Brinckle v. Brinckle, 12 Phila. (Pa.) 234.

Cohæredes una persona censentur, propter unitatem juris quod habent. Co. Litt. 163. Co-heirs are deemed as one person, on account of the unity of right which they possess.

COHÆRES. Lat. In civil and old English law. A co-heir, or joint heir.

CO-HEIR. One of several to whom an inheritance descends.

CO-HEIRESS. A joint heiress. A woman who has an equal share of an inheritance with another woman.

COHUAGIUM. A tribute made by those who meet promiscuously in a market or fair. Du Cange.

COIF. A title given to serjeants at law, who are called "serjeants of the coif," from the coif they wear on their heads. The use of this coif at first was to cover the clerical tonsure, many of the practising serjeants being clergyman who had abandoned their profession. It was a thin linen cover, gathered together in the form of a skull or helmet; the material being afterwards changed into white silk, and the form eventually into the black patch at the top of the forensic wig, which is now the distinguishing mark of the degree of serjeant at law. (Cowell; Foss, Judg.; 3 Steph. Comm. 272, note.) Brown.

COIN, *v.* To fashion pieces of metal into a prescribed shape, weight, and degree of fineness, and stamp them with prescribed devices, by authority of government, in order that they may circulate as money. Legal Tender Cases, 12 Wall. 484, 20 L. Ed. 287; Thayer v. Hedges, 22 Ind. 301; Bank v. Van Dyck, 27 N. Y. 490; Borie v. Trott, 5 Phila. (Pa.) 403; Latham v. U. S., 1 Ct. Cl. 154; Hague v. Powers, 39 Barb. (N. Y.) 466.

COIN, *n.* Pieces of gold, silver, or other metal, fashioned into a prescribed shape, weight, and degree of fineness, and stamped, by authority of government, with certain marks and devices, and put into circulation as money at a fixed value. Com. v. Gallagher, 16 Gray (Mass.) 240; Latham v. U. S., 1 Ct. Cl. 150; Borie v. Trott, 5 Phila. (Pa.) 403.

Strictly speaking, coin differs from money, as the species differs from the genus. Money is any matter, whether metal, paper, beads, shells, etc., which has currency as a medium in commerce. Coin is a particular species, always made of metal, and struck according to a certain process called "coinage." Wharton.

COINAGE. The process or the function of coining metallic money; also the great mass of metallic money in circulation. Meyer v. Roosevelt, 25 How. Prac. (N. Y.) 105; U. S. v. Otey (C. C.) 31 Fed. 70.

COITUS. In medical jurisprudence. Sexual intercourse; carnal copulation.

COJUDICES. Lat. In old English law. Associate judges having equality of power with others.

COLD WATER ORDEAL. The trial which was anciently used for the common sort of people, who, having a cord tied about them under their arms, were cast into a river; if they sank to the bottom until they were drawn up, which was in a very short time, then were they held guiltless; but such as did remain upon the water were held culpable, being, as they said, of the water rejected and kept up. Wharton.

COLIBERTUS. In feudal law. One who, holding in free socage, was obliged to do certain services for the lord. A middle class of tenants between servile and free, who held their freedom of tenure on condition of performing certain services. Said to be the same as the *conditionales*. Cowell.

COLLATERAL. By the side; at the side; attached upon the side. Not lineal, but upon a parallel or diverging line. Additional or auxiliary; supplementary; co-operating.

—Collateral act. In old practice. The name "collateral act" was given to any act (except the payment of money) for the performance of which a bond, recognizance, etc., was given as security.—**Collateral ancestors.** A phrase sometimes used to designate uncles and aunts, and other collateral antecessors, who are not strictly ancestors. Banks v. Walker, 3 Barb. Ch. (N. Y.) 438, 446.—**Collateral assurance.** That which is made over and above the principal assurance or deed itself.—**Collateral attack.** See "Collateral impeachment," infra.—**Collateral facts.** Such as are outside the controversy, or are not directly connected with the principal matter or issue in dispute. Summerour v. Felker, 102 Ga. 254, 29 S. E. 448; Garner v. State, 76 Miss. 515, 25 South. 363.—**Collateral impeachment.** A collateral impeachment of a judgment or decree is an attempt made to destroy or evade its effect as an estoppel, by reopening the merits of the cause or by showing reasons why the judgment should not have been rendered or should not have a conclusive effect, in a *collateral* proceeding, *i. e.*, in any action other than that in which the judgment was rendered; for, if this be done upon appeal, error, or *certiorari*, the impeachment is *direct*. Burke v. Loan Ass'n, 25 Mont. 315, 64 Pac. 881, 87 Am. St. Rep. 416; Crawford v. McDonald, 88 Tex. 626, 33 S. W. 325; Morrill v. Morrill, 20 Or. 96, 25 Pac. 362, 11 L. R. A. 155, 23 Am. St. Rep. 95; Harman v. Moore, 112 Ind. 221, 13 N. E. 718; Schneider v. Sellers, 25 Tex. Civ. App. 226, 61 S. W. 541; Bitzer v. Mercke, 111 Ky. 299, 63 S. W. 771.—**Collateral inheritance tax.** A tax levied upon the collateral devolution of property by will or under the intestate law. In re Bittinger's Estate, 129 Pa. 338, 18 Atl. 132; Strode v. Com., 52 Pa. 181.—**Collateral kinsmen.** Those who descend from one and the same common ancestor, but not from one another.—**Collateral security.** A security given in addition to the direct security, and subordinate to it, intended to guaranty its validity or convertibility or insure its performance; so that, if the direct security fails, the creditor may fall back upon the collateral security. Butler v. Rockwell, 14 Colo. 125, 23 Pac. 462; McCormick v. Bank (C. C.) 57 Fed. 110; Munn v. McDonald, 10 Watts (Pa.) 273; In re Waddell-Entz Co., 67 Conn. 324, 35 Atl. 257. Collateral security, in bank phraseology, means some security additional to the personal obligation of the borrower. Shoemaker v. Bank, 2 Abb. (U. S.) 423, Fed. Cas. No. 12,801.—**Collateral undertaking.** "Collateral" and "original" have become the technical terms whereby

to distinguish promises that are within, and such as are not within, the statute of frauds. Elder v. Warfield, 7 Har. & J. (Md.) 391.

As to collateral "Consanguinity," "Descent," "Estoppel," "Guaranty," "Issue," "Limitation," "Negligence," "Proceeding," and "Warranty," see those titles.

COLLATERALIS ET SOCII. The ancient title of masters in chancery.

COLLATIO BONORUM. Lat. A joining together or contribution of goods into a common fund. This occurs where a portion of money, advanced by the father to a son or daughter, is brought into *hotchpot*, in order to have an equal distributory share of his personal estate at his death. See COLLATION.

COLLATIO SIGNORUM. In old English law. A comparison of marks or seals. A mode of testing the genuineness of a seal, by comparing it with another known to be genuine. Adams. See Bract. fol. 389*b*.

COLLATION. In the civil law. The collation of goods is the supposed or real return to the mass of the succession which an heir makes of property which he received in advance of his share or otherwise, in order that such property may be divided together with the other effects of the succession. Civ. Code La. art. 1227; Miller v. Miller, 105 La. 257, 29 South. 802.

The term is sometimes used also in common-law jurisdictions in the sense given above. It is synonymous with "hotchpot." Moore v. Freeman, 50 Ohio St. 592, 35 N. E. 502.

In practice. The comparison of a copy with its original to ascertain its correctness; or the report of the officer who made the comparison.

COLLATION OF SEALS. When upon the same label one seal was set on the back or reverse of the other. Wharton.

COLLATION TO A BENEFICE. In ecclesiastical law. This occurs where the bishop and patron are one and the same person, in which case the bishop cannot present the clergyman to himself, but does, by the one act of collation or conferring the benefice, the whole that is done in common cases both by presentation and institution. 2 Bl. Comm. 22.

COLLATIONE FACTÂ UNI POST MORTEM ALTERIUS. A writ directed to justices of the common pleas, commanding them to issue their writ to the bishop, for the admission of a clerk in the place of another presented by the crown, where there had been a demise of the crown during a suit; for judgment once passed for the king's clerk, and he dying before admittance, the king may bestow his presentation on another. Reg. Orig. 31.

COLLATIONE HEREMITAGII. In old English law. A writ whereby the king conferred the keeping of an hermitage upon a clerk. Reg. Orig. 303, 308.

COLLECT. To gather together; to bring scattered things (assets, accounts, articles of property) into one mass or fund.

To collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings. White v. Case, 13 Wend. (N. Y.) 544; Ryan v. Tudor, 31 Kan. 366, 2 Pac. 797; Purdy v. Independence, 75 Iowa, 356, 39 N. W. 641; McInerny v. Reed, 23 Iowa, 414; Taylor v. Kearney County, 35 Neb. 381, 53 N. W. 211.

—Collect on delivery. See C. O. D.—**Collector.** One authorized to receive taxes or other impositions; as "collector of taxes." A person appointed by a private person to collect the credits due him.—**Collector of decedent's estate.** A person temporarily appointed by the probate court to collect rents, assets, interest, bills receivable, etc., of a decedent's estate, and act for the estate in all financial matters requiring immediate settlement. Such collector is usually appointed when there is protracted litigation as to the probate of the will, or as to the person to take out administration, and his duties cease as soon as an executor or administrator is qualified.—**Collector of the customs.** An officer of the United States, appointed for the term of four years. Act May 15, 1820, § 1; 3 Story, U. S. Laws, 1790.—**Collection.** Indorsement "for collection." See FOR COLLECTION.

COLLEGA. In the civil law. One invested with joint authority. A colleague; an associate.

COLLEGATARIUS. Lat. In the civil law. A co-legatee. Inst. 2, 20, 8.

COLLEGATORY. A co-legatee; a person who has a legacy left to him in common with other persons.

COLLEGE. An organized assembly or collection of persons, established by law, and empowered to co-operate for the performance of some special function or for the promotion of some common object, which may be educational, political, ecclesiastical, or scientific in its character.

The assemblage of the cardinals at Rome is called a "college." So, in the United States, the body of presidential electors is called the "electoral college."

In the most common use of the word, it designates an institution of learning (usually incorporated) which offers instruction in the liberal arts and humanities and in scientific branches, but not in the technical arts or those studies preparatory to admission to the professions. Com. v. Banks, 198 Pa. 397, 48 Atl. 277; Chegaray v. New York, 13 N. Y. 229; Northampton County v. Lafayette College, 128 Pa. 132, 18 Atl. 516.

In England, it is a civil corporation, com-

pany or society of men, having certain privileges, and endowed with certain revenues, founded by royal license. An assemblage of several of these colleges is called a "university." Wharton.

COLLEGIA. In the civil law. The guild of a trade.

COLLEGIALITER. In a corporate capacity. 2 Kent, Comm. 296.

COLLEGIATE CHURCH. In English ecclesiastical law. A church built and endowed for a society or body corporate of a dean or other president, and secular priests, as canons or prebendaries in the said church; such as the churches of Westminster, Windsor, and others. Cowell.

COLLEGIUM. Lat. In the civil law. A word having various meanings; *e. g.*, an assembly, society, or company; a body of bishops; an army; a class of men. But the principal idea of the word was that of an association of individuals of the same rank and station, or united for the pursuit of some business or enterprise. Sometimes, a corporation, as in the maxim "tres faciunt collegium" (1 Bl. Comm. 469), though the more usual and proper designation of a corporation was "universitas."

—Collegium ammiralitatis. The college or society of the admiralty.—**Collegium illicitum.** One which abused its right, or assembled for any other purpose than that expressed in its charter.—**Collegium licitum.** An assemblage or society of men united for some useful purpose or business, with power to act like a single individual. 2 Kent, Comm. 269.

Collegium est societas plurium corporum simul habitantium. Jenk. Cent. 229. A college is a society of several persons dwelling together.

COLLIERY. This term is sufficiently wide to include all contiguous and connected veins and seams of coal which are worked as one concern, without regard to the closes or pieces of ground under which they are carried, and apparently also the engines and machinery in such contiguous and connected veins. MacSwin. Mines, 25. See Carey v. Bright, 58 Pa. 85.

COLLIGENDUM BONA DEFUNCTI. See AD COLLIGENDUM, etc.

COLLISION. In maritime law. The act of ships or vessels striking together.

In its strict sense, collision means the impact of two vessels both moving, and is distinguished from *allision*, which designates the striking of a moving vessel against one that is stationary. But collision is used in a broad sense, to include allision, and perhaps other species of encounters between vessels. Wright v. Brown, 4 Ind. 97, 58 Am. Dec. 622; London Assur. Co. v. Companhia De Moagens, 68 Fed. 258, 15 C. C. A. 379, Towing Co. v. Ætna Ins. Co., 23 App. Div. 152, 48 N. Y. Supp. 927.

The term is not inapplicable to cases where a stationary vessel is struck by one under way, strictly termed "allision;" or where one vessel is brought into contact with another by swinging at anchor. And even an injury received by a vessel at her moorings, in consequence of being violently rubbed or pressed against by a second vessel lying along-side of her, in consequence of a collision against such second vessel by a third one under way, may be compensated for, under the general head of "collision," as well as an injury which is the direct result of a "blow," properly so called. The Moxey, Abb. Adm. 73, Fed. Cas. No. 9,894.

COLLISTRIGIUM. The pillory.

COLLITIGANT. One who litigates with another.

COLLOBIUM. A hood or covering for the shoulders, formerly worn by serjeants at law.

COLLOCATION. In French law. The arrangement or marshaling of the creditors of an estate in the order in which they are to be paid according to law. Merl. Repert.

COLLOQUIUM. One of the usual parts of the declaration in an action for slander. It is a general averment that the words complained of were spoken "of and concerning the plaintiff," or concerning the extrinsic matters alleged in the inducement, and its office is to connect the whole publication with the previous statement. Van Vechten v. Hopkins, 5 Johns. (N. Y.) 220, 4 Am. Dec. 339; Lukehart v. Byerly, 53 Pa. 421; Squires v. State, 39 Tex. Cr. R. 96, 45 S. W. 147, 73 Am. St. Rep. 904; Vanderlip v. Roe, 23 Pa. 82; McClaughry v. Wetmore, 6 Johns. (N. Y.) 82, 5 Am. Dec. 194.

An averment that the words in question are spoken of or concerning some usage, report, or fact which gives to words otherwise indifferent the peculiar defamatory meaning assigned to them. Carter v. Andrews, 16 Pick. (Mass.) 6

COLLUSION. A deceitful agreement or compact between two or more persons, for the one party to bring an action against the other for some evil purpose, as to defraud a third party of his right. Cowell.

A secret arrangement between two or more persons, whose interests are apparently conflicting, to make use of the forms and proceedings of law in order to defraud a third person, or to obtain that which justice would not give them, by deceiving a court or it officers. Baldwin v. New York, 45 Barb. (N. Y.) 359; Belt v. Blackburn, 28 Md. 235; Railroad Co. v. Gay, 86 Tex. 571, 26 S. W. 599, 25 L. R. A. 52; Balch v. Beach, 119 Wis. 77, 95 N. W. 132.

In divorce proceedings, collusion is an agreement between husband and wife that

one of them shall commit, or appear to have committed, or be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce. Civil Code Cal. § 114. But it also means connivance or conspiracy in initiating or prosecuting the suit, as where there is a compact for mutual aid in carrying it through to a decree. Beard v. Beard, 65 Cal. 354, 4 Pac. 229; Pohlman v. Pohlman, 60 N. J. Eq. 28, 46 Atl. 658; Drayton v. Drayton, 54 N. J. Eq. 298, 38 Atl. 25.

COLLYBISTA. In the civil law. A money-changer; a dealer in money.

COLLYBUM. In the civil law. Exchange.

COLNE. In Saxon and old English law. An account or calculation.

COLONY. A dependent political community, consisting of a number of citizens of the same country who have emigrated therefrom to people another, and remain subject to the mother-country. U. S. v. The Nancy, 3 Wash. C. C. 287, Fed. Cas. No. 15,854.

A settlement in a foreign country possessed and cultivated, either wholly or partially, by immigrants and their descendants, who have a political connection with and subordination to the mother-country, whence they emigrated. In other words, it is a place peopled from some more ancient city or country. Wharton.

—Colonial laws. In America, this term designates the body of law in force in the thirteen original colonies before the Declaration of Independence. In England, the term signifies the laws enacted by Canada and the other present British colonies.**—Colonial office.** In the English government, this is the department of state through which the sovereign appoints colonial governors, etc., and communicates with them. Until the year 1854, the secretary for the colonies was also secretary for war.

COLONUS. In old European law. A husbandman; an inferior tenant employed in cultivating the lord's land. A term of Roman origin, corresponding with the Saxon ceorl. 1 Spence, Ch. 51.

COLOR. An appearance, semblance, or *simulacrum*, as distinguished from that which is real. A *prima facie* or apparent right. Hence, a deceptive appearance; a plausible, assumed exterior, concealing a lack of reality; a disguise or pretext. Railroad Co. v. Allfree, 64 Iowa, 500, 20 N. W. 779; Berks County v. Railroad Co., 167 Pa. 102, 31 Atl. 474; Broughton v. Haywood, 61 N. C. 383.

In pleading. Ground of action admitted to subsist in the opposite party by the pleading of one of the parties to an action, which is so set out as to be apparently valid, but which is in reality legally insufficient.

This was a term of the ancient rhetoricians, and early adopted into the language of pleading. It was an apparent or *prima facie* right; and the meaning of the rule that pleadings in confession and avoidance should give color was that they should confess the matter adversely alleged, to such an extent, at least, as to admit some apparent right in the opposite party, which required to be encountered and avoided by the allegation of new matter. Color was either express, *i. e.*, inserted in the pleading, or implied, which was naturally inherent in the structure of the pleading. Steph. Pl. 233; Merten v. Bank, 5 Okl. 585, 49 Pac. 913.

The word also means the dark color of the skin showing the presence of negro blood; and hence it is equivalent to African descent or parentage.

COLOR OF AUTHORITY. That semblance or presumption of authority sustaining the acts of a public officer which is derived from his apparent title to the office or from a writ or other process in his hands apparently valid and regular. State v. Oates, 86 Wis. 634, 57 N. W. 296, 39 Am. St. Rep. 912; Wyatt v. Monroe, 27 Tex. 268.

COLOR OF LAW. The appearance or semblance, without the substance, of legal right. McCain v. Des Moines, 174 U. S. 168, 19 Sup. Ct. 644, 43 L. Ed. 936.

COLOR OF OFFICE. An act unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and color. Plow. 64.

A claim or assumption of right to do an act by virtue of an office, made by a person who is legally destitute of any such right. Feller v. Gates, 40 Or. 543, 67 Pac. 416, 56 L. R. A. 630, 91 Am. St. Rep. 492; State v. Fowler, 88 Md. 601, 42 Atl. 201, 42 L. R. A. 849, 71 Am. St. Rep. 452; Bishop v. McGillis, 80 Wis. 575, 50 N. W. 779, 27 Am. St. Rep. 63; Decker v. Judson, 16 N. Y. 439; Mason v. Crabtree, 71 Ala. 481; Morton v. Campbell, 37 Barb. (N. Y.) 181; Luther v. Banks, 111 Ga. 374, 36 S. E. 826; People v. Schuyler, 4 N. Y. 187.

The phrase implies, we think, some official power vested in the actor,—he must be at least officer *de facto*. We do not understand that an act of a mere pretender to an office, or false personator of an officer, is said to be done by color of office. And it implies an illegal claim of authority, by virtue of the office, to do the act or thing in question. Burrall v. Acker, 23 Wend. (N. Y.) 606, 35 Am. Dec. 582.

COLOR OF TITLE. The appearance, semblance, or *simulacrum* of title. Any fact, extraneous to the act or mere will of the claimant, which has the appearance, on its face, of supporting his claim of a present title to land, but which, for some defect, in reality falls short of establishing it. Wright v. Mattison, 18 How. 56, 15 L. Ed. 280; Cameron v. U. S., 148 U. S. 301, 13 Sup. Ct.

595, 37 L. Ed. 459; Saltmarsh v. Crommelin, 24 Ala. 352.

"Color of title is anything in writing purporting to convey title to the land, which defines the extent of the claim, it being immaterial how defective or imperfect the writing may be, so that it is a sign, semblance, or color of title." Veal v. Robinson, 70 Ga. 809.

Color of title is that which the law considers *prima facie* a good title, but which, by reason of some defect, not appearing on its face, does not in fact amount to title. An absolute nullity, as a void deed, judgment, etc., will not constitute color of title. Bernal v. Gleim, 33 Cal. 668.

"Any instrument having a grantor and grantee, and containing a description of the lands intended to be conveyed, and apt words for their conveyance, gives color of title to the lands described. Such an instrument purports to be a conveyance of the title, and because it does not, for some reason, have that effect, it passes only color or the semblance of a title." Brooks v. Bruyn, 35 Ill. 392.

It is not synonymous with "claim of title." To the former, a paper title is requisite; but the latter may exist wholly in parol. Hamilton v. Wright, 30 Iowa, 480.

COLORABLE. That which has or gives color. That which is in appearance only, and not in reality, what it purports to be.

—Colorable alteration. One which makes no real or substantial change, but is introduced only as a subterfuge or means of evading the patent or copyright law.—**Colorable imitation.** In the law of trade-marks, this phrase denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons.—**Colorable pleading.** The practice of giving *color* in pleading.

COLORE OFFICII. Lat. By color of office.

COLORED. By common usage in America, this term, in such phrases as "colored persons," "the colored race," "colored men," and the like, is used to designate negroes or persons of the African race, including all persons of mixed blood descended from negro ancestry. Van Camp v. Board of Education, 9 Ohio St. 411; U. S. v. La Coste, 26 Fed. Cas. 829; Jones v. Com., 80 Va. 542; Heirn v. Bridault, 37 Miss. 222; State v. Chavers, 50 N. C. 15; Johnson v. Norwich, 29 Conn. 407.

COLPICES. Young poles, which, being cut down, are made levers or lifters. Blount.

COLPINDACH. In old Scotch law. A young beast or cow, of the age of one or two years; in later times called a "cowdash."

COLT. An animal of the horse species, whether male or female, not more than four years old. Mallory v. Berry, 16 Kan. 295; Pullen v. State, 11 Tex. App. 91.

COM. An abbreviation for "company," exactly equivalent to "Co." Keith v. Sturges, 51 Ill. 142.

COMBARONES. In old English law. Fellow-barons; fellow-citizens. The citizens or freemen of the Cinque Ports being anciently called "barons;" the term "*combarones*" is used in this sense in a grant of Henry III. to the barons of the port of Fevresham. Cowell.

COMBAT. A forcible encounter between two or more persons; a battle; a duel. Trial by battle.

—Mutual combat is one into which both the parties enter voluntarily; it implies a common intent to fight, but not necessarily an exchange of blows. Aldrige v. State, 59 Miss. 250; Tate v. State, 46 Ga. 158.

COMBATERRÆ. A valley or piece of low ground between two hills. Kennett, Gloss.

COMBE. A small or narrow valley.

COMBINATION. A conspiracy, or confederation of men for unlawful or violent deeds.

A union of different elements. A patent may be taken out for a new combination of existing machines. Stevenson Co. v. McFassell, 90 Fed. 707, 33 C. C. A. 249; Moore v. Schaw (C. C.) 118 Fed. 602.

—Combination in restraint of trade. A trust, pool, or other association of two or more individuals or corporations having for its object to monopolize the manufacture or traffic in a particular commodity, to regulate or control the output, restrict the sale, establish and maintain the price, stifle or exclude competition, or otherwise to interfere with the normal course of trade under conditions of free competition. Northern Securities Co. v. U. S., 193 U. S. 197, 24 Sup. Ct. 436, 48 L. Ed. 679; U. S. v. Knight Co., 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325; Texas Brewing Co. v. Templeman, 90 Tex. 277, 38 S. W. 27; U. S. v. Patterson (C. C.) 55 Fed. 605; State v. Continental Tobacco Co., 177 Mo. 1, 75 S. W. 737.

COMBUSTIO. Burning. In old English law. The punishment inflicted upon apostates.

—Combustio domorum. Houseburning; arson. 4 Bl. Comm. 272.—**Combustio pecuniæ.** Burning of money; the ancient method of testing mixed and corrupt money, paid into the exchequer, by melting it down.

COME. To present oneself; to appear in court. In modern practice, though such presence may be constructive only, the word is still used to indicate participation in the proceedings. Thus, a pleading may begin, "Now *comes* the defendant," etc. In case of a default, the technical language of the record is that the party "*comes* not, but makes default." Horner v. O'Laughlin, 29 Md. 472.

COMES, *v.* A word used in a pleading to indicate the defendant's presence in court. See COME.

COMES, *n.* Lat. A follower or attendant; a count or earl.

COMES AND DEFENDS. This phrase, anciently used in the language of pleading, and still surviving in some jurisdictions, occurs at the commencement of a defendant's plea or demurrer; and of its two verbs the former signifies that he appears in court, the latter that he defends the action.

COMINUS. Lat. Immediately; hand-to-hand; in personal contact.

COMITAS. Lat. Comity, courtesy, civility. *Comitas inter communitates;* or *comitas inter gentes;* comity between communities or nations; comity of nations. 2 Kent, Comm. 457.

COMITATU COMMISSO. A writ or commission, whereby a sheriff is authorized to enter upon the charges of a county. Reg. Orig. 295.

COMITATU ET CASTRO COMMISSO. A writ by which the charge of a county, together with the keeping of a castle, is committed to the sheriff.

COMITATUS. In old English law. A county or shire; the body of a county. The territorial jurisdiction of a *comes, i. e.*, count or earl. The county court, a court of great antiquity and of great dignity in early times. Also, the retinue or train of a prince or high governmental official.

COMITES. Counts or earls. Attendants or followers. Persons composing the retinue of a high functionary. Persons who are attached to the suite of a public minister.

COMITES PALEYS. Counts or earls palatine; those who had the government of a county palatine.

COMITIA. In Roman law. An assembly, either (1) of the Roman curiæ, in which case it was called the "*comitia curiata vel calata;*" or (2) of the Roman centuries, in which case it was called the "*comitia centuriata;*" or (3) of the Roman tribes, in which case it was called the "*comitia tributa.*" Only patricians were members of the first *comitia*, and only plebians of the last; but the *comitia centuriata* comprised the entire populace, patricians and plebians both, and was the great legislative assembly passing the *leges*, properly so called, as the senate passed the *senatus consulta*, and the *comitia tributa* passed the *plebiscita*. Under the *Lex Hortensia*, 287 B. C., the *plebiscitum* acquired the force of a *lex*. Brown.

COMITISSA. In old English law. A countess; an earl's wife.

COMITIVA. In old English law. The dignity and office of a *comes*, (count or earl;) the same with what was afterwards called "*comitatus.*"

Also a companion or fellow-traveler; a troop or company of robbers. Jacob.

COMITY. Courtesy; complaisance; respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will.

—Comity of nations. The most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another. It is derived altogether from the voluntary consent of the latter; and it is inadmisible when it is contrary to its known policy, or prejudicial to its interests. In the silence of any positive rule affirming or denying or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless repugnant to its policy, or prejudicial to its interests. It is not the comity of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other principles of the municipal law are ascertained and guided. Story, Confl. Laws, § 38. The comity of nations (*comitas gentium*) is that body of rules which states observe towards one another from courtesy or mutual convenience, although they do not form part of international law. Holtz. Enc. *s. v.* Hilton v. Guyot, 159 U. S. 113, 16 Sup. Ct. 139, 40 L. Ed. 95; Fisher v. Fielding, 67 Conn. 91, 34 Atl. 714, 32 L. R. A. 236, 52 Am. St. Rep. 270; People v. Martin, 175 N. Y. 315, 67 N. E. 589, 96 Am. St. Rep. 628.—**Judicial comity.** The principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect. Franzen v. Zimmer, 90 Hun, 103, 35 N. Y. Supp. 612; Stowe v. Bank (C. C.) 92 Fed. 96; Mast v. Mfg. Co., 177 U. S. 485, 20 Sup. Ct. 708, 44 L. Ed. 856; Conklin v. Shipbuilding Co. (C. C.) 123 Fed. 916.

COMMAND. An order, imperative direction, or behest. State v. Mann, 2 N. C. 4; Barney v. Hayes, 11 Mont. 571, 29 Pac. 282, 28 Am. St. Rep. 495.

COMMANDEMENT. In French law. A writ served by the *huissier* pursuant to a judgment or to an executory notarial deed. Its object is to give notice to the debtor that if he does not pay the sum to which he has been condemned by the judgment, or which he engaged to pay by the notarial deed, his property will be seized and sold. Arg. Fr. Merc. Law, 550.

COMMANDER IN CHIEF. By article 2, § 2, of the constitution it is declared that the president shall be commander in chief of the army and navy of the United States. The term implies supreme control of military operations during the progress of a war, not only on the side of strategy and tactics, but also in reference to the political and international aspects of the war. See Fleming v. Page, 9 How. 603, 13 L. Ed. 276; Prize Cases, 2 Black, 635, 17 L. Ed. 459; Swaim v. U. S., 28 Ct. Cl. 173.

COMMANDERY. In old English law. A manor or chief messuage with lands and tenements thereto appertaining, which belonged to the priory of St. John of Jerusalem, in England; he who had the government of such a manor or house was styled the "com-

mander," who could not dispose of it, but to the use of the priory, only taking thence his own sustenance, according to his degree. The manors and lands belonging to the priory of St. John of Jerusalem were given to Henry the Eighth by 32 Hen. VIII. c. 20, about the time of the dissolution of abbeys and monasteries; so that the name only of commanderies remains, the power being long since extinct. Wharton.

COMMANDITAIRES. Special partners; partners *en commandité*. See COMMANDITÉ.

COMMANDITÉ. In French law. A special or limited partnership, where the contract is between one or more persons who are general partners, and jointly and severally responsible, and one or more other persons who merely furnish a particular fund or capital stock, and thence are called "*commanditaires*," or "*commenditaires*," or "partners *en commandité*;" the business being carried on under the social name or firm of the general partners only, composed of the names of the general or complementary partners, the partners in *commandité* being liable to losses only to the extent of the funds or capital furnished by them. Story, Partn. § 78; 3 Kent, Comm. 34.

COMMANDMENT. In practice. An authoritative order of a judge or magisterial officer.

In criminal law. The act or offense of one who commands another to transgress the law, or do anything contrary to law, as theft, murder, or the like. Particularly applied to the act of an accessary before the fact, in inciting, procuring, setting on, or stirring up another to do the fact or act. 2 Inst. 182.

COMMARCHIO. A boundary; the confines of land.

COMMENCE. To commence a suit is to demand something by the institution of process in a court of justice. Cohens v. Virginia, 6 Wheat. 408, 5 L. Ed. 257. To "bring" a suit is an equivalent term; an action is "commenced" when it is "brought," and vice versa. Goldenberg v. Murphy, 108 U. S. 162, 2 Sup. Ct. 388, 27 L. Ed. 686.

COMMENDA. In French law. The delivery of a benefice to one who cannot hold the legal title, to keep and manage it for a time limited and render an account of the proceeds. Guyot, Rép. Univ.

In mercantile law. An association in which the management of the property was intrusted to individuals. Troub. Lim. Partn. c. 3, § 27.

Commenda est facultas recipiendi et retinendi beneficium contra jus positivum à supremâ potestate. Moore, 905. A commendam is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.

COMMENDAM. In ecclesiastical law. The appointment of a suitable clerk to hold a void or vacant benefice or church living until a regular pastor be appointed. Hob. 144; Latch, 236.

In commercial law. The limited partnership (or *Société en commandité*) of the French law has been introduced into the Code of Louisiana under the title of "Partnership *in Commendam*." Civil Code La. art. 2810.

COMMENDATIO. In the civil law. Commendation, praise, or recommendation, as in the maxim "simplex commendatio non obligat," meaning that mere recommendation or praise of an article by the seller of it does not amount to a warranty of its qualities. 2 Kent, Comm. 485.

COMMENDATION. In feudal law. This was the act by which an owner of allodial land placed himself and his land under the protection of a lord, so as to constitute himself his vassal or feudal tenant.

COMMENDATORS. Secular persons upon whom ecclesiastical benefices were bestowed in Scotland; called so because the benefices were commended and intrusted to their supervision.

COMMENDATORY. He who holds a church living or preferment *in commendam*.

COMMENDATORY LETTERS. In ecclesiastical law. Such as are written by one bishop to another on behalf of any of the clergy, or others of his diocese traveling thither, that they may be received among the faithful, or that the clerk may be promoted, or necessaries administered to others, etc. Wharton.

COMMENDATUS. In feudal law. One who intrusts himself to the protection of another. Spelman. A person who, by voluntary homage, put himself under the protection of a superior lord. Cowell.

COMMERCE. Intercourse by way of trade and traffic between different peoples or states and the citizens or inhabitants thereof, including not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and the transportation of persons as well as of goods, both by land and by sea. Brennan v. Titusville, 153 U. S. 289, 14 Sup. Ct. 829, 38 L. Ed. 719; Railroad Co. v. Fuller, 17 Wall. 568, 21 L. Ed. 710; Winder v. Caldwell, 14 How. 444, 14 L. Ed. 487; Cooley v. Board of Wardens

12 How. 299, 13 L. Ed. 996; Trade-Mark Cases, 100 U. S. 96, 25 L. Ed. 550; Gibbons v. Ogden, 9 Wheat. 1, 6 L. Ed. 23; Brown v. Maryland, 12 Wheat. 448, 6 L. Ed. 678; Bowman v. Railroad, 125 U. S. 465, 8 Sup. Ct. 689, 31 L. Ed. 700; Leisy v. Hardin, 135 U. S. 100, 10 Sup. Ct. 681, 34 L. Ed. 128; Mobile County v. Kimball, 102 U. S. 691, 26 L. Ed. 238; Corfield v. Coryell, 6 Fed. Cas. 546; Fuller v. Railroad Co., 31 Iowa, 207; Passenger Cases, 7 How. 401, 12 L. Ed. 702; Robbins v. Shelby County Taxing Dist., 120 U. S. 489, 7 Sup. Ct. 592, 30 L. Ed. 694; Arnold v. Yanders, 56 Ohio St. 417, 47 N. E. 50, 60 Am. St. Rep. 753; Fry v. State, 63 Ind. 562, 30 Am. Rep. 238; Webb v. Dunn, 18 Fla. 724; Gilman v. Philadelphia, 3 Wall. 724, 18 L. Ed. 96.

Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens of our country and the citizens or subjects of other countries, and between the citizens of different states. The power to regulate it embraces all the instruments by which such commerce may be conducted. Welton v. Missouri, 91 U. S. 275, 23 L. Ed. 347.

Commerce is not limited to an exchange of commodities only, but includes, as well, intercourse with foreign nations and between the states; and includes the transportation of passengers. Steamboat Co. v. Livingston, 3 Cow. (N. Y.) 713; People v. Raymond, 34 Cal. 492.

The words "commerce" and "trade" are synonymous, but not identical. They are often used interchangeably; but, strictly speaking, commerce relates to intercourse or dealings with foreign nations, states, or political communities, while trade denotes business intercourse or mutual traffic within the limits of a state or nation, or the buying, selling, and exchanging of articles between members of the same community. See Hooker v. Vandewater, 4 Denio (N. Y.) 353, 47 Am. Dec. 258; Jacob; Wharton.

—Commerce with foreign nations. Commerce between citizens of the United States and citizens or subjects of foreign governments; commerce which, either immediately or at some stage of its progress, is extraterritorial. U. S. v. Holliday, 3 Wall. 409, 18 L. Ed. 182; Veazie v. Moor, 14 How. 573, 14 L. Ed. 545; Lord v. Steamship Co., 102 U. S. 544, 26 L. Ed. 224. The same as "foreign commerce," which see *infra*.—**Commerce with Indian tribes.** Commerce with individuals belonging to such tribes, in the nature of buying, selling, and exchanging commodities, without reference to the locality where carried on, though it be within the limits of a state. U. S. v. Holliday, 3 Wall. 407, 18 L. Ed. 182; U. S. v. Cisna, 25 Fed. Cas. 424.—**Domestic commerce.** Commerce carried on wholly within the limits of the United States, as distinguished from foreign commerce. Also, commerce carried on within the limits of a single state, as distinguished from interstate commerce. Louisville & N. R. Co. v. Tennessee R. R. Com'n (C. C.) 19 Fed. 701.—**Foreign commerce.** Commerce or trade between the United States and foreign countries. Com. v. Housatonic R. Co., 143 Mass. 264, 9 N. E. 547; Foster v. New Orleans, 94 U. S. 246, 24 L. Ed. 122. The term is sometimes applied to commerce between ports of two sister states not lying on the same coast, *e. g.*, New York and San Francisco.—**Internal commerce.** Such as is carried on between individuals within the same state, or between different parts of the same state. Lehigh Val. R. Co. v. Pennsylvania, 145 U. S. 192, 12 Sup. Ct. 806, 36 L. Ed. 672; Steamboat Co. v. Livingston, 3 Cow. (N. Y.) 713. Now more commonly called "intrastate" commerce.—**International commerce.** Commerce between states or nations entirely foreign to each other. Louisville & N. R. Co. v. Tennessee R. R. Com'n (C. C.) 19 Fed. 701.—**Interstate commerce.** Such as is carried on between different states of the Union or between points lying in different states. See INTERSTATE COMMERCE.—**Intrastate commerce.** Such as is begun, carried on, and completed wholly within the limits of a single state. Contrasted with "interstate commerce," (*q. v.*)

COMMERCIA BELLI. War contracts. Compacts entered into by belligerent nations to secure a temporary and limited peace. 1 Kent, Comm. 159. Contracts between nations at war, or their subjects.

COMMERCIAL. Relating to or connected with trade and traffic or commerce in general. U. S. v. Breed, 24 Fed. Cas. 1222; Earnshaw v. Cadwalader, 145 U. S. 258, 12 Sup. Ct. 851, 36 L. Ed. 693; Zante Currants (C. C.) 73 Fed. 189.

—Commercial agency. The same as a "mercantile" agency. In re United States Mercantile Reporting, etc., Co., 52 Hun, 611, 4 N. Y. Supp. 916. See MERCANTILE.—**Commercial agent.** An officer in the consular service of the United States, of rank inferior to a consul. Also used as equivalent to "Commercial broker," see *infra*.—**Commercial broker.** One who negotiates the sale of merchandise without having the possession or control of it, being distinguished in the latter particular from a commission merchant. Adkins v. Richmond, 98 Va. 91, 34 S. E. 967, 47 L. R. A. 583, 81 Am. St. Rep. 705; In re Wilson, 19 D. C. 349, 12 L. R. A. 624; Henderson v. Com., 78 Va. 489.—**Commercial corporation.** One engaged in commerce in the broadest sense of that term; hence including a railroad company. Sweatt v. Railroad Co., 23 Fed. Cas. 530.—**Commercial domicile.** See DOMICILE.—**Commercial insurance.** See INSURANCE.—**Commercial law.** A phrase used to designate the whole body of substantive jurisprudence applicable to the rights, intercourse, and relations of persons engaged in commerce, trade, or mercantile pursuits. It is not a very scientific or accurate term. As foreign commerce is carried on by means of shipping, the term has come to be used occasionally as synonymous with "maritime law;" but, in strictness, the phrase "commercial law" is wider, and includes many transactions or legal questions which have nothing to do with shipping or its incidents. Watson v. Tarpley, 18 How. 521, 15 L. Ed. 509; Williams v. Gold Hill Min. Co. (C. C.) 96 Fed. 464.—**Commercial mark.** In French law. A trade-mark is specially or purely the mark of the manufacturer or producer of the article, while a "commercial" mark is that of the dealer or merchant who distributes the product to consumers or the trade. La Republique Française v. Schultz (C. C.) 57 Fed. 41.—**Commercial paper.** The term "commercial paper" means bills of exchange, promissory notes, bank-checks, and other negotiable instruments for the payment of money, which, by their form and on their face, purport to be such instruments as are, by the law-merchant, recognized as falling under the designation of "commercial paper." In re Hercules Mut. L. Assur. Soc., 6 Ben. 35, 12 Fed. Cas.

12. Commercial paper means negotiable paper given in due course of business, whether the element of negotiability be given it by the law-merchant or by statute. A note given by a merchant for money loaned is within the meaning. In re Sykes, 5 Biss. 113, Fed. Cas. No. 13,708.—**Commercial traveler.** Where an agent simply exhibits samples of goods kept for sale by his principal, and takes orders from purchasers for such goods, which goods are afterwards to be delivered by the principal to the purchasers, and payment for the goods is to be made by the purchasers to the principal on such delivery, such agent is generally called a "drummer" or "commercial traveler." Kansas City v. Collins, 34 Kan. 434, 8 Pac. 865; Olney v. Todd, 47 Ill. App. 440; Ex parte Taylor, 58 Miss. 481, 38 Am. Rep. 336; State v. Miller, 93 N. C. 511, 53 Am. Rep. 469.

COMMERCIUM. Lat. In the civil law. Commerce; business; trade; dealings in the nature of purchase and sale; a contract.

Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum. 3 Inst. 181. Commerce, by the law of nations, ought to be common, and not converted to monopoly and the private gain of a few.

COMMINALTY. The commonalty or the people.

COMMINATORIUM. In old practice. A clause sometimes added at the end of writs, admonishing the sheriff to be faithful in executing them. Bract. fol. 398.

COMMISE. In old French law. Forfeiture; the forfeiture of a fief; the penalty attached to the ingratitude of a vassal. Guyot, Inst. Feod. c. 12.

COMMISSAIRE. In French law. A person who receives from a meeting of shareholders a special authority, viz., that of checking and examining the accounts of a manager or of valuing the *apports en nature*, (*q. v.*) The name is also applied to a judge who receives from a court a special mission, *e. g.*, to institute an inquiry, or to examine certain books, or to supervise the operations of a bankruptcy. Arg. Fr. Merc. Law, 551.

COMMISSAIRES-PRISEURS. In French law. Auctioneers, who possess the exclusive right of selling personal property at public sale in the towns in which they are established; and they possess the same right concurrently with notaries, *greffiers*, and *huissiers*, in the rest of the arrondissement. Arg. Fr. Merc. Law, 551.

COMMISSARIAT. The whole body of officers who make up the commissaries' department of an army.

COMMISSARY. In ecclesiastical law. One who is sent or delegated to execute some office or duty as the representative of his superior; an officer of the bishop, who exercises spiritual jurisdiction in distant parts of the diocese.

In military law. An officer whose principal duties are to supply an army with provisions and stores.

COMMISSARY COURT. A Scotch ecclesiastical court of general jurisdiction, held before four commissioners, members of the Faculty of Advocates, appointed by the crown.

COMMISSION. A warrant or authority or letters patent, issuing from the government, or one of its departments, or a court, empowering a person or persons named to do certain acts, or to exercise jurisdiction, or to perform the duties and exercise the authority of an office, (as in the case of an officer in the army or navy.) Bledsoe v. Colgan, 138 Cal. 34, 70 Pac. 924; U. S. v. Planter, 27 Fed. Cas. 544; Dew v. Judges, 3 Hen. & M. (Va.) 1, 3 Am. Dec. 639; Scofield v. Lounsbury, 8 Conn. 109.

Also, in private affairs, it signifies the authority or instructions under which one person transacts business or negotiates for another.

In a derivative sense, a body of persons to whom a commission is directed. A board or committee officially appointed and empowered to perform certain acts or exercise certain jurisdiction of a public nature or relation; as a "commission of assise."

In the civil law. A species of bailment, being an undertaking, without reward, to do something in respect to an article bailed; equivalent to "mandate."

In commercial law. The recompense or reward of an agent, factor, broker, or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. But in this sense the word occurs more frequently in the plural. Jackson v. Stanfield, 137 Ind. 592, 37 N. E. 14, 23 L. R. A. 588; Ralston v. Kohl, 30 Ohio St. 98; Whitaker v. Guano Co., 123 N. C. 368, 31 S. E. 629.

In criminal law. Doing or perpetration; the performance of an act. Groves v. State, 116 Ga. 516, 42 S. E. 755, 59 L. R. A. 598.

In practice. An authority or writ issuing from a court, in relation to a cause before it, directing and authorizing a person or persons named to do some act or exercise some special function; usually to take the depositions of witnesses.

A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath on interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions

given with the commission. Pen. Code Cal. § 1351.

—Commission day. In English practice. The opening day of the assises.**—Commission de lunatico inquirendo.** The same as a commission of lunacy, (see *infra.*) In re Misselwitz, 177 Pa. 359, 35 Atl. 722.**—Commission del credere,** in commercial law, is where an agent of a seller undertakes to guaranty to his principal the payment of the debt due by the buyer. The phrase "*del credere*" is borrowed from the Italian language, in which its signification is equivalent to our word "guaranty" or "warranty." Story, Ag. 28.**—Commission merchant.** A term which is synonymous with "factor." It means one who receives goods, chattels, or merchandise for sale, exchange, or other disposition, and who is to receive a compensation for his services, to be paid by the owner, or derived from the sale, etc., of the goods. State v. Thompson, 120 Mo. 12, 25 S. W. 346; Perkins v. State, 50 Ala. 154; White v. Com., 78 Va. 484.**—Commission of anticipation.** In English law. An authority under the great seal to collect a tax or subsidy before the day.**—Commission of appraisement and sale.** Where property has been arrested in an admiralty action *in rem* and ordered by the court to be sold, the order is carried out by a commission of appraisement and sale; in some cases (as where the property is to be released on bail and the value is disputed) a commission of appraisement only is required. Sweet.**—Commission of array.** In English law. A commission issued to send into every county officers to muster or set in military order the inhabitants. The introduction of commissions of lieutenancy, which contained, in substance, the same powers as these commissions, superseded them. 2 Steph. Comm. (7th Ed.) 582.**—Commission of assise.** Those issued to judges of the high court or court of appeal, authorizing them to sit at the assises for the trial of civil actions.**—Commission of bankrupt.** A commission or authority formerly granted by the lord chancellor to such persons as he should think proper, to examine the bankrupt in all matters relating to his trade and effects, and to perform various other important duties connected with bankruptcy matters. But now, under St. 1 & 2 Wm. IV. c. 56, § 12, a fiat issues instead of such commission.**—Commission of charitable uses.** This commission issues out of chancery to the bishop and others, where lands given to charitable uses are misemployed, or there is any fraud or dispute concerning them, to inquire of and redress the same, etc.**—Commission of delegates.** When any sentence was given in any ecclesiastical cause by the archbishop, this commission, under the great seal, was directed to certain persons, usually lords, bishops, and judges of the law, to sit and hear an appeal of the same to the king, in the court of chancery. But latterly the judicial committee of the privy council has supplied the place of this commission. Brown.**—Commission of lunacy.** A writ issued out of chancery, or such court as may have jurisdiction of the case, directed to a proper officer, to inquire whether a person named therein is a lunatic or not. 1 Bouv. Inst. n. 382, *et seq.;* In re Moore, 68 Cal. 281, 9 Pac. 164.**—Commission of partition.** In the former English equity practice, this was a commission or authority issued to certain persons, to effect a division of lands held by tenants in common desiring a partition; when the commissioners reported, the parties were ordered to execute mutual conveyances to confirm the division.**—Commission of rebellion.** In English law. An attaching process, formerly issuable out of chancery, to enforce obedience to a process or decree; abolished by order of 26th August, 1841.**—Commission of review.** In English ecclesiastical law. A commission formerly sometimes granted in extraordinary cases, to revise the sentence of the court of delegates. 3 Bl. Comm. 67. Now out of use, the privy council being substituted for the court of delegates, as the great court of appeal in all ecclesiastical causes. 3 Steph. Comm. 432.**—Commission of the peace.** In English law. A commission from the crown, appointing certain persons therein named, jointly and severally, to keep the *peace,* etc. Justices of the peace are always appointed by special commission under the great seal, the form of which was settled by all the judges, A. D. 1590, and continues with little alteration to this day. 1 Bl. Comm. 351; 3 Steph. Comm. 39, 40.**—Commission of treaty with foreign princes.** Leagues and arrangements made between states and kingdoms, by their ambassadors and ministers, for the mutual advantage of the kingdoms in alliance. Wharton.**—Commission of unlivery.** In an action in the English admiralty division, where it is necessary to have the cargo in a ship unladen in order to have it appraised, a commission of unlivery is issued and executed by the marshal. Williams & B. Adm. Jur. 233.**—Commission to examine witnesses.** In practice. A commission issued out of the court in which an action is pending, to direct the taking of the depositions of witnesses who are beyond the territorial jurisdiction of the court.**—Commission to take answer in chancery.** In English law. A commission issued when defendant lives abroad to swear him to such answer. 15 & 16 Vict. c. 86, § 21. Obsolete. See Jud. Acts, 1873, 1875.**—Commission to take depositions.** A written authority issued by a court of justice, giving power to take the testimony of witnesses who cannot be personally produced in court. Tracy v. Suydam, 30 Barb. (N. Y.) 110.

COMMISSIONED OFFICERS. In the United States army and navy and marine corps, those who hold their rank and office under commissions issued by the president, as distinguished from non-commissioned officers (in the army, including sergeants, corporals, etc.) and warrant officers (in the navy, including boatswains, gunners, etc.) and from privates or enlisted men. See Babbitt v. U. S., 16 Ct. Cl. 202.

COMMISSIONER. A person to whom a commission is directed by the government or a court. State v. Banking Co., 14 N. J. Law, 437; In re Canter, 40 Misc. Rep. 126, 81 N. Y. Supp. 338.

In the governmental system of the United States, this term denotes an officer who is charged with the administration of the laws relating to some particular subject-matter, or the management of some bureau or agency of the government. Such are the commissioners of education, of patents, of pensions, of fisheries, of the general land-office, of Indian affairs, etc.

In the state governmental systems, also, and in England, the term is quite extensively used as a designation of various officers having a similar authority and similar duties.

—Commissioner of patents. An officer of the United States government, being at the head of the bureau of the patent-office.**—Commissioners of bail.** Officers appointed to take recognizances of bail in civil cases.**—Commissioners of bankrupts.** The name given, under the former English practice in bankruptcy, to the persons appointed under the great seal to

execute a commission of bankruptcy, (*q. v.*)—**Commissioners of circuit courts.** Officers appointed by and attached to the circuit courts of the United States, performing functions partly ministerial and partly judicial. To a certain extent they represent the judge in his absense. In the examination of persons arrested for violations of the laws of the United States they have the powers of committing magistrates. They also take bail, recognizances, affidavits, etc., and hear preliminary proceedings for foreign extradition. In re Com'rs of Circuit Court (C. C.) 65 Fed. 317.—**Commissioners of deeds.** Officers empowered by the government of one state to reside in another state, and there take acknowledgments of deeds and other papers which are to be used as evidence or put on record in the former state.—**Commissioners of highways.** Officers appointed in each county or township, in many of the states, with power to take charge of the altering, opening, repair, and vacating of highways within such county or township.—**Commissioners of sewers.** In English law. Commissioners appointed under the great seal, and constituting a court of special jurisdiction; which is to overlook the repairs of the banks and walls of the seacoast and navigable rivers, or, with consent of a certain proportion of the owners and occupiers, to make new ones, and to cleanse such rivers, and the streams communicating therewith. St. 3 & 4 Wm. IV. c. 22, § 10; 3 Steph. Comm. 442.—**County commissioners.** See COUNTY.

COMMISSIONS. The compensation or reward paid to a factor, broker, agent, bailee, executor, trustee, receiver, etc., when the same is calculated as a percentage on the amount of his transactions or the amount received or expended. See COMMISSION.

COMMISSIVE. Caused by or consisting in acts of commission, as distinguished from neglect, sufferance, or toleration; as in the phrase "commissive waste," which is contrasted with "permissive waste." See WASTE.

COMMISSORIA LEX. In Roman law. A clause which might be inserted in an agreement for a sale upon credit, to the effect that the vendor should be freed from his obligation, and might rescind the sale, if the vendee did not pay the purchase price at the appointed time. Also a similar agreement between a debtor and his pledgee that, if the debtor did not pay at the day appointed, the pledge should become the absolute property of the creditor. This, however, was abolished by a law of Constantine. Cod. 8, 35, 3. See Dig. 18, 3; Mackeld. Rom. Law, §§ 447, 461; 2 Kent, Comm. 583.

COMMIT. In practice. To send a person to prison by virtue of a lawful authority, for any crime or contempt, or to an asylum, workhouse, reformatory, or the like, by authority of a court or magistrate. People v. Beach, 122 Cal. 37, 54 Pac. 369; Cummington v. Wareham, 9 Cush. (Mass.) 585; French v. Bancroft, 1 Metc. (Mass.) 502; People v. Warden, 73 App. Div. 174, 76 N. Y. Supp. 728.

To deliver a defendant to the custody of the sheriff or marshal, on his surrender by his bail. 1 Tidd, Pr. 285, 287.

COMMITMENT. In practice. The warrant or *mittimus* by which a court or magistrate directs an officer to take a person to prison.

The act of sending a person to prison by means of such a warrant or order. People v. Rutan, 3 Mich. 49; Guthmann v. People, 203 Ill. 260, 67 N. E. 821; Allen v. Hagan, 170 N. Y. 46, 62 N. E. 1086.

COMMITTEE. In practice. An assembly or board of persons to whom the consideration or management of any matter is committed or referred by some court. Lloyd v. Hart, 2 Pa. 473, 45 Am. Dec. 612; Farrar v. Eastman, 5 Me. 345.

An individual or body to whom others have delegated or committed a particular duty, or who have taken on themselves to perform it in the expectation of their act being confirmed by the body they profess to represent or act for. 15 Mees. & W. 529.

The term is especially applied to the person or persons who are invested, by order of the proper court, with the guardianship of the person and estate of one who has been adjudged a lunatic.

In parliamentary law. A portion of a legislative body, comprising one or more members, who are charged with the duty of examining some matter specially referred to them by the house, or of deliberating upon it, and reporting to the house the result of their investigations or recommending a course of action. A committee may be appointed for one special occasion, or it may be appointed to deal with all matters which may be referred to it during a whole session or during the life of the body. In the latter case, it is called a "standing committee." It is usually composed of a comparatively small number of members, but may include the whole house.

—**Joint committee.** A joint committee of a legislative body comprising two chambers is a committee consisting of representatives of each of the two houses, meeting and acting together as one committee.—**Secret committee.** A secret committee of the house of commons is a committee specially appointed to investigate a certain matter, and to which secrecy being deemed necessary in furtherance of its objects, its proceedings are conducted with closed doors, to the exclusion of all persons not members of the committee. All other committees are open to members of the house, although they may not be serving upon them. Brown.

COMMITTING MAGISTRATE. See MAGISTRATE.

COMMITTITUR. In practice. An order or minute, setting forth that the person named in it *is committed* to the custody of the sheriff.

—**Committitur piece.** An instrument in writing on paper or parchment, which charges a person, already in prison, in execution at the suit of the person who arrested him. 2 Chit. Archb. Pr. (12th Ed.) 1208.

COMMIXTIO. In the civil law. The mixing together or confusion of things, dry or solid, belonging to different owners, as distinguished from *confusio*, which has relation to liquids.

COMMODATE. In Scotch law. A gratuitous loan for use. Ersk. Inst. 3, 1, 20. Closely formed from the Lat. *commodatum*, (*q. v.*)

COMMODATI ACTIO. Lat. In the civil law. An action of loan; an action for a thing lent. An action given for the recovery of a thing loaned, (*commodatum*,) and not returned to the lender. Inst. 3, 15, 2; Id. 4, 1, 16.

COMMODATO. In Spanish law. A contract by which one person lends gratuitously to another some object not consumable, to be restored to him in kind at a given period; the same contract as *commodatum*, (*q. v.*)

COMMODATUM. In the civil law. He who lends to another a thing for a definite time, to be enjoyed and used under certain conditions, without any pay or reward, is called "*commodans*;" the person who receives the thing is called "*commodatarius*," and the contract is called "*commodatum*." It differs from *locatio* and *conductio*, in this: that the use of the thing is gratuitous. Dig. 13, 6; Inst. 3, 2, 14; Story, Bailm. § 221. Coggs v. Bernard, 2 Ld. Raym. 909; Adams v. Mortgage Co., 82 Miss. 263, 34 South. 482, 17 L. R. A. (N. S.) 138, 100 Am. St. Rep. 633; World's Columbian Exposition Co. v. Republic of France, 96 Fed. 693, 38 C. C. A. 483.

COMMODITIES. Goods, wares, and merchandise of any kind; movables; articles of trade or commerce. Best v. Bauder, 29 How. Prac. (N. Y.) 492; Portland Bank v. Apthorp, 12 Mass. 256; Queen Ins. Co. v. State, 86 Tex. 250, 24 S. W. 397, 22 L. R. A. 483.

Commodum ex injuriâ suâ nemo habere debet. Jenk. Cent. 161. No person ought to have advantage from his own wrong.

COMMON, *n.* An incorporeal hereditament which consists in a profit which one man has in connection with one or more others in the land of another. Trustees v. Robinson, 12 Serg. & R. (Pa.) 31; Van Rensselaer v. Radcliff, 10 Wend. (N. Y.) 647, 25 Am. Dec. 582; Watts v. Coffin, 11 Johns. (N. Y.) 498.

Common, in English law, is an incorporeal right which lies in grant, originally commencing on some agreement between lords and tenants, which by time has been formed into prescription, and continues good, although there be no deed or instrument to prove the original contract. 4 Coke, 37; 1 Crabb, Real Prop. p. 258, § 268.

Common, or a right of common, is a right or privilege which several persons have to the produce of the lands or waters of another. Thus common of pasture is a right of feeding the beasts of one person on the lands of another; common of estovers is the right a tenant has of taking necessary wood and timber from the woods of the lord for fuel, fencing, etc. Van Rensselaer v. Radcliff, 10 Wend. (N. Y.) 647.

The word "common" also denotes an unin-closed piece of land set apart for public or municipal purposes, in many cities and villages of the United States. White v. Smith, 37 Mich. 291; Newport v. Taylor, 16 B. Mon. 807; Cincinnati v. White, 6 Pet. 435, 8 L. Ed. 452; Cummings v. St. Louis, 90 Mo. 259, 2 S. W. 130; Newell v. Hancock, 67 N. H. 244, 35 Atl. 253; Bath v. Boyd, 23 N. C. 194; State v. McReynolds, 61 Mo. 210.

—Common appendant. A right annexed to the possession of arable land, by which the owner is entitled to feed his beasts on the lands of another, usually of the owner of the manor of which the lands entitled to common are a part. 2 Bl. Comm. 33; Smith v. Floyd, 18 Barb. (N. Y.) 527; Van Rensselaer v. Radcliff, 10 Wend. (N. Y.) 648.**—Common appurtenant.** A right of feeding one's beasts on the land of another, (in common with the owner or with others,) which is founded on a grant, or a prescription which supposes a grant. 1 Crabb, Real Prop. p. 264, § 277. This kind of common arises from no connection of tenure, and is against common right; it may commence by grant within time of memory, or, in other words, may be created at the present day; it may be claimed as annexed to any kind of land, and may be claimed for beasts not commonable, as well as those that are. 2 Bl. Comm. 33; Van Rensselaer v. Radcliff, 10 Wend. (N. Y.) 649; Smith v. Floyd, 18 Barb. (N. Y.) 527. **—Common because of vicinage** is where the inhabitants of two townships which lie contiguous to each other have usually intercommoned with one another, the beasts of the one straying mutually into the other's fields, without any molestation from either. This is, indeed, only a permissive right, intended to excuse what, in strictness, is a trespass in both, and to prevent a multiplicity of suits, and therefore either township may inclose and bar out the other, though they have intercommoned time out of mind. 2 Bl. Comm. 33; Co. Litt. 122*a*.**—Common in gross, or at large.** A species of common which is neither appendant nor appurtenant to *land*, but is annexed to a man's *person*, being granted to him and his heirs by deed; or it may be claimed by prescriptive right, as by a parson of a church or the like corporation sole. 2 Bl. Comm. 34. It is a separate inheritance, entirely distinct from any other landed property, vested in the person to whom the common right belongs. 2 Steph. Comm. 6; Mitchell v. D'Olier, 68 N. J. Law, 375, 53 Atl. 467, 59 L. R. A. 949.**—Common of digging.** Common of digging, or common in the soil, is the right to take for one's own use part of the soil or minerals in another's land; the most usual subjects of the right are sand, gravel, stones, and clay. It is of a very similar nature to common of estovers and of turbary. Elton, Com. 109.**—Common of estovers.** A liberty of taking necessary wood for the use or furniture of a house or farm from off another's estate, in common with the owner or with others. 2 Bl. Comm. 35. It may be claimed, like common of pasture, either by grant or prescription. 2 Steph. Comm. 10; Van Rensselaer v. Rad-

cliff, 10 Wend. (N. Y.) 648.—**Common of fishery.** The same as Common of piscary. See *infra*.—**Common of fowling.** In some parts of the country a right of taking wild animals (such as conies or wildfowl) from the land of another has been found to exist; in the case of wildfowl, it is called a "common of fowling." Elton, Com. 118.—**Common of pasture.** The right or liberty of pasturing one's cattle upon another man's land. It may be either appendant, appurtenant, in gross, or because of vicinage. Van Rensselaer v. Radcliff, 10 Wend. (N. Y.) 647.—**Common of piscary.** The right or liberty of fishing in another man's water, in common with the owner or with other persons. 2 Bl. Comm. 34. A liberty or right of fishing in the water covering the soil of another person, or in a river running through another's land. 3 Kent, Comm. 409. Hardin v. Jordan, 140 U. S. 371, 11 Sup. Ct. 808, 35 L. Ed. 428; Albright v. Park Com'n, 68 N. J. Law, 523, 53 Atl. 612; Van Rensselaer v. Radcliff, 10 Wend. (N. Y.) 649. It is quite different from a common fishery, with which, however, it is frequently confounded.—**Common of shack.** A species of common by vicinage prevailing in the counties of Norfolk, Lincoln, and Yorkshire, in England; being the right of persons occupying lands lying together in the same common field to turn out their cattle after harvest to feed promiscuously in that field. 2 Steph. Comm. 6, 7; 5 Coke, 65.—**Common of turbary.** Common of turbary, in its modern sense, is the right of taking peat or turf from the waste land of another, for fuel in the commoner's house. Williams, Common, 187; Van Rensselaer v. Radcliff, 10 Wend. (N. Y.) 647.—**Common sans nombre.** Common without number, that is, without *limit* as to the *number* of cattle which may be turned on; otherwise called "common without stint." Bract. fols. 53*b*, 222*b*; 2 Steph. Comm. 6, 7; 2 Bl. Comm. 34.—**Common, tenants in.** See TENANTS IN COMMON.

COMMON. As an *adjective*, this word denotes usual, ordinary, accustomed; shared amongst several; owned by several jointly. State v. O'Conner, 49 Me. 596; Koen v. State, 35 Neb. 676, 53 N. W. 595, 17 L. R. A. 821; Aymette v. State, 2 Humph. (Tenn.) 154.

—**Common assurances.** The several modes or instruments of conveyance established or authorized by the law of England. Called "common" because thereby *every man's* estate is assured to him. 2 Bl. Comm. 294. The legal evidences of the translation of property, whereby every person's estate is assured to him, and all controversies, doubts, and difficulties are either prevented or removed. Wharton.—**Common fine.** In old English law. A certain sum of money which the residents in a leet paid to the lord of the leet, otherwise called "head silver," "cert money," (*q. v.*) or "*certum letæ*." Termes de la Ley; Cowell. A sum of money paid by the inhabitants of a manor to their lord, towards the charge of holding a court leet. Bailey, Dict.—**Common form.** A will is said to be proved in common form when the executor proves it on his own oath; as distinguished from "proof by witnesses," which is necessary when the paper propounded as a will is disputed. Hubbard v. Hubbard, 7 Or. 42; Richardson v. Green, 61 Fed. 423, 9 C. C. A. 565; In re Straub, 49 N. J. Eq. 264, 24 Atl. 569; Sutton v. Hancock, 118 Ga. 436, 45 S. E. 504.—**Common hall.** A court in the city of London, at which all the citizens, or such as are free of the city, have a right to attend.—**Common learning.** Familiar law or doctrine. Dyer, 27*b*, 33.—**Common place.** Common pleas. The English court of common pleas is sometimes so called in the old books.—**Common prayer.** The liturgy, or public form of prayer prescribed by the Church of England to be used in all churches and chapels, and which the clergy are enjoined to use under a certain penalty.—**Common repute.** The prevailing belief in a given community as to the existence of a certain fact or aggregation of facts. Brown v. Foster, 41 S. C. 118, 19 S. E. 299.—**Common right.** A term applied to rights, privileges, and immunities appertaining to and enjoyed by all citizens equally and in common, and which have their foundation in the common law. Co. Inst. 142*a*; Spring Valley Waterworks v. Schottler, 62 Cal. 106.—**Common seller.** A common seller of any commodity (particularly under the liquor laws of many states) is one who sells it frequently, usually, customarily, or habitually; in some states, one who is shown to have made a certain number of sales, either three or five. State v. O'Conner, 49 Me. 596; State v. Nutt, 28 Vt. 598; Moundsville v. Fountain, 27 W. Va. 194; Com. v. Tubbs, 1 Cush. (Mass.) 2.—**Common sense.** Sound practical judgment; that degree of intelligence and reason, as exercised upon the relations of persons and things and the ordinary affairs of life, which is possessed by the generality of mankind, and which would suffice to direct the conduct and actions of the individual in a manner to agree with the behavior of ordinary persons.—**Common thief.** One who by practice and habit is a thief; or, in some states, one who has been convicted of three distinct larcenies at the same term of court. World v. State, 50 Md. 54; Com. v. Hope, 22 Pick. (Mass.) 1; Stevens v. Com., 4 Metc. (Mass.) 364.—**Common weal.** The public or common good or welfare.

As to common "Bail," "Barretor," "Carrier," "Chase," "Council," "Counts," "Diligence," "Day," "Debtor," "Drunkard," "Error," "Fishery," "Highway," "Informer," "Inn," "Intendment," "Intent," "Jury," "Labor," "Nuisance," "Property," "School," "Scold," "Stock," "Seal," "Sergeant," "Traverse," "Vouchee," "Wall," see those titles. For Commons, House of, see HOUSE OF COMMONS.

COMMON BAR. In pleading. (Otherwise called "blank bar.") A plea to compel the plaintiff to assign the particular place where the trespass has been committed. Steph. Pl. 256.

COMMON BENCH. The English court of common pleas was formerly so called. Its original title appears to have been simply "The Bench," but it was designated "Common Bench" to distinguish it from the "King's Bench," and because in it were tried and determined the causes of *common* persons, *i. e.*, causes between subject and subject, in which the crown had no interest.

COMMON LAW. 1. As distinguished from the Roman law, the modern civil law, the canon law, and other systems, the common law is that body of law and juristic theory which was originated, developed, and formulated and is administered in England, and has obtained among most of the states and peoples of Anglo-Saxon stock. Lux v. Haggin, 69 Cal. 255, 10 Pac. 674.

2. As distinguished from law created by the enactment of legislatures, the common

law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England. Western Union Tel. Co. v. Call Pub. Co., 181 U. S. 92, 21 Sup. Ct. 561, 45 L. Ed. 765; State v. Buchanan, 5 Har. & J. (Md.) 365, 9 Am. Dec. 534; Lux v. Haggin, 69 Cal. 255, 10 Pac. 674; Barry v. Port Jervis, 64 App. Div. 268, 72 N. Y. Supp. 104.

3. As distinguished from equity law, it is a body of rules and principles, written or unwritten, which are of fixed and immutable authority, and which must be applied to controversies rigorously and in their entirety, and cannot be modified to suit the peculiarities of a specific case, or colored by any judicial discretion, and which rests confessedly upon custom or statute, as distinguished from any claim to ethical superiority. Klever v. Seawall, 65 Fed. 395, 12 C. C. A. 661.

4. As distinguished from ecclesiastical law, it is the system of jurisprudence administered by the purely secular tribunals.

5. As concerns its force and authority in the United States, the phrase designates that portion of the common law of England (including such acts of parliament as were applicable) which had been adopted and was in force here at the time of the Revolution. This, so far as it has not since been expressly abrogated, is recognized as an organic part of the jurisprudence of most of the United States. Browning v. Browning, 3 N. M. 371, 9 Pac. 677; Guardians of Poor v. Greene, 5 Bin. (Pa.) 557; U. S. v. New Bedford Bridge, 27 Fed. Cas. 107.

6. In a wider sense than any of the foregoing, the "common law" may designate all that part of the positive law, juristic theory, and ancient custom of any state or nation which is of general and universal application, thus marking off special or local rules or customs.

As a compound adjective "common-law" is understood as contrasted with or opposed to "statutory," and sometimes also to "equitable" or to "criminal." See examples below.

—Common-law action. A civil suit, as distinguished from a criminal prosecution or a proceeding to enforce a penalty or a police regulation; not necessarily an action which would lie at common law. Kirby v. Railroad Co. (C. C.) 106 Fed. 551; U. S. v. Block, 24 Fed. Cas. 1,174.**—Common-law assignments.** Such forms of assignments for the benefit of creditors as were known to the common law, as distinguished from such as are of modern invention or authorized by statute. Ontario Bank v. Hurst, 103 Fed. 231, 43 C. C. A. 193.**—Common-law cheat.** The obtaining of money or property by means of a false token, symbol, or device; this being the definition of a cheat or "cheating" at common law. State v. Wilson, 72 Minn. 522, 75 N. W. 715; State v. Renick, 33 Or. 584, 56 Pac. 275, 44 L. R. A. 266, 72 Am. St. Rep. 758.**—Common-law courts.** In England, those administering the common law. Equitable L. Assur. Soc. v. Paterson, 41 Ga. 364, 5 Am. Rep. 535.**—Common-law crime.** One punishable by the force of the common law, as distinguished from crimes created by statute. In re Greene (C. C.) 52 Fed. 104.**—Common-law jurisdiction.** Jurisdiction of a court to try and decide such cases as were cognizable by the courts of law under the English common law; the jurisdiction of those courts which exercise their judicial powers according to the course of the common law. People v. McGowan, 77 Ill. 644, 20 Am. Rep. 254; In re Conner, 39 Cal. 98, 2 Am. Rep. 430; U. S. v. Power, 27 Fed. Cas. 607.**—Common-law lien.** One known to or granted by the common law, as distinguished from statutory, equitable, and maritime liens; also one arising by implication of law, as distinguished from one created by the agreement of the parties. The Menominie (D. C.) 36 Fed. 197; Tobacco Warehouse Co. v. Trustee, 117 Ky. 478, 78 S. W. 413, 64 L. R. A. 219.**—Common-law marriage.** One not solemnized in the ordinary way, but created by an agreement to marry, followed by cohabitation; a consummated agreement to marry, between a man and a woman, per verba de præsenti, followed by cohabitation. Taylor v. Taylor, 10 Colo. App. 303, 50 Pac. 1049; Cuneo v. De Cuneo, 24 Tex. Civ. App. 436, 59 S. W. 284; Morrill v. Palmer, 68 Vt. 1, 33 Atl. 829, 33 L. R. A. 411.**—Common-law mortgage.** One possessing the characteristics or fulfilling the requirements of a mortgage at common law; not known in Louisiana, where the civil law prevails; but such a mortgage made in another state and affecting lands in Louisiana, will be given effect there as a "conventional" mortgage, affecting third persons after due inscription. Gates v. Gaither, 46 La. Ann. 286, 15 South. 50.**—Common-law procedure acts.** Three acts of parliament, passed in the years 1852, 1854, and 1860, respectively, for the amendment of the procedure in the common-law courts. The common-law procedure act of 1852 is St. 15 & 16 Vict. c. 76; that of 1854, St. 17 & 18 Vict. c. 125; and that of 1860, St. 23 & 24 Vict. c. 126. Mozley & Whitley.**—Common-law wife.** A woman who was party to a "common-law marriage," as above defined; or one who, having lived with a man in a relation of concubinage during his life, asserts a claim, after his death, to have been his wife according to the requirements of the common law. In re Brush, 25 App. Div. 610, 49 N. Y. Supp. 803. **—Common lawyer.** A lawyer learned in the common law.

Common opinion is good authority in law. Co. Litt. 186*a;* Bank of Utica v. Mersereau, 3 Barb. Ch. (N. Y.) 528, 577, 49 Am. Dec. 189.

COMMON PLEAS. The name of a court of record having general original jurisdiction in civil suits.

Common causes or suits. A term anciently used to denote civil actions, or those depending between subject and subject, as distinguished from *pleas of the crown.* Dallett v. Feltus, 7 Phila. (Pa.) 627.

COMMON PLEAS, THE COURT OF. In English law. (So called because its original jurisdiction was to determine controversies between subject and subject.) One of the three superior courts of common law at Westminster, presided over by a lord chief

justice and five (formerly four, until 31 & 32 Vict. c. 125, § 11, subsec. 8) *puisné* judges. It was detached from the king's court (*aula regis*) as early as the reign of Richard I., and the fourteenth clause of *Magna Charta* enacted that it should not follow the king's court, but be held in some certain place. Its jurisdiction was altogether confined to civil matters, having no cognizance in criminal cases, and was concurrent with that of the queen's bench and exchequer in personal actions and ejectment. Wharton.

COMMON RECOVERY. In conveyancing. A species of common assurance, or mode of conveying lands by matter of record, formerly in frequent use in England. It was in the nature and form of an action at law, carried regularly through, and ending in a *recovery* of the lands against the tenant of the freehold; which recovery, being a supposed adjudication of the right, bound all persons, and vested a free and absolute fee-simple in the recoverer. 2 Bl. Comm. 357. Christy v. Burch, 25 Fla. 942, 2 South. 258. Common recoveries were abolished by the statutes 3 & 4 Wm. IV. c. 74.

COMMONABLE. Entitled to common. Commonable beasts are either beasts of the plow, as horses and oxen, or such as manure the land, as kine and sheep. Beasts not commonable are swine, goats, and the like. Co. Litt. 122*a*; 2 Bl. Comm. 33.

COMMONAGE. In old deeds. The right of common. See COMMON.

COMMONALTY. In English law. The great body of citizens; the mass of the people, excluding the nobility.

In American law. The body of people composing a municipal corporation, excluding the corporate officers.

COMMONANCE. The commoners, or tenants and inhabitants, who have the right of common or commoning in open field. Cowell.

COMMONERS. In English law. Persons having a right of *common*. So called because they have a right to pasture on the waste, in common with the lord. 2 H. Bl. 889.

COMMONS. 1. The class of subjects in Great Britain exclusive of the royal family and the nobility. They are represented in parliament by the house of commons.

2. Part of the demesne land of a manor, (or land the property of which was in the lord,) which, being uncultivated, was termed the "lord's waste," and served for public roads and for common of pasture to the lord and his tenants. 2 Bl. Comm. 90.

COMMONS HOUSE OF PARLIAMENT. In the English parliament. The lower house, so called because the commons of the realm, that is, the knights, citizens, and burgesses returned to parliament, representing the whole body of the commons, sit there.

COMMONTY. In Scotch law. Land possessed in common by different proprietors, or by those having acquired rights of servitude. Bell.

COMMONWEALTH. The public or common weal or welfare. This cannot be regarded as a technical term of public law, though often used in political science. It generally designates, when so employed, a republican frame of government,—one in which the welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class or the will of a monarch; or it may designate the body of citizens living under such a government. Sometimes it may denote the corporate entity, or the government, of a jural society (or state) possessing powers of self-government in respect of its immediate concerns, but forming an integral part of a larger government, (or nation.) In this latter sense, it is the official title of several of the United States, (as Pennsylvania and Massachusetts,) and would be appropriate to them all. In the former sense, the word was used to designate the English government during the protectorate of Cromwell. See GOVERNMENT; NATION; STATE. (State v. Lambert, 44 W. Va. 308, 28 S. E. 930.)

COMMORANCY. The dwelling in any place as an inhabitant; which consists in usually lying there. 4 Bl. Comm. 273. In American law it is used to denote a mere temporary residence. Ames v. Winsor, 19 Pick. (Mass.) 248; Pullen v. Monk, 82 Me. 412, 19 Atl. 909; Gilman v. Inman, 85 Me. 105, 26 Atl. 1049.

COMMORANT. Staying or abiding; dwelling temporarily in a place.

COMMORIENTES. Several persons who perish at the same time in consequence of the same calamity.

COMMORTH, or COMORTH. A contribution which was gathered at marriages, and when young priests said or sung the first masses. Prohibited by 26 Hen. VIII. c. 6. Cowell.

COMMOTE. Half a cantred or hundred in Wales, containing fifty vilages. Also a great seignory or lordship, and may include one or divers manors. Co. Litt. 5.

COMMOTION. A "civil commotion" is an insurrection of the people for general purposes, though it may not amount to re-

bellion where there is a usurped power. 2 Marsh. Ins. 793; Boon v. Insurance Co., 40 Conn. 584; Grame v. Assur. Soc., 112 U. S. 273, 5 Sup. Ct. 150, 28 L. Ed. 716; Spruill v. Insurance Co., 46 N. C. 127.

COMMUNE, *n.* A self-governing town or village. The name given to the committee of the people in the French revolution of 1793; and again, in the revolutionary uprising of 1871, it signified the attempt to establish absolute self-government in Paris, or the mass of those concerned in the attempt. In old French law, it signified any municipal corporation. And in old English law, the commonalty or common people. 2 Co. Inst. 540.

COMMUNE, *adj.* Lat. Common.

—Commune concilium regni. The common council of the realm. One of the names of the English parliament.**—Commune forum.** The common place of justice. The seat of the principal courts, especially those that are fixed. **—Commune placitum.** In old English law. A common plea or civil action, such as an action of debt.**—Commune vinculum.** A common or mutual bond. Applied to the common stock of consanguinity, and to the feodal bond of fealty, as the common bond of union between lord and tenant. 2 Bl. Comm. 250; 3 Bl. Comm. 230.

COMMUNI CUSTODIA. In English law. An obsolete writ which anciently lay for the lord, whose tenant, holding by knight's service, died, and left his eldest son under age, against a stranger that entered the land, and obtained the ward of the body. Reg. Orig. 161.

COMMUNI DIVIDUNDO. In the civil law. An action which lies for those who have property in common, to procure a division. It lies where parties hold land in common but not in partnership. Calvin.

COMMUNIA. In old English law. Common things, *res communes.* Such as running water, the air, the sea, and sea shores. Bract. fol. 7*b*.

COMMUNIA PLACITA. In old English law. Common pleas or actions; those between one subject and another, as distinguished from pleas of the crown.

COMMUNIA PLACITA NON TENENDA IN SCACCARIO. An ancient writ directed to the treasurer and barons of the exchequer, forbidding them to hold pleas between common persons (*i. e.*, not debtors to the king, who alone originally sued and were sued there) in that court, where neither of the parties belonged to the same. Reg. Orig. 187.

COMMUNIÆ. In feudal law on the continent of Europe, this name was given to towns enfranchised by the crown, about the twelfth century, and formed into free corporations by grants called "charters of community."

COMMUNIBUS ANNIS. In ordinary years; on the annual average.

COMMUNICATION. Information given; the sharing of knowledge by one with another; conference; consultation or bargaining preparatory to making a contract. Also intercourse; connection.

In French law. The production of a merchant's books, by delivering them either to a person designated by the court, or to his adversary, to be examined in all their parts, and as shall be deemed necessary to the suit. Arg. Fr. Merc. Law, 552.

—Confidential communications. These are certain classes of communications, passing between persons who stand in a confidential or fiduciary relation to each other, (or who, on account of their relative situation, are under a special duty of secrecy and fidelity,) which the law will not permit to be divulged, or allow them to be inquired into in a court of justice, for the sake of public policy and the good order of society. Examples of such privileged relations are those of husband and wife and attorney and client. Hatton v. Robinson, 14 Pick. (Mass.) 416, 25 Am. Dec. 415; Parker v. Carter, 4 Munf. (Va.) 287, 6 Am. Dec. 513; Chirac v. Reinicker, 11 Wheat. 280, 6 L. Ed. 474; Parkhurst v. Berdell, 110 N. Y. 386, 18 N. E. 123, 6 Am. St. Rep. 384.**—Privileged communication.** In the law of evidence. A communication made to a counsel, solicitor, or attorney, in professional confidence, and which he is not permitted to divulge; otherwise called a "confidential communication." 1 Starkie, Ev. 185. In the law of libel and slander. A defamatory statement made to another in pursuance of a duty, political, judicial, social, or personal, so that an action for libel or slander will not lie, though the statement be false, unless in the last two cases actual malice be proved in addition. Bacon v. Railroad Co., 66 Mich. 166, 33 N. W. 181.

COMMUNINGS. In Scotch law. The negotiations preliminary to the entering into a contract.

COMMUNIO BONORUM. In the civil law. A term signifying a community (*q. v.*) of goods.

COMMUNION OF GOODS. In Scotch law. The right enjoyed by married persons in the movable goods belonging to them. Bell.

Communis error facit jus. Common error makes law. 4 Inst. 240; Noy, Max. p. 37, max. 27. Common error goeth for a law. Finch, Law, b. 1, c. 3, no. 54. Common error sometimes passes current as law. Broom, Max. 139, 140.

COMMUNIS OPINIO. Common opinion; general professional opinion. According to Lord Coke, (who places it on the footing of observance or usage,) common opinion is good authority in law. Co. Litt. 186*a*.

COMMUNIS PARIES. In the civil law. A common or party wall. Dig. 8, 2, 8, 13.

COMMUNIS RIXATRIX. In old English law. A common scold, (*q. v.*) 4 Bl. Comm. 168.

COMMUNIS SCRIPTURA. In old English law. A common writing; a writing common to both parties; a chirograph. Glan. lib. 8, c. 1.

COMMUNIS STIPES. A common stock of descent; a common ancestor.

COMMUNISM. A name given to proposed systems of life or social organization based upon the fundamental principle of the non-existence of private property and of a community of goods in a society.

An equality of distribution of the physical means of life and enjoyment as a transition to a still higher standard of justice that all should work according to their capacity and receive according to their wants. 1 Mill, Pol. Ec. 248.

COMMUNITAS REGNI ANGLIÆ. The general assembly of the kingdom of England. One of the ancient names of the English parliament. 1 Bl. Comm. 148.

COMMUNITY. A society of people living in the same place, under the same laws and regulations, and who have common rights and privileges. In re Huss, 126 N. Y. 537, 27 N. E. 784, 12 L. R. A. 620; Gilman v. Dwight, 13 Gray (Mass.) 356, 74 Am. Dec. 634; Cunningham v. Underwood, 116 Fed. 803, 53 C. C. A. 99; Berkson v. Railway Co., 144 Mo. 211, 45 S. W. 1119.

In the civil law. A corporation or body politic. Dig. 3, 4.

In French law. A species of partnership which a man and a woman contract when they are lawfully married to each other.

—Community debt. One chargeable to the community (of husband and wife) rather than to either of the parties individually. Calhoun v. Leary, 6 Wash. 17, 32 Pac. 1070.**—Community of profits.** This term, as used in the definition of a partnership, (to which a community of profits is essential,) means a proprietorship in them as distinguished from a personal claim upon the other associate, a property right in them from the start in one associate as much as in the other. Bradley v. Ely, 24 Ind. App. 2, 56 N. E. 44, 79 Am. St. Rep. 251; Moore v. Williams, 26 Tex. Civ. App. 142, 62 S. W. 977.**—Community property.** Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either. In re Lux's Estate, 114 Cal. 73, 45 Pac. 1023; Mitchell v. Mitchell, 80 Tex. 101, 15 S. W. 705; Ames v. Hubby, 49 Tex. 705; Holyoke v. Jackson, 3 Wash. T. 235, 3 Pac. 841; Civ. Code Cal. § 687. This partnership or community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two, and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. Civ. Code La. art. 2402.

COMMUTATION. In criminal law. Change; substitution. The substitution of one punishment for another, after conviction of the party subject to it. The change of a punishment from a greater to a less; as from hanging to imprisonment.

Commutation of a punishment is not a conditional pardon, but the substitution of a lower for a higher grade of punishment, and is presumed to be for the culprit's benefit. In re Victor, 31 Ohio St. 207; Ex parte Janes, 1 Nev. 321; Rich v. Chamberlain, 107 Mich. 381, 65 N. W. 235.

In civil matters. The conversion of the right to receive a variable or periodical payment into the right to receive a fixed or gross payment. Commutation may be effected by private agreement, but it is usually done under a statute.

—Commutation of taxes. Payment of a designated lump sum (permanent or annual) for the privilege of exemption from taxes, or the settlement in advance of a specific sum in lieu of an ad valorem tax. Cotton Mfg. Co. v. New Orleans, 31 La. Ann. 440.**—Commutation of tithes.** Signifies the conversion of tithes into a fixed payment in money.**—Commutation ticket.** A railroad ticket giving the holder the right to travel at a certain rate for a limited number of trips (or for an unlimited number within a certain period of time) for a less amount than would be paid in the aggregate for so many separate trips. Interstate Commerce Com'n v. Baltimore & O. R. Co. (C. C.) 43 Fed. 56.

COMMUTATIVE CONTRACT. See CONTRACT.

COMMUTATIVE JUSTICE. See JUSTICE.

COMPACT. An agreement or contract. Usually applied to conventions between nations or sovereign states.

A compact is a mutual consent of parties concerned respecting some property or right that is the object of the stipulation, or something that is to be done or forborne. Chesapeake & O. Canal Co. v. Baltimore & O. R. Co., 4 Gill & J. (Md.) 1.

The terms "compact" and "contract" are synonymous. Green v. Biddle, 8 Wheat. 1, 92, 5 L. Ed. 547.

COMPANAGE. All kinds of food, except bread and drink. Spelman.

COMPANIES CLAUSES CONSOLIDATION ACT. An English statute, (8 Vict. c. 16,) passed in 1845, which consolidated the clauses of previous laws still remaining in force on the subject of public companies. It is considered as incorporated into all subsequent acts authorizing the execution of

undertakings of a public nature by companies, unless expressly excepted by such later acts. Its purpose is declared by the preamble to be to avoid repeating provisions as to the constitution and management of the companies, and to secure greater uniformity in such provisions. Wharton.

COMPANION OF THE GARTER. One of the knights of the Order of the Garter.

COMPANIONS. In French law. A general term, comprehending all persons who compose the crew of a ship or vessel. Poth. Mar. Cont. no. 163.

COMPANY. A society or association of persons, in considerable number, interested in a common object, and uniting themselves for the prosecution of some commercial or industrial undertaking, or other legitimate business. Mills v. State, 23 Tex. 303; Smith v. Janesville, 52 Wis. 680, 9 N. W. 789.

The proper signification of the word "company," when applied to persons engaged in trade, denotes those united for the same purpose or in a joint concern. It is so commonly used in this sense, or as indicating a partnership, that few persons accustomed to purchase goods at shops, where they are sold by retail, would misapprehend that such was its meaning. Palmer v. Pinkham, 33 Me. 32.

Joint stock companies. Joint stock companies are those having a joint stock or capital, which is divided into numerous transferable shares, or consists of transferable stock. Lindl. Partn. 6.

The term is not identical with "partnership," although every unincorporated society is, in its legal relations, a partnership. In common use a distinction is made, the name "partnership" being reserved for business associations of a limited number of persons (usually not more than four or five) trading under a name composed of their individual names set out in succession; while "company" is appropriated as the designation of a society comprising a larger number of persons, with greater capital, and engaged in more extensive enterprises, and trading under a title not disclosing the names of the individuals. See Allen v. Long, 80 Tex. 261, 16 S. W. 43, 26 Am. St. Rep. 735; Adams Exp. Co. v. Schofield, 111 Ky. 832, 64 S. W. 903; Kossakowski v. People, 177 Ill. 563, 53 N. E. 115; In re Jones, 28 Misc. Rep. 356, 59 N. Y. Supp. 983; Attorney General v. Mercantile Marine Ins. Co., 121 Mass. 525.

Sometimes the word is used to represent those members of a partnership whose names do not appear in the name of the firm. See 12 Toullier, 97.

—Limited company. A company in which the liability of each shareholder is limited by the number of shares he has taken, so that he cannot be called on to contribute beyond the amount of his shares In England, the memorandum of association of such company may provide that the liability of the directors, manager, or managing director thereof shall be unlimited. 30 & 31 Vict. c. 131; 1 Lindl. Partn. 383; Mozley & Whitley.—**Public company.** In English law. A business corporation; a society of persons joined together for carrying on some commercial or industrial undertaking.

COMPARATIO LITERARUM. In the civil law. Comparison of writings, or handwritings. A mode of proof allowed in certain cases.

COMPARATIVE. Proceeding by the method of comparison; founded on comparison; estimated by comparison.

—Comparative interpretation. That method of interpretation which seeks to arrive at the meaning of a statute or other writing by comparing its several parts and also by comparing it as a whole with other like documents proceeding from the same source and referring to the same general subject. Glenn v. York County, 6 Rich. (S. C.) 412.—**Comparative jurisprudence.** The study of the principles of legal science by the comparison of various systems of law.—**Comparative negligence.** That doctrine in the law of negligence by which the negligence of the parties is compared, in the degrees of "slight," "ordinary," and "gross" negligence, and a recovery permitted, notwithstanding the contributory negligence of the plaintiff, when the negligence of the plaintiff is slight and the negligence of the defendant gross, but refused when the plaintiff has been guilty of a want of ordinary care, thereby contributing to his injury, or when the negligence of the defendant is not gross, but only ordinary or slight, when compared, under the circumstances of the case, with the contributory negligence of the plaintiff. 3 Amer. & Eng. Enc. Law, 367. See Steel Co. v. Martin, 115 Ill. 358, 3 N. E. 456; Railroad Co. v. Ferguson, 113 Ga. 708, 39 S. E. 306, 54 L. R. A. 802; Straus v. Railroad Co., 75 Mo. 185; Hurt v. Railroad Co., 94 Mo. 255, 7 S. W. 1, 4 Am. St. Rep. 374.

COMPARISON OF HANDWRITING. A comparison by the juxtaposition of two writings, in order, by such comparison, to ascertain whether both were written by the same person.

A method of proof resorted to where the genuineness of a written document is disputed; it consists in comparing the handwriting of the disputed paper with that of another instrument which is proved or admitted to be in the writing of the party sought to be charged, in order to infer, from their identity or similarity in this respect, that they are the work of the same hand. Johnson v. Insurance Co., 105 Iowa, 273, 75 N. W. 101; Rowt v. Kile, 1 Leigh (Va.) 216; Travis v. Brown, 43 Pa. 9, 82 Am. Dec. 540.

COMPASCUUM. Belonging to commonage. *Jus compascuum*, the right of common of pasture.

COMPASS, THE MARINER'S. An instrument used by mariners to point out the course of a ship at sea. It consists of a magnetized steel bar called the "needle," attached to the under side of a card, upon which are drawn the points of the compass, and supported by a fine pin, upon which it turns freely in a horizontal plane.

COMPASSING. Imagining or contriving, or plotting. In English law, "compassing the king's death" is treason. 4 Bl. Comm. 76.

COMPATERNITAS. In the canon law. A kind of spiritual relationship contracted by baptism.

COMPATERNITY. Spiritual affinity, contracted by sponsorship in baptism.

COMPATIBILITY. Such relation and consistency between the duties of two offices that they may be held and filled by one person.

COMPEAR. In Scotch law. To appear.

COMPEARANCE. In Scotch practice. Appearance; an appearance made for a defendant; an appearance by counsel. Bell.

COMPELLATIVUS. An adversary or accuser.

Compendia sunt dispendia. Co. Litt. 305. Abbreviations are detriments.

COMPENDIUM. An abridgment, synopsis, or digest.

COMPENSACION. In Spanish law. Compensation; set-off. The extinction of a debt by another debt of equal dignity.

COMPENSATIO. Lat. In the civil law. Compensation, or set-off. A proceeding resembling a set-off in the common law, being a claim on the part of the defendant to have an amount due to him from the plaintiff deducted from his demand. Dig. 16, 2; Inst. 4, 6, 30, 39; 3 Bl. Comm. 305.

—Compensatio criminis. (Set-off of crime or guilt.) In practice. The plea of recrimination in a suit for a divorce; that is, that the complainant is guilty of the same kind of offense with which the respondent is charged.

COMPENSATION. Indemnification; payment of damages; making amends; that which is necessary to restore an injured party to his former position. An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury. Railroad Co. v. Denman, 10 Minn. 280 (Gil. 208).

Also that equivalent in money which is paid to the owners and occupiers of lands taken or injuriously affected by the operations of companies exercising the power of eminent domain.

In the constitutional provision for "just compensation" for property taken under the power of eminent domain, this term means a payment in money. Any benefit to the remaining property of the owner, arising from public works for which a part has been taken, cannot be considered as compensation. Railroad Co. v. Burkett, 42 Ala. 83.

As compared with consideration and damages compensation, in its most careful use, seems to be between them. Consideration is amends for something given by consent, or by the owner's choice. Damages is amends exacted from a wrong-doer for a tort. Compensation is amends for something which was taken without the owner's choice, yet without commission of a tort. Thus, one should say, consideration for land sold; compensation for land taken for a railway; damages for a trespass. But such distinctions are not uniform. Land damages is a common expression for compensation for lands taken for public use. Abbott.

The word also signifies the remuneration or wages given to an employé or officer. But it is not exactly synonymous with "salary." See People v. Wemple, 115 N. Y. 302, 22 N. E. 272; Com. v. Carter, 55 S. W. 701, 21 Ky. Law Rep. 1509; Crawford County v. Lindsay, 11 Ill. App. 261; Kilgore v. People, 76 Ill. 548.

In the civil, Scotch, and French law. Recoupment; set-off. The meeting of two debts due by two parties, where the debtor in the one debt is the creditor in the other; that is to say, where one person is both debtor and creditor to another, and therefore, to the extent of what is due to him, claims allowance out of the sum that he is due. Bell; 1 Kames, Eq. 395, 396.

Compensation is of three kinds,—legal, or by operation of law; compensation by way of exception; and by reconvention. Stewart v. Harper, 16 La. Ann. 181.

—Compensatory damages. See DAMAGES.

COMPERENDINATIO. In the Roman law. The adjournment of a cause, in order to hear the parties or their advocates a second time; a second hearing of the parties to a cause. Calvin.

COMPERTORIUM. In the civil law. A judicial inquest made by delegates or commissioners to find out and relate the truth of a cause.

COMPERUIT AD DIEM. In practice. A plea in an action of debt on a bail bond that the defendant appeared at the day required.

COMPETENCY. In the law of evidence. The presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of justice. The term is also applied, in the same sense, to documents or other written evidence.

Competency differs from credibility. The former is a question which arises before considering the evidence given by the witness; the latter concerns the degree of credit to be

given to his story. The former denotes the personal qualification of the witness; the latter his veracity. A witness may be competent, and yet give incredible testimony; he may be incompetent, and yet his evidence, if received, be perfectly credible. Competency is for the court; credibility for the jury. Yet in some cases the term "credible" is used as an equivalent for "competent." Thus, in a statute relating to the execution of wills, the term "credible witness" is held to mean one who is entitled to be examined and to give evidence in a court of justice; not necessarily one who is personally worthy of belief, but one who is not disqualified by imbeciliity, interest, crime, or other cause. 1 Jarm. Wills, 124; Smith v. Jones, 68 Vt. 132, 34 Atl. 424; Com. v. Holmes, 127 Mass. 424, 34 Am. Rep. 391.

In French law. Competency, as applied to a court, means its right to exercise jurisdiction in a particular case.

COMPETENT. Duly qualified; answering all requirements; adequate; suitable; sufficient; capable; legally fit. Levee Dist. v. Jamison, 176 Mo. 557, 75 S. W. 679.

—Competent and omitted. In Scotch practice. A term applied to a plea which might have been urged by a party during the dependence of a cause, but which had been omitted. Bell.**—Competent authority.** As applied to courts and public officers, this term imports jurisdiction and due legal authority to deal with the particular matter in question. Mitchel v. U. S., 9 Pet. 735, 9 L. Ed. 283; Charles v. Charles, 41 Minn. 201, 42 N. W. 935.**—Competent evidence.** That which the very nature of the thing to be proven requires, as the production of a writing where its contents are the subject of inquiry. 1 Greenl. Ev. § 2; Chapman v. McAdams, 1 Lea (Tenn.) 500; Horbach v. State, 43 Tex. 242; Porter v. Valentine, 18 Misc. Rep. 213, 41 N. Y. Supp. 507.**—Competent witness.** One who is legally qualified to be heard to testify in a cause. Hogan v. Sherman, 5 Mich. 60; People v. Compton, 123 Cal. 403, 56 Pac. 44; Com. v. Mullen, 97 Mass. 545. See COMPETENCY.

COMPETITION. In Scotch practice. The contest among creditors claiming on their respective diligences, or creditors claiming on their securities. Bell.

—Unfair competition in trade. See UNFAIR.

COMPILE. To compile is to copy from various authors into one work. Between a compilation and an abridgment there is a clear distinction. A compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of one author. Story v. Holcombe, 4 McLean, 306, 314, Fed. Cas. No. 13,497.

—Compilation. A literary production, composed of the works of others and arranged in a methodical manner.**—Compiled statutes.** A collection of the statutes existing and in force in a given state, all laws and parts of laws relating to each subject-matter being brought together under one head, and the whole arranged systematically in one book, either under an alphabetical arrangement or some other plan of classification. Such a collection of statutes differs from a code in this, that none of the laws so compiled derives any new force or undergoes any modification in its relation to other statutes *in pari materia* from the fact of the compilation, while a code is a re-enactment of the whole body of the positive law and is to be read and interpreted as one entire and homogeneous whole. Railway Co. v. State, 104 Ga. 831, 31 S. E. 531; Black, Interp. Laws, p. 363.

COMPLAINANT. In practice. One who applies to the courts for legal redress; one who exhibits a bill of complaint. This is the proper designation of one suing in equity, though "plaintiff" is often used in equity proceedings as well as at law. Benefit Ass'n v. Robinson, 147 Ill. 138, 35 N. E. 168.

COMPLAINT. In civil practice. In those states having a Code of Civil Procedure, the complaint is the first or initiatory pleading on the part of the plaintiff in a civil action. It corresponds to the declaration in the common-law practice. Code N. Y. § 141; Sharon v. Sharon, 67 Cal. 185, 7 Pac. 456; Railroad Co. v. Young, 154 Ind. 24, 55 N. E. 853; McMath v. Parsons, 26 Minn. 246, 2 N. W. 703.

The complaint shall contain: (1) The title of the cause, specifying the name of the court in which the action is brought, the name of the county in which the trial is required to be had, and the names of the parties to the action, plaintiff and defendant. (2) A plain and concise statement of the facts constituting a cause of action, without unnecessary repetition; and each material allegation shall be distinctly numbered. (3) A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof must be stated. Code N. C. 1883, § 233.

—Cross-complaint. In code practice. Whenever the defendant seeks affirmative relief against any party, relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by permission of the court subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint. Code Civ. Proc. Cal. § 442; Standley v. Insurance Co., 95 Ind. 254; Harrison v. McCormick, 69 Cal. 616, 11 Pac. 456; Bank v. Ridpath, 29 Wash. 687, 70 Pac. 139.

In criminal law. A charge, preferred before a magistrate having jurisdiction, that a person named (or an unknown person) has committed a specified offense, with an offer to prove the fact, to the end that a prosecution may be instituted. It is a technical term, descriptive of proceedings before a magistrate. Hobbs v. Hill, 157 Mass. 556, 32 N. E. 862; Com. v. Davis, 11 Pick. (Mass.) 436; U. S. v. Collins (D. C.) 79 Fed. 66; State v. Dodge Co., 20 Neb. 595, 31 N. W. 117.

The complaint is an allegation, made before a proper magistrate, that a person has been guilty of a designated public offense. Code Ala. 1886, § 4255.

COMPLETE, *adj.* **1.** Full; entire; including every item or element of the thing spoken of, without omissions or deficiencies; as, a "complete" copy, record, schedule, or transcript. Yeager v. Wright, 112 Ind. 230, 13 N. E. 707; Anderson v. Ackerman, 88 Ind. 490; Bailey v. Martin, 119 Ind. 103, 21 N. E. 346.

2. Perfect; consummate; not lacking in any element or particular; as in the case of a "complete legal title" to land, which includes the possession, the right of possession, and the right of property. Dingey v. Paxton, 60 Miss. 1054; Ehle v. Quackenboss, 6 Hill (N. Y.) 537.

COMPLICE. One who is united with others in an ill design; an associate; a confederate; an accomplice.

COMPOS MENTIS. Sound of mind. Having use and control of one's mental faculties.

COMPOS SUI. Having the use of one's limbs, or the power of bodily motion. *Si fuit ita compos sui quod itinerare potuit de loco in locum,* if he had so far the use of his limbs as to be able to travel from place to place. Bract. fol. 14*b*.

COMPOSITIO MENSURARUM. The ordinance of measures. The title of an ancient ordinance, not printed, mentioned in the statute 23 Hen. VIII. c. 4; establishing a standard of measures. 1 Bl. Comm. 275.

COMPOSITIO ULNARUM ET PERTICARUM. The statute of ells and perches. The title of an English statute establishing a standard of measures. 1 Bl. Comm. 275.

COMPOSITION. An agreement, made upon a sufficient consideration, between an insolvent or embarrassed debtor and his creditors, whereby the latter, for the sake of immediate payment, agree to accept a dividend less than the whole amount of their claims, to be distributed *pro rata,* in discharge and satisfaction of the whole. Bank v. McGeoch, 92 Wis. 286, 66 N. W. 606; Crossley v. Moore, 40 N. J. Law, 27; Crawford v. Krueger, 201 Pa. 348, 50 Atl. 931; In re Merriman's Estate, 17 Fed. Cas. 131; Chapman v. Mfg. Co., 77 Me. 210; In re Adler (D. C.) 103 Fed. 444.

"Composition" should be distinguished from "accord." The latter properly denotes an arrangement between a debtor and a single creditor for a discharge of the obligation by a part payment or on different terms. The former designates an arrangement between a debtor and the whole body of his creditors (or at least a considerable proportion of them) for the liquidation of their claims by the dividend offered.

In ancient law. Among the Franks, Goths, Burgundians, and other barbarous peoples, this was the name given to a sum of money paid, as satisfaction for a wrong or personal injury, to the person harmed, or to his family if he died, by the aggressor. It was originally made by mutual agreement of the parties. but afterwards established by law, and took the place of private physical vengeance.

—Composition deed. An agreement embodying the terms of a composition between a debtor and his creditors.—**Composition in bankruptcy.** An arrangement between a bankrupt and his creditors, whereby the amount he can be expected to pay is liquidated, and he is allowed to retain his assets, upon condition of his making the payments agreed upon.—**Composition of matter.** In patent law. A mixture or chemical combination of materials. Goodyear v. Railroad Co., 10 Fed. Cas. 664; Cahill v. Brown, 4 Fed. Cas. 1005; Jacobs v. Baker, 7 Wall. 295, 19 L. Ed. 200.—**Composition of tithes, or real composition.** This arises in English ecclesiastical law, when an agreement is made between the owner of lands and the incumbent of a benefice, with the consent of the ordinary and the patron, that the lands shall, for the future, be discharged from payment of tithes, by reason of some land or other real recompense given in lieu and satisfaction thereof. 2 Bl. Comm. 28; 3 Steph. Comm. 129.

COMPOTARIUS. In old English law. A party accounting. Fleta, lib. 2, c. 71, § 17.

COMPOUND, *v.* To compromise; to effect a composition with a creditor; to obtain discharge from a debt by the payment of a smaller sum. Bank v. Malheur County, 30 Or. 420, 45 Pac. 781, 35 L. R. A. 141; Haskins v. Newcomb, 2 Johns. (N. Y.) 405; Pennell v. Rhodes, 9 Q. B. 114.

COMPOUND INTEREST. Interest upon interest, *i. e.,* when the interest of a sum of money is added to the principal, and then bears interest, which thus becomes a sort of secondary principal. Camp v. Bates, 11 Conn. 487; Woods v. Rankin, 2 Heisk. (Tenn.) 46; U. S. Mortg. Co. v. Sperry (C. C.) 26 Fed. 730.

COMPOUNDER. In Louisiana. The maker of a composition, generally called the "amicable compounder."

COMPOUNDING A FELONY. The offense committed by a person who, having been directly injured by a felony, agrees with the criminal that he will not prosecute him, on condition of the latter's making reparation, or on receipt of a reward or bribe not to prosecute.

The offense of taking a reward for forbearing to prosecute a felony; as where a party robbed takes his goods again, or other amends, upon an agreement not to prosecute. Watson v. State, 29 Ark. 299; Com. v. Pease, 16 Mass. 91.

COMPRA Y VENTA. In Spanish law. Purchase and sale.

COMPRINT. A surreptitious printing of another book-seller's copy of a work, to make gain thereby, which was contrary to common law, and is illegal. Wharton.

COMPRIVIGNI. In the civil law. Children by a former marriage, (individually called "*privigni*," or "*privignæ*,") considered relatively to each other. Thus, the son of a husband by a former wife, and the daughter of a wife by a former husband, are the *comprivigni* of each other. Inst. 1, 10, 8.

COMPROMISE. An arrangement arrived at, either in court or out of court, for settling a dispute upon what appears to the parties to be equitable terms, having regard to the uncertainty they are in regarding the facts, or the law and the facts together. Colburn v. Groton, 66 N. H. 151, 28 Atl. 95, 22 L. R. A. 763; Treitschke v. Grain Co., 10 Neb. 358, 6 N. W. 427; Attrill v. Patterson, 58 Md. 226; Bank v. McGeoch, 92 Wis. 286, 66 N. W. 606; Rivers v. Blom, 163 Mo. 442, 63 S. W. 812.

An agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their difficulties 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. Sharp v. Knox, 4 La. 456.

In the civil law. An agreement whereby two or more persons mutually bind themselves to refer their legal dispute to the decision of a designated third person, who is termed "umpire" or "arbitrator." Dig. 4, 8; Mackeld. Rom. Law, § 471.

Compromissarii sunt judices. Jenk. Cent. 128. Arbitrators are judges.

COMPROMISSARIUS. In the civil law. An arbitrator.

COMPROMISSUM. A submission to arbitration.

Compromissum ad similitudinem judiciorum redigitur. A compromise is brought into affinity with judgments. Strong v. Strong, 9 Cush. (Mass.) 571.

COMPTE ARRÊTÉ. Fr. An account stated in writing, and acknowledged to be correct on its face by the party against whom it is stated. Paschal v. Union Bank of Louisiana, 9 La. Ann. 484.

COMPTER. In Scotch law. An accounting party.

COMPTROLLER. A public officer of a state or municipal corporation, charged with certain duties in relation to the fiscal affairs of the same, principally to examine and audit the accounts of collectors of the public money, to keep records, and report the financial situation from time to time. There are also officers bearing this name in the treasury department of the United States.

—Comptroller in bankruptcy. An officer in England, whose duty it is to receive from the trustee in each bankruptcy his accounts and periodical statements showing the proceedings in the bankruptcy, and also to call the trustee to account for any misfeasance, neglect, or omission in the discharge of his duties. Robs. Bankr. 13; Bankr. Act 1869, § 55.—**Comptrollers of the hanaper.** In English law. Officers of the court of chancery; their offices were abolished by 5 & 6 Vict. c. 103.—**State comptroller.** A supervising officer of revenue in a state government, whose principal duty is the final auditing and settling of all claims against the state. State v. Doron, 5 Nev. 413.

COMPULSION. Constraint; objective necessity. Forcible inducement to the commission of an act. Navigation Co. v. Brown, 100 Pa. 346; U. S. v. Kimball (C. C.) 117 Fed. 163; Gates v. Hester, 81 Ala. 357, 1 South. 848.

COMPULSORY, *n.* In ecclesiastical procedure, a compulsory is a kind of writ to compel the attendance of a witness, to undergo examination. Phillim. Ecc. Law, 1258.

COMPULSORY, *adj.* Involuntary; forced; coerced by legal process or by force of statute.

—Compulsory arbitration. That which takes place where the consent of one of the parties is enforced by statutory provisions. Wood v. Seattle, 23 Wash. 1, 62 Pac. 135, 52 L. R. A. 369.—**Compulsory nonsuit.** An involuntary nonsuit. See NONSUIT.—**Compulsory payment.** One not made voluntarily, but exacted by duress, threats, the enforcement of legal process, or unconscionably taking advantage of another. Shaw v. Woodcock, 7 Barn. & C. 73; Beckwith v. Frisbie, 32 Vt. 565; State v. Nelson, 41 Minn. 25, 42 N. W. 548, 4 L. R. A. 300; Lonergan v. Buford, 148 U. S. 581, 13 Sup. Ct. 684, 37 L. Ed. 569.—**Compulsory process.** Process to compel the attendance in court of a person wanted there as a witness or otherwise; including not only the ordinary subpœna, but also a warrant of arrest or attachment if needed. Powers v. Com., 24 Ky. Law Rep. 1007, 70 S. W. 644; Graham v. State, 50 Ark. 161, 6 S. W. 721; State v. Nathaniel, 52 La. Ann. 558, 26 South. 1008.—**Compulsory sale or purchase.** A term sometimes used to characterize the transfer of title to property under the exercise of the power of eminent domain. In re Barre Water Co., 62 Vt. 27, 20 Atl. 109, 9 L. R. A. 195.

COMPURGATOR. One of several neighbors of a person accused of a crime, or charged as a defendant in a civil action, who appeared and swore that they believed him on his oath. 3 Bl. Comm. 341.

COMPUTO. Lat. To compute, reckon, or account. Used in the phrases *insimul computassent*, "they reckoned together," (see INSIMUL;) *plene computavit*, "he has fully accounted," (see PLENE;) *quod computet*, "that he account," (see QUOD COMPUTET.)

COMPUTATION. The act of computing, numbering, reckoning, or estimating.

The account or estimation of time by rule of law, as distinguished from any arbitrary construction of the parties. Cowell.

COMPUTUS. A writ to compel a guardian, bailiff, receiver, or accountant to yield up his accounts. It is founded on the statute Westm. 2, c. 12; Reg. Orig. 135.

COMTE. Fr. A count or earl. In the ancient French law, the *comte* was an officer having jurisdiction over a particular district or territory, with functions partly military and partly judicial.

CON BUENA FE. In Spanish law. With (or in) good faith.

CONACRE. In Irish practice. The payment of wages in land, the rent being worked out in labor at a money valuation. Wharton.

Conatus quid sit, non definitur in jure. 2 Bulst. 277. What an attempt is, is not defined in law.

CONCEAL. To hide; secrete; withhold from the knowledge of others.

The word "conceal," according to the best lexicographers, signifies to withhold or keep secret mental facts from another's knowledge, as well as to hide or secrete physical objects from sight or observation. Gerry v. Dunham, 57 Me. 339.

—**Concealed.** The term "concealed" is not synonymous with "lying in wait." If a person conceals himself for the purpose of shooting another unaware, he is lying in wait; but a person may, while concealed, shoot another without committing the crime of murder. People v. Miles, 55 Cal. 207. The term "concealed weapons" means weapons willfully or knowingly covered or kept from sight. Owen v. State, 31 Ala. 387.—**Concealers.** In old English law. Such as find out concealed lands; that is, lands privily kept from the king by common persons having nothing to show for them. They are called "a troublesome, disturbant sort of men; turbulent persons." Cowell.—**Concealment.** The improper suppression or disguising of a fact, circumstance, or qualification which rests within the knowledge of one only of the parties to a contract, but which ought in fairness and good faith to be communicated to the other, whereby the party so concealing draws the other into an engagement which he would not make but for his ignorance of the fact concealed. A neglect to communicate that which a party knows, and ought to communicate, is called a "concealment." Civ. Code Cal. § 2561. The terms "misrepresentation" and "concealment" have a known and definite meaning in the law of insurance. Misrepresentation is the statement of something as fact which is untrue in fact, and which the assured states, knowing it to be not true, with an intent to deceive the underwriter, or which he states positively as true, without knowing it to be true, and which has a tendency to mislead, such fact in either case being material to the risk. Concealment is the designed and intentional withholding of any fact material to the risk, which the assured, in honesty and good faith, ought to communicate to the underwriter; mere silence on the part of the assured, especially as to some matter of fact which he does not consider it important for the underwriter to know, is not to be considered as such concealment. If the fact so untruly stated or purposely suppressed is not material, that is, if the knowledge or ignorance of it would not naturally influence the judgment of the underwriter in making the contract, or in estimating the degree and character of the risk, or in fixing the rate of the premium, it is not a "misrepresentation" or "concealment," within the clause of the conditions annexed to policies. Daniels v. Insurance Co., 12 Cush. (Mass.) 416, 59 Am. Dec. 192.

CONCEDER. Fr. In French law. To grant. See CONCESSION.

CONCEDO. Lat. I grant. A word used in old Anglo-Saxon grants, and in statutes merchant.

CONCEPTION. In medical jurisprudence, the beginning of pregnancy, (*q. v.*)

CONCEPTUM. In the civil law. A theft (*furtum*) was called *"conceptum,"* when the thing stolen was searched for, and found upon some person in the presence of witnesses. Inst. 4, 1, 4.

CONCERNING, CONCERNED. Relating to; pertaining to; affecting; involving; being engaged in or taking part in. U. S. v. Fulkerson (D. C.) 74 Fed. 631; May v. Brown, 3 Barn. & C. 137; Ensworth v. Holly, 33 Mo. 370; Miller v. Navigation Co., 32 W. Va. 46, 9 S. E. 57; U. S. v. Scott (C. C.) 74 Fed. 217; McDonald v. White, 130 Ill. 493, 22 N. E. 599.

CONCESSI. Lat. I have granted. At common law, in a feoffment or estate of inheritance, this word does not imply a warranty; it only creates a covenant in a lease for years. Co. Litt. 384*a*. See Kinney v. Watts, 14 Wend. (N. Y.) 40; Koch v. Hustis, 113 Wis. 599, 87 N. W. 834; Burwell v. Jackson, 9 N. Y. 535.

CONCESSIMUS. Lat. We have granted. A term used in conveyances, the effect of which was to create a joint covenant on the part of the grantors.

CONCESSIO. In old English law. A grant. One of the old common assurances, or forms of conveyance.

Concessio per regem fieri debet de certitudine. 9 Coke, 46. A grant by the king ought to be made from certainty.

Concessio versus concedentem latam interpretationem habere debet. A grant ought to have a broad interpretation (to be liberally interpreted) against the grantor. Jenk. Cent. 279.

CONCESSION. A grant; ordinarily applied to the grant of specific privileges by a government; French and Spanish grants in Louisiana. See Western M. & M. Co. v. Peytona Coal Co., 8 W. Va. 446.

CONCESSIT SOLVERE. (He granted and agreed to pay.) In English law. An action of debt upon a simple contract. It lies by custom in the mayor's court, London, and Bristol city court.

CONCESSOR. In old English law. A grantor.

CONCESSUM. Accorded; conceded. This term, frequently used in the old reports, signifies that the court admitted or assented to a point or proposition made on the argument.

CONCESSUS. A grantee.

CONCILIABULUM. A council house.

CONCILIATION. In French law. The formality to which intending litigants are subjected in cases brought before the *juge de paix*. The judge convenes the parties and endeavors to reconcile them. Should he not succeed, the case proceeds. In criminal and commercial cases, the preliminary of conciliation does not take place. Arg. Fr. Merc. Law, 552.

CONCILIUM. Lat. A council. Also argument in a cause, or the sitting of the court to hear argument; a day allowed to a defendant to present his argument; an imparlance.

—Concilium ordinarium. In Anglo-Norman times. An executive and residuary judicial committee of the *Aula Regis*, (*q. v.*)—**Concilium regis.** An ancient English tribunal, existing during the reigns of Edward I. and Edward II., to which was referred cases of extraordinary difficulty. Co. Litt. 304.

CONCIONATOR. In old records. A common council man; a freeman called to a legislative hall or assembly. Cowell.

CONCLUDE. To finish; determine; to estop; to prevent.

CONCLUDED. Ended; determined; estopped; prevented from.

CONCLUSION. The end; the termination; the act of finishing or bringing to a close. The conclusion of a declaration or complaint is all that part which follows the statement of the plaintiff's cause of action. The conclusion of a plea is its final clause, in which the defendant either "puts himself upon the country" (where a material averment of the declaration is traversed and issue tendered) or offers a verification, which is proper where new matter is introduced. State v. Waters, 1 Mo. App. 7.

In trial practice. It signifies making the final or concluding address to the jury or the court. This is, in general, the privilege of the party who has to sustain the burden or proof.

Conclusion also denotes a bar or estoppel; the consequence, as respects the individual, of a judgment upon the subject-matter, or of his confession of a matter or thing which the law thenceforth forbids him to deny.

—Conclusion against the form of the statute. The proper form for the conclusion of an indictment for an offense created by statute is the technical phrase "against the form of the statute in such case made and provided;" or, in Latin, *contra formam statuti*. **—Conclusion of fact.** An inference drawn from the subordinate or evidentiary facts.—**Conclusion of law.** Within the rule that pleadings should contain only facts, and not conclusions of law, this means a proposition not arrived at by any process of natural reasoning from a fact or combination of facts stated, but by the application of the artificial rules of law to the facts pleaded. Levins v. Rovegno, 71 Cal. 273, 12 Pac. 161; Iron Co. v. Vandervort, 164 Pa. 572, 30 Atl. 491; Clark v. Railway Co., 28 Minn. 69, 9 N. W. 75.—**Conclusion to the country.** In pleading. The tender of an issue to be tried by jury. Steph. Pl. 230.

CONCLUSIVE. Shutting up a matter; shutting out all further evidence; not admitting of explanation or contradiction; putting an end to inquiry; final; decisive. Hoadley v. Hammond, 63 Iowa, 599, 19 N. W. 794; Joslyn v. Rockwell, 59 Hun, 129, 13 N. Y. Supp. 311; Appeal of Bixler, 59 Cal. 550.

—Conclusive evidence. See EVIDENCE.—**Conclusive presumption.** See PRESUMPTION.

CONCORD. In the old process of levying a fine of lands, the concord was an agreement between the parties (real or feigned) in which the deforciant (or he who keeps the other out of possession) acknowledges that the lands in question are the right of complainant; and, from the acknowledgment or admission of right thus made, the party who levies the fine is called the "cognizor," and the person to whom it is levied the "cognizee." 2 Bl. Comm. 350.

The term also denotes an agreement between two persons, one of whom has a right of action against the other, settling what amends shall be made for the breach or wrong; a compromise or an accord.

In old practice. An agreement between two or more, upon a trespass committed, by way of amends or satisfaction for it. Plowd. 5, 6, 8.

Concordare leges legibus est optimus interpretandi modus. To make laws agree with laws is the best mode of interpreting them. Halk. Max. 70.

CONCORDAT. In public law. A compact or convention between two or more independent governments.

An agreement made by a temporal sovereign with the pope, relative to ecclesiastical matters.

In French law. A compromise effected by a bankrupt with his creditors, by virtue

of which he engages to pay within a certain time a certain proportion of his debts, and by which the creditors agree to discharge the whole of their claims in consideration of the same. Arg. Fr. Merc. Law, 553.

CONCORDIA. Lat. In old English law. An agreement, or concord. Fleta, lib. 5, c. 3, § 5. The agreement or unanimity of a jury. *Compellere ad concordiam.* Fleta, lib. 4, c. 9, § 2.

CONCORDIA DISCORDANTIUM CANONUM. The harmony of the discordant canons. A collection of ecclesiastical constitutions made by Gratian, an Italian monk, A. D. 1151; more commonly known by the name of "*Decretum Gratiani.*"

Concordia parvæ res crescunt et opulentia lites. 4 Inst. 74. Small means increase by concord and litigations by opulence.

CONCUBARIA. A fold, pen, or place where cattle lie. Cowell.

CONCUBEANT. Lying together, as cattle.

CONCUBINAGE. A species of loose or informal marriage which took place among the ancients, and which is yet in use in some countries. See CONCUBINATUS.

The act or practice of cohabiting, in sexual commerce, without the authority of law or a legal marriage. State v. Adams, 179 Mo. 334, 78 S. W. 588; State v. Overstreet, 43 Kan. 299, 23 Pac. 572; Henderson v. People, 124 Ill. 607, 17 N. E. 68, 7 Am. St. Rep. 391.

An exception against a woman suing for dower, on the ground that she was the concubine, and not the wife, of the man of whose land she seeks to be endowed. Britt. c. 107.

CONCUBINATUS. In Roman law. An informal, unsanctioned, or "natural" marriage, as contradistinguished from the *justæ nuptiæ*, or *justum matrimonium*, the civil marriage.

CONCUBINE. (1) A woman who cohabits with a man to whom she is not married. (2) A sort of inferior wife, among the Romans, upon whom the husband did not confer his rank or quality.

CONCUR. To agree; accord; consent. In the practice of appellate courts, a "concurring opinion" is one filed by one of the judges or justices, in which he agrees with the conclusions or the result of another opinion filed in the case (which may be either the opinion of the court or a dissenting opinion) though he states separately his views of the case or his reasons for so concurring. In Louisiana law. To join with other claimants in presenting a demand against an insolvent estate.

CONCURATOR. In the civil law. A joint or co-curator, or guardian.

CONCURRENCE. In French law. The possession, by two or more persons, of equal rights or privileges over the same subject-matter.

—Concurrence deloyale. A term of the French law nearly equivalent to "unfair trade competition;" and used in relation to the infringement of rights secured by trade-marks, etc. It signifies a dishonest, perfidious, or treacherous rivalry in trade, or any manœuvre calculated to prejudice the good will of a business or the value of the name of a property or its credit or renown with the public, to the injury of a business competitor. Simmons Medicine Co. v. Mansfield Drug Co., 93 Tenn. 84, 23 S. W. 165.

CONCURRENT. Having the same authority; acting in conjunction; agreeing in the same act; contributing to the same event; contemporaneous.

As to concurrent "Covenants," "Jurisdiction," "Insurance," "Lease," "Lien," and "Writs," see those titles.

CONCURSO. In the law of Louisiana, the name of a suit or remedy to enable creditors to enforce their claims against an insolvent or failing debtor. Schroeder v. Nicholson, 2 La. 355.

CONCURSUS. In the civil law. (1) A running together; a collision, as *concursus creditorum*, a conflict among creditors. (2) A concurrence, or meeting, as *concursus actionum*, concurrence of actions.

CONCUSS. In Scotch law. To coerce.

CONCUSSIO. In the civil law. The offense of extortion by threats of violence. Dig. 47, 13.

CONCUSSION. In the civil law. The unlawful forcing of another by threats of violence to give something of value. It differs from robbery, in this: That in robbery the thing is taken by force, while in concussion it is obtained by threatened violence. Heinec. Elem. § 1071.

In medical jurisprudence. Concussion of the brain is a jarring of the brain substance, by a fall, blow, or other external injury, without laceration of its tissue, or with only microscopical laceration. Maynard v. Railroad Co., 43 Or. 63, 72 Pac. 590.

CONDEDIT. In ecclesiastical law. The name of a plea entered by a party to a libel filed in the ecclesiastical court, in which it is pleaded that the deceased made the will which is the subject of the suit, and that he was of sound mind. 2 Eng. Ecc. R. 438; 6 Eng. Ecc. R. 431.

CONDEMN. To find or adjudge guilty. 8 Leon. 68. To adjudge or sentence. 3 Bl. Comm. 291. To adjudge (as an admiralty court) that a vessel is a prize, or that she is unfit for service. 1 Kent, Comm. 102; 5 Esp. 65. To set apart or expropriate property for public use, in the exercise of the power of eminent domain. Wulzen v. San Francisco, 101 Cal. 15, 35 Pac. 353, 40 Am. St. Rep. 17.

CONDEMNATION. **In admiralty law.** The judgment or sentence of a court having jurisdiction and acting *in rem*, by which (1) it is declared that a vessel which has been captured at sea as a prize was lawfully so seized and is liable to be treated as prize; or (2) that property which has been seized for an alleged violation of the revenue laws, neutrality laws, navigation laws, etc., was lawfully so seized, and is, for such cause, forfeited to the government; or (3) that the vessel which is the subject of inquiry is unfit and unsafe for navigation. Gallagher v. Murray, 9 Fed. Cas. 1087.

In the civil law. A sentence or judgment which condemns some one to do, to give, or to pay something, or which declares that his claim or pretensions are unfounded. Lockwood v. Saffold, 1 Ga. 72.

In real-property law. The process by which property of a private owner is taken for public use, without his consent, but upon the award and payment of just compensation, being in the nature of a forced sale. Atlanta, K. & N. R. Co. v. Southern Ry. Co., 131 Fed. 666, 66 C. C. A. 601; Venable v. Railway Co., 112 Mo. 103, 20 S. W. 493, 18 L. R. A. 68; In re Rugheimer (D. C.) 36 Fed. 369.

CONDEMNATION MONEY. In practice. The damages which the party failing in an action is adjudged or *condemned* to pay; sometimes simply called the "condemnation."

As used in an appeal-bond, this phrase means the damages which should be awarded against the appellant by the judgment of the court. It does not embrace damages not included in the judgment. Doe v. Daniels, 6 Blackf. (Ind.) 8; Hayes v. Weaver, 61 Ohio St. 55, 55 N. E. 172; Maloney v. Johnson-McLean Co., 72 Neb. 340, 100 N. W. 424.

CONDESCENDENCE. In the Scotch law. A part of the proceedings in a cause, setting forth the facts of the case on the part of the pursuer or plaintiff.

CONDICTIO. In Roman law. A general term for actions of a personal nature, founded upon an obligation to give or do a certain and defined thing or service. It is distinguished from *vindicatio rei*, which is an action to vindicate one's right of property in a thing by regaining (or retaining) possession of it against the adverse claim of the other party.

—Condictio certi. An action which lies upon a promise to do a thing, where such promise or stipulation is certain, (*si certa sit stipulatio.*) Inst. 3, 16, pr.; Id. 3, 15, pr.; Dig. 12, 1; Bract. fol. 103b.—**Condictio ex lege.** An action arising where the law gave a remedy, but provided no appropriate form of action. Calvin.—**Condictio indebitati.** An action which lay to recover anything which the plaintiff had given or paid to the defendant, by mistake, and which he was not bound to give or pay, either in fact or in law.—**Condictio rei furtivæ.** An action which lay to recover a thing stolen, against the thief himself, or his heir. Inst. 4, 1, 19.—**Condictio sine causa.** An action which lay in favor of a person who had given or promised a thing without consideration, (*causa.*) Dig. 12, 7; Cod. 4, 9.

CONDITIO. Lat. A condition.

Conditio beneficialis, quæ statum construit, benignè secundum verborum intentionem est interpretanda; odiosa autem, quæ statum destruit, stricte secundum verborum proprietatem accipienda. 8 Coke, 90. A beneficial condition, which creates an estate, ought to be construed favorably, according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed strictly according to the letter of the words.

Conditio dicitur, cum quid in casum incertum qui potest tendere ad esse aut non esse, confertur. Co. Litt. 201. It is called a "condition," when something is given on an uncertain event, which may or may not come into existence.

Conditio illicita habetur pro non adjectâ. An unlawful condition is deemed as not annexed.

Conditio præcedens adimpleri debet prius quam sequatur effectus. Co. Litt. 201. A condition precedent must be fulfilled before the effect can follow.

CONDITION. **In the civil law.** The rank, situation, or degree of a particular person in some one of the different orders of society.

An agreement or stipulation in regard to some uncertain future event, not of the essential nature of the transaction, but annexed to it by the parties, providing for a change or modification of their legal relations upon its occurrence. Mackeld. Rom. Law, § 184.

Classification. In the civil law, conditions are of the following several kinds:

The *casual* condition is that which depends on chance, and is in no way in the power either of the creditor or of the debtor. Civ. Code La. art. 2023.

A *mixed* condition is one that depends at the same time on the will of one of the parties and on the will of a third person, or on the will of one of the parties and also on a casual event. Civ. Code La. art. 2025.

The *potestative* condition is that which makes

the execution of the agreement depend on an event which it is in the power of the one or the other of the contracting parties to bring about or to hinder. Civ. Code La. art. 2024.

A *resolutory* or *dissolving* condition is that which, when accomplished, operates the revocation of the obligation, placing matters in the same state as though the obligation had not existed. It does not suspend the execution of the obligation. It only obliges the creditor to restore what he has received in case the event provided for in the condition takes place. Civ. Code La. art. 2045; Moss v. Smoker, 2 La. Ann. 991.

A *suspensive* condition is that which depends, either on a future and uncertain event, or on an event which has actually taken place, without its being yet known to the parties. In the former case, the obligation cannot be executed till after the event; in the latter, the obligation has its effect from the day on which it was contracted, but it cannot be enforced until the event be known. Civ. Code La. art. 2043; New Orleans v. Railroad Co., 171 U. S. 312, 18 Sup. Ct. 875, 43 L. Ed. 178; Moss v. Smoker, 2 La. Ann. 991.

In French law. In French law, the following peculiar distinctions are made: (1) A condition is *casuelle* when it depends on a chance or hazard; (2) a condition is *potestative* when it depends on the accomplishment of something which is in the power of the party to accomplish; (3) a condition is *mixte* when it depends partly on the will of the party and partly on the will of others; (4) a condition is *suspensive* when it is a future and uncertain event, or present but unknown event, upon which an obligation takes or fails to take effect; (5) a condition is *resolutoire* when it is the event which undoes an obligation which has already had effect as such. Brown.

In common law. The rank, situation, or degree of a particular person in some one of the different orders of society; or his *status* or situation, considered as a juridicial person, arising from positive law or the institutions of society. Thill v. Pohlman, 76 Iowa, 638, 41 N. W. 385.

A clause in a contract or agreement which has for its object to suspend, rescind, or modify the principal obligation, or, in case of a will, to suspend, revoke, or modify the devise or bequest. Towle v. Remsen, 70 N. Y. 303.

A *modus* or quality annexed by him that hath an estate, or interest or right to the same, whereby an estate, etc., may either be defeated, enlarged, or created upon an uncertain event. Co. Litt. 201*a*.

A qualification or restriction annexed to a conveyance of lands, whereby it is provided that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated. Heaston v. Randolph County, 20 Ind. 398; Cooper v. Green, 28 Ark. 54; State v. Board of Public Works, 42 Ohio St. 615; Selden v. Pringle, 17 Barb. (N. Y.) 465.

Classification. The different kinds of conditions known to the common law may be arranged and described as follows:

They are either *express* or *implied*, the former when incorporated in express terms in the deed, contract, lease, or grant; the latter, when inferred or presumed by law, from the nature of the transaction or the conduct of the parties, to have been tacitly understood between them as a part of the agreement, though not expressly mentioned. 2 Crabb, Real Prop. p. 792; Bract. fol. 47; Civ. Code La. art. 2026; Raley v. Umatilla County, 15 Or. 172, 13 Pac. 890, 3 Am. St. Rep. 142. Express and implied conditions are also called by the older writers, respectively, *conditions in deed* (or in fact, the Law French term being *conditions en fait*) and *conditions in law*. Co. Litt. 201*a*.

They are *possible* or *impossible;* the former when they admit of performance in the ordinary course of events; the latter when it is contrary to the course of nature or human limitations that they should ever be performed.

They are *lawful* or *unlawful;* the former when their character is not in violation of any rule, principle, or policy of law; the latter when they are such as the law will not allow to be made.

They are *consistent* or *repugnant;* the former when they are in harmony and concord with the other parts of the transaction; the latter when they contradict, annul, or neutralize the main purpose of the contract. Repugnant conditions are also called "insensible."

They are *affirmative or negative;* the former being a condition which consists in doing a thing; as provided that the lessee shall pay rent, etc., and the latter being a condition which consists in not doing a thing; as provided that the lessee shall not alien, etc. Shep. Touch. 118.

They are *precedent* or *subsequent*. A condition precedent is one which must happen or be performed before the estate to which it is annexed can vest or be enlarged; or it is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed. Towle v. Remsen, 70 N. Y. 309; Jones v. U. S., 96 U. S. 26, 24 L. Ed. 644; Redman v. Insurance Co., 49 Wis. 431, 4 N. W. 591; Beatty's Estate v. Western College, 177 Ill. 280, 52 N. E. 432, 42 L. R. A. 797, 69 Am. St. Rep. 242; Warner v. Bennett, 31 Conn. 475; Blean v. Messenger, 33 N. J. Law, 503. A condition subsequent is one annexed to an estate already vested, by the performance of which such estate is kept and continued, and by the failure or non-performance of which it is defeated; or it is a condition referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition. Co. Litt. 201; 2 Bl. Comm. 154; Civ. Code Cal. § 1436; Code Ga. § 2722; Goff v. Pensenhafer, 190 Ill. 200, 60 N. E. 110; Moran v. Stewart, 173 Mo. 207, 73 S. W. 177; Hague v. Ahrens, 53 Fed. 58, 3 C. C. A. 426; Towle v. Remsen, 70 N. Y. 309; Chapin v. School Dist., 35 N. H. 450; Blanchard v. Railroad Co., 31 Mich. 49, 18 Am. Rep. 142; Cooper v. Green, 28 Ark. 54.

Conditions may also be *positive* (requiring that a specified event shall happen or an act be done) and *restrictive* or *negative*, the latter being such as impose an obligation not to do a particular thing, as, that a lessee shall not alien or sub-let or commit waste, or the like. Shep. Touch. 118.

They may be *single*, *copulative*, or *disjunctive*. Those of the first kind require the performance of one specified thing only; those of the second kind require the performance of divers acts or things; those of the third kind require the performance of one of several things. Shep. Touch. 118.

Conditions may also be *independent*, *dependent*, or *mutual*. They belong to the first class when each of the two conditions must be performed without any reference to the other; to

the second class when the performance of one condition is not obligatory until the actual performance of the other; and to the third class when neither party need perform his condition unless the other is ready and willing to perform his, or, in other words, when the mutual covenants go to the whole consideration on both sides and each is precedent to the other. Huggins v. Daley, 99 Fed. 609, 40 C. C. A. 12, 48 L. R. A. 320.

The following varieties may also be noted: A condition *collateral* is one requiring the performance of a collateral act having no necessary relation to the main subject of the agreement. A *compulsory* condition is one which expressly requires a thing to be done, as, that a lessee shall pay a specified sum of money on a certain day or his lease shall be void. Shep. Touch. 118. *Concurrent* conditions are those which are mutually dependent and are to be performed at the same time. Civ. Code Cal. § 1437. A condition *inherent* is one annexed to the rent reserved out of the land whereof the estate is made, or rather, to the estate in the land, in respect of rent. Shep. Touch. 118.

Synonyms distinguished. A "condition" is to be distinguished from a *limitation*, in that the latter may be to or for the benefit of a stranger, who may then take advantage of its determination, while only the grantor, or those who stand in his place, can take advantage of a condition, (Hoselton v. Hoselton, 166 Mo. 182, 65 S. W. 1005; Stearns v. Gofrey, 16 Me. 158;) and in that a limitation ends the estate without entry or claim, which is not true of a condition. It also differs from a *conditional limitation;* for in the latter the estate is limited over to a third person, while in case of a simple condition it reverts to the grantor, or his heirs or devisees, (Church v. Grant, 3 Gray [Mass.] 147, 63 Am. Dec. 725.) It differs also from a *covenant*, which can be made by either grantor or grantee, while only the grantor can make a condition, (Co. Litt. 70.) A *charge* is a devise of land with a bequest out of the subject-matter, and a charge upon the devisee personally, in respect of the estate devised, gives him an estate on condition. A condition also differs from a *remainder;* for, while the former may operate to defeat the estate before its natural termination, the latter cannot take effect until the completion of the preceding estate.

CONDITIONAL. That which is dependent upon or granted subject to a condition.

—Conditional creditor. In the civil law. A creditor having a future right of action, or having a right of action in expectancy. Dig. 50, 16, 54.**—Conditional stipulation.** In the civil law. A stipulation to do a thing upon condition, as the happening of any event.

As to conditional "Acceptance," "Appearance," "Bequest," "Contract," "Delivery," "Devise," "Fee," "Guaranty," "Judgment," "Legacy," "Limitation," "Obligation," "Pardon," "Privilege," and "Sale," see those titles.

Conditiones quælibet odiosæ; maxime autem contra matrimonium et commercium. Any conditions are odious, but especially those which are against [in restraint of] marriage and commerce. Lofft, Appendix, 644.

CONDITIONS OF SALE. The terms upon which sales are made at auction; usually written or printed and exposed in the auction room at the time of sale.

CONDOMINIA. In the civil law. Coownerships or limited ownerships, such as *emphyteusis, superficies, pignus, hypotheca, ususfructus, usus,* and *habitatio.* These were more than mere *jura in re aliená,* being portion of the *dominium* itself, although they are commonly distinguished from the *dominium* strictly so called. Brown.

CONDONACION. In Spanish law. The remission of a debt, either expressly or tacitly.

CONDONATION. The conditional remission or forgiveness, by one of the married parties, of a matrimonial offense committed by the other, and which would constitute a cause of divorce; the condition being that the offense shall not be repeated. See Pain v. Pain, 37 Mo. App. 115; Betz v. Betz, 25 N. Y. Super. Ct. 696; Thomson v. Thomson, 121 Cal. 11, 53 Pac. 403; Harnett v. Harnett, 55 Iowa, 45, 7 N. W. 394; Eggerth v. Eggerth, 15 Or. 626, 16 Pac. 650; Turnbull v. Turnbull, 23 Ark. 615; Odom v. Odom, 36 Ga. 318; Polson v. Polson, 140 Ind. 310, 39 N. E. 498.

The term is also sometimes applied to forgiveness of a past wrong, fault, injury, or breach of duty in other relations, as, for example, in that of master and servant. Leatherberry v. Odell (C. C.) 7 Fed. 648.

CONDONE. To make condonation of.

CONDUCT MONEY. In English practice. Money paid to a witness who has been subpœnaed on a trial, sufficient to defray the reasonable expenses of going to, staying at, and returning from the place of trial. Lush, Pr. 460; Archb. New Pr. 639.

CONDUCTI ACTIO. In the civil law. An action which the hirer (*conductor*) of a thing might have against the letter, (*locator.*) Inst. 3, 25, pr. 2.

CONDUCTIO. In the civil law. A hiring. Used generally in connection with the term *locatio,* a letting. *Locatio et conductio,* (sometimes united as a compound word, "*locatio-conductio,*") a letting and hiring. Inst. 3, 25; Bract. fol. 62, c. 28; Story, Bailm. §§ 8, 368.

CONDUCTOR. In the civil law. A hirer.

CONDUCTOR OPERARUM. In the civil law. A person who engages to perform a piece of work for another, at a stated price.

CONDUCTUS. A thing hired.

CONE AND KEY. In old English law. A woman at fourteen or fifteen years of age may take charge of her house and receive *cone* and *key;* that is, keep the accounts and keys. Cowell. Said by Lord Coke to be *cover* and *keye*, meaning that at that age a woman knew what in her house should be kept under lock and key. 2 Inst. 203.

CONFARREATIO. In Roman law. A sacrificial rite resorted to by marrying persons of high patrician or priestly degree, for the purpose of clothing the husband with the *manus* over his wife; the civil modes of effecting the same thing being *coemptio*, (formal,) and *usus mulieris*, (informal.) Brown.

CONFECTIO. The making and completion of a written instrument. 5 Coke, 1.

CONFEDERACY. In criminal law. The association or banding together of two or more persons for the purpose of committing an act or furthering an enterprise which is forbidden by law, or which, though lawful in itself, becomes unlawful when made the object of the confederacy. State v. Crowley, 41 Wis. 284, 22 Am. Rep. 719; Watson v. Navigation Co., 52 How. Prac. (N. Y.) 353. *Conspiracy* is a more technical term for this offense.

The act of two or more who combine together to do any damage or injury to another, or to do any unlawful act. Jacob. See Watson v. Navigation Co., 52 How. Prac. (N. Y.) 353; State v. Crowley, 41 Wis. 284, 22 Am. Rep. 719.

In equity pleading. An improper combination alleged to have been entered into between the defendants to a bill in equity.

In international law. A league or agreement between two or more independent states whereby they unite for their mutual welfare and the furtherance of their common aims. The term may apply to a union so formed for a temporary or limited purpose, as in the case of an offensive and defensive alliance; but it is more commonly used to denote that species of political connection between two or more independent states by which a central government is created, invested with certain powers of sovereignty, (mostly external,) and acting upon the several component states as its units, which, however, retain their sovereign powers for domestic purposes and some others. See FEDERAL GOVERNMENT.

CONFEDERATION. A league or compact for mutual support, particularly of princes, nations, or states. Such was the colonial government during the Revolution.

—Articles of Confederation. The name of the instrument embodying the compact made between the thirteen original states of the Union, before the adoption of the present constitution.

CONFERENCE. A meeting of several persons for deliberation, for the interchange of opinion, or for the removal of differences or disputes. Thus, a meeting between a counsel and solicitor to advise on the cause of their client.

In the practice of legislative bodies, when the two houses cannot agree upon a pending measure, each appoints a committee of "conference," and the committees meet and consult together for the purpose of removing differences, harmonizing conflicting views, and arranging a compromise which will be accepted by both houses.

In international law. A personal meeting between the diplomatic agents of two or more powers, for the purpose of making statements and explanations that will obviate the delay and difficulty attending the more formal conduct of negotiations.

In French law. A concordance or identity between two laws or two systems of laws.

CONFESS. To admit the truth of a charge or accusation. Usually spoken of charges of tortious or criminal conduct.

CONFESSIO. Lat. A confession. *Confessio in judicio*, a confession made in or before a court.

Confessio facta in judicio omni probatione major est. A confession made in court is of greater effect than any proof. Jenk. Cent. 102.

CONFESSION. In criminal law. A voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offense charged, and discloses the circumstances of the act or the share and participation which he had in it. Spicer v. Com. (Ky.) 51 S. W. 802; People v. Parton, 49 Cal. 637; Lee v. State, 102 Ga. 221, 29 S. E. 264; State v. Heidenreich, 29 Or. 381, 45 Pac. 755.

Also the act of a prisoner, when arraigned for a crime or misdemeanor, in acknowledging and avowing that he is guilty of the offense charged.

Classification. Confessions are divided into *judicial* and *extrajudicial*. The former are such as are made before a magistrate or court in the due course of legal proceedings, while the latter are such as are made by a party elsewhere than in court or before a magistrate. Speer v. State, 4 Tex. App. 479. An *implied* confession is where the defendant, in a case not capital, does not plead guilty but indirectly admits his guilt by placing himself at the mercy of the court and asking for a light sentence. 2 Hawk. P. C. p. 469; State v. Conway, 20 R. I. 270, 38 Atl. 656. An *indirect* confession is one inferred from the conduct of the defendant. State v. Miller, 9 Houst. (Del.) 564, 32 Atl. 137. A *naked* confession is an admission of the guilt of the party, but which is not supported by any evidence of the commission of the crime. A *relative* confession, in the older crim-

inal law of England, "is where the accused confesseth and appealeth others thereof, to become an approver," (2 Hale, P. C. c. 29,) or in other words to "turn king's evidence." This is now obsolete, but something like it is practiced in modern law, where one of the persons accused or supposed to be involved in a crime is put on the witness stand under an implied promise of pardon. Com. v. Knapp, 10 Pick. (Mass.) 477, 20 Am. Dec. 534; State v. Willis, 71 Conn. 293, 41 Atl. 820. A *simple* confession is merely a plea of guilty. State v. Willis, 71 Conn. 293, 41 Atl. 820; Bram v. U. S., 168 U. S. 532, 18 Sup. Ct. 183, 42 L. Ed. 568. A *voluntary* confession is one made spontaneously by a person accused of crime, free from the influence of any extraneous disturbing cause, and in particular, not influenced, or extorted by violence, threats, or promises. State v. Clifford, 86 Iowa, 550, 53 N. W. 299, 41 Am. St. Rep. 518; Roesel v. State, 62 N. J. Law, 216, 41 Atl. 408; State v. Alexander, 109 La. 557, 33 South. 600; Com. v. Sego, 125 Mass. 213; Bullock v. State, 65 N. J. Law, 557, 47 Atl. 62, 86 Am. St. Rep. 668; Colburn v. Groton, 66 N. H. 151, 28 Atl. 95, 22 L. R. A. 763.

—Confession and avoidance. A plea in confession and avoidance is one which avows and confesses the truth of the averments of fact in the declaration, either expressly or by implication, but then proceeds to allege new matter which tends to deprive the facts admitted of their ordinary legal effect, or to obviate, neutralize, or *avoid* them.**—Confession of defense.** In English practice. Where defendant alleges a ground of defense arising since the commencement of the action, the plaintiff may deliver confession of such defense and sign judgment for his costs up to the time of such pleading, unless it be otherwise ordered. Jud. Act 1875, Ord. XX, r. 3.**—Confession of judgment.** The act of a debtor in permitting judgment to be entered against him by his creditor, for a stipulated sum, by a written statement to that effect or by warrant of attorney, without the institution of legal proceedings of any kind. **—Confessing error.** A plea to an assignment of error, admitting the same.

CONFESSO, BILL TAKEN PRO. In equity practice. An order which the court of chancery makes when the defendant does not file an answer, that the plaintiff may take such a decree as the case made by his bill warrants.

CONFESSOR. An ecclesiastic who receives auricular confessions of sins from persons under his spiritual charge, and pronounces absolution upon them. The secrets of the confessional are not privileged communications at common law, but this has been changed by statute in some states. See 1 Greenl. Ev. §§ 247, 248.

CONFESSORIA ACTIO. Lat. In the civil law. An action for enforcing a servitude. Mackeld. Rom. Law, § 324.

Confessus in judicio pro judicato habetur, et quodammodo sua sententiâ damnatur. 11 Coke, 30. A person confessing his guilt when arraigned is deemed to have been found guilty, and is, as it were, condemned by his own sentence.

CONFIDENCE. Trust; reliance; ground of trust. In the construction of wills, this word is considered peculiarly appropriate to create a trust. "It is as applicable to the subject of a trust, as nearly a synonym, as the English language is capable of. Trust is a confidence which one man reposes in another, and confidence is a trust." Appeal of Coates, 2 Pa. 133.

CONFIDENTIAL. Intrusted with the confidence of another or with his secret affairs or purposes; intended to be held in confidence or kept secret.

—Confidential communications. See COMMUNICATION.**—Confidential creditor.** This term has been applied to the creditors of a failing debtor who furnished him with the means of obtaining credit to which he was not entitled, involving in loss the unsuspecting and fair-dealing creditors. Gay v. Strickland, 112 Ala. 567, 20 South. 921.**—Confidential relation.** A fiduciary relation. These phrases are used as convertible terms. It is a peculiar relation which exists between client and attorney, principal and agent, principal and surety, landlord and tenant, parent and child, guardian and ward, ancestor and heir, husband and wife, trustee and *cestui que trust*, executors or administrators and creditors, legatees, or distributees, appointer and appointee under powers, and partners and part owners. In these and like cases, the law, in order to prevent undue advantage from the unlimited confidence or sense of duty which the relation naturally creates, requires the utmost degree of good faith in all transactions between the parties. Robins v. Hope, 57 Cal. 493; People v. Palmer, 152 N. Y. 217, 46 N. E. 328; Scattergood v. Kirk, 192 Pa. 263, 43 Atl. 1030; Brown v. Deposit Co., 87 Md. 377, 40 Atl. 256.

CONFINEMENT. Confinement may be by either a moral or a physical restraint, by threats of violence with a present force, or by physical restraint of the person. U. S. v. Thompson, 1 Sumn. 171, Fed. Cas. No. 16,492; Ex parte Snodgrass, 43 Tex. Cr. R. 359, 65 S. W. 1061.

CONFIRM. To complete or establish that which was imperfect or uncertain; to ratify what has been done without authority or insufficiently. Boggs v. Mining Co., 14 Cal. 305; Railway Co. v. Ransom, 15 Tex. Civ. App. 689, 41 S. W. 826.

Confirmare est id firmum facere quod prius infirmum fuit. Co. Litt. 295. To confirm is to make firm that which was before infirm.

Confirmare nemo potest prius quam jus ei acciderit. No one can confirm before the right accrues to him. 10 Coke, 48.

Confirmat usum qui tollit abusum. He confirms the use [of a thing] who removes the abuse, [of it.] Moore, 764.

CONFIRMATIO. The conveyance of an estate, or the communication of a right that one hath in or unto lands or tenements, to another that hath the possession thereof, or some other estate therein, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased or

enlarged. Shep. Touch. 311; 2 Bl. Comm. 325.

—Confirmatio crescens. An enlarging confirmation; one which enlarges a rightful estate. Shep. Touch. 311.**—Confirmatio diminuens.** A diminishing confirmation. A confirmation which tends and serves to diminish and abridge the services whereby a tenant doth hold, operating as a release of part of the services. Shep. Touch. 311.**—Confirmatio perficiens.** A confirmation which makes valid a wrongful and defeasible title, or makes a conditional estate absolute. Shep. Touch. 311.

CONFIRMATIO CHARTARUM. Lat. Confirmation of the charters. A statute passed in the 25 Edw. I., whereby the Great Charter is declared to be allowed as the common law; all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral churches and read twice a year to the people; and sentence of excommunication is directed to be as constantly denounced against all those that, by word or deed or counsel, act contrary thereto or in any degree infringe it. 1 Bl. Comm. 128.

Confirmatio est nulla ubi donum præcedens est invalidum. Moore, 764; Co. Litt. 295. Confirmation is void where the preceding gift is invalid.

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit. Co. Litt. 295b. Confirmation supplies all defects, though that which had been done was not valid at the beginning.

CONFIRMATION. A contract by which that which was infirm, imperfect, or subject to be avoided is made firm and unavoidable.

A conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased. Co. Litt. 295b. Jackson v. Root, 18 Johns. (N. Y.) 60; People v. Law, 34 Barb. (N. Y.) 511; De Mares v. Gilpin, 15 Colo. 76, 24 Pac. 568.

In English ecclesiastical law. The ratification by the archbishop of the election of a bishop by dean and chapter under the king's letter missive prior to the investment and consecration of the bishop by the archbishop. 25 Hen. VIII. c. 20.

—Confirmation of sale. The confirmation of a judicial sale by the court which ordered it is a signification in some way (usually by the entry of an order) of the court's approval of the terms, price, and conditions of the sale. Johnson v. Cooper, 56 Miss. 618; Hyman v. Smith, 13 W. Va. 765.

CONFIRMAVI. Lat. I have confirmed. The emphatic word in the ancient deeds of confirmation. Fleta, lib. 3, c. 14, § 5.

CONFIRMEE. The grantee in a deed of confirmation.

CONFIRMOR. The grantor in a deed of confirmation.

CONFISCABLE. Capable of being confiscated or suitable for confiscation; liable to forfeiture. Camp v. Lockwood, 1 Dall. (Pa.) 393, 1 L. Ed. 194.

CONFISCARE. In civil and old English law. To confiscate; to claim for or bring into the fisc, or treasury. Bract. fol. 150.

CONFISCATE. To appropriate property to the use of the state. To adjudge property to be forfeited to the public treasury; to seize and condemn private forfeited property to public use. Ware v. Hylton, 3 Dall. 234, 1 L. Ed. 568; State v. Sargent, 12 Mo. App. 234.

Formerly, it appears, this term was used as synonymous with "forfeit," but at present the distinction between the two terms is well marked. Confiscation supervenes upon forfeiture. The person, by his act, forfeits his property; the state thereupon appropriates it, that is, confiscates it. Hence, to confiscate property implies that it has first been forfeited; but to forfeit property does not necessarily imply that it will be confiscated.

"Confiscation" is also to be distinguished from "condemnation" as prize. The former is the act of the sovereign against a rebellious subject; the latter is the act of a belligerent against another belligerent. Confiscation may be effected by such means, summary or arbitrary, as the sovereign, expressing its will through lawful channels, may please to adopt. Condemnation as prize can only be made in accordance with principles of law recognized in the common jurisprudence of the world. Both are proceedings *in rem*, but confiscation recognizes the title of the original owner to the property, while in prize the tenure of the property is qualified, provisional, and destitute of absolute ownership. Winchester v. U. S., 14 Ct. Cl. 48.

CONFISCATEE. One whose property has been seized and sold under a confiscation act, *e. g.*, for unpaid taxes. See Brent v. New Orleans, 41 La. Ann. 1098, 6 South. 793.

CONFISCATION. The act of confiscating; or of condemning and adjudging to the public treasury.

—Confiscation acts. Certain acts of congress, enacted during the progress of the civil war (1861 and 1862) in the exercise of the war powers of the government and meant to strengthen its hands and aid in suppressing the rebellion, which authorized the seizure, condemnation, and forfeiture of "property used for insurrectionary purposes." 12 U. S. St. at Large, 319, 589; Miller v. U. S., 11 Wall. 268, 20 L. Ed. 135; Semmes v. U. S., 91 U. S. 27, 23 L. Ed. 193.**—Confiscation cases.** The name given to a group of fifteen cases decided by the United States supreme court in 1868, on the validity and construction of the confiscation acts of congress. Reported in 7 Wall. 454, 19 L. Ed. 196.

CONFISK. An old form of *confiscate*.

CONFITENS REUS. An accused person who admits his guilt.

CONFLICT OF LAWS. 1. An opposition, conflict, or antagonism between differ-

ent laws of the same state or sovereignty upon the same subject-matter.

2. A similar inconsistency between the municipal laws of different states or countries, arising in the case of persons who have acquired rights or a *status*, or made contracts, or incurred obligations, within the territory of two or more states.

3. That branch of jurisprudence, arising from the diversity of the laws of different nations in their application to rights and remedies, which reconciles the inconsistency, or decides which law or system is to govern in the particular case, or settles the degree of force to be accorded to the law of a foreign country, (the acts or rights in question having arisen under it,) either where it varies from the domestic law, or where the domestic law is silent or not exclusively applicable to the case in point. In this sense it is more properly called "private international law."

CONFLICT OF PRESUMPTIONS. In this conflict certain rules are applicable, viz.: (1) Special take precedence of general presumptions; (2) constant of casual ones; (3) presume in favor of innocence; (4) of legality; (5) of validity; and, when these rules fail, the matter is said to be at large. Brown.

CONFORMITY. In English ecclesiastical law. Adherence to the doctrines and usages of the Church of England.

—Conformity, bill of. See BILL OF CONFORMITY.

CONFRAIRIE. Fr. In old English law. A fraternity, brotherhood, or society. Cowell.

CONFRERES. Brethren in a religious house; fellows of one and the same society. Cowell.

CONFRONTATION. In criminal law. the act of setting a witness face to face with the prisoner, in order that the latter may make any objection he has to the witness, or that the witness may identify the accused. State v. Behrman, 114 N. C. 797, 19 S. E. 220, 25 L. R. A. 449; Howser v. Com., 51 Pa. 332; State v. Mannion, 19 Utah, 505, 57 Pac. 542, 45 L. R. A. 638, 75 Am. St. Rep. 753; People v. Elliott, 172 N. Y. 146, 64 N. E. 837, 60 L. R. A. 318.

CONFUSIO. In the civil law. The inseparable intermixture of property belonging to different owners; it is properly confined to the pouring together of fluids, but is sometimes also used of a melting together of metals or any compound formed by the irrecoverable commixture of different substances.

It is distinguished from *commixtion* by the fact that in the latter case a separation may be made, while in a case of *confusio* there cannot be. 2 Bl. Comm. 405.

CONFUSION. This term, as used in the civil law and in compound terms derived from that source, means a blending or intermingling, and is equivalent to the term "merger" as used at common law. Palmer v. Burnside, 1 Woods, 182, Fed. Cas. No. 10,685.

—Confusion of boundaries. The title of that branch of equity jurisdiction which relates to the discovery and settlement of conflicting, disputed, or uncertain boundaries.—**Confusion of debts.** A mode of extinguishing a debt, by the concurrence in the same person of two qualities which mutually destroy one another. This may occur in several ways, as where the creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either accedes to the title of the other by any other mode of transfer. Woods v. Ridley, 11 Humph. (Tenn.) 198.—**Confusion of goods.** The inseparable intermixture of property belonging to different owners; properly confined to the pouring together of fluids, but used in a wider sense to designate any indistinguishable compound of elements belonging to different owners. The term "confusion" is applicable to a mixing of chattels of one and the same general description, differing thus from "accession," which is where various materials are united in one product. Confusion of goods arises wherever the goods of two or more persons are so blended as to have become undistinguishable. 1 Schouler, Pers. Prop. 41. Treat v. Barber, 7 Conn. 280; Robinson v. Holt, 39 N. H. 563, 75 Am. Dec. 233; Belcher v. Commission Co., 26 Tex. Civ. App. 60, 62 S. W. 924.—**Confusion of rights.** A union of the qualities of debtor and creditor in the same person. The effect of such a union is, generally, to extinguish the debt. 1 Salk. 306; Cro. Car. 551.—**Confusion of titles.** A civil-law expression, synonymous with "merger," as used in the common law, applying where two titles to the same property unite in the same person. Palmer v. Burnside, 1 Woods, 179, Fed. Cas. No. 10,685.

CONGÉ. Fr. In the French law. Permission, leave, license; a passport or clearance to a vessel; a permission to arm, equip, or navigate a vessel.

—Congé d'accorder. Leave to accord. A permission granted by the court, in the old process of levying a fine, to the defendant to agree with the plaintiff.—**Congé d'emparler.** Leave to imparl. The privilege of an imparlance, (*licentia loquendi.*) 3 Bl. Comm. 299.—**Congé d'eslire.** A permission or license from the British sovereign to a dean and chapter to elect a bishop, in time of vacation; or to an abbey or priory which is of royal foundation, to elect an abbot or prior.

CONGEABLE. L. Fr. Lawful; permissible; allowable. "Disseisin is properly where a man entereth into any lands or tenements where his entry is not *congeable*, and putteth out him that hath the freehold." Litt. § 279. See Ricard v. Williams, 7 Wheat. 107, 5 L. Ed. 398.

CONGILDONES. In Saxon law. Fellow-members of a guild.

CONGIUS. An ancient measure containing about a gallon and a pint. Cowell.

CONGREGATION. An assembly or society of persons who together constitute the

principal supporters of a particular parish, or habitually meet at the same church for religious exercises. Robertson v. Bullions, 9 Barb. (N. Y.) 67; Runkel v. Winemiller, 4 Har. & McH. (Md.) 452, 1 Am. Dec. 411; In re Walker, 200 Ill. 566, 66 N. E. 144.

In the ecclesiastical law, this term is used to designate certain bureaus at Rome, where ecclesiastical matters are attended to.

CONGRESS. In international law. An assembly of envoys, commissioners, deputies, etc., from different sovereignties who meet to concert measures for their common good, or to adjust their mutual concerns.

In American law. The name of the legislative assembly of the United States, composed of the senate and house of representatives, (*q. v.*)

CONGRESSUS. The extreme practical test of the truth of a charge of impotence brought against a husband by a wife. It is now disused. Causes Célèbres, 6, 183.

CONJECTIO. In the civil law of evidence. A throwing together. Presumption; the putting of things together, with the inference drawn therefrom.

CONJECTIO CAUSÆ. In the civil law. A statement of the case. A brief synopsis of the case given by the advocate to the judge in opening the trial. Calvin.

CONJECTURE. A slight degree of credence, arising from evidence too weak or too remote to cause belief. Weed v. Scofield, 73 Conn. 670, 49 Atl. 22.

Supposition or surmise. The idea of a fact, suggested by another fact; as a possible cause, concomitant, or result. Burrill, Circ. Ev. 27.

CONJOINTS. Persons married to each other. Story, Confl. Laws, § 71.

CONJUDEX. In old English law. An associate judge. Bract. 403.

CONJUGAL RIGHTS. Matrimonial rights; the right which husband and wife have to each other's society, comfort, and affection.

CONJUGIUM. One of the names of marriage, among the Romans. Tayl. Civil Law, 284.

CONJUNCT. In Scotch law. Joint.

CONJUNCTA. In the civil law. Things joined together or united; as distinguished from *disjuncta*, things disjoined or separated. Dig. 50, 16, 53.

CONJUNCTIM. Lat. In old English law. Jointly. Inst. 2, 20, 8.

CONJUNCTIM ET DIVISIM. L. Lat. In old English law. Jointly and severally.

CONJUNCTIO. In the civil law. Conjunction; connection of words in a sentence. See Dig. 50, 16, 29, 142.

Conjunctio mariti et feminæ est de jure naturæ. The union of husband and wife is of the law of nature.

CONJUNCTIVE. A grammatical term for particles which serve for joining or connecting together. Thus, the conjunction "and" is called a "conjunctive," and "or" a "disjunctive," conjunction.

—Conjunctive denial. Where several material facts are stated conjunctively in the complaint, an answer which undertakes to deny their averments as a whole, conjunctively stated, is called a "conjunctive denial." Doll v. Good, 38 Cal. 287.**—Conjunctive obligation.** See OBLIGATION.

CONJURATIO. In old English law. A swearing together; an oath administered to several together; a combination or confederacy under oath. Cowell.

In old European law. A compact of the inhabitants of a commune, or municipality, confirmed by their oaths to each other and which was the basis of the commune. Steph. Lect. 119.

CONJURATION. In old English law. A plot or compact made by persons combining by oath to do any public harm. Cowell.

The offense of having conference or commerce with evil spirits, in order to discover some secret, or effect some purpose. Id. Classed by Blackstone with witchcraft, enchantment, and sorcery, but distinguished from each of these by other writers. 4 Bl. Comm. 60; Cowell. Cooper v. Livingston, 19 Fla. 693

CONJURATOR. In old English law. One who swears or is sworn with others; one bound by oath with others; a compurgator; a conspirator.

CONNECTIONS. Relations by blood or marriage, but more commonly the relations of a person with whom one is connected by marriage. In this sense, the relations of a wife are "connections" of her husband. The term is vague and indefinite. See Storer v. Wheatley, 1 Pa. 507.

CONNEXITÉ. In French law. This exists when two actions are pending which, although not identical as in *lis pendens*, are so nearly similar in object that it is expedient to have them both adjudicated upon by the same judges. Arg. Fr. Merc. Law, 553.

CONNIVANCE. The secret or indirect consent or permission of one person to the commission of an unlawful or criminal act

by another. Oakland Bank v. Wilcox, 60 Cal. 137; State v. Gesell, 124 Mo. 531, 27 S. W. 1101.

Literally, a winking at; intentional forbearance to see a fault or other act; generally implying consent to it. Webster.

Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce. Civ. Code Cal. § 112. Dennis v. Dennis, 68 Conn. 186, 36 Atl. 34, 34 L. R. A. 449, 57 Am. St. Rep. 95; Robbins v. Robbins, 140 Mass. 528, 5 N. E. 837, 54 Am. Rep. 488.

Connivance differs from condonation, though the same legal consequences may attend it. Connivance necessarily involves criminality on the part of the individual who connives; condonation may take place without imputing the slightest blame to the party who forgives the injury. Connivance must be the act of the mind before the offense has been committed; condonation is the result of a determination to forgive an injury which was not known until after it was inflicted. Turton v. Turton, 3 Hagg. Ecc. 350.

CONNOISSEMENT. In French law. An instrument similar to our bill of lading.

CONNUBIUM. In the civil law. Marriage. Among the Romans, a lawful marriage as distinguished from "concubinage," (*q. v.*,) which was an inferior marriage.

CONOCIAMENTO. In Spanish law. A recognizance. White, New Recop. b. 3, tit. 7, c. 5, § 3.

CONOCIMIENTO. In Spanish law. A bill of lading. In the Mediterranean ports it is called "*poliza de cargamiento.*"

CONPOSSESSIO. In modern civil law. A joint possession. Mackeld. Rom. Law, § 245.

CONQUEREUR. In Norman and old English law. The first purchaser of an estate; he who first brought an estate into his family.

CONQUEROR. In old English and Scotch law. The first purchaser of an estate; he who brought it into the family owning it. 2 Bl. Comm. 242, 243.

CONQUEST. In feudal law. Conquest; acquisition by purchase; any method of acquiring the ownership of an estate other than by descent. Also an estate acquired otherwise than by inheritance.

In international law. The acquisition of the sovereignty of a country by force of arms, exercised by an independent power which reduces the vanquished to the submission of its empire. Castillero v. U. S., 2 Black, 109, 17 L. Ed. 360.

In Scotch law. Purchase. Bell.

CONQUESTOR. Conqueror. The title given to William of Normandy.

CONQUÊTS. In French law. The name given to every acquisition which the husband and wife, jointly or severally, make during the conjugal community. Thus, whatever is acquired by the husband and wife, either by his or her industry or good fortune, inures to the extent of one-half for the benefit of the other. Merl. Repert. "*Conquêt.*" Picotte v. Cooley, 10 Mo. 312.

CONQUISITIO. In feudal and old English law. Acquisition. 2 Bl. Comm. 242.

CONQUISITOR. In feudal law. A purchaser, acquirer, or conqueror. 2 Bl. Comm. 242, 243.

CONSANGUINEUS. Lat. A person related by blood; a person descended from the same common stock.

—Consanguineus frater. In civil and feudal law. A half-brother by the father's side, as distinguished from *frater uterinus*, a brother by the mother's side.

Consanguineus est quasi eodem sanguine natus. Co. Litt. 157. A person related by consanguinity is, as it were, sprung from the same blood.

CONSANGUINITY. Kinship; blood relationship; the connection or relation of persons descended from the same stock or common ancestor. 2 Bl. Comm. 202; Blodget v. Brinsmaid, 9 Vt. 30; State v. De Hart, 109 La. 570, 33 South. 605; Tepper v. Supreme Council, 59 N. J. Eq. 321, 45 Atl. 111; Rector v. Drury, 3 Pin. (Wis.) 298.

Lineal and collateral consanguinity. Lineal consanguinity is that which subsists between persons of whom one is descended in a direct line from the other, as between son, father, grandfather, great-grandfather, and so upwards in the direct ascending line; or between son, grandson, great-grandson, and so downwards in the direct descending line. Collateral consanguinity is that which subsists between persons who have the same ancestors, but who do not descend (or ascend) one from the other. Thus, father and son are related by lineal consanguinity, uncle and nephew by collateral consanguinity. 2 Bl. Comm. 203; McDowell v. Addams, 45 Pa. 432; State v. De Hart, 109 La. 570, 33 South. 605; Brown v. Baraboo, 90 Wis. 151, 62 N. W. 921, 30 L. R. A. 320.

"Affinity" distinguished. Consanguinity, denoting blood relationship, is distinguished from "affinity," which is the connection existing in consequence of a marriage, between each of the married persons and the kindred of the other. Tegarden v. Phillips, 14 Ind. App. 27, 42 N. E. 549; Carman v. Newell, 1 Denio (N. Y.) 25; Spear v. Robinson, 29 Me. 545.

CONSCIENCE. The moral sense; the faculty of judging the moral qualities of actions, or of discriminating between right and wrong; particularly applied to one's perception and judgment of the moral qualities of his own conduct, but in a wider sense, de-

noting a similar application of the standards of morality to the acts of others. In law, especially the moral rule which requires probity, justice, and honest dealing between man and man, as when we say that a bargain is "against conscience" or "unconscionable," or that the price paid for property at a forced sale was so inadequate as to "shock the conscience." This is also the meaning of the term as applied to the jurisdiction and principles of decision of courts of chancery, as in saying that such a court is a "court of conscience," that it proceeds "according to conscience," or that it has cognizance of "matters of conscience." See 3 Bl. Comm. 47–56; People v. Stewart, 7 Cal. 143; Miller v. Miller, 187 Pa. 572, 41 Atl. 277.

—Conscientious scruple. A conscientious scruple against taking an oath, serving as a juror in a capital case, doing military duty, or the like, is an objection or repugnance growing out of the fact that the person believes the thing demanded of him to be morally wrong, his conscience being the sole guide to his decision; it is thus distinguished from an "objection on principle," which is dictated by the reason and judgment, rather than the moral sense, and may relate only to the propriety or expediency of the thing in question. People v. Stewart, 7 Cal. 143.—**"Conscience of the court."** When an issue is sent out of chancery to be tried at law, to "inform the conscience of the court," the meaning is that the court is to be supplied with exact and dependable information as to the unsettled or disputed questions of fact in the case, in order that it may proceed to decide it in accordance with the principles of equity and good conscience in the light of the facts thus determined. See Watt v. Starke, 101 U. S. 252, 25 L. Ed. 826.—**Conscience, courts of.** Courts, not of record, constituted by act of parliament in the city of London, and other towns, for the recovery of small debts; otherwise and more commonly called "Courts of Requests." 3 Steph. Comm. 451.—**Conscience, right of.** As used in some constitutional provisions, this phrase is equivalent to religious liberty or freedom of conscience. Com. v. Lesher, 17 Serg. & R. (Pa.) 155; State v. Cummings, 36 Mo. 263.

Conscientia dicitur a con et scio, quasi scire cum Deo. 1 Coke, 100. Conscience is called from *con* and *scio*, to know, as it were, with God.

CONSCIENTIA REI ALIENI. In Scotch law. Knowledge of another's property; knowledge that a thing is not one's own, but belongs to another. He who has this knowledge, and retains possession, is chargeable with "violent profits."

CONSCRIPTION. Drafting into the military service of the state; compulsory service falling upon all male subjects evenly, within or under certain specified ages. Kneedler v. Lane, 45 Pa. 267.

CONSECRATE. In ecclesiastical law. To dedicate to sacred purposes, as a bishop by imposition of hands, or a church or churchyard by prayers, etc. Consecration is performed by a bishop or archbishop.

Consecratio est periodus electionis; electio est præambula consecrationis. 2 Rolle, 102. Consecration is the termination of election; election is the preamble of consecration.

CONSEDO. Sp. A term used in conveyances under Mexican law, equivalent to the English word "grant." Mulford v. Le Franc, 26 Cal. 103.

CONSEIL DE FAMILLE. In French law. A family council. Certain acts require the sanction of this body. For example, a guardian can neither accept nor reject an inheritance to which the minor has succeeded without its authority, (Code Nap. 461;) nor can he accept for the child a gift *inter vivos* without the like authority, (Id. 463.)

CONSEIL JUDICIAIRE. In French law. When a person has been subjected to an interdiction on the ground of his insane extravagance, but the interdiction is not absolute, but limited only, the court of first instance, which grants the interdiction, appoints a council, called by this name, with whose assistance the party may bring or defend actions, or compromise the same, alienate his estate, make or incur loans, and the like. Brown.

CONSEILS DE PRUDHOMMES. In French law. A species of trade tribunals, charged with settling differences between masters and workmen. They endeavor, in the first instance, to conciliate the parties. In default, they adjudicate upon the questions in dispute. Their decisions are final up to 200*f*. Beyond that amount, appeals lie to the tribunals of commerce. Arg. Fr. Merc. Law, 553.

CONSENSUAL CONTRACT. A term derived from the civil law, denoting a contract founded upon and completed by the mere consent of the contracting parties, without any external formality or symbolic act to fix the obligation.

Consensus est voluntas plurium ad quos res pertinet, simul juncta. Lofft, 514. Consent is the conjoint will of several persons to whom the thing belongs.

Consensus facit legem. Consent makes the law. (A contract is law between the parties agreeing to be bound by it.) Branch, Princ.

Consensus, non concubitus, facit nuptias vel matrimonium, et consentire non possunt ante annos nubiles. 6 Coke, 22. Consent, and not cohabitation, constitutes nuptials or marriage, and persons cannot consent before marriageable years. 1 Bl. Comm. 434.

Consensus tollit errorem. Co. Litt. 126. Consent (acquiescence) removes mistake.

Consensus voluntas multorum ad quos res pertinet, simul juncta. Consent is the united will of several interested in one subject-matter. Davis, 48; Branch, Princ.

CONSENT. A concurrence of wills.

Express consent is that directly given, either *viva voce* or in writing.

Implied consent is that manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption that the consent has been given. Cowen v. Paddock, 62 Hun, 622, 17 N. Y. Supp. 388.

Consent in an act of reason, accompanied with deliberation, the mind weighing as in a balance the good or evil on each side. 1 Story, Eq. Jur. § 222; Plummer v. Com., 1 Bush (Ky.) 76; Dicken v. Johnson, 7 Ga. 492; Mactier v. Frith, 6 Wend. (N. Y.) 114, 21 Am. Dec. 262; People v. Studwell, 91 App. Div. 469, 86 N. Y. Supp. 967.

There is a difference between consenting and submitting. Every consent involves a submission; but a mere submission does not necessarily involve consent. 9 Car. & P. 722.

—Consent decree. See DECREE.—**Consent judgment.** See JUDGMENT.

CONSENT-RULE. In English practice. A superseded instrument, in which a defendant in an action of ejectment specified for what purpose he intended to defend, and undertook to confess not only the fictitious lease, entry, and ouster, but that he was in possession.

Consentientes et agentes pari pœna plectentur. They who consent to an act, and they who do it, shall be visited with equal punishment. 5 Coke, 80.

Consentire matrimonio non possunt infra [ante] annos nubiles. Parties cannot consent to marriage within the years of marriage, [before the age of consent.] 6 Coke, 22

Consequentiæ non est consequentia. Bac. Max. The consequence of a consequence exists not.

CONSEQUENTIAL CONTEMPT. The ancient name for what is now known as "constructive" contempt of court. Ex parte Wright, 65 Ind. 508. See CONTEMPT.

CONSEQUENTIAL DAMAGE. Such damage, loss, or injury as does not flow directly and immediately from the act of the party, but only from some of the consequences or results of such act. Swain v. Copper Co., 111 Tenn. 430, 78 S. W. 93; Pearson v. Spartanburg County, 51 S. C. 480, 29 S. E. 193.

The term "consequential damage" means sometimes damage which is so remote as not to be actionable; sometimes damage which, though somewhat remote, is actionable; or damage which, though actionable, does not follow immediately, in point of time, upon the doing of the act complained of. Eaton v. Railroad Co., 51 N. H. 504, 12 Am. Rep. 147.

CONSEQUENTS. In Scotch law. Implied powers or authorities. Things which follow, usually by implication of law. A commission being given to execute any work, every power necessary to carry it on is implied. 1 Kames, Eq. 242.

CONSERVATOR. A guardian; protector; preserver.

"When any person having property shall be found to be incapable of managing his affairs, by the court of probate in the district in which he resides, * * * it shall appoint some person to be his *conservator*, who, upon giving a probate bond, shall have the charge of the person and estate of such incapable person." Gen. St. Conn. 1875, p. 346, § 1. Treat v. Peck, 5 Conn. 280.

—Conservators of rivers. Commissioners or trustees in whom the control of a certain river is vested, in England, by act of parliament.—**Conservators of the peace.** Officers authorized to preserve and maintain the public peace. In England, these officers were locally elected by the people until the reign of Edward III. when their appointment was vested in the king. Their duties were to prevent and arrest for breaches of the peace, but they had no power to arraign and try the offender until about 1360, when this authority was given to them by act of parliament, and "then they acquired the more honorable appellation of justices of the peace." 1 Bl. Comm. 351. Even after this time, however, many public officers were styled "conservators of the peace," not as a distinct office but by virtue of the duties and authorities pertaining to their offices. In this sense the term may include the king himself, the lord chancellor, justices of the king's bench, master of the rolls, coroners, sheriffs, constables, etc. 1 Bl. Comm. 350. See Smith v. Abbott, 17 N. J. Law, 358. The term is still in use in Texas, where the constitution provides that county judges shall be conservators of the peace. Const. Tex. art. 4, § 15; Jones v. State (Tex. Cr. App.) 65 S. W. 92.

CONSIDERATIO CURIÆ. The judgment of the court.

CONSIDERATION. The inducement to a contract. The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract. The reason or material cause of a contract. Insurance Co. v. Raddin, 120 U. S. 183, 7 Sup. Ct. 500, 30 L. Ed. 644; Eastman v. Miller, 113 Iowa, 404, 85 N. W. 635; St. Mark's Church v. Teed, 120 N. Y. 583, 24 N. E. 1014; Fertilizer Co. v. Dunan, 91 Md. 144, 46 Atl. 347, 50 L. R. A. 401; Kemp v. Bank, 109 Fed. 48, 48 C. C. A. 213; Streshley v. Powell, 12 B. Mon. (Ky.) 178; Roberts v. New York, 5 Abb. Prac. (N. Y.) 41; Rice v. Almy, 32 Conn. 297.

Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the

promisor, is a good consideration for a promise. Civ. Code Cal. § 1605.

Any act of the plaintiff from which the defendant or a stranger derives a benefit or advantage, or any labor, detriment, or inconvenience sustained by the plaintiff, however small, if such act is performed or inconvenience suffered by the plaintiff by the consent, express or implied, of the defendant. 3 Scott, 250.

Considerations are classified and defined as follows:

They are either *express* or *implied;* the former when they are specifically stated in a deed, contract, or other instrument; the latter when inferred or supposed by the law from the acts or situation of the parties.

They are either *executed* or *executory;* the former being acts done or values given before or at the time of making the contract; the latter being promises to give or do something in future.

They are either *good* or *valuable.* A good consideration is such as is founded on natural duty and affection, or on a strong moral obligation. A valuable consideration is founded on money, or something convertible into money, or having a value in money, except marriage, which is a valuable consideration. Code Ga. 1882, § 2741. See Chit. Cont. 7.

A *continuing* consideration is one consisting in acts or performances which must necessarily extend over a considerable period of time.

Concurrent considerations are those which arise at the same time or where the promises are simultaneous.

Equitable or *moral* considerations are devoid of efficacy in point of strict law, but are founded upon a moral duty, and may be made the basis of an express promise.

A *gratuitous* consideration is one which is not founded upon any such loss, injury, or inconvenience to the party to whom it moves as to make it valid in law.

Past consideration is an act done before the contract is made, and is really by itself no consideration for a promise. Anson, Cont. 82.

A *nominal* consideration is one bearing no relation to the real value of the contract or article, as where a parcel of land is described in a deed as being sold for "one dollar," no actual consideration passing, or the real consideration being concealed. This term is also sometimes used as descriptive of an inflated or exaggerated value placed upon property for the purpose of an exchange. Boyd v. Watson, 101 Iowa, 214, 70 N. W. 123.

A *sufficient* consideration is one deemed by the law of sufficient value to support an ordinary contract between parties, or one sufficient to support the particular transaction. Golson v. Dunlap, 73 Cal. 157, 14 Pac. 576.

For definition of an *adequate* consideration, see ADEQUATE.

A *legal* consideration is one recognized or permitted by the law as valid and lawful; as distinguished from such as are illegal or immoral. The term is also sometimes used as equivalent to "good" or "sufficient" consideration. See Sampson v. Swift, 11 Vt. 315; Albert Lea College v. Brown, 88 Minn. 524, 93 N. W. 672, 60 L. R. A. 870.

A *pecuniary* consideration is a consideration for an act or forbearance which consists either in money presently passing or in money to be paid in the future, including a promise to pay a debt in full which otherwise would be released or diminished by bankruptcy or insolvency proceedings. See Phelps v. Thomas, 6 Gray (Mass.) 328; In re Ekings (D. C.) 6 Fed. 170.

CONSIDERATUM EST PER CURIAM. (It is considered by the court.) The formal and ordinary commencement of a judgment. Baker v. State, 3 Ark. 491.

CONSIDERATUR. L. Lat. It is considered. Held to mean the same with *consideratum est.* 2 Strange, 874.

CONSIGN. In the civil law. To deposit in the custody of a third person a thing belonging to the debtor, for the benefit of the creditor, under the authority of a court of justice. Poth. Obl. pt. 3, c. 1, art. 8.

In commercial law. To deliver goods to a carrier to be transmitted to a designated factor or agent. Powell v. Wallace, 44 Kan. 656, 25 Pac. 42; Sturm v. Boker, 150 U. S. 312, 14 Sup. Ct. 99, 37 L. Ed. 1093; Ide Mfg. Co. v. Sager Mfg. Co., 82 Ill. App. 685.

To deliver or transfer as a charge or trust; to commit, intrust, give in trust; to transfer from oneself to the care of another; to send or transmit goods to a merchant or factor for sale. Gillespie v. Winberg, 4 Daly (N. Y.) 320.

CONSIGNATION. In Scotch law. The payment of money into the hands of a third party, when the creditor refuses to accept of it. The person to whom the money is given is termed the "consignatory." Bell.

In French law. A deposit which a debtor makes of the thing that he owes into the hands of a third person, and under the authority of a court of justice. 1 Poth. Obl. 536; Weld v. Hadley, 1 N. H. 304.

CONSIGNEE. In mercantile law. One to whom a consignment is made. The person to whom goods are shipped for sale. Lyon v. Alvord, 18 Conn. 80; Gillespie v. Winberg, 4 Daly (N. Y.) 320; Comm. v. Harris, 168 Pa. 619, 32 Atl. 92; Railroad Co. v. Freed, 38 Ark. 622.

CONSIGNMENT. The act or process of consigning goods; the transportation of goods consigned; an article or collection of goods sent to a factor to be sold; goods or property sent, by the aid of a common carrier, from

one person in one place to another person in another place. See CONSIGN.

CONSIGNOR. One who sends or makes a consignment. A shipper of goods.

Consilia multorum quæruntur in magnis. 4 Inst. 1. The counsels of many are required in great things.

CONSILIARIUS. In the civil law. A counsellor, as distinguished from a pleader or advocate. An assistant judge. One who participates in the decisions. Du Cange.

CONSILIUM. A day appointed to hear the counsel of both parties. A case set down for argument.

It is commonly used for the day appointed for the argument of a demurrer, or errors assigned. 1 Tidd, Pr. 438.

CONSIMILI CASU. In practice. A writ of entry, framed under the provisions of the statute Westminster 2, (13 Edw. I.,) c. 24, which lay for the benefit of the reversioner, where a tenant by the curtesy aliened in fee or for life.

CONSISTING. Being composed or made up of. This word is not synonymous with "including;" for the latter, when used in connection with a number of specified objects, always implies that there may be others which are not mentioned. Farish v. Cook, 6 Mo. App. 331.

CONSISTORIUM. The state council of the Roman emperors. Mackeld. Rom. Law, § 58.

CONSISTORY. In ecclesiastical law. An assembly of cardinals convoked by the pope.

CONSISTORY COURTS. Courts held by diocesan bishops within their several cathedrals, for the trial of ecclesiastical causes arising within their respective dioceses. The bishop's chancellor, or his commissary, is the judge; and from his sentence an appeal lies to the archbishop. Mozley & Whitley.

CONSOBRINI. In the civil law. Cousins-german, in general; brothers' and sisters' children, considered in their relation to each other.

CONSOCIATIO. Lat. An association, fellowship, or partnership. Applied by some of the older writers to a corporation, and even to a nation considered as a body politic. Thomas v. Dakin, 22 Wend. (N. Y.) 104.

CONSOLATO DEL MARE. The name of a code of sea-laws, said to have been compiled by order of the kings of Arragon (or, according to other authorities, at Pisa or Barcelona) in the fourteenth century, which comprised the maritime ordinances of the Roman emperors, of France and Spain, and of the Italian commercial powers. This compilation exercised a considerable influence in the formation of European maritime law.

CONSOLIDATE. To consolidate means something more than rearrange or redivide. In a general sense, it means to unite into one mass or body, as to consolidate the forces of an army, or various funds. In parliamentary usage, to consolidate two bills is to unite them into one. In law, to consolidate benefices is to combine them into one. Fairview v. Durland, 45 Iowa, 56.

—Consolidated fund. In England. A fund for the payment of the public debt.—**Consolidated laws or statutes.** A collection or compilation into one statute or one code or volume of all the laws of the state in general, or of those relating to a particular subject; nearly the same as "compiled laws" or "compiled statutes." See COMPILATION. And see Ellis v. Parsell, 100 Mich. 170, 58 N. W. 839; Graham v. Muskegon County Clerk, 116 Mich. 571, 74 N. W. 729.—**Consolidated orders.** The orders regulating the practice of the English court of chancery, which were issued, in 1860, in substitution for the various orders which had previously been promulgated from time to time.

CONSOLIDATION. In the civil law. The union of the usufruct with the estate out of which it issues, in the same person; which happens when the usufructuary acquires the estate, or *vice versa*. In either case the usufruct is extinct. Lec. El. Dr. Rom. 424.

In Scotch law. The junction of the property and superiority of an estate, where they have been disjoined. Bell.

—Consolidation of actions. The act or process of uniting several actions into one trial and judgment, by order of a court, where all the actions are between the same parties, pending in the same court, and turning upon the same or similar issues; or the court may order that one of the actions be tried, and the others decided without trial according to the judgment in the one selected. Powell v. Gray, 1 Ala. 77; Jackson v. Chamberlin, 5 Cow. (N. Y.) 282; Thompson v. Shepherd, 9 Johns. (N. Y.) 262. **—Consolidation of benefices.** The act or process of uniting two or more of them into one.—**Consolidation of corporations.** The union or merger into one corporate body of two or more corporations which had been separately created for similar or connected purposes. In England this is termed "amalgamation." When the rights, franchises, and effects of two or more corporations are, by legal authority and agreement of the parties, combined and united into one whole, and committed to a single corporation, the stockholders of which are composed of those (so far as they choose to become such) of the companies thus agreeing, this is in law, and according to common understanding, a consolidation of such companies, whether such single corporation, called the consolidated company, be a new one then created, or one of the original companies, continuing in existence with only larger rights, capacity, and property. Meyer v. Johnston, 64 Ala. 656; Shadford v. Railway Co., 130 Mich. 300, 89 N. W. 960; Adams v. Railroad Co., 77 Miss. 194, 24 South. 200, 28 South. 956, 60 L. R. A. 33; Pingree v. Rail-

road Co., 118 Mich. 314, 76 N. W. 635, 53 L. R. A. 274; People v. Coke Co., 205 Ill. 482, 68 N. E. 950, 98 Am. St. Rep. 244; Buford v. Packet Co., 3 Mo. App. 171.—**Consolidation rule.** In practice. A rule or order of court requiring a plaintiff who has instituted separate suits upon several claims against the same defendant, to consolidate them in one action, where that can be done consistently with the rules of pleading.

CONSOLS. An abbreviation of the expression "consolidated annuities," and used in modern times as a name of various funds united in one for the payment of the British national debt. Also, a name given to certain issues of bonds of the state of South Carolina. Whaley v. Gaillard, 21 S. C. 568.

Consortio malorum me quoque malum facit. Moore, 817. The company of wicked men makes me also wicked.

CONSORTIUM. In the civil law. A union of fortunes; a lawful Roman marriage. Also, the joining of several persons as parties to one action. In old English law, the term signified company or society. In the language of pleading, (as in the phrase *per quod consortium amisit*) it means the companionship or society of a wife. Bigaouette v. Paulet, 134 Mass. 123, 45 Am. Rep. 307; Lockwood v. Lockwood, 67 Minn. 476, 70 N. W. 784; Kelley v. Railroad Co., 168 Mass. 308, 46 N. E. 1063, 38 L. R. A. 631, 60 Am. St. Rep. 397.

CONSORTSHIP. In maritime law. An agreement or stipulation between the owners of different vessels that they shall keep in company, mutually aid, instead of interfering with each other, in wrecking and salvage, and share any money awarded as salvage, whether earned by one vessel or both. Andrews v. Wall, 3 How. 571, 11 L. Ed. 729.

CONSPIRACY. In criminal law. A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is innocent in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful. Pettibone v. U. S., 148 U. S. 197, 13 Sup. Ct. 542, 37 L. Ed. 419; State v. Slutz, 106 La. 182, 30 South. 298; Wright v. U. S., 108 Fed. 805, 48 C. C. A. 37; U. S. v. Benson, 70 Fed. 591, 17 C. C. A. 293; Girdner v. Walker, 1 Heisk. (Tenn.) 186; Boutwell v. Marr, 71 Vt. 1, 42 Atl. 607, 43 L. R. A. 803, 76 Am. St. Rep. 746; U. S. v. Weber (C. C.) 114 Fed. 950; Comm. v. Hunt, 4 Metc. (Mass.) 111, 38 Am. Dec. 346; Erdman v. Mitchell, 207 Pa. 79, 56 Atl. 327, 63 L. R. A. 534, 99 Am. St. Rep. 783; Standard Oil Co. v. Doyle, 118 Ky. 662, 82 S. W. 271, 111 Am. St. Rep. 331.

Conspiracy is a consultation or agreement between two or more persons, either falsely to accuse another of a crime punishable by law; or wrongfully to injure or prejudice a third person, or any body of men, in any manner; or to commit any offense punishable by law; or to do any act with intent to prevent the course of justice; or to effect a legal purpose with a corrupt intent, or by improper means. Hawk. P. C. c. 72, § 2; Archb. Crim. Pl. 390, adding also combinations by journeymen to raise wages. State v. Murphy, 6 Ala. 765, 41 Am. Dec. 79.

Civil and criminal. The term "civil" is used to designate a conspiracy which will furnish ground for a civil action, as where, in carrying out the design of the conspirators, overt acts are done causing legal damage, the person injured has a right of action. It is said that the gist of civil conspiracy is the injury or damage. While criminal conspiracy does not require such overt acts, yet, so far as the rights and remedies are concerned, all criminal conspiracies are embraced within the civil conspiracies. Brown v. Pharmacy Co., 115 Ga. 429, 41 S. E. 553, 57 L. R. A. 547, 90 Am. St. Rep. 126.

CONSPIRATIONE. An ancient writ that lay against conspirators. Reg. Orig. 134; Fitzh. Nat. Brev. 114.

CONSPIRATORS. Persons guilty of a conspiracy.

Those who bind themselves by oath, covenant, or other alliance that each of them shall aid the other falsely and maliciously to indict persons; or falsely to move and maintain pleas, etc. 33 Edw. I. St. 2. Besides these, there are conspirators in treasonable purposes; as for plotting against the government. Wharton.

CONSTABLE. In medieval law. The name given to a very high functionary under the French and English kings, the dignity and importance of whose office was only second to that of the monarch. He was in general the leader of the royal armies, and had cognizance of all matters pertaining to war and arms, exercising both civil and military jurisdiction. He was also charged with the conservation of the peace of the nation. Thus there was a "Constable of France" and a "Lord High Constable of England."

In English law. A public civil officer, whose proper and general duty is to keep the peace within his district, though he is frequently charged with additional duties. 1 Bl. Comm. 356.

High constables, in England, are officers appointed in every hundred or franchise, whose proper duty seems to be to keep the king's peace within their respective hundreds. 1 Bl. Comm. 356; 3 Steph. Comm. 47.

Petty constables are inferior officers in every town and parish, subordinate to the high constable of the hundred, whose principal duty is the preservation of the peace, though they also have other particular duties assigned to them by act of parliament, particularly the service of the summonses and the execution of the warrants of justices of the peace. 1 Bl. Comm. 356; 3 Steph. Comm. 47, 48.

Special constables are persons appointed (with or without their consent) by the magistrates to execute warrants on particular occasions, as in the case of riots, etc.

In American law. An officer of a municipal corporation (usually elected) whose

duties are similar to those of the sheriff, though his powers are less and his jurisdiction smaller. He is to preserve the public peace, execute the process of magistrates' courts, and of some other tribunals, serve writs, attend the sessions of the criminal courts, have the custody of juries, and discharge other functions sometimes assigned to him by the local law or by statute. Comm. v. Deacon, 8 Serg. & R. (Pa.) 47; Leavitt v. Leavitt, 135 Mass. 191; Allor v. Wayne County, 43 Mich. 76, 4 N. W. 492.

—Constable of a castle. In English law. An officer having charge of a castle; a warden, or keeper; otherwise called a "castellain."—**Constable of England.** (Called, also, "Marshal.") His office consisted in the care of the common peace of the realm in deeds of arms and matters of war. Lamb. Const. **4.—Constable of Scotland.** An officer who was formerly entitled to command all the king's armies in the absence of the king, and to take cognizance of all crimes committed within four miles of the king's person or of parliament, the privy council, or any general convention of the states of the kingdom. The office was hereditary in the family of Errol, and was abolished by the 20 Geo. III. c. 43. Bell; Ersk. Inst. 1, 3, 37. **—Constable of the exchequer.** An officer mentioned in Fleta, lib. 2, c. 31.**—High constable of England, lord.** His office has been disused (except only upon great and solemn occasions, as the coronation, or the like) since the attainder of Stafford, Duke of Buckingham, in the reign of Henry VII.

CONSTABLEWICK. In English law. The territorial jurisdiction of a constable; as bailiwick is of a bailiff or sheriff. 5 Nev. & M. 261.

CONSTABULARIUS. An officer of horse; an officer having charge of foot or horse; a naval commander; an officer having charge of military affairs generally. Spelman.

CONSTAT. It is clear or evident; it appears; it is certain; there is no doubt. *Non constat*, it does not appear.

A certificate which the clerk of the pipe and auditors of the exchequer made, at the request of any person who intended to plead or move in that court, for the discharge of anything. The effect of it was the certifying what appears (*constat*) upon record, touching the matter in question. Wharton.

CONSTAT D'HUISSIER. In French law. An affidavit made by a *huissier*, setting forth the appearance, form, quality, color, etc., of any article upon which a suit depends. Arg. Fr. Merc. Law, 554.

CONSTATE. To establish, constitute, or ordain. "Constating instruments" of a corporation are its charter, organic law, or the grant of powers to it. See examples of the use of the term, Green's Brice, Ultra Vires, p. 39; Ackerman v. Halsey, 37 N. J. Eq. 363.

CONSTITUENT. A word used as a correlative to "attorney," to denote one who constitutes another his agent or invests the other with authority to act for him.

It is also used in the language of politics, as a correlative to "representative," the constituents of a legislator being those whom he represents and whose interests he is to care for in public affairs; usually the electors of his district.

CONSTITUERE. Lat. To appoint, constitute, establish, ordain, or undertake. Used principally in ancient powers of attorney, and now supplanted by the English word "constitute."

CONSTITUIMUS. A Latin term, signifying *we constitute* or *appoint*.

CONSTITUTED AUTHORITIES. Officers properly appointed under the constitution for the government of the people.

CONSTITUTIO. In the civil law. An imperial ordinance or constitution, distinguished from *Lex*, *Senatus-Consultum*, and other kinds of law and having its effect from the sole will of the emperor.

An establishment or settlement. Used of controversies settled by the parties without a trial. Calvin.

A sum paid according to agreement. Du Cange.

In old English law. An ordinance or statute. A provision of a statute.

CONSTITUTIO DOTIS. Establishment of dower.

CONSTITUTION. In public law. The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers.

In a more general sense, any fundamental or important law or edict; as the Novel Constitutions of Justinian; the Constitutions of Clarendon.

In American law. The written instrument agreed upon by the people of the Union or of a particular state, as the absolute rule of action and decision for all departments and officers of the government in respect to all the points covered by it, which must control until it shall be changed by the authority which established it, and in opposition to which any act or ordinance of any such department or officer is null and void. Cooley, Const. Lim. 3.

CONSTITUTIONAL. Consistent with the constitution; authorized by the constitution; not conflicting with any provision of

the constitution or fundamental law of the state. Dependent upon a constitution, or secured or regulated by a constitution; as "constitutional monarchy," "constitutional rights."

—Constitutional convention. A duly constituted assembly of delegates or representatives of the people of a state or nation for the purpose of framing, revising, or amending its constitution.**—Constitutional liberty or freedom.** Such freedom as is enjoyed by the citizens of a country or state under the protection of its constitution; the aggregate of those personal, civil, and political rights of the individual which are guarantied by the constitution and secured against invasion by the government or any of its agencies. People v. Hurlbut, 24 Mich. 106, 9 Am. Rep. 103.**—Constitutional law.** (1) That branch of the public law of a state which treats of the organization and frame of government, the organs and powers of sovereignty, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and subject, and which prescribes generally the plan and method according to which the public affairs of the state are to be administered. (2) That department of the science of law which treats of constitutions, their establishment, construction, and interpretation, and of the validity of legal enactments as tested by the criterion of conformity to the fundamental law. (3) A constitutional law is one which is consonant to, and agrees with, the constitution; one which is not in violation of any provision of the constitution of the particular state.**—Constitutional officer.** One whose tenure and term of office are fixed and defined by the constitution, as distinguished from the incumbents of offices created by the legislature. Foster v. Jones, 79 Va. 642, 52 Am. Rep. 637; People v. Scheu, 60 App. Div. 592, 69 N. Y. Supp. 597.

CONSTITUTIONES. Laws promulgated, *i. e.*, enacted, by the Roman Emperor. They were of various kinds, namely, the following: (1) *Edicta;* (2) *decreta;* (3) *rescripta,* called also "*epistolæ.*" Sometimes they were general, and intended to form a precedent for other like cases; at other times they were special, particular, or individual, (*personales,*) and not intended to form a precedent. The emperor had this power of irresponsible enactment by virtue of a certain *lex regia,* whereby he was made the fountain of justice and of mercy. Brown.

Constitutiones tempore posteriores potiores sunt his quæ ipsas præcesserunt. Dig. 1, 4, 4. Later laws prevail over those which preceded them.

CONSTITUTIONS OF CLARENDON. See CLARENDON.

CONSTITUTOR. In the civil law. One who, by a simple agreement, becomes responsible for the payment of another's debt.

CONSTITUTUM. In the civil law. An agreement to pay a subsisting debt which exists without any stipulation, whether of the promisor or another party. It differs from a stipulation in that it must be for an existing debt. Du Cange.

Constitutum esse eam domum unicuique nostrum debere existimari, ubi quisque sedes et tabulas haberet, suarumque rerum constitutionem fecisset. It is settled that that is to be considered the home of each one of us where he may have his habitation and account-books, and where he may have made an establishment of his business. Dig. 50, 16, 203.

CONSTRAINT. This term is held to be exactly equivalent with "restraint." Edmondson v. Harris, 2 Tenn. Ch. 427.

In Scotch law. Constraint means duress.

CONSTRUCT. To build; erect; put together; make ready for use. Morse v. West-Port, 110 Mo. 502, 19 S. W. 831; Contas v. Bradford, 206 Pa. 291, 55 Atl. 989.

Constructio legis non facit injuriam. The construction of the law (a construction made by the law) works no injury. Co. Litt. 183; Broom, Max. 603. The law will make such a construction of an instrument as not to injure a party.

CONSTRUCTION. The process, or the art, of determining the sense, real meaning, or proper explanation of obscure or ambiguous terms or provisions in a statute, written instrument, or oral agreement, or the application of such subject to the case in question, by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or a connected matter, or by seeking and applying the probable aim and purpose of the provision.

It is to be noted that this term is properly distinguished from *interpretation,* although the two are often used synonymously. In strictness, interpretation is limited to exploring the written text, while construction goes beyond and may call in the aid of extrinsic considerations, as above indicated.

Strict and liberal construction. Strict construction is construction of a statute or other instrument according to its letter, which recognizes nothing that is not expressed, takes the language used in its exact and technical meaning, and admits no equitable considerations or implications. Paving Co. v. Watt, 51 La. Ann. 1345, 26 South. 70; Stanyan v. Peterborough, 69 N. H. 372, 46 Atl. 191. Liberal construction, on the other hand, expands the meaning of the statute to meet cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not inconsistent with the language used; it resolves all reasonable doubts in favor of the applicability of the statute to the particular case. Black, Interp. Laws, 282; Lawrence v. McCalmont, 2 How. 449, 11 L. Ed. 326; In re Johnson's Estate, 98 Cal. 531, 33 Pac. 460, 21 L. R. A. 380; Shorey v. Wyckoff, 1 Wash. T. 351.

—Construction, court of. A court of equity or of common law, as the case may be, is called the court of construction with regard to wills, as opposed to the court of probate, whose duty is to decide whether an instrument be a will at all. Now, the court of probate may decide that

a given instrument is a will, and yet the court of construction may decide that it has no operation, by reason of perpetuities, illegality, uncertainty, etc. Wharton.—**Equitable construction.** A construction of a law, rule, or remedy which has regard more to the equities of the particular transaction or state of affairs involved than to the strict application of the rule or remedy; that is, a liberal and extensive construction, as opposed to a literal and restrictive. Smiley v. Sampson, 1 Neb. 91.

CONSTRUCTIVE. That which is established by the mind of the law in its act of *construing* facts, conduct, circumstances, or instruments; that which has not the character assigned to it in its own essential nature, but acquires such character in consequence of the way in which it is regarded by a rule or policy of law; hence, inferred, implied, made out by legal interpretation. Middleton v. Parke, 3 App. D. C. 160.

—**Constructive assent.** An assent or consent imputed to a party from a construction or interpretation of his conduct; as distinguished from one which he actually expresses.—**Constructive authority.** Authority inferred or assumed to have been given because of the grant of some other antecedent authority. Middleton v. Parke, 3 App. D. C. 160.—**Constructive breaking into a house.** A breaking made out by construction of law. As where a burglar gains an entry into a house by threats, fraud, or conspiracy. 2 Russ. Crimes, 9, 10.—**Constructive crime.** Where, by a strained construction of a penal statute, it is made to include an act not otherwise punishable, it is said to be a "constructive crime," that is, one built up by the court with the aid of inference and implication. Ex parte McNulty, 77 Cal. 164, 19 Pac. 237, 11 Am. St. Rep. 257.—**Constructive taking.** A phrase used in the law to characterize an act not amounting to an actual appropriation of chattels, but which shows an intention to convert them to his use; as if a person intrusted with the possession of goods deals with them contrary to the orders of the owner.

As to constructive "Breaking," "Contempt," "Contracts," "Conversion," "Delivery," "Eviction," "Fraud," "Larceny," "Malice," "Notice," "Possession," "Seisin," "Service of Process," "Total Loss," "Treason," and "Trusts," see those titles.

CONSTRUE. To put together; to arrange or marshal the words of an instrument. To ascertain the meaning of language by a process of arrangement and inference. See CONSTRUCTION.

CONSTUPRATE. To ravish, debauch, violate, rape. See Harper v. Delp, 3 Ind. 230; Koenig v. Nott, 2 Hilt. (N. Y.) 329.

CONSUETUDINARIUS. In ecclesiastical law. A ritual or book, containing the rites and forms of divine offices, or the customs of abbeys and monasteries.

CONSUETUDINARY LAW. Customary law. Law derived by oral tradition from a remote antiquity. Bell.

CONSUETUDINES. In old English law. Customs. Thus, *consuetudines et assisa forestæ*, the customs and assise of the forest.

CONSUETUDINES FEUDORUM. (Lat. feudal customs.) A compilation of the law of feuds or fiefs in Lombardy, made A. D. 1170.

CONSUETUDINIBUS ET SERVICIIS. In old English law. A writ of right close, which lay against a tenant who deforced his lord of the rent or service due to him. Reg. Orig. 159; Fitzh. Nat. Brev. 151.

CONSUETUDO. Lat. A custom; an established usage or practice. Co. Litt. 58. Tolls; duties; taxes. Id. 58*b*.

—**Consuetudo Anglicana.** The custom of England; the ancient common law, as distinguished from *lex*, the Roman or civil law.—**Consuetudo curiæ.** The custom or practice of a court. Hardr. 141.—**Consuetudo mercatorum.** Lat. The custom of merchants, the same with *lex mercatoria*.

Consuetudo contra rationem introducta potius usurpatio quam consuetudo appellari debet. A custom introduced against reason ought rather to be called a "usurpation" than a "custom." Co. Litt. 113.

Consuetudo debet esse certa; nam incerta pro nullâ habetur. Dav. 33. A custom should be certain; for an uncertain custom is considered null.

Consuetudo est altera lex. Custom is another law. 4 Coke, 21.

Consuetudo est optimus interpres legum. 2 Inst. 18. Custom is the best expounder of the laws.

Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis. Jenk. Cent. 273. Custom and common usage overcomes the unwritten law, if it be special; and interprets the written law, if the law be general.

Consuetudo ex certa causa rationabili usitata privat communem legem. A custom, grounded on a certain and reasonable cause, supersedes the common law. Litt. § 169; Co. Litt. 113; Broom, Max. 919.

Consuetudo, licet sit magnæ auctoritatis, nunquam tamen, præjudicat manifestæ veritati. A custom, though it be of great authority, should never prejudice manifest truth. 4 Coke, 18.

Consuetudo loci observanda est. Litt. § 169. The custom of a place is to be observed.

Consuetudo manerii et loci observanda est. 6 Coke, 67. A custom of a manor and place is to be observed.

Consuetudo neque injuriâ oriri neque tolli potest. Lofft, 340. Custom can neither arise from nor be taken away by injury.

Consuetudo non trahitur in consequentiam. 3 Keb. 499. Custom is not drawn into consequence. 4 Jur. (N. S.) Ex. 139.

Consuetudo præscripta et legitima vincit legem. A prescriptive and lawful custom overcomes the law. Co. Litt. 113; 4 Coke, 21.

Consuetudo regni Angliæ est lex Angliæ. Jenk. Cent. 119. The custom of the kingdom of England is the law of England. See 2 Bl. Comm. 422.

Consuetudo semel reprobata non potest amplius induci. A custom once disallowed cannot be again brought forward, [or relied on.] Dav. 33.

Consuetudo tollit communem legem. Co. Litt. 33*b*. Custom takes away the common law.

Consuetudo volentes ducit, lex nolentes trahit. Custom leads the willing, law compels [drags] the unwilling. Jenk. Cent. 274.

CONSUL. **In Roman law.** During the republic, the name "consul" was given to the chief executive magistrate, two of whom were chosen annually. The office was continued under the empire, but its powers and prerogatives were greatly reduced. The name is supposed to have been derived from *consulo*, to consult, because these officers consulted with the senate on administrative measures.

In old English law. An ancient title of an earl.

In international law. An officer of a commercial character, appointed by the different states to watch over the mercantile interests of the appointing state and of its subjects in foreign countries. There are usually a number of consuls in every maritime country, and they are usually subject to a chief consul, who is called a "consul general." Schunior v. Russell, 83 Tex. 83, 18 S. W. 484; Seidel v. Peschkaw, 27 N. J. Law, 427; Sartori v. Hamilton, 13 N. J. Law, 107; The Anne, 3 Wheat. 445, 4 L. Ed. 428.

The word "consul" has two meanings: (1) It denotes an officer of a particular grade in the consular service; (2) it has a broader generic sense, embracing all consular officers. Dainese v. U. S., 15 Ct. Cl. 64.

The official designations employed throughout this title shall be deemed to have the following meanings, respectively: *First.* "Consul general," "consul," and "commercial agent" shall be deemed to denote full, principal, and permanent consular officers, as distinguished from subordinates and substitutes. *Second.* "Deputy-consul" and "consular agent" shall be deemed to denote consular officers subordinate to such principals, exercising the powers and performing the duties within the limits of their consulates or commercial agencies respectively, the former at the same ports or places and the latter at ports or places different from those at which such principals are located respectively. *Third.* "Vice-consuls" and "vice-commercial agents" shall be deemed to denote consular officers who shall be substituted, temporarily, to fill the places of consuls general, consuls, or commercial agents, when they shall be temporarily absent or relieved from duty. *Fourth.* "Consular officer" shall be deemed to include consuls general, consuls, commercial agents, deputy-consuls, vice-consuls, vice-commercial agents, and consular agents, and none others. *Fifth.* "Diplomatic officer" shall be deemed to include ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, chargés d'affaires, agents, and secretaries of legation, and none others. Rev. St. U. S. § 1674 (U. S. Comp. St. 1901, p. 1150.)

CONSULAR COURTS. Courts held by the consuls of one country, within the territory of another, under authority given by treaty, for the settlement of civil cases between citizens of the country which the consul represents. In some instances they have also a criminal jurisdiction, but in this respect are subject to review by the courts of the home government. See Rev. St. U. S. § 4083 (U. S. Comp. St. 1901, p. 2768.)

CONSULTA ECCLESIA. In ecclesiastical law. A church full or provided for. Cowell.

CONSULTARY RESPONSE. The opinion of a court of law on a special case.

CONSULTATION. A writ whereby a cause which has been wrongfully removed by prohibition out of an ecclesiastical court to a temporal court is returned to the ecclesiastical court. Phillim. Ecc. Law, 1439.

A conference between the counsel engaged in a case, to discuss its questions or arrange the method of conducting it.

In French law. The opinion of counsel upon a point of law submitted to them.

CONSULTO. Lat. In the civil law. Designedly; intentionally. Dig. 28, 41.

CONSUMMATE. Completed; as distinguished from *initiate*, or that which is merely begun. The husband of a woman seised of an estate of inheritance becomes, by the birth of a child, tenant by the curtesy *initiate*, and may do many acts to charge the lands, but his estate is not *consummate* till the death of the wife. 2 Bl. Comm. 126, 128; Co. Litt. 30*a*.

CONSUMMATION. The completion of a thing; the completion of a marriage between two affianced persons by cohabitation. Sharon v. Sharon, 79 Cal. 633, 22 Pac. 26.

CONTAGIOUS DISEASE. One capable of being transmitted by mediate or immediate contact. See Grayson v. Lynch, 163 U. S. 468, 16 Sup. Ct. 1064, 41 L. Ed. 230; Stryker v. Crane, 33 Neb. 690, 50 N. W. 1132; Pierce v. Dillingham, 203 Ill. 148, 67 N. E. 846, 62 L. R. A. 888. See INFECTION.

CONTANGO. In English law. The commission received for carrying over or putting off the time of execution of a contract to deliver stocks or pay for them at a certain time. Wharton.

CONTEK. L. Fr. A contest, dispute, disturbance, opposition. Britt. c. 42; Kelham. *Conteckours;* brawlers; disturbers of the peace. Britt. c. 29.

CONTEMNER. One who has committed contempt of court. Wyatt v. People, 17 Colo. 252, 28 Pac. 961.

CONTEMPLATION. The act of the mind in considering with attention. Continued attention of the mind to a particular subject. Consideration of an act or series of acts with the intention of doing or adopting them. The consideration of an event or state of facts with the expectation that it will transpire.

—Contemplation of bankruptcy. Contemplation of the breaking up of one's business or an inability to continue it; knowledge of, and action with reference to, a condition of bankruptcy or ascertained insolvency, coupled with an intention to commit what the law declares to be an "act of bankruptcy," or to make provision against the consequences of insolvency, or to defeat the general distribution of assets which would take place under a proceeding in bankruptcy. Jones v. Howland, 8 Metc. (Mass.) 384, 41 Am. Dec. 525; Paulding v. Steel Co., 94 N. Y. 339; In re Duff (D. C.) 4 Fed. 519; Morgan v. Brundrett, 5 Barn. & Ald. 289; Winsor v. Kendall, 30 Fed. Cas. 322; Buckingham v. McLean, 13 How. 167, 14 L. Ed. 90; In re Carmichael (D. C.) 96 Fed. 594.**—Contemplation of death.** The apprehension or expectation of approaching dissolution; not that general expectation which every mortal entertains, but the apprehension which arises from some presently existing sickness or physical condition or from some impending danger. As applied to transfers of property, the phrase "in contemplation of death" is practically equivalent to "causa mortis." In re Cornell's Estate, 66 App. Div. 162, 73 N. Y. Supp. 32; In re Edgerton's Estate, 35 App. Div. 125, 54 N. Y. Supp. 700; In re Baker's Estate, 83 App. Div. 530, 82 N. Y. Supp. 390.**—Contemplation of insolvency.** Knowledge of, and action with reference to, an existing or contemplated state of insolvency, with a design to make provision against its results or to defeat the operation of the insolvency laws. Robinson v. Bank, 21 N. Y. 411; Paulding v. Steel Co., 94 N. Y. 338; Heroy v. Kerr, 21 How. Prac. 420; Anstedt v. Bentley, 61 Wis. 629, 21 N. W. 807.

CONTEMPORANEA EXPOSITIO. Lat. Contemporaneous exposition, or construction; a construction drawn from the *time* when, and the circumstances under which, the subject-matter to be construed, as a statute or custom, originated.

Contemporanea expositio est optima et fortissima in lege. Contemporaneous exposition is the best and strongest in the law. 2 Inst. 11. A statute is best explained by following the construction put upon it by judges who lived at the *time* it was made, or soon after. 10 Coke, 70; Broom, Max. 682.

CONTEMPT. Contumacy; a willful disregard of the authority of a court of justice or legislative body or disobedience to its lawful orders.

Contempt of court is committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he has given. Welch v. Barber, 52 Conn. 147, 52 Am. Rep. 567; Lyon v. Lyon, 21 Conn. 198; Kissel v. Lewis, 27 Ind. App. 302, 61 N. E. 209; Yates v. Lansing, 9 Johns. (N. Y.) 395, 6 Am. Dec. 290; Stuart v. People, 4 Ill. 395; Gandy v. State, 13 Neb. 445, 14 N. W. 143.

Classification. Contempts are of two kinds, direct and constructive. Direct contempts are those committed in the immediate view and presence of the court (such as insulting language or acts of violence) or so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings. These are punishable summarily. They are also called "criminal" contempts, but that term is better used in contrast with "civil" contempts. See *infra.* Ex parte Wright, 65 Ind. 508; State v. McClaugherty, 33 W. Va. 250, 10 S. E. 407; State v. Shepherd, 177 Mo. 205, 76 S. W. 79, 99 Am. St. Rep. 624; Indianapolis Water Co. v. American Strawboard Co. (C. C.) 75 Fed. 975; In re Dill, 32 Kan. 668, 5 Pac. 39, 49 Am. Rep. 505; State v. Hansford, 43 W. Va. 773, 28 S. E. 791; Androscoggin & K. R. Co. v. Androscoggin R. Co., 49 Me. 392. Constructive (or indirect) contempts are those which arise from matters not occurring in or near the presence of the court, but which tend to obstruct or defeat the administration of justice, and the term is chiefly used with reference to the failure or refusal of a party to obey a lawful order, injunction, or decree of the court laying upon him a duty of action or forbearance. Androscoggin & K. R. Co. v. Androscoggin R. Co., 49 Me. 392; Cooper v. People, 13 Colo. 337, 22 Pac. 790, 6 L. R. A. 430; Stuart v. People, 4 Ill. 395; McMakin v. McMakin, 68 Mo. App. 57. Constructive contempts were formerly called "consequential," and this term is still in occasional use.

Contempts are also classed as civil or criminal. The former are those quasi contempts which consist in the failure to do something which the party is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court, while criminal contempts are acts done in disrespect of the court or its process or which obstruct the administration of justice or tend to bring the court into disrespect. A civil contempt is not an offense against the dignity of the court, but against the party in whose behalf the mandate of the court was issued, and a fine is imposed

for his indemnity. But criminal contempts are offenses or injuries offered to the court, and a fine or imprisonment is imposed upon the contemnor for the purpose of punishment. Wyatt v. People, 17 Colo. 252, 28 Pac. 961; People v. McKane, 78 Hun, 154, 28 N. Y. Supp. 981; Schreiber v. Mfg. Co., 18 App. Div. 158, 45 N. Y. Supp. 442; Eaton Rapids v. Horner, 126 Mich. 52, 85 N. W. 264; In re Nevitt, 117 Fed. 448, 54 C. C. A. 622; State v. Shepherd, 177 Mo. 205, 76 S. W. 79, 99 Am. St. Rep. 624.

CONTEMPT OF CONGRESS, LEGISLATURE, or PARLIAMENT. Whatever obstructs or tends to obstruct the due course of proceeding of either house, or grossly reflects on the character of a member of either house, or imputes to him what it would be a libel to impute to an ordinary person, is a contempt of the house, and thereby a breach of privilege. Sweet.

CONTEMPTIBILITER. Lat. Contemptuously.

In old English law. Contempt, contempts. Fleta, lib. 2, c. 60, § 35.

CONTENTIOUS. Contested; adversary; litigated between adverse or contending parties; a judicial proceeding not merely *ex parte* in its character, but comprising attack and defense as between opposing parties, is so called. The litigious proceedings in ecclesiastical courts are sometimes said to belong to its "contentious" jurisdiction, in contradistinction to what is called its "voluntary" jurisdiction, which is exercised in the granting of licenses, probates of wills, dispensations, faculties, etc.

—Contentious jurisdiction. In English ecclesiastical law. That branch of the jurisdiction of the ecclesiastical courts which is exercised upon adversary or *contentious* proceedings. **—Contentious possession.** In stating the rule that the possession of land necessary to give rise to a title by prescription must be a "contentious" one, it is meant that it must be based on opposition to the title of the rival claimant (not in recognition thereof or subordination thereto) and that the opposition must be based on good grounds, or such as might be made the subject of litigation. Railroad Co. v. McFarlan, 43 N. J. Law, 621.

CONTENTMENT, CONTENEMENT. A man's countenance or credit, which he has together with, and by reason of, his freehold; or that which is necessary for the support and maintenance of men, agreeably to their several qualities or states of life. Wharton; Cowell.

CONTENTS. The contents of a promissory note or other commercial instrument or chose in action means the specific sum named therein and payable by the terms of the instrument. Trading Co. v. Morrison, 178 U. S. 262, 20 Sup. Ct. 869, 44 L. Ed. 1061; Sere v. Pitot, 6 Cranch, 335, 3 L. Ed. 240; Simons v. Paper Co. (C. C.) 33 Fed. 195; Barney v. Bank, 2 Fed. Cas. 894; Corbin v. Black Hawk County, 105 U. S. 659, 26 L. Ed. 1136.

—Contents and not contents. In parliamentary law. The "contents" are those who, in the house of lords, express assent to a bill; the "not" or "non contents" dissent. May, Parl. Law, cc. 12, 357. **—"Contents unknown."** Words sometimes annexed to a bill of lading of goods in cases. Their meaning is that the master only means to acknowledge the shipment, in good order, of the cases, as to their external condition. Clark v. Barnwell, 12 How. 273, 13 L. Ed. 985; Miller v. Railroad Co., 90 N. Y. 433, 43 Am. Rep. 179; The Columbo, 6 Fed. Cas. 178.

CONTERMINOUS. Adjacent; adjoining; having a common boundary; coterminous.

CONTEST. To make defense to an adverse claim in a court of law; to oppose, resist, or dispute the case made by a plaintiff. Pratt v. Breckinridge, 112 Ky. 1, 65 S. W. 136; Parks v. State, 100 Ala. 634, 13 South. 756.

—Contestation of suit. In an ecclesiastical cause, that stage of the suit which is reached when the defendant has answered the libel by giving in an allegation. **—Contested election.** This phrase has no technical or legally defined meaning. An election may be said to be contested whenever an objection is formally urged against it which, if found to be true in fact, would invalidate it. This is true both as to objections founded upon some constitutional provision and to such as are based on statutes. Robertson v. State, 109 Ind. 116, 10 N. E. 600.

CONTESTATIO LITIS. In Roman law. Contestation of suit; the framing an issue; joinder in issue. The formal act of both the parties with which the proceedings *in jure* were closed when they led to a judicial investigation, and by which the neighbors whom the parties brought with them were called to testify. Mackeld. Rom. Law, § 219.

In old English law. Coming to an issue; the issue so produced. Crabb, Eng. Law, 216.

Contestatio litis eget terminos contradictarios. An issue requires terms of contradiction. Jenk. Cent. 117. To constitute an issue, there must be an affirmative on one side and a negative on the other.

CONTEXT. The context of a particular sentence or clause in a statute, contract, will, etc., comprises those parts of the text which immediately precede and follow it. The context may sometimes be scrutinized, to aid in the interpretation of an obscure passage.

CONTIGUOUS. In close proximity; in actual close contact. Touching; bounded or traversed by. The term is not synonymous with "vicinal." Plaster Co. v. Campbell, 89 Va. 396, 16 S. E. 274; Bank v. Hopkins, 47 Kan. 580, 28 Pac. 606, 27 Am. St. Rep. 309; Raxedale v. Seip, 32 La. Ann. 435; Arkell v. Insurance Co., 69 N. Y. 191, 25 Am. Rep. 168.

CONTINENCIA. In Spanish law. Continency or unity of the proceedings in a cause. White, New Recop. b. 3, tit. 6, c. 1.

CONTINENS. In the Roman law. Continuing; holding together. Adjoining buildings were said to be *continentia.*

CONTINENTAL. Pertaining or relating to a continent; characteristic of a continent; as broad in scope or purpose as a continent. Continental Ins. Co. v. Continental Fire Ass'n (C. C.) 96 Fed. 848.

—Continental congress. The first national legislative assembly in the United States, which met in 1774, in pursuance of a recommendation made by Massachusetts and adopted by the other colonies. In this congress all the colonies were represented except Georgia. The delegates were in some cases chosen by the legislative assemblies in the states; in others by the people directly. The powers of the congress were undefined, but it proceeded to take measures and pass resolutions which concerned the general welfare and had regard to the inauguration and prosecution of the war for independence. Black, Const. Law (3d Ed.) 40; 1 Story, Const. §§ 198–217.**—Continental currency.** Paper money issued under the authority of the continental congress. Wharton v. Morris, 1 Dall. 125, 1 L. Ed. 65.

CONTINENTIA. In old English practice. Continuance or connection. Applied to the proceedings in a cause. Bract. fol. 362*b*.

CONTINGENCY. An event that may or may not happen, a doubtful or uncertain future event. The quality of being contingent.

A fortuitous event, which comes without design, foresight, or expectation. A contingent expense must be deemed to be an expense depending upon some future uncertain event. People v. Yonkers, 39 Barb. (N. Y.) 272.

—Contingency of a process. In Scotch law. Where two or more processes are so connected that the circumstances of the one are likely to throw light on the others, the process first enrolled is considered as the leading process, and those subsequently brought into court, if not brought in the same division, may be remitted to it, *ob contingentiam*, on account of their nearness or proximity in character to it. The effect of remitting processes in this manner is merely to bring them before the same division of the court or same lord ordinary. In other respects they remain distinct. Bell.**—Contingency with double aspect.** A remainder is said to be "in a contingency with double aspect," when there is another remainder limited on the same estate, not in derogation of the first, but as a substitute for it in case it should fail. Fearne, Rem. 373.

CONTINGENT. Possible, but not assured; doubtful or uncertain, conditioned upon the occurrence of some future event which is itself uncertain, or questionable. Verdier v. Roach, 96 Cal. 467, 31 Pac. 554.

This term, when applied to a use, remainder, devise, bequest, or other legal right or interest, implies that no present interest exists, and that whether such interest or right ever will exist depends upon a future uncertain event. Jemison v. Blowers, 5 Barb. (N. Y.) 692.

—Contingent claim. One which has not accrued and which is dependent on the happening of some future event. Hospes v. Car Co., 48 Minn. 174, 50 N. W. 1117, 15 L. R. A. 470, 31 Am. St. Rep. 637; Austin v. Saveland's Estate, 77 Wis. 108, 45 N. W. 955; Downer v. Topliff, 19 Vt. 399; Stichter v. Cox, 52 Neb. 532, 72 N. W. 848; Clark v. Winchell, 53 Vt. 408. **—Contingent estate.** An estate which depends for its effect upon an event which may or may not happen; as an estate limited to a person not *in esse*, or not yet born. 2 Crabb, Real Prop. p. 4, § 946; Haywood v. Shreve, 44 N. J. Law, 94; Wadsworth v. Murray, 29 App. Div. 191, 51 N. Y. Supp. 1038; Thornton v. Zea, 22 Tex. Civ. App. 509, 55 S. W. 798; Hopkins v. Hopkins, 1 Hun, 354.**—Contingent interest in personal property.** It may be defined as a future interest not transmissible to the representatives of the party entitled thereto, in case he dies before it vests in possession. Thus, if a testator leaves the income of a fund to his wife for life, and the capital of the fund to be distributed among such of his children as shall be living at her death, the interest of each child during the widow's life-time is *contingent*, and in case of his death is not transmissible to his representatives. Mozley & Whitley.**—Contingent liability.** One which is not now fixed and absolute, but which will become so in case of the occurrence of some future and uncertain event. Downer v. Curtis, 25 Vt. 650; Bank v. Hingham Mfg. Co., 127 Mass. 563; Haywood v. Shreve, 44 N. J. Law, 94; Steele v. Graves, 68 Ala. 21.

As to contingent "Damages," "Legacy," "Limitation," "Remainder," "Trust," and "Use," see those titles.

CONTINUAL CLAIM. In old English law. A formal claim made by a party entitled to enter upon any lands or tenements, but deterred from such entry by menaces, or bodily fear, for the purpose of preserving or keeping alive his right. It was called "continual," because it was required to be repeated once in the space of every year and day. It had to be made as near to the land as the party could approach with safety, and, when made in due form, had the same effect with, and in all respects amounted to, a legal entry. Litt. §§ 419–423; Co. Litt. 250*a*; 3 Bl. Comm. 175.

CONTINUANCE. The adjournment or postponement of an action pending in a court, to a subsequent day of the same or another term. Com. v. Maloney, 145 Mass. 205, 13 N. E. 482; State v. Underwood, 76 Mo. 630.

Also the entry of a continuance made upon the record of the court, for the purpose of formally evidencing the postponement, or of connecting the parts of the record so as to make one continuous whole.

CONTINUANDO. In pleading. A form of allegation in which the trespass, criminal offense, or other wrongful act complained of is charged to have been committed on a specified day and to have "continued" to the present time, or is averred to have been

committed at divers days and times within a given period or on a specified day and on divers other days and times between that day and another. This is called "laying the time with a continuando." Benson v. Swift, 2 Mass. 52; People v. Sullivan, 9 Utah, 195, 33 Pac. 701.

CONTINUING. Enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences.

As to continuing "Consideration," "Covenant," "Damages," "Guaranty," "Nuisance," and "Offense," see those titles.

CONTINUOUS. Uninterrupted; unbroken; not intermittent or occasional; so persistently repeated at short intervals as to constitute virtually an unbroken series. Black v. Canal Co., 22 N. J. Eq. 402; Hofer's Appeal, 116 Pa. 360, 9 Atl. 441; Ingraham v. Hough, 46 N. C. 43.

—Continuous adverse use. Is interchangeable with the term "uninterrupted adverse use." Davidson v. Nicholson, 59 Ind. 411.—**Continuous injury.** One recurring at repeated intervals, so as to be of repeated occurrence; not necessarily an injury that never ceases. Wood v. Sutcliffe, 8 Eng. Law & Eq. 217.

As to continuous "Crime" and "Easements," see those titles.

CONTRA. Against, confronting, opposite to; on the other hand; on the contrary. The word is used in many Latin phrases, as appears by the following titles. In the books of reports, *contra*, appended to the name of a judge or counsel, indicates that he held a view of the matter in argument *contrary* to that next before advanced. Also, after citation of cases in support of a position, *contra* is often prefixed to citations of cases opposed to it.

—Contra bonos mores. Against good morals. Contracts *contra bonos mores* are void.—**Contra formam collationis.** In old English law. A writ that issued where lands given in perpetual alms to lay houses of religion, or to an abbot and convent, or to the warden or master of an hospital and his convent, to find certain poor men with necessaries, and do divine service, etc., were alienated, to the disherison of the house and church. By means of this writ the donor or his heirs could recover the lands. Reg. Orig. 238; Fitzh. Nat. Brev. 210.—**Contra formam doni.** Against the form of the grant. See FORMEDON.—**Contra formam feoffamenti.** In old English law. A writ that lay for the heir of a tenant, enfeoffed of certain lands or tenements, by charter of feoffment from a lord to make certain services and suits to his court, who was afterwards distrained for more services than were mentioned in the charter. Reg. Orig. 176; Old Nat. Brev. 162.—**Contra formam statuti.** In criminal pleading. (Contrary to the form of the statute in such case made and provided.) The usual conclusion of every indictment, etc., brought for an offense created by statute.—**Contra jus belli.** Lat. Against the law of war. 1 Kent, Comm. 6.—**Contra jus commune.** Against common right or law; contrary to the rule of the common law. Bract. fol. 48b.—**Contra legem terræ.** Against the law of the land.—**Contra omnes gentes.** Against all people. Formal words in old covenants of warranty. Fleta, lib. 3, c. 14, § 11.—**Contra pacem.** Against the peace. A phrase used in the Latin forms of indictments, and also of actions for trespass, to signify that the offense alleged was committed against the public peace, *i. e.*, involved a breach of the peace. The full formula was *contra pacem domini regis*, against the peace of the lord the king. In modern pleading, in this country, the phrase "against the peace of the commonwealth" or "of the people" is used.—**Contra proferentem.** Against the party who proffers or puts forward a thing.—**Contra tabulas.** In the civil law. Against the will, (testament.) Dig. 37, 4.—**Contra vadium et plegium.** In old English law. Against gage and pledge. Bract. fol. 155.

Contra legem facit qui id facit quod lex prohibit; in fraudem vero qui, salvis verbis legis, sententiam ejus circumvenit. He does contrary to the law who does what the law prohibits; he acts in fraud of the law who, the letter of the law being inviolate, uses the law contrary to its intention. Dig. 1, 3, 29.

Contra negantem principia non est disputandum. There is no disputing against one who denies first principles. Co. Litt. 343.

Contra non valentem agere nulla currit præscriptio. No prescription runs against a person unable to bring an action. Broom, Max. 903.

Contra veritatem lex nunquam aliquid permittit. The law never suffers anything contrary to truth. 2 Inst. 252.

CONTRABAND. Against law or treaty; prohibited. Goods exported from or imported into a country against its laws. Brande. Articles, the importation or exportation of which is prohibited by law. P. Enc.

CONTRABAND OF WAR. Certain classes of merchandise, such as arms and ammunition, which, by the rules of international law, cannot lawfully be furnished or carried by a neutral nation to either of two belligerents; if found in transit in neutral vessels, such goods may be seized and condemned for violation of neutrality. The Peterhoff, 5 Wall. 58, 18 L. Ed. 564; Richardson v. Insurance Co., 6 Mass. 114, 4 Am. Dec. 92.

A recent American author on international law says that, "by the term 'contraband of war,' we now understand a class of articles of commerce which *neutrals* are prohibited from furnishing to either one of the belligerents, for the reason that, by so doing, injury is done to the other belligerent;" and he treats of the subject, chiefly, in its relation to commerce upon the high seas. Hall, Int. Law, 570, 592; Elrod v. Alexander, 4 Heisk. (Tenn.) 345.

CONTRACAUSATOR. A criminal; one prosecuted for a crime.

CONTRACT. An agreement, upon sufficient consideration, to do or not to do a particular thing. 2 Bl. Comm. 442; 2 Kent, Comm. 449. Justice v. Lang, 42 N. Y. 496, 1 Am. Rep. 576; Edwards v. Kearzey, 96 U. S. 599, 24 L. Ed. 793; Canterberry v. Miller, 76 Ill. 355.

A covenant or agreement between two or more persons, with a lawful consideration or cause. Jacob.

A deliberate engagement between competent parties, upon a legal consideration, to do, or abstain from doing, some act. Wharton.

A contract or agreement is either where a promise is made on one side and assented to on the other; or where two or more persons enter into engagement with each other by a promise on either side. 2 Steph. Comm. 54.

A contract is an agreement by which one person obligates himself to another to give, to do, or permit, or not to do, something expressed or implied by such agreement. Civ. Code La. art. 1761; Fisk v. Police Jury, 34 La. Ann. 45.

A contract is an agreement to do or not to do a certain thing. Civ. Code Cal. § 1549.

A contract is an agreement between two or more parties for the doing or not doing of some specified thing. Code Ga. 1882, § 2714.

A contract is an agreement between two or more persons to do or not to do a particular thing; and the *obligation* of a contract is found in the terms in which the contract is expressed, and is the duty thus assumed by the contracting parties respectively to perform the stipulations of such contract. When that duty is recognized and enforced by the municipal law, it is one of *perfect*, and when not so recognized and enforced, of *imperfect*, obligation. Barlow v. Greogory, 31 Conn. 265.

The writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation.

Classification. Contracts may be classified on several different methods, according to the element in them which is brought into prominence. The usual classifications are as follows:

Record, specialty, simple. Contracts of record are such as are declared and adjudicated by courts of competent jurisdiction, or entered on their records, including judgments, recognizances, and statutes staple. Hardeman v. Downer, 39 Ga. 425. These are not properly speaking contracts at all, though they may be enforced by action like contracts. Specialties, or special contracts, are contracts under seal, such as deeds and bonds. Ludwig v. Bungart, 26 Misc. Rep. 247, 56 N. Y. Supp. 51. All others are included in the description "simple" contracts; that is, a simple contract is one that is not a contract of record and not under seal; it may be either written or oral, in either case it is called a "parol" contract, the distinguishing feature being the lack of a seal. Webster v. Fleming, 178 Ill. 140, 52 N. E. 975; Perrine v. Cheeseman, 11 N. J. Law, 177, 19 Am. Dec. 388; Corcoran v. Railroad Co., 20 Misc. Rep. 197, 45 N. Y. Supp. 861; Justice v. Lang, 42 N. Y. 493, 1 Am. Rep. 576.

Express and implied. An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing. 2 Bl. Comm. 443; 2 Kent, Comm. 450; Linn v. Ross, 10 Ohio, 414, 36 Am. Dec. 95; Thompson v. Woodruff, 7 Cold. (Tenn.) 401; Grevall v. Whiteman, 32 Misc. Rep. 279, 65 N. Y. Supp. 974. An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice from their acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding. Miller's Appeal, 100 Pa. 568, 45 Am. Rep. 394; Wickham v. Weil (Com. Pl.) 17 N. Y. Supp. 518; Hinkle v. Sage, 67 Ohio St. 256, 65 N. E. 999; Power Co. v. Montgomery, 114 Ala. 433, 21 South. 960; Railway Co. v. Gaffney, 65 Ohio St. 104, 61 N. E. 152; Jennings v. Bank, 79 Cal. 323, 21 Pac. 852, 5 L. R. A. 233, 12 Am. St. Rep. 145; Deane v. Hodge, 35 Minn. 146, 27 N. W. 917, 59 Am. Rep. 321; Bixby v. Moor, 51 N. H. 403. Implied contracts are sometimes subdivided into those "implied in fact" and those "implied in law," the former being covered by the definition just given, while the latter are obligations imposed upon a person by the law, not in pursuance of his intention and agreement, either expressed or implied, but even against his will and design, because the circumstances between the parties are such as to render it just that the one should have a right, and the other a corresponding liability, similar to those which would arise from a contract between them. This kind of obligation therefore rests on the principle that whatsoever it is certain a man ought to do that the law will suppose him to have promised to do. And hence it is said that, while the liability of a party to an express contract arises directly from the contract, it is just the reverse in the case of a contract "implied in law," the contract there being implied or arising from the liability. Musgrove v. Jackson, 59 Miss. 392; Bliss v. Hoyt, 70 Vt. 534, 41 Atl. 1026; Linn v. Ross, 10 Ohio, 414, 36 Am. Dec. 95; People v. Speir, 77 N. Y. 150; O'Brien v. Young, 95 N. Y. 432, 47 Am. Rep. 64. But obligations of this kind are not properly contracts at all, and should not be so denominated. There can be no true contract without a mutual and concurrent intention of the parties. Such obligations are more properly described as "quasi contracts." Willard v. Doran, 48 Hun, 402, 1 N. Y. Supp. 588; People v. Speir, 77 N. Y. 150; Woods v. Ayres, 39 Mich. 350, 33 Am. Rep. 396; Bliss v. Hoyt, 70 Vt. 534, 41 Atl. 1026; Keener, Quasi Contr. 5.

Executed and executory. Contracts are also distinguished into executed and executory; *executed*, where nothing remains to be done by either party, and where the transaction is completed at the moment that the arrangement is made, as where an article is sold and delivered, and payment therefor is made on the spot; *executory*, where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time. Farrington v. Tennessee, 95 U. S. 683, 24 L. Ed. 558; Fox v. Kitton, 19 Ill. 532; Watkins v. Nugen, 118 Ga. 372, 45 S. E. 262; Kynoch v. Ives, 14 Fed. Cas. 890; Watson v. Coast, 35 W. Va. 463, 14 S. E. 249; Keokuk v. Electric Co., 90 Iowa, 67, 57 N. W. 689; Hatch v. Standard Oil Co., 100 U. S. 130, 25 L. Ed. 554; Foley v. Felrath, 98 Ala. 176, 13 South. 485, 39 Am. St. Rep. 39. But executed contracts are not properly contracts at all, except reminiscently. The term denotes rights in property which have been acquired by means of contract; but the parties are no longer bound by a contractual tie. Mettel v. Gales, 12 S. D. 632, 82 N. W. 181.

Entire and severable. An *entire* contract is one the consideration of which is entire on both

sides. The entire fulfillment of the promise by either is a condition precedent to the fulfillment of any part of the promise by the other. Whenever, therefore, there is a contract to pay the gross sum for a certain and definite consideration, the contract is entire. A *severable* contract is one the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as corresponds to a sample. Potter v. Potter, 43 Or. 149, 72 Pac. 702; Telephone Co. v. Root (Pa.) 4 Atl. 829; Horseman v. Horseman, 43 Or. 83, 72 Pac. 698; Norrington v. Wright (C. C.) 5 Fed. 771; Dowley v. Schiffer (Com. Pl.) 13 N. Y. Supp. 552; Osgood v. Bauder, 75 Iowa, 550, 39 N. W. 887, 1 L. R. A. 655. Where a contract consists of many parts, which may be considered as parts of one whole, the contract is entire. When the parts may be considered as so many distinct contracts, entered into at one time, and expressed in the same instrument, but not thereby made one contract, the contract is a separable contract. But, if the consideration of the contract is single and entire, the contract must be held to be entire, although the subject of the contract may consist of several distinct and wholly independent items. 2 Pars. Cont. 517.

Parol. All contracts which are not contracts of record and not specialties are parol contracts. It is erroneous to contrast "parol" with "written." Though a contract may be wholly in writing, it is still a parol contract if it is not under seal. Yarborough v. West, 10 Ga. 473; Jones v. Holliday, 11 Tex. 415, 62 Am. Dec. 487; Ludwig v. Bungart, 26 Misc. Rep. 247, 56 N. Y. Supp. 51.

Joint and several. A joint contract is one made by two or more promisors, who are jointly bound to fulfill its obligations, or made to two or more promisees, who are jointly entitled to require performance of the same. A contract may be "several" as to any one of several promisors or promisees, if he has a legal right (either from the terms of the agreement or the nature of the undertaking) to enforce his individual interest separately from the other parties. Rainey v. Smizer, 28 Mo. 310; Bartlett v. Robbins, 5 Metc. (Mass.) 186.

Principal and accessory. A principal contract is one which stands by itself, justifies its own existence, and is not subordinate or auxiliary to any other. Accessory contracts are those made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage, and pledges. Civ. Code La. art. 1764.

Unilateral and bilateral. A unilateral contract is one in which one party makes an express engagement or undertakes a performance, without receiving in return any express engagement or promise of performance from the other. Bilateral (or reciprocal) contracts are those by which the parties expressly enter into mutual engagements, such as sale or hire. Civ. Code La. art. 1758; Poth. Obl. 1, 1, 1, 2; Montpelier Seminary v. Smith, 69 Vt. 382, 38 Atl. 66; Laclede Const. Co. v. Tudor Ironworks, 169 Mo. 137, 69 S. W. 388.

Consensual and real. Consensual contracts are such as are founded upon and completed by the mere agreement of the contracting parties, without any external formality or symbolic act to fix the obligation. Real contracts are those in which it is necessary that there should be something more than mere consent, such as a loan of money, deposit or pledge, which, from their nature, require a delivery of the thing, (*res.*) Inst. 3, 14, 2; Id. 3, 15; Halifax, Civil Law, b. 2, c. 15, No. 1. In the common law a contract respecting real property (such as a lease of land for years) is called a "real" contract. 3 Coke, 22*a*.

Certain and hazardous. Certain contracts are those in which the thing to be done is supposed to depend on the will of the party, or when, in the usual course of events, it must happen in the manner stipulated. Hazardous contracts are those in which the performance of that which is one of its objects depends on an uncertain event. Civ. Code La. 1769.

Commutative and independent. Commutative contracts are those in which what is done, given, or promised by one party is considered as an equivalent to or in consideration of what is done, given, or promised by the other. Civ. Code La. 1761; Ridings v. Johnson, 128 U. S. 212, 9 Sup. Ct. 72, 32 L. Ed. 401. Independent contracts are those in which the mutual acts or promises have no relation to each other, either as equivalents or as considerations. Civ. Code La. 1762.

Gratuitous and onerous. Gratuitous contracts are those of which the object is the benefit of the person with whom it is made, without any profit or advantage received or promised as a consideration for it. It is not, however, the less gratuitous if it proceed either from gratitude for a benefit before received or from the hope of receiving one hereafter, although such benefit be of a pecuniary nature. Onerous contracts are those in which something is given or promised as a consideration for the engagement or gift, or some service, interest, or condition is imposed on what is given or promised, although unequal to it in value. Civ. Code La. 1766, 1767; Penitentiary Co. v. Nelms, 65 Ga. 505, 38 Am. Rep. 793.

Mutual interest, mixed, etc. Contracts of "mutual interest" are such as are entered into for the reciprocal interest and utility of each of the parties; as sales, exchange, partnership, and the like. "Mixed" contracts are those by which one of the parties confers a benefit on the other, receiving something of inferior value in return, such as a donation subject to a charge. Contracts "of beneficence" are those by which only one of the contracting parties is benefited; as loans, deposit and mandate. Poth. Obl. 1, 1, 1, 2.

A **conditional** contract is an executory contract the performance of which depends upon a condition. It is not simply an executory contract, since the latter may be an absolute agreement to do or not to do something, but it is a contract whose very existence and performance depend upon a contingency. Railroad Co. v. Jones, 2 Cold. (Tenn.) 584; French v. Osmer, 67 Vt. 427, 32 Atl. 254.

Constructive contracts are such as arise when the law prescribes the rights and liabilities of persons who have not in reality entered into a contract at all, but between whom circumstances make it just that one should have a right, and the other be subject to a liability, similar to the rights and liabilities in cases of express contract. Wickham v. Weil (Com. Pl.) 17 N. Y. Supp. 518; Graham v. Cummings, 208 Pa. 516, 57 Atl. 943; Robinson v. Turrentine (C. C.) 59 Fed. 559; Hertzog v. Hertzog, 29 Pa. 465.

Personal contract. A contract relating to personal property, or one which so far involves the element of personal knowledge or skill or personal confidence that it can be performed only by the person with whom made, and therefore is not binding on his executor. See Janin v. Browne, 59 Cal. 44.

Special contract. A contract under seal; a specialty; as distinguished from one merely oral or in writing not sealed. But in common usage this term is often used to denote an express or explicit contract, one which clearly defines and settles the reciprocal rights and obligations of the parties, as distinguished from

one which must be made out, and its terms ascertained, by the inference of the law from the nature and circumstances of the transaction.

Compound words and phrases.—Contract of benevolence. A contract made for the benefit of one of the contracting parties only, as a mandate or deposit.—**Contract of record.** A contract of record is one which has been declared and adjudicated by a court having jurisdiction, or which is entered of record in obedience to, or in carrying out, the judgments of a court. Code Ga. 1882, § 2716.—**Contract of sale.** A contract by which one of the contracting parties, called the "seller," enters into an obligation to the other to cause him to have freely, by a title of proprietor, a thing, for the price of a certain sum of money, which the other contracting party, called the "buyer," on his part obliges himself to pay. Poth. Cont.; Civ. Code La. 1900, art. 2439; White v. Treat (C. C.) 100 Fed. 291; Sawmill Co. v. O'Shee, 111 La. 817, 35 South. 919.—**Pre-contract.** An obligation growing out of a contract or contractual relation, of such a nature that it debars the party from legally entering into a similar contract at a later time with any other person; particularly applied to marriage.—**Quasi contracts.** In the civil law. A contractual relation arising out of transactions between the parties which give them mutual rights and obligations, but do not involve a specific and express convention or agreement between them. Keener, Quasi Contr. 1; Brackett v. Norton, 4 Conn. 524, 10 Am. Dec. 179; People v. Speir, 77 N. Y. 150; Willard v. Doran, 48 Hun, 402, 1 N. Y. Supp. 588; McSorley v. Faulkner (Com. Pl.) 18 N. Y. Supp. 460; Railway Co. v. Gaffney, 65 Ohio St. 104, 61 N. E. 153. Quasi contracts are the lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties. Civ. Code La. art. 2293. Persons who have not contracted with each other are often regarded by the Roman law, under a certain state of facts, as if they had actually concluded a convention between themselves. The legal relation which then takes place between these persons, which has always a similarity to a contract obligation, is therefore termed *"obligatio quasi ex contractu."* Such a relation arises from the conducting of affairs without authority, (*negotiorum gestio,*) from the payment of what was not due, (*solutio indebiti,*) from tutorship and curatorship, and from taking possession of an inheritance. Mackeld. Rom. Law, § 491.—**Subcontract.** A contract subordinate to another contract, made or intended to be made between the contracting parties, on one part, or some of them, and a stranger. 1 H. Bl. 37, 45. Where a person has contracted for the performance of certain work, (*e. g.*, to build a house,) and he in turn engages a third party to perform the whole or a part of that which is included in the original contract, (*e. g.*, to do the carpenter work,) his agreement with such third person is called a "subcontract," and such person is called a "subcontractor." Central Trust Co. v. Railroad Co. (C. C.) 54 Fed. 723; Lester v. Houston, 101 N. C. 605, 8 S. E. 366.

CONTRACTION. Abbreviation; abridgment or shortening of a word by omitting a letter or letters or a syllable, with a mark over the place where the elision occurs. This was customary in records written in the ancient "court hand," and is frequently found in the books printed in black-letter.

CONTRACTOR. This term is strictly applicable to any person who enters into a contract, (Kent v. Railroad Co., 12 N. Y. 628,) but is commonly reserved to designate one who, for a fixed price, undertakes to procure the performance of works on a large scale, or the furnishing of goods in large quantities, whether for the public or a company or individual, (McCarthy v. Second Parish, 71 Me. 318, 36 Am. Rep. 320; Brown v. Trust Co., 174 Pa. 443, 34 Atl. 335.)

CONTRACTUS. Lat. Contract; a contract; contracts.

—Contractus bonæ fidei. In Roman law. Contracts of good faith. Those contracts which, when brought into litigation, were not determined by the rules of the strict law alone, but allowed the judge to examine into the *bona fides* of the transaction, and to hear equitable considerations against their enforcement. In this they were opposed to contracts *stricti juris*, against which equitable defenses could not be entertained.—**Contractus civiles.** In Roman law. Civil contracts. Those contracts which were recognized as actionable by the strict civil law of Rome, or as being founded upon a particular statute, as distinguished from those which could not be enforced in the courts except by the aid of the prætor, who, through his equitable powers, gave an action upon them. The latter were called *"contractus prætorii."*

Contractus est quasi actus contra actum. 2 Coke, 15. A contract is, as it were, act against act.

Contractus ex turpi causa, vel contra bonos mores, nullus est. A contract founded on a base consideration, or against good morals, is null. Hob. 167.

Contractus legem ex conventione accipiunt. Contracts receive legal sanction from the agreement of the parties. Dig. 16, 3, 1, 6.

CONTRADICT. In practice. To disprove. To prove a fact contrary to what has been asserted by a witness.

CONTRADICTION IN TERMS. A phrase of which the parts are expressly inconsistent, as, *e. g.*, "an innocent murder;" "a fee-simple for life."

CONTRÆSCRITURA. In Spanish law. A counter-writing; counter-letter. A document executed at the same time with an act of sale or other instrument, and operating by way of defeasance or otherwise modifying the apparent effect and purport of the original instrument.

CONTRAFACTIO. Counterfeiting; as *contrafactio sigilli regis*, counterfeiting the king's seal. Cowell.

CONTRAINTE PAR CORPS. In French law. The civil process of arrest of the person, which is imposed upon vendors falsely representing their property to be unincumbered, or upon persons mortgaging property which they are aware does not belong to them, and in other cases of moral heinousness. Brown.

CONTRALIGATIO. In old English law. Counter-obligation. Literally, counter-binding. *Est enim obligatio quasi contraligatio.* Fleta, lib. 2, c. 56, § 1.

CONTRAMANDATIO. A countermanding. *Contramandatio placiti*, in old English law, was the respiting of a defendant, or giving him further time to answer, by countermanding the day fixed for him to plead, and appointing a new day; a sort of imparlance.

CONTRAMANDATUM. A lawful excuse, which a defendant in a suit by attorney alleges for himself to show that the plaintiff has no cause of complaint. Blount.

CONTRAPLACITUM. In old English law. A counter-plea. Townsh. Pl. 61.

CONTRAPOSITIO. In old English law. A plea or answer. Blount. A counter-position.

CONTRARIENTS. This word was used in the time of Edw. II. to signify those who were opposed to the government, but were neither rebels nor traitors. Jacob.

Contrariorum contraria est ratio. Hob. 344. The reason of contrary things is contrary.

CONTRAROTULATOR. A controller. One whose business it was to observe the money which the collectors had gathered for the use of the king or the people. Cowell.

—Contrarotulator pipæ. An officer of the exchequer that writeth out summons twice every year, to the sheriffs, to levy the rents and debts of the pipe. Blount.

CONTRAT. In French law. Contracts are of the following varieties: (1) *Bilateral*, or *synallagmatique*, where each party is bound to the other to do what is just and proper; or (2) *unilateral*, where the one side only is bound; or (3) *commutatif*, where one does to the other something which is supposed to be an equivalent for what the other does to him; or (4) *aléatoire*, where the consideration for the act of the one is a mere chance; or (5) *contrat de bienfaisance*, where the one party procures to the other a purely gratuitous benefit; or (6) *contrat à titre onereux*, where each party is bound under some duty to the other. Brown.

CONTRATALLIA. In old English law. A counter-tally. A term used in the exchequer. Mem. in Scacc. M. 26 Edw. 1.

CONTRATENERE. To hold against; to withhold. Whishaw.

CONTRAVENING EQUITY. A right or equity, in another person, which is inconsistent with and opposed to the equity sought to be enforced or recognized.

CONTRAVENTION. In French law. An act which violates the law, a treaty, or an agreement which the party has made. That infraction of the law punished by a fine which does not exceed fifteen francs and by an imprisonment not exceeding three days. Pen. Code, 1.

In Scotch law. The act of breaking through any restraint imposed by deed, by covenant, or by a court.

CONTRECTARE. Lat. **In the civil law.** To handle; to take hold of; to meddle with.

In old English law. To treat. *Vel malè contrectet;* or shall ill treat. Fleta, lib. 1, c. 17, § 4.

CONTRECTATIO. In the civil and old English law. Touching; handling; meddling. The act of removing a thing from its place in such a manner that, if the thing be not restored, it will amount to theft.

Contrectatio rei alienæ, animo furandi, est furtum. Jenk. Cent. 132. The touching or removing of another's property, with an intention of stealing, is theft.

CONTREFACON. In French law. The offense of printing or causing to be printed a book, the copyright of which is held by another, without authority from him. Merl. Repert.

CONTRE-MAITRE. In French marine law. The chief officer of a vessel, who, in case of the sickness or absence of the master, commanded in his place. Literally, the counter-master.

CONTRIBUTE. To supply a share or proportional part of money or property towards the prosecution of a common enterprise or the discharge of a joint obligation. Park v. Missionary Soc., 62 Vt. 19, 20 Atl. 107; Railroad Co. v. Creasy (Tex. Civ. App.) 27 S. W. 945.

CONTRIBUTION. In common law. The sharing of a loss or payment among several. The act of any one or several of a number of co-debtors, co-sureties, etc., in reimbursing one of their number who has paid the whole debt or suffered the whole liability, each to the extent of his proportionate share. Canosia Tp. v. Grand Lake Tp., 80 Minn. 357, 83 N. W. 346; Dysart v. Crow, 170 Mo. 275, 70 S. W. 689; Aspinwall v. Sacchi, 57 N. Y. 336; Vandiver v. Pollak, 107 Ala. 547, 19 South. 180; 54 Am. St. Rep. 118.

In maritime law. Where the property of one of several parties interested in a vessel and cargo has been voluntarily sacrificed for the common safety, (as by throwing goods overboard to lighten the vessel,) such loss must be made good by the contribution of the

others, which is termed "general average." 3 Kent, Comm. 232-244; 1 Story, Eq. Jur. § 490.

In the civil law. A partition by which the creditors of an insolvent debtor divide among themselves the proceeds of his property proportionably to the amount of their respective credits. Code La. art. 2522, no. 10.

Contribution is the division which is made among the heirs of the succession of the debts with which the succession is charged, according to the proportion which each is bound to bear. Civ. Code La. art. 1420.

CONTRIBUTIONE FACIENDA. In old English law. A writ that lay where tenants in common were bound to do some act, and one of them was put to the whole burthen, to compel the rest to make contribution. Reg. Orig. 175; Fitzh. Nat. Brev. 162.

CONTRIBUTORY, *n.* A person liable to contribute to the assets of a company which is being wound up, as being a member or (in some cases) a past member thereof. Mozley & Whitley.

CONTRIBUTORY, *adj.* Joining in the promotion of a given purpose; lending assistance to the production of a given result.

As to contributory "Infringement" and "Negligence," see those titles.

CONTROLLER. A comptroller, which see.

CONTROLMENT. In old English law. The controlling or checking of another officer's account; the keeping of a counter-roll.

CONTROVER. In old English law. An inventer or deviser of false news. 2 Inst. 227.

CONTROVERSY. A litigated question; adversary proceeding in a court of law; a civil action or suit, either at law or in equity, Barber v. Kennedy, 18 Minn. 216 (Gil. 196); State v. Guinotte, 156 Mo. 513, 57 S. W. 281, 50 L. R. A. 787.

It differs from "case," which includes all suits, criminal as well as civil; whereas "controversy" is a civil and not a criminal proceeding. Chisholm v. Georgia, 2 Dall. 419, 431, 432, 1 L. Ed. 440.

CONTROVERT. To dispute; to deny; to oppose or contest; to take issue on. Buggy Co. v. Patt, 73 Iowa, 485, 35 N. W. 587; Swenson v. Kleinschmidt, 10 Mont. 473, 26 Pac. 198.

CONTUBERNIUM. In Roman law. The marriage of slaves; a permitted cohabitation.

CONTUMACE CAPIENDO. In English law. Excommunication in all cases of contempt in the spiritual courts is discontinued by 53 Geo. III. c. 127, § 2, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the judge shall have power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the court of chancery, whereupon a writ *de contumace capiendo* shall issue from that court, which shall have the same force and effect as formerly belonged, in case of contempt, to a writ *de excommunicato capiendo.* (2 & 3 Wm. IV. c. 93; 8 & 4 Vict. c. 93.) Wharton.

CONTUMACY. The refusal or intentional omission of a person who has been duly cited before a court to appear and defend the charge laid against him, or, if he is duly before the court, to obey some lawful order or direction made in the cause. In the former case it is called "presumed" contumacy; in the latter, "actual." The term is chiefly used in ecclesiastical law. See 3 Curt. Ecc. 1.

CONTUMAX. One accused of a crime who refuses to appear and answer to the charge. An outlaw.

CONTUSION. In medical jurisprudence. A bruise; an injury to any external part of the body by the impact of a fall or the blow of a blunt instrument, without laceration of the flesh, and either with or without a tearing of the skin, but in the former case it is more properly called a "contused wound."

CONTUTOR. Lat. In the civil law. A co-tutor, or co-guardian. Inst. 1, 24, 1.

CONUSANCE. In English law. Cognizance or jurisdiction. Conusance of pleas. Termes de la Ley.

—Conusance, claim of. See COGNIZANCE.

CONUSANT. Cognizant; acquainted with; having actual knowledge; as, if a party knowing of an agreement in which he has an interest makes no objection to it, he is said to be conusant. Co. Litt. 157.

CONUSEE. See COGNIZEE.

CONUSOR. See COGNIZOR.

CONVENABLE. In old English law. Suitable; agreeable; convenient; fitting. Litt. § 103.

CONVENE. In the civil law. To bring an action.

CONVENIENT. Proper; just; suitable. Finlay v. Dickerson, 29 Ill. 20; Railway Co. v. Smith, 173 U. S. 684, 19 Sup. Ct. 565, 43 L. Ed. 858.

CONVENIT. Lat. In civil and old English law. It is agreed; it was agreed.

CONVENT. The fraternity of an abbey or priory, as *societas* is the number of fellows in a college. A religious house, now regarded as a merely voluntary association, not importing civil death. 33 Law J. Ch. 308.

CONVENTICLE. A private assembly or meeting for the exercise of religion. The word was first an appellation of reproach to the religious assemblies of Wycliffe in the reigns of Edward III. and Richard II., and was afterwards applied to a meeting of dissenters from the established church. As this word in strict propriety denotes an unlawful assembly, it cannot be justly applied to the assembling of persons in places of worship licensed according to the requisitions of law. Wharton.

CONVENTIO. In canon law. The act of summoning or calling together the parties by summoning the defendant.

In the civil law. A compact, agreement, or convention. An agreement between two or more persons respecting a legal relation between them. The term is one of very wide scope, and applies to all classes of subjects in which an engagement or business relation may be founded by agreement. It is to be distinguished from the negotiations or preliminary transactions on the object of the convention and fixing its extent, which are not binding so long as the convention is not concluded. Mackeld. Rom. Law, §§ 385, 386.

In contracts. An agreement; a covenant. Cowell.

—Conventio in unum. In the civil law. The agreement between the two parties to a contract upon the sense of the contract proposed. It is an essential part of the contract, following the pollicitation or proposal emanating from the one, and followed by the consension or agreement of the other.

Conventio privatorum non potest publico juri derogare. The agreement of private persons cannot derogate from public right, *i. e.*, cannot prevent the application of general rules of law, or render valid any contravention of law. Co. Litt. 166*a*; Wing. Max. p. 746, max. 201.

Conventio vincit legem. The express agreement of parties overcomes [prevails against] the law. Story, Ag. § 368.

CONVENTION. In Roman law. An agreement between parties; a pact. A convention was a mutual engagement between two persons, possessing all the subjective requisites of a contract, but which did not give rise to an action, nor receive the sanction of the law, as bearing an "obligation," until the objective requisite of a solemn ceremonial, (such as *stipulatio*) was supplied. In other words, convention was the informal agreement of the parties, which formed the basis of a contract, and which became a contract when the external formalities were superimposed. See Maine, Anc. Law, 313.

"The division of conventions into contracts and pacts was important in the Roman law. The former were such conventions as already, by the older civil law, founded an obligation and action; all the other conventions were termed 'pacts.' These generally did not produce an actionable obligation. Actionability was subsequently given to several pacts, whereby they received the same power and efficacy that contracts received." Mackeld. Rom. Law, § 395.

In English law. An extraordinary assembly of the houses of lords and commons, without the assent or summons of the sovereign. It can only be justified *ex necessitate rei*, as the parliament which restored Charles II., and that which disposed of the crown and kingdom to William and Mary. Wharton.

Also the name of an old writ that lay for the breach of a covenant.

In legislation. An assembly of delegates or representatives chosen by the people for special and extraordinary legislative purposes, such as the framing or revision of a state constitution. Also an assembly of delegates chosen by a political party, or by the party organization in a larger or smaller territory, to nominate candidates for an approaching election. State v. Metcalf, 18 S. D. 393, 100 N. W. 925, 67 L. R. A. 331; State v. Tooker, 18 Mont. 540, 46 Pac. 530, 34 L. R. A. 315; Schafer v. Whipple, 25 Colo. 400, 55 Pac. 180.

Constitutional convention. See CONSTITUTION.

In public and international law. A pact or agreement between states or nations in the nature of a treaty; usually applied (a) to agreements or arrangements preliminary to a formal treaty or to serve as its basis, or (b) international agreements for the regulation of matters of common interest but not coming within the sphere of politics or commercial intercourse, such as international postage or the protection of submarine cables. U. S. Comp. St. 1901, p. 3589; U. S. v. Hunter (C. C.) 21 Fed. 615.

CONVENTIONAL. Depending on, or arising from, the mutual agreement of parties; as distinguished from *legal*, which means created by, or arising from, the act of the law.

As to conventional "Estates," "Interest," "Mortgage," "Subrogation," and "Trustees," see those titles.

CONVENTIONE. The name of a writ for the breach of any covenant in writing, whether real or personal. Reg. Orig. 115; Fitzh. Nat. Brev. 145.

CONVENTIONS. This name is sometimes given to compacts or treaties with for-

eign countries as to the apprehension and extradition of fugitive offenders. See EXTRADITION.

CONVENTUAL CHURCH. In ecclesiastical law. That which consists of regular clerks, professing some order or religion; or of dean and chapter; or other societies of spiritual men.

CONVENTUALS. Religious men united in a convent or religious house. Cowell.

CONVENTUS. Lat. A coming together; a convention or assembly. *Conventus magnatum vel procerum* (the assembly of chief men or peers) was one of the names of the English parliament. 1 Bl. Comm. 148.

In the civil law. The term meant a gathering together of people; a crowd assembled for any purpose; also a convention, pact, or bargain.

—Conventus juridicus. In the Roman law. A court of sessions held in the Roman provinces, by the president of the province, assisted by a certain number of counsellors and assessors, at fixed periods, to hear and determine suits, and to provide for the civil administration of the province. Schm. Civil Law, Introd. 17.

CONVERSANT. One who is in the habit of being in a particular place is said to be conversant there. Barnes, 162. Acquainted; familiar.

CONVERSANTES. In old English law. Conversant or dwelling; commorant.

CONVERSATION. Manner of living; habits of life; conduct; as in the phrase "chaste life and conversation." Bradshaw v. People, 153 Ill. 156, 38 N. E. 652. "Criminal conversation" means seduction of another man's wife, considered as an actionable injury to the husband. Prettyman v. Williamson, 1 Pennewill (Del.) 224, 39 Atl. 731; Crocker v. Crocker, 98 Fed. 702.

CONVERSE. The transposition of the subject and predicate in a proposition, as: "Everything is good in its place." *Converse,* "Nothing is good which is not in its place." Wharton.

CONVERSION. In equity. The transformation of one species of property into another, as money into land or land into money; or, more particularly, a fiction of law, by which equity assumes that such a transformation has taken place (contrary to the fact) when it is rendered necessary by the equities of the case,—as to carry into effect the directions of a will or settlement,—and by which the property so dealt with becomes invested with the properties and attributes of that into which it is supposed to have been converted. Seymour v. Freer, 8 Wall. 214, 19 L. Ed. 306; Haward v. Peavey, 128 Ill. 430, 21 N. E. 503, 15 Am. St. Rep. 120; Yerkes v. Yerkes, 200 Pa. 419, 50 Atl. 186; Appeal of Clarke, 70 Conn. 195, 39 Atl. 155.

At law. An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights. Baldwin v. Cole, 6 Mod. 212; Trust Co. v. Tod, 170 N. Y. 233, 63 N. E. 285; Boyce v. Brockway, 31 N. Y. 490; University v. Bank, 96 N. C. 280, 3 S. E. 359; Webber v. Davis, 44 Me. 147, 69 Am. Dec. 87; Gilman v. Hill, 36 N. H. 311; Stough v. Stefani, 19 Neb. 468, 27 N. W. 445; Schroeppel v. Corning, 5 Denio (N. Y.) 236; Aschermann v. Brewing Co., 45 Wis. 266.

—Constructive conversion. An implied or virtual conversion, which takes place where a person does such acts in reference to the goods of another as amount in law to the appropriation of the property to himself. Scruggs v. Scruggs (C. C.) 105 Fed. 28; Laverty v. Snethen, 68 N. Y. 524, 23 Am. Rep. 184.

CONVEY. To pass or transmit the title to property from one to another; to transfer property or the title to property by deed or instrument under seal.

To convey real estate is, by an appropriate instrument, to transfer the legal title to it from the present owner to another. Abendroth v. Greenwich, 29 Conn. 356.

Convey relates properly to the disposition of real property, not to personal. Dickerman v. Abrahams, 21 Barb. (N. Y.) 551, 561.

CONVEYANCE. In pleading. Introduction or inducement.

In real property law. The transfer of the title of land from one person or class of persons to another. Klein v. McNamara, 54 Miss. 105; Alexander v. State, 28 Tex. App. 186, 12 S. W. 595; Brown v. Fitz, 13 N. H. 283; Pickett v. Buckner, 45 Miss. 245; Dickerman v. Abrahams, 21 Barb. (N. Y.) 551.

An instrument in writing under seal, (anciently termed an "assurance,") by which some estate or interest in lands is transferred from one person to another; such as a deed, mortgage, etc. 2 Bl. Comm. 293, 295, 309.

Conveyance includes every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged, or assigned, or by which the title to any real estate may be affected in law or equity, except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands. 1 Rev. St. N. Y. p. 762, § 38; Gen. St. Minn. 1878, c. 40, § 26; How. St. Mich. 1882, § 5689.

The term "conveyance," as used in the California Code, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or incumbered, or by which the title to any real property may be affected, except wills. Civil Code Cal. § 1215.

—Absolute or conditional conveyance. An absolute conveyance is one by which the

right or property in a thing is transferred, free of any condition or qualification, by which it might be defeated or changed; as an ordinary deed of lands, in contradistinction to a mortgage, which is a conditional conveyance. Burrill; Falconer v. Buffalo, etc., R. Co., 69 N. Y. 491.—**Mesne conveyance.** An intermediate conveyance; one occupying an intermediate position in a chain of title between the first grantee and the present holder.—**Primary conveyances.** Those by means whereof the benefit or estate is created or first arises; as distinguished from those whereby it may be enlarged, restrained, transferred, or extinguished. The term includes feoffment, gift, grant, lease, exchange, and partition, and is opposed to *derivative* conveyances, such as release, surrender, confirmation, etc. 2 Bl. Comm. 309.—**Secondary conveyances.** The name given to that class of conveyances which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. 2 Bl. Comm. 324. Otherwise termed "derivative conveyances," (*q. v.*)—**Voluntary conveyance.** A conveyance without valuable consideration; such as a deed or settlement in favor of a wife or children. See Gentry v. Field, 143 Mo. 399, 45 S. W. 286; Trumbull v. Hewitt, 62 Conn. 451, 26 Atl. 350; Martin v. White, 115 Ga. 866, 42 S. E. 279.

As to fraudulent conveyances, see FRAUDULENT.

CONVEYANCER. One whose business it is to draw deeds, bonds, mortgages, wills, writs, or other legal papers, or to examine titles to real estate. 14 St. at Large, 118.

He who draws conveyances; especially a barrister who confines himself to drawing conveyances, and other chamber practice. Mozley & Whitley.

CONVEYANCING. A term including both the science and act of transferring titles to real estate from one man to another.

Conveyancing is that part of the lawyer's business which relates to the alienation and transmission of property and other rights from one person to another, and to the framing of legal documents intended to create, define, transfer, or extinguish rights. It therefore includes the investigation of the title to land, and the preparation of agreements, wills, articles of association, private statutes operating as conveyances, and many other instruments in addition to conveyances properly so called. Sweet; Livermore v. Bagley, 3 Mass. 505.

CONVEYANCING COUNSEL TO THE COURT OF CHANCERY. Certain counsel, not less than six in number, appointed by the lord chancellor, for the purpose of assisting the court of chancery, or any judge thereof, with their opinion in matters of title and conveyancing. Mozley & Whitley.

Convicia si irascaris tua divulgas; spreta exolescunt. 3 Inst. 198. If you be moved to anger by insults, you publish them; if despised, they are forgotten.

CONVICIUM. In the civil law. The name of a species of slander or injury uttered in public, and which charged some one with some act *contra bonos mores.*

CONVICT, *v.* To condemn after judicial investigation; to find a man guilty of a criminal charge. The word was formerly used also in the sense of finding against the defendant in a civil case.

CONVICT, *n.* One who has been condemned by a court. One who has been adjudged guilty of a crime or misdemeanor. Usually spoken of condemned felons or the prisoners in penitentiaries. Molineux v. Collins, 177 N. Y. 395, 69 N. E. 727, 65 L. R. A. 104; Morrissey v. Publishing Co., 19 R. I. 124, 32 Atl. 19; In re Aliano (C. C.) 43 Fed. 517; Jones v. State, 32 Tex. Cr. R. 135, 22 S. W. 404.

Formerly a man was said to be convict when he had been found guilty of treason or felony, but before judgment had been passed on him, after which he was said to be attaint, (*q. v.*) Co. Litt. 390*b*.

CONVICTED. This term has a definite signification in law, and means that a judgment of final condemnation has been pronounced against the accused. Gallagher v. State, 10 Tex. App. 469.

CONVICTION. In practice. In a general sense, the result of a criminal trial which ends in a judgment or sentence that the prisoner is guilty as charged.

Finding a person guilty by verdict of a jury. 1 Bish. Crim. Law, § 223.

A record of the summary proceedings upon any penal statute before one or more justices of the peace or other persons duly authorized, in a case where the offender has been *convicted* and sentenced. Holthouse.

In ordinary phrase, the meaning of the word "conviction" is the finding by the jury of a verdict that the accused is guilty. But, in legal parlance, it often denotes the final judgment of the court. Blaufus v. People, 69 N. Y. 109, 25 Am. Rep. 148.

The ordinary legal meaning of "conviction," when used to designate a particular stage of a criminal prosecution triable by a jury, is the confession of the accused in open court, or the verdict returned against him by the jury, which ascertains and publishes the fact of his guilt; while "judgment" or "sentence" is the appropriate word to denote the action of the court before which the trial is had, declaring the consequences to the convict of the fact thus ascertained. A pardon granted after verdict of guilty, but before sentence, and pending a hearing upon exceptions taken by the accused during the trial, is granted after conviction, within the meaning of a constitutional restriction upon granting pardon before conviction. When, indeed, the word "conviction" is used to describe the effect of the guilt of the accused as judicially proved in one case, when pleaded or given in evidence in another, it is sometimes used in a more comprehensive sense, including the judgment of the court upon the verdict or confession of guilt; as, for instance, in speaking of the plea of *autrefois convict*, or of the effect of guilt, judicially ascertained, as a disqualification of the convict. Com. v. Lockwood, 109 Mass. 323, 12 Am. Rep. 699.

—**Former conviction.** A previous trial and conviction of the same offense as that now charged; pleadable in bar of the prosecution.

State v. Ellsworth, 131 N. C. 773, 42 S. E. 699, 92 Am. St. Rep. 790; Williams v. State, 13 Tex. App. 285, 46 Am. Rep. 237.—**Summary conviction.** The conviction of a person, (usually for a minor misdemeanor,) as the result of his trial before a magistrate or court, without the intervention of a jury, which is authorized by statute in England and in many of the states. In these proceedings there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only as the statute has appointed to be his judge. A conviction reached on such a magistrate's trial is called a "summary conviction." Brown; Blair v. Com., 25 Grat. (Va.) 853.

CONVINCING PROOF. Such as is sufficient to establish the proposition in question, beyond hesitation, ambiguity, or reasonable doubt, in an unprejudiced mind. Evans v. Rugee, 57 Wis. 623, 16 N. W. 49; French v. Day, 89 Me. 441, 36 Atl. 909; Ward v. Waterman, 85 Cal. 488, 24 Pac. 930; Winston v. Burnell, 44 Kan. 367, 24 Pac. 477, 21 Am. St. Rep. 289.

CONVIVIUM. A tenure by which a tenant was bound to provide meat and drink for his lord at least once in the year. Cowell.

CONVOCATION. In ecclesiastical law. The general assembly of the clergy to consult upon ecclesiastical matters.

CONVOY. A naval force, under the command of an officer appointed by government, for the protection of merchant-ships and others, during the whole voyage, or such part of it as is known to require such protection. Marsh. Ins. b. 1, c. 9, § 5; Park, Ins. 388; Peake, Add. Cas. 143*n;* 2 H. Bl. 551.

CO-OBLIGOR. A joint obligor; one bound jointly with another or others in a bond or obligation.

COOL BLOOD. In the law of homicide. Calmness or tranquillity; the undisturbed possession of one's faculties and reason; the absence of violent passion, fury, or uncontrollable excitement.

COOLING TIME. Time to recover "cool blood" after severe excitement or provocation; time for the mind to become so calm and sedate as that it is supposed to contemplate, comprehend, and coolly act with reference to the consequences likely to ensue. Eanes v. State, 10 Tex. App. 447; May v. People, 8 Colo. 210, 6 Pac. 816; Keiser v. Smith, 71 Ala. 481, 46 Am. Rep. 342; Jones v. State, 33 Tex. Cr. R. 492, 26 S. W. 1082, 47 Am. St. Rep. 46.

CO-OPERATION. In economics. The combined action of numbers. It is of two distinct kinds: (1) Such co-operation as takes place when several persons help each other in the same employment; (2) such co-operation as takes place when several persons help each other in different employments. These may be termed "simple co-operation" and "complex co-operation." Mill, Pol. Ec. 142.

In patent law. Unity of action to a common end or a common result, not merely joint or simultaneous action. Boynton Co. v. Morris Chute Co. (C. C.) 82 Fed. 444; Fastener Co. v. Webb (C. C.) 89 Fed. 987; Holmes, etc., Tel. Co. v. Domestic, etc., Tel. Co. (C. C.) 42 Fed. 227.

COOPERTIO. In old English law. The head or branches of a tree cut down; though *coopertio arborum* is rather the bark of timber trees felled, and the chumps and broken wood. Cowell.

COOPERTUM. In forest law. A covert; a thicket (*dumetum*) or shelter for wild beasts in a forest. Spelman.

COOPERTURA. In forest law. A thicket, or covert of wood.

COOPERTUS. Covert; covered.

CO-OPTATION. A concurring choice; the election, by the members of a close corporation, of a person to fill a vacancy.

CO-ORDINATE. Of the same order, rank, degree, or authority; concurrent; without any distinction of superiority and inferiority; as, courts of "co-ordinate jurisdiction." See JURISDICTION.

Co-ordinate and subordinate are terms often applied as a test to ascertain the doubtful meaning of clauses in an act of parliament. If there be two, one of which is grammatically governed by the other, it is said to be "subordinate" to it; but, if both are equally governed by some third clause, the two are called "co-ordinate." Wharton.

COPARCENARY. A species of estate, or tenancy, which exists where lands of inheritance descend from the ancestor to two or more persons. It arises in England either by common law or particular custom. By common law, as where a person, seised in fee-simple or fee-tail, dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representatives; in this case they all inherit, and these coheirs are then called "coparceners," or, for brevity, "parceners" only. Litt. §§ 241, 242; 2 Bl. Comm. 187. By particular custom, as where lands descend, as in gavelkind, to all the males in equal degree, as sons, brothers, uncles, etc. Litt. § 265; 1 Steph. Comm. 319.

While joint tenancies refer to persons, the idea of coparcenary refers to the estate. The title to it is always by descent. The respective shares may be unequal; as, for instance, one daughter and two granddaughters, children of a deceased daughter, may take by the same act of descent. As to strangers, the tenants' seisin is a joint one, but, as between themselves, each is seised of his or her own share, on whose death it goes to the heirs, and not by survivorship. The right of possession of coparceners is in common, and the possession of one is, in general, the possession of the others. 1 Washb. Real Prop. *414.

COPARCENERS. Persons to whom an estate of inheritance descends jointly, and by whom it is held as an entire estate. 2 Bl. Comm. 187.

COPARTICEPS. In old English law. A coparcener.

COPARTNER. One who is a partner with one or more other persons; a member of a partnership.

COPARTNERSHIP. A partnership.

COPARTNERY. In Scotch law. The contract of copartnership. A contract by which the several partners agree concerning the communication of loss or gain, arising from the subject of the contract. Bell.

COPE. A custom or tribute due to the crown or lord of the soil, out of the lead mines in Derbyshire; also a hill, or the roof and covering of a house; a church vestment.

COPEMAN, or COPESMAN. A chapman, (*q. v.*)

COPESMATE. A merchant; a partner in merchandise.

COPIA. Lat. **In civil and old English law.** Opportunity or means of access.

In old English law. A copy. *Copia libelli*, the copy of a libel. Reg. Orig. 58.

—Copia libelli deliberanda. The name of a writ that lay where a man could not get a copy of a libel at the hands of a spiritual judge, to have the same delivered to him. Reg. Orig. 51.—**Copia vera.** In Scotch practice. A true copy. Words written at the top of copies of instruments.

COPPA. In English law. A crop or cock of grass, hay, or corn, divided into titheable portions, that it may be more fairly and justly tithed.

COPPER AND SCALES. See MANCIPATIO.

COPPICE, or COPSE. A small wood, consisting of underwood, which may be cut at twelve or fifteen years' growth for fuel.

COPROLALIA. In medical jurisprudence. A disposition or habit of using obscene language, developing unexpectedly in the particular individual or contrary to his previous history and habits, recognized as a sign of insanity or of aphasia.

COPULA. The corporal consummation of marriage. *Copula*, (in logic,) the link between subject and predicate contained in the verb.

Copulatio verborum indicat acceptationem in eodem sensu. Coupling of words together shows that they are to be understood in the same sense. 4 Bacon's Works, p. 26; Broom, Max. 588.

COPULATIVE TERM. One which is placed between two or more others to join them together.

COPY. The transcript or double of an original writing; as the copy of a patent, charter, deed, etc.

Exemplifications are copies verified by the great seal or by the seal of a court. West Jersey Traction Co. v. Board of Public Works, 57 N. J. Law, 313, 30 Atl. 581.

Examined copies are those which have been compared with the original or with an official record thereof.

Office copies are those made by officers intrusted with the originals and authorized for that purpose. Id., Stamper v. Gay, 8 Wyo. 322, 23 Pac. 69.

COPYHOLD. A species of estate at will, or customary estate in England, the only visible title to which consists of the copies of the court rolls, which are made out by the steward of the manor, on a tenant's being admitted to any parcel of land, or tenement belonging to the manor. It is an estate at the will of the lord, yet such a will as is agreeable to the custom of the manor, which customs are preserved and evidenced by the rolls of the several courts baron, in which they are entered. 2 Bl. Comm. 95. In a larger sense, copyhold is said to import every customary tenure, (that is, every tenure pending on the particular custom of a manor,) as opposed to free socage, or freehold, which may now (since the abolition of knight-service) be considered as the general or common-law tenure of the country. 1 Steph. Comm. 210.

—Copyhold commissioners. Commissioners appointed to carry into effect various acts of parliament, having for their principal objects the compulsory commutation of manorial burdens and restrictions, (fines, heriots, rights to timber and minerals, etc.,) and the compulsory enfranchisement of copyhold lands. 1 Steph. Comm. 643; Elton, Copyh.—**Copyholder.** A tenant by copyhold tenure, (by copy of court-roll.) 2 Bl. Comm. 95.—**Privileged copyholds.** Those copyhold estates which are said to be held according to the custom of the manor, and not *at the will of the lord*, as common copyholds are. They include customary freeholds and ancient demesnes. 1 Crabb, Real Prop. p. 709, § 919.

COPYRIGHT. The right of literary property as recognized and sanctioned by positive law. A right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them. In re Rider, 16 R. I. 271, 15 Atl. 72; Mott Iron Works v. Clow, 83 Fed. 316, 27 C. C. A. 250; Palmer v. De Witt, 47

N. Y. 536, 7 Am. Rep. 480; Keene v. Wheatley, 14 Fed. Cas. 185.

An incorporeal right, being the exclusive privilege of printing, reprinting, selling, and publishing his own original work, which the law allows an author. Wharton.

Copyright is the exclusive right of the owner of an intellectual production to multiply and dispose of copies; the sole right to the copy, or to copy it. The word is used indifferently to signify the statutory and the common-law right; or one right is sometimes called "copyright" after publication, or statutory copyright; the other copyright before publication, or common-law copyright. The word is also used synonymously with "literary property;" thus, the exclusive right of the owner publicly to read or exhibit a work is often called "copyright." This is not strictly correct. Drone, Copyr. 100.

International copyright is the right of a subject of one country to protection against the republication in another country of a work which he originally published in his own country. Sweet.

CORAAGIUM, or CORAAGE. Measures of corn. An unusual and extraordinary tribute, arising only on special occasions. They are thus distinguished from services. Mentioned in connection with *hidage* and *carvage*. Cowell.

CORAM. Lat. Before; in presence of. Applied to persons only. Townsh. Pl. 22.

—Coram domino rege. Before our lord the king. *Coram domino rege ubicumque tunc fuerit Angliæ*, before our lord the king wherever he shall then be in England. **—Coram ipso rege.** Before the king himself. The old name of the court of king's bench, which was originally held before the king in person. 3 Bl. Comm. 41. **—Coram nobis.** Before us ourselves, (the king, *i. e.*, in the king's or queen's bench.) Applied to writs of error directed to another branch of the same court, *e. g.*, from the full bench to the court at *nisi prius*. 1 Archb. Pr. K. B. 234. **—Coram non judice.** In presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be *coram non judice*, and the judgment is void. Manufacturing Co. v. Holt, 51 W. Va. 352, 41 S. E. 351. **—Coram paribus.** Before the peers or freeholders. The attestation of deeds, like all other solemn transactions, was originally done only *coram paribus*. 2 Bl. Comm. 307. *Coram paribus de vicineto*, before the peers or freeholders of the neighborhood. Id. 315. **Coram sectatoribus.** Before the suitors. Cro. Jac. 582. **—Coram vobis.** Before you. A writ of error directed by a court of review to the court which tried the cause, to correct an error in fact. 3 Md. 325; 3 Steph. Comm. 642.

CORD. A measure of wood, containing 128 cubic feet. Kennedy v. Railroad Co., 67 Barb. (N. Y.) 177.

CO-RESPONDENT. A person summoned to answer a bill, petition, or libel, together with another respondent. Now chiefly used to designate the person charged with adultery with the respondent in a suit for divorce for that cause, and joined as a defendant with such party. Lowe v. Bennett, 27 Misc. Rep. 356, 58 N. Y. Supp. 88.

CORIUM FORISFACERE. To forfeit one's skin, applied to a person condemned to be whipped; anciently the punishment of a servant. *Corium perdere*, the same. *Corium redimere*, to compound for a whipping. Wharton.

CORN. In English law, a general term for any sort of grain; but in America it is properly applied only to maize. Sullins v. State, 53 Ala. 476; Kerrick v. Van Dusen, 32 Minn. 317, 20 N. W. 228; Com. v. Pine, 3 Pa. Law J. 412. In the memorandum clause in policies of insurance it includes pease and beans, but not rice. Park, Ins. 112; Scott v. Bourdillion, 2 Bos. & P. (N. R.) 213.

—Corn laws. A species of protective tariff formerly in existence in England, imposing import-duties on various kinds of grain. The corn laws were abolished in 1846. **—Corn rent.** A rent in wheat or malt paid on college leases by direction of St. 18 Eliz. c. 6. 2 Bl. Comm. 609.

CORNAGE. A species of tenure in England, by which the tenant was bound to blow a horn for the sake of alarming the country on the approach of an enemy. It was a species of grand serjeanty. Bac. Abr. "Tenure," N.

CORNER. A combination among the dealers in a specific commodity, or outside capitalists, for the purpose of buying up the greater portion of that commodity which is upon the market or may be brought to market, and holding the same back from sale, until the demand shall so far outrun the limited supply as to advance the price abnormally. Kirkpatrick v. Bonsall, 72 Pa. 158; Wright v. Cudahy, 168 Ill. 86, 48 N. E. 39; Kent v. Miltenberger, 13 Mo. App. 506.

In surveying. An angle made by two boundary lines; the common end of two boundary lines, which run at an angle with each other.

CORNET. A commissioned officer of cavalry, abolished in England in 1871, and not existing in the United States army.

CORODIO HABENDO. The name of a writ to exact a corody of an abbey or religious house.

CORODIUM. In old English law. A corody.

CORODY. In old English law. A sum of money or allowance of meat, drink, and clothing due to the crown from the abbey or other religious house, whereof it was founder, towards the sustentation of such one of its servants as is thought fit to receive it. It differs from a pension, in that it was allowed towards the maintenance of any of

the king's servants in an abbey; a pension being given to one of the king's chaplains, for his better maintenance, till he may be provided with a benefice. Fitzh. Nat. Brev. 250. See 1 Bl. Comm. 283.

COROLLARY. In logic. A collateral or secondary consequence, deduction, or inference.

CORONA. The crown. *Placita coronæ;* pleas of the crown; criminal actions or proceedings, in which the crown was the prosecutor.

CORONA MALA. In old English law. The clergy who abuse their character were so called. Blount.

CORONARE. In old records. To give the tonsure, which was done on the crown, or in the form of a crown; to make a man a priest. Cowell.

—Coronare filium. To make one's son a priest. *Homo coronatus* was one who had received the first tonsure, as preparatory to superior orders, and the tonsure was in form of a corona, or crown of thorns. Cowell.

CORONATION OATH. The oath administered to a sovereign at the ceremony of crowning or investing him with the insignia of royalty, in acknowledgment of his right to govern the kingdom, in which he swears to observe the laws, customs, and privileges of the kingdom, and to act and do all things conformably thereto. Wharton.

CORONATOR. A coroner, (*q. v.*) Spelman.

—Coronatore eligendo. The name of a writ issued to the sheriff, commanding him to proceed to the election of a coroner.**—Coronatore exonerando.** In English law. The name of a writ for the removal of a coroner, for a cause which is to be therein assigned, as that he is engaged in other business, or incapacitated by years or sickness, or has not a sufficient estate in the county, or lives in an inconvenient part of it.

CORONER. The name of an ancient officer of the common law, whose office and functions are continued in modern English and American administration. The coroner is an officer belonging to each county, and is charged with duties both judicial and ministerial, but chiefly the former. It is his special province and duty to make inquiry into the causes and circumstances of any death happening within his territory which occurs through violence or suddenly and with marks of suspicion. This examination (called the "coroner's inquest") is held with a jury of proper persons upon view of the dead body. See Bract. fol. 121; 1 Bl. Comm. 346–348; 3 Steph. Comm. 33. In England, another branch of his judicial office is to inquire concerning shipwrecks, and certify whether wreck or not, and who is in possession of the goods; and also to inquire concerning treasure trove, who were the finders, and where it is, and whether any one be suspected of having found and concealed a treasure. 1 Bl. Comm. 349. It belongs to the ministerial office of the coroner to serve writs and other process, and generally to discharge the duties of the sheriff, in case of the incapacity of that officer or a vacancy in his office. On the office and functions of coroners, see, further, Pueblo County v. Marshall, 11 Colo. 84, 16 Pac. 837; Cox v. Royal Tribe, 42 Or. 365, 71 Pac. 73, 60 L. R. A. 620, 95 Am. St. Rep. 752; Powell v. Wilson, 16 Tex. 59; Lancaster County v. Holyoke, 37 Neb. 328, 55 N. W. 950, 21 L. R. A. 394.

—Coroner's court. In England. A tribunal of record, where a coroner holds his inquiries. Cox v. Royal Tribe, 42 Or. 365, 71 Pac. 73, 60 L. R. A. 620, 95 Am. St. Rep. 752.**—Coroner's inquest.** An inquisition or examination into the causes and circumstances of any death happening by violence or under suspicious conditions within his territory, held by the coroner with the assistance of a jury. Boisliniere v. County Com'rs, 32 Mo. 378.

CORPORAL. Relating to the body; bodily. Should be distinguished from corporeal, (*q. v.*)

—Corporal imbecility. Physical inability to perform completely the act of sexual intercourse; not necessarily congenital, and not invariably a permanent and incurable impotence. Griffeth v. Griffeth, 162 Ill. 368, 44 N. E. 820; Ferris v. Ferris, 8 Conn. 168.**—Corporal oath.** An oath, the external sole nity of which consists in laying one's hand upon the Gospels while the oath is administered to him. More generally, a solemn oath. The terms "corporal oath" and "solemn oath" are, in Indiana, at least, used synonymously; and an oath taken with the uplifted hand may be properly described by either term. Jackson v. State, 1 Ind. 185; State v. Norris, 9 N. H. 102; Com. v. Jarboe, 89 Ky. 143, 12 S. W. 138.**—Corporal punishment.** Physical punishment as distinguished from pecuniary punishment or a fine; any kind of punishment of or inflicted on the body, such as whipping or the pillory; the term may or may not include imprisonment, according to the context. Ritchey v. People, 22 Colo. 251, 43 Pac. 1026; People v. Winchell, 7 Cow. (N. Y.) 525, note.**—Corporal touch.** Bodily touch; actual physical contact; manual apprehension.

CORPORALE SACRAMENTUM. In old English law. A corporal oath.

Corporalis injuria non recipit æstimationem de futuro. A personal injury does not receive satisfaction from a future course of proceeding, [is not left for its satisfaction to a future course of proceeding.] Bac. Max. reg. 6; Broom, Max. 278.

CORPORATE. Belonging to a corporation; as a corporate name. Incorporated; as a corporate body.

—Corporate authorities. The title given in statutes of several states to the aggregate body of officers of a municipal corporation, or to certain of those officers (excluding the others) who are vested with authority in regard to the particular matter spoken of in the statute, as, taxation, bonded debt, regulation of the sale of liquors, etc. See People v. Knopf, 171 Ill. 191,

49 N. E. 424; State v. Andrews, 11 Neb. 523, 10 N. W. 410; Com. v. Upper Darby Auditors, 2 Pa. Dist. R. 89; Schaeffer v. Bonham, 95 Ill. 382.—**Corporate body.** This term, or its equivalent "body corporate," is applied to private corporations aggregate; not including municipal corporations. Cedar Count v. Johnson, 50 Mo. 225; East Oakland Tp. v. Skinner, 94 U. S. 256, 24 L. Ed. 125; Campbell v. Railroad Co., 71 Ill. 611; Com. v. Beamish, 81 Pa. St. 391.—**Corporate franchise.** The right to exist and do business as a corporation; the right or privilege granted by the state or government to the persons forming an aggregate private corporation, and their successors, to exist and do business as a corporation and to exercise the rights and powers incidental to that form of organization or necessarily implied in the grant. Bank of California v. San Francisco, 142 Cal. 276, 75 Pac. 832, 64 L. R. A. 918, 100 Am. St. Rep. 130; Jersey City Gaslight Co. v. United Gas Imp. Co. (C. C.) 46 Fed. 264; Cobb v. Durham County, 122 N. C. 307, 30 S. E. 338; People v. Knight, 174 N. Y. 475, 67 N. E. 65, 63 L. R. A. 87.—**Corporate name.** When a corporation is erected, a name is always given to it, or, supposing none to be actually given, will attach to it by implication, and by that name alone it must sue and be sued, and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation. Wharton.—**Corporate purpose.** In reference to municipal corporations, and especially to their powers of taxation, a "corporate purpose" is one which shall promote the general prosperity and the welfare of the municipality, (Wetherell v. Devine, 116 Ill. 631, 6 N. E. 24,) or a purpose necessary or proper to carry into effect the object of the creation of the corporate body, (People v. School Trustees, 78 Ill. 140,) or one which is germane to the general scope of the objects for which the corporation was created or has a legitimate connection with those objects and a manifest relation thereto, (Weightman v. Clark, 103 U. S. 256, 26 L. Ed. 392.)

CORPORATION. An artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals, who subsist as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law. See Case of Sutton's Hospital, 10 Coke, 32; Dartmouth College v. Woodward, 4 Wheat. 518, 636, 657, 4 L. Ed. 629; U. S. v. Trinidad Coal Co., 137 U. S. 160, 11 Sup. Ct. 57, 34 L. Ed. 640; Andrews Bros. Co. v. Youngstown Coke Co., 86 Fed. 585, 30 C. C. A. 293; Porter v. Railroad Co., 76 Ill. 573; State v. Payne, 129 Mo. 468, 31 S. W. 797, 33 L. R. A. 576; Farmers' L. & T. Co. v. New York, 7 Hill (N. Y.) 283; State v. Turley, 142 Mo. 403, 44 S. W. 267; Barber v. International Co., 73 Conn. 587, 48 Atl. 758; Sovereign Camp v. Fraley, 94 Tex. 200, 59 S. W. 905, 51 L. R. A. 898; Sellers v. Greer, 172 Ill. 549, 50 N. E. 246, 40 L. R. A. 589; Old Colony, etc., Co. v. Parker, etc., Co., 183 Mass. 557, 67 N. E. 870; Warner v. Beers, 23 Wend. (N. Y.) 103, 129, 142.

A franchise possessed by one or more individuals, who subsist as a body politic, under a special denomination, and are vested by the policy of the law with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual. 2 Kent, Comm. 267.

An artificial person or being, endowed by law with the capacity of perpetual succession; consisting either of a single individual, (termed a "corporation sole,") or of a collection of several individuals, (which is termed a "corporation aggregate.") 3 Steph. Comm. 166; 1 Bl. Comm. 467, 469.

A corporation is an intellectual body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues always the same, notwithstanding the change of the individuals who compose it, and which, for certain purposes, is considered a natural person. Civil Code La. art. 427.

Classification. According to the accepted definitions and rules, corporations are classified as follows:

Public and private. A public corporation is one created by the state for political purposes and to act as an agency in the administration of civil government, generally within a particular territory or subdivision of the state, and usually invested, for that purpose, with subordinate and local powers of legislation; such as a county, city, town, or school district. These are also sometimes called "political corporations." People v. McAdams, 82 Ill. 356; Wooster v. Plymouth, 62 N. H. 208; Goodwin v. East Hartford, 70 Conn. 18, 38 Atl. 876; Dean v. Davis, 51 Cal. 409; Regents v. Williams, 9 Gill & J. (Md.) 401, 31 Am. Dec. 72; Ten Eyck v. Canal Co., 18 N. J. Law, 200, 37 Am. Dec. 233; Toledo Bank v. Bond, 1 Ohio St. 622; Murphy v. Mercer County, 57 N. J. Law, 245, 31 Atl. 229. Private corporations are those founded by and composed of private individuals, for private purposes, as distinguished from governmental purposes, and having no political or governmental franchises or duties. Santa Clara County v. Southern Pac. R. Co. (C. C.) 18 Fed. 402; Swan v. Williams, 2 Mich. 434; People v. McAdams, 82 Ill. 361; McKim v. Odom, 3 Bland (Md.) 418; Rundle v. Canal Co., 21 Fed. Cas. 6.

The true distinction between public and private corporations is that the former are organized for governmental purposes, the latter not. The term "public" has sometimes been applied

to corporations of which the government owned the entire stock, as in the case of a state bank. But bearing in mind that "public" is here equivalent to "political," it will be apparent that this is a misnomer. Again the fact that the business or operations of a corporation may directly and very extensively affect the general public (as in the case of a railroad company or a bank or an insurance company) is no reason for calling it a public corporation. If organized by private persons for their own advantage,—or even if organized for the benefit of the public generally, as in the case of a free public hospital or other charitable institution,—it is none the less a private corporation, if it does not possess governmental powers or functions. The uses may in a sense be called "public," but the corporation is "private," as much so as if the franchises were vested in a single person. Dartmouth College v. Woodward, 4 Wheat. 562, 4 L. Ed. 629; Ten Eyck v. Canal Co., 18 N. J. Law, 204, 37 Am. Dec. 233. It is to be observed, however, that those corporations which serve the public or contribute to the comfort and convenience of the general public, though owned and managed by private interests, are now (and quite appropriately) denominated "public-service corporations." See *infra*. Another distinction between public and private corporations is that the former are not voluntary associations (as the latter are) and that there is no contractual relation between the government and a public corporation or between the individuals who compose it. Mor. Priv. Corp. § 3; Goodwin v. East Hartford, 70 Conn. 18, 38 Atl. 876.

The terms "public" and "municipal," as applied to corporations, are not convertible. All municipal corporations are public, but not vice versa. Strictly speaking, only cities and towns are "municipal" corporations, though the term is very commonly so employed as to include also counties and such governmental agencies as school districts and road districts. Brown v. Board of Education, 108 Ky. 783, 57 S. W. 612. But there may also be "public" corporations which are not "municipal" even in this wider sense of the latter term. Such, according to some of the authorities, are the "irrigation districts" now known in several of the western states. Irrigation Dist. v. Collins, 46 Neb. 411, 64 N. W. 1086; Irrigation Dist. v. Peterson, 4 Wash. 147, 29 Pac. 995. Compare Herring v. Irrigation Dist. (C. C.) 95 Fed. 705.

Ecclesiastical and lay. In the English law, all corporations private are divided into ecclesiastical and lay, the former being such corporations as are composed exclusively of ecclesiastics organized for spiritual purposes, or for administering property held for religious uses, such as bishops and certain other dignitaries of the church and (formerly) abbeys and monasteries. 1 Bl. Comm. 470. Lay corporations are those composed of laymen, and existing for secular or business purposes. This distinction is not recognized in American law. Corporations formed for the purpose of maintaining or propagating religion or of supporting public religious services, according to the rites of particular denominations, and incidentally owning and administering real and personal property for religious uses, are called "religious corporations," as distinguished from business corporations; but they are "lay" corporations, and not "ecclesiastical" in the sense of the English law. Robertson v. Bullions, 11 N. Y. 243.

Eleemosynary and civil. Lay corporations are classified as "eleemosynary" and "civil;" the former being such as are created for the distribution of alms or for the administration of charities or for purposes falling under the description of "charitable" in its widest sense, including hospitals, asylums, and colleges; the latter being organized for the facilitating of business transactions and the profit or advantage of the members. 1 Bl. Comm. 471; Dartmouth College v. Woodward, 4 Wheat. 660, 4 L. Ed. 629.

In the law of Louisiana, the term "civil" as applied to corporations, is used in a different sense, being contrasted with "religious." Civil corporations are those which relate to temporal police; such are the corporations of the cities, the companies for the advancement of commerce and agriculture, literary societies, colleges or universities founded for the instruction of youth, and the like. Religious corporations are those whose establishment relates only to religion; such are the congregations of the different religious persuasions. Civ. Code La. art. 431.

Aggregate and sole. A corporation sole is one consisting of one person only, and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense, the sovereign in England is a sole corporation, so is a bishop, so are some deans distinct from their several chapters, and so is every parson and vicar. 3 Steph. Comm. 168, 169; 2 Kent, Comm. 273. Warner v. Beers, 23 Wend. (N. Y.) 172; Codd v. Rathbone, 19 N. Y. 39; First Parish v. Dunning, 7 Mass. 447. A corporation aggregate is one composed of a number of individuals vested with corporate powers; and a "corporation," as the word is used in general popular and legal speech, and as defined at the head of this title, means a "corporation aggregate."

Domestic and foreign. With reference to the laws and the courts of any given state, a "domestic" corporation is one created by, or organized under, the laws of that state; a "foreign" corporation is one created by or under the laws of another state, government, or country. In re Grand Lodge, 110 Pa. 613, 1 Atl. 582; Boley v. Trust Co., 12 Ohio St. 143; Bowen v. Bank, 34 How. Prac. (N. Y.) 411.

Close and open. A "close" corporation is one in which the directors and officers have the power to fill vacancies in their own number, without allowing to the general body of stockholders any choice or vote in their election. An "open" corporation is one in which all the members or corporators have a vote in the election of the directors and other officers. McKim v. Odom, 3 Bland (Md.) 416.

Other compound and descriptive terms. —**A business corporation** is one formed for the purpose of transacting business in the widest sense of that term, including not only trade and commerce, but manufacturing, mining, banking, insurance, transportation, and practically every form of commercial or industrial activity where the purpose of the organization is pecuniary profit; contrasted with religious, charitable, educational, and other like organizations, which are sometimes grouped in the statutory law of a state under the general designation of "corporations not for profit." Winter v. Railroad Co., 30 Fed. Cas. 329; In re Independent Ins. Co., 13 Fed. Cas. 13; McLeod v. College, 69 Neb. 550, 96 N. W. 265.

Corporation de facto. One existing under color of law and in pursuance of an effort made in good faith to organize a corporation under the statute; an association of men claiming to be a legally incorporated company, and exercising the powers and functions of a corporation, but without actual lawful authority to do so. Foster v. Hare, 26 Tex. Civ. App. 177, 62 S. W. 541; Attorney General v. Stevens, 1 N. J. Eq. 378, 22 Am. Dec. 526; Manufacturing Co. v. Schofield, 28 Ind. App. 95, 62 N. E. 106; Cedar Rapids Water Co. v. Cedar Rapids, 118 Iowa, 234, 91 N. W. 1081; Johnson v. Okerstrom, 70 Minn. 303, 73 N. W. 147; Tulare Irrig. Dist. v. Shepard, 185 U. S. 1, 22 Sup. Ct. 531, 46 L. Ed. 773; In re Gibbs' Estate, 157 Pa. 59, 27 Atl. 383, 22 L. R. A. 276; Pape v. Bank, 20 Kan. 440, 27 Am. Rep. 183.

Joint-stock corporation. This differs from a joint-stock *company* in being regularly incorporated, instead of being a mere partnership, but resembles it in having a capital divided into shares of stock. Most business corporations (as distinguished from eleemosynary corporations) are of this character.

Moneyed corporations are, properly speaking, those dealing in money or in the business of receiving deposits, loaning money, and exchange; but in a wider sense the term is applied to all business corporations having a money capital and employing it in the conduct of their business. Mutual Ins. Co. v. Erie County, 4 N. Y. 444; Gillet v. Moody, 3 N. Y. 487; Vermont Stat. 1894, § 3674; Hill v. Reed, 16 Barb. (N. Y.) 287; In re California Pac. R. Co., 4 Fed. Cas. 1,060; Hobbs v. National Bank, 101 Fed. 75, 41 C. C. A. 205.

Municipal corporations. See that title.

Public-service corporations. Those whose operations serve the needs of the general public or conduce to the comfort and convenience of an entire community, such as railroads, gas, water, and electric light companies. The business of such companies is said to be "affected with a public interest," and for that reason they are subject to legislative regulation and control to a greater extent than corporations not of this character.

Quasi corporations. Organizations resembling corporations; municipal societies or similar bodies which, though not true corporations in all respects, are yet recognized, by statutes or immemorial usage, as persons or aggregate corporations, with precise duties which may be enforced, and privileges which may be maintained, by suits at law. They may be considered *quasi* corporations, with limited powers, co-extensive with the duties imposed upon them by statute or usage, but restrained from a general use of the authority which belongs to those metaphysical persons by the common law. Scates v. King, 110 Ill. 456; Adams v. Wiscasset Bank, 1 Me. 361, 1 Am. Dec. 88; Lawrence County v. Railroad Co., 81 Ky. 227; Barnes v. District of Columbia, 91 U. S. 552, 23 L. Ed. 440.

This term is lacking in definiteness and precision. It appears to be applied indiscriminately (a) to all kinds of municipal corporations, the word "quasi" being introduced because it is said that these are not voluntary organizations like private corporations, but created by the legislature for its own purposes and without reference to the wishes of the people of the territory affected; (b) to all municipal corporations except cities and incorporated towns, the latter being considered the only true municipal corporations because they exist and act under charters or statutes of incorporation while counties, school districts, and the like are merely created or set off under general laws; (c) to municipal corporations possessing only a low order of corporate existence or the most limited range of corporate powers, such as hundreds in England, and counties, villages, and school districts in America.

Quasi public corporation. This term is sometimes applied to corporations which are not strictly public, in the sense of being organized for governmental purposes, but whose operations contribute to the comfort, convenience, or welfare of the general public, such as telegraph and telephone companies, gas, water, and electric light companies, and irrigation companies. More commonly and more correctly styled "public-service corporations." See Wiemer v. Louisville Water Co. (C. C.) 130 Fed. 251; Cumberland Tel. Co. v. Evansville (C. C.) 127 Fed. 187; McKim v. Odom, 3 Bland (Md.) 419; Campbell v. Watson, 62 N. J. Eq. 396, 50 Atl. 120.

Spiritual corporations. Corporations, the members of which are entirely spiritual persons, and incorporated as such, for the furtherance of religion and perpetuating the rights of the church.

Trading corporations. A trading corporation is a commercial corporation engaged in buying and selling. The word "trading," is much narrower in scope than "business," as applied to corporations, and though a trading corporation is a business corporation, there are many business corporations which are not trading companies. Dartmouth College v.

Woodward, 4 Wheat. 669, 4 L. Ed. 629; Adams v. Railroad Co., 1 Fed. Cas. 92.

Tramp corporations. Companies chartered in one state without any intention of doing business therein, but which carry on their business and operations wholly in other states. State v. Georgia Co., 112 N. C. 34, 17 S. E. 10, 19 L. R. A. 485.

Synonyms. The words "company" and "corporation" are commonly used as interchangeable terms. In strictness, however, a company is an association of persons for business or other purposes, embracing a considerable number of individuals, which may or may not be incorporated. In the former case, it is legally a partnership or a joint-stock company; in the latter case, it is properly called a "corporation." Goddard v. Railroad Co., 202 Ill. 362, 66 N. E. 1066; Bradley Fertilizer Co. v. South Pub. Co., 4 Misc. Rep. 172, 23 N. Y. Supp. 675; Com. v. Reinoehl, 163 Pa. 287, 29 Atl. 896, 25 L. R. A. 247; State v. Mead, 27 Vt. 722; Leader Printing Co. v. Lowry, 9 Okl. 89, 59 Pac. 242. For the particulars in which corporations differ from "Joint-Stock Companies" and "Partnerships," see those titles.

CORPORATION ACT. In English law. The statute 13 Car. II. St. 2, c. 1; by which it was provided that no person should thereafter be elected to office in any corporate town that should not, within one year previously, have taken the sacrament of the Lord's Supper, according to the rites of the Church of England; and every person so elected was also required to take the oaths of allegiance and supremacy. 3 Steph. Comm. 103, 104; 4 Bl. Comm. 58. This statute is now repealed. 4 Steph. Comm. 511.

CORPORATION COURTS. Certain courts in Virginia described as follows: "For each city of the state, there shall be a court called a 'corporation court,' to be held by a judge, with like qualifications and elected in the same manner as judges of the county court." Code Va. 1887, § 3050.

CORPORATOR. A member of a corporation aggregate. Grant, Corp. 48.

CORPORE ET ANIMO. Lat. By the body and by the mind; by the physical act and by the mental intent. Dig. 41, 2, 3.

CORPOREAL. A term descriptive of such things as have an objective, material existence; perceptible by the senses of sight and touch; possessing a real body. Opposed to incorporeal and spiritual. Civ. Code La. 1900, art. 460; Sullivan v. Richardson, 33 Fla. 1, 14 South. 692.

There is a distinction between "corporeal" and "corporal." The former term means "possessing a body," that is, tangible, physical, material; the latter means "relating to or affecting a body," that is, bodily, external. Corporeal denotes the nature or physical existence of a body; corporal denotes its exterior or the co-ordination of it with some other body. Hence we speak of "corporeal hereditaments," but of "corporal punishment," "corporal touch," "corporal oath," etc.

—Corporeal hereditaments. See HEREDITAMENTS.—**Corporeal property.** Such as affects the senses, and may be seen and handled by the body, as opposed to incorporeal property, which cannot be seen or handled, and exists only in contemplation. Thus a house is corporeal, but the annual rent payable for its occupation is incorporeal. Corporeal property is, if movable, capable of manual transfer; if immovable, possession of it may be delivered up. But incorporeal property cannot be so transferred, but some other means must be adopted for its transfer, of which the most usual is an instrument in writing. Mozley & Whitley.

CORPS DIPLOMATIQUE. In international law. Ambassadors and diplomatic persons at any court or capital.

CORPSE. The dead body of a human being.

CORPUS. (Lat.) Body; the body; an aggregate or mass, (of men, laws, or articles;) physical substance, as distinguished from intellectual conception; the principal sum or capital, as distinguished from interest or income.

A substantial or positive fact, as distinguished from what is equivocal and ambiguous. The *corpus delicti* (body of an offense) is the fact of its having been actually committed. Best, Pres. 269–279.

A corporeal act of any kind, (as distinguished from *animus* or mere intention,) on the part of him who wishes to acquire a thing, whereby he obtains the physical ability to exercise his power over it whenever he pleases. The word occurs frequently in this sense in the civil law. Mackeld. Rom. Law, § 248.

—Corpus comitatus. The body of a county. The whole county, as distinguished from a part of it, or any particular place in it. U. S. v. Grush, 5 Mason, 290, Fed. Cas. No. 15,268.—**Corpus corporatum.** A corporation; a corporate body, other than municipal.—**Corpus cum causa.** (The body with the cause.) An English writ which issued out of chancery, to remove both the *body* and the record, touching the *cause* of any man lying in execution upon a judgment for debt, into the king's bench, there to remain until he satisfied the judgment. Cowell; Blount.—**Corpus delicti.** The body of a crime. The body (material substance) upon which a crime has been committed, *e. g.*, the corpse of a murdered man, the charred remains of a house burned down. In a derivative sense, the substance or foundation of a crime; the substantial fact that a crime has been committed. People v. Dick, 37 Cal. 281; White v. State, 49 Ala. 347; Goldman v. Com., 100 Va. 865, 42 S. E. 923; State v. Hand, 1 Marv. (Del.) 545, 41 Atl. 192; State v. Dickson, 78 Mo. 441.—**Corpus pro corpore.** In old records. Body for body. A phrase expressing the liability of manucaptors. 3 How. State Tr. 110.

CORPUS CHRISTI DAY. In English law. A feast instituted in 1264, in honor of the sacrament. 32 Hen. VIII. c. 21.

Corpus humanum non recipit æstimationem. The human body does not admit of valuation. Hob. 59.

CORPUS JURIS. A body of law. A term used to signify a book comprehending several collections of law. There are two principal collections to which this name is given; the *Corpus Juris Civilis*, and the *Corpus Juris Canonici*.

—Corpus juris canonici. The body of the canon law. A compilation of the canon law, comprising the decrees and canons of the Roman Church, constituting the body of ecclesiastical law of that church.**—Corpus juris civilis.** The body of the civil law. The system of Roman jurisprudence compiled and codified under the direction of the emperor Justinian, in A. D. 528–534. This collection comprises the Institutes, Digest, (or Pandects,) Code, and Novels. The name is said to have been first applied to this collection early in the seventeenth century.

CORRECTION. Discipline; chastisement administered by a master or other person in authority to one who has committed an offense, for the purpose of curing his faults or bringing him into proper subjection.

—Correction, house of. A prison for the reformation of petty or juvenile offenders.

CORRECTOR OF THE STAPLE. In old English law. A clerk belonging to the staple, to write and record the bargains of merchants there made.

CORREGIDOR. In Spanish law. A magistrate who took cognizance of various misdemeanors, and of civil matters. 2 White, New Recop. 53.

CORREI. Lat. In the civil law. Co-stipulators; joint stipulators.

—Correi credendi. In the civil and Scotch law. Joint creditors; creditors *in solido*. Poth. Obl. pt. 2, c. 4, art. 3, § 11.**—Correi debendi.** In Scotch law. Two or more persons bound as principal debtors to another. Ersk. Inst. 3, 3, 74.

CORRELATIVE. Having a mutual or reciprocal relation, in such sense that the existence of one necessarily implies the existence of the other. *Father* and *son* are correlative terms. *Right* and *duty* are correlative terms.

CORRESPONDENCE. Interchange of written communications. The letters written by a person and the answers written by the one to whom they are addressed.

CORROBORATE. To strengthen; to add weight or credibility to a thing by additional and confirming facts or evidence. Still v. State (Tex. Cr. R.) 50 S. W. 355; State v. Hicks, 6 S. D. 325, 60 N. W. 66; Schefter v. Hatch, 70 Hun, 597, 25 N. Y. Supp. 240.

The expression "corroborating circumstances" clearly does not mean facts which, independent of a confession, will warrant a conviction; for then the verdict would stand not on the confession, but upon those independent circumstances. To corroborate is to strengthen, to confirm by additional security, to add strength. The testimony of a witness is said to be corroborated when it is shown to correspond with the representation of some other witness, or to comport with some facts otherwise known or established. Corroborating circumstances, then, used in reference to a confession, are such as serve to strengthen it, to render it more probable; such, in short, as may serve to impress a jury with a belief in its truth. State v. Guild, 10 N. J. Law, 163, 18 Am. Dec. 404.

—Corroborating evidence. Evidence supplementary to that already given and tending to strengthen or confirm it; additional evidence of a different character to the same point. Gildersleeve v. Atkinson, 6 N. M. 250, 27 Pac. 477; Mills v. Comm., 93 Va. 815, 22 S. E. 863; Code Civ. Proc. Cal. 1903, § 1839.

Corruptio optimi est pessima. Corruption of the best is worst.

CORRUPTION. Illegality; a vicious and fraudulent intention to evade the prohibitions of the law.

The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. U. S. v. Johnson (C. C.) 26 Fed. 682; State v. Ragsdale, 59 Mo. App. 603; Wight v. Rindskopf, 43 Wis. 351; Worsham v. Murchison, 66 Ga. 719; U. S. v. Edwards (C. C.) 43 Fed. 67.

CORRUPTION OF BLOOD. In English law. This was the consequence of *attainder*. It meant that the attainted person could neither inherit lands or other hereditaments from his ancestor, nor retain those he already had, nor transmit them by descent to any heir, because his blood was considered in law to be corrupted. Avery v. Everett, 110 N. Y. 317, 18 N. E. 148, 1 L. R. A. 264, 6 Am. St. Rep. 368. This was abolished by St. 3 & 4 Wm. IV. c. 106, and 33 & 34 Vict. c. 23, and is unknown in America. Const. U. S. art. 3, § 3.

CORSELET. Ancient armor which covered the body.

CORSE-PRESENT. A mortuary, thus termed because, when a mortuary became due on the death of a man, the best or second-best beast was, according to custom, offered or presented to the priest, and carried with the corpse. In Wales a corse-present was due upon the death of a clergyman to the bishop of the diocese, till abolished by 12 Anne St. 2, c. 6. 2 Bl. Comm. 426.

CORSNED. In Saxon law. The morsel of execration. A species of ordeal in use among the Saxons, performed by eating a piece of bread over which the priest had pronounced a certain imprecation. If the accused ate it freely, he was pronounced innocent; but, if it stuck in his throat, it was considered as a proof of his guilt. Crabb,

Eng. Law, 30; 1 Reeve, Eng. Law, 21; 4 Bl. Comm. 345.

CORTES. The name of the legislative assemblies, the parliament or congress, of Spain and Portugal.

CORTEX. The bark of a tree; the outer covering of anything.

CORTIS. A court or yard before a house. Blount.

CORTULARIUM, or CORTARIUM. In old records. A yard adjoining a country farm.

CORVEE. In French law. Gratuitous labor exacted from the villages or communities, especially for repairing roads, constructing bridges, etc. State v. Covington, 125 N. C. 641, 34 S. E. 272.

COSA JUZGADA. In Spanish law. A cause or matter adjudged, (*res judicata.*) White, New Recop. b. 3, tit. 8, note.

COSAS COMUNES. In Spanish law. A term corresponding to the *res communes* of the Roman law, and descriptive of such things as are open to the equal and common enjoyment of all persons and not to be reduced to private ownership, such as the air, the sea, and the water of running streams. Hall, Mex. Law, 147; Lux v. Haggin, 69 Cal. 255, 10 Pac. 707.

COSDUNA. In feudal law. A custom or tribute.

COSEN, COZEN. In old English law. To cheat. "A cosening knave." 3 Leon. 171.

COSENAGE. In old English law. Kindred; cousinship. Also a writ that lay for the heir where the *tresail, i. e.*, the father of the *besail*, or great-grandfather, was seised of lands in fee at his death, and a stranger entered upon the land and abated. Fitzh. Nat. Brev. 221.

COSENING. In old English law. An offense, mentioned in the old books, where anything was done deceitfully, whether belonging to contracts or not, which could not be properly termed by any special name. The same as the *stellionatus* of the civil law. Cowell.

COSHERING. In old English law. A feudal prerogative or custom for lords to lie and feast themselves at their tenants' houses. Cowell.

COSMUS. Clean. Blount.

COSS. A term used by Europeans in India to denote a road-measure of about two miles, but differing in different parts. Wharton.

COST. The cost of an article purchased for exportation is the price paid, with all incidental charges paid at the place of exportation. Goodwin v. U. S., 2 Wash. C. C. 493, Fed. Cas. No. 5,554. Cost price is that actually paid for goods. Buck v. Burk, 18 N. Y. 337.

COST-BOOK. A book in which a number of adventurers who have obtained permission to work a lode, and have agreed to share the enterprise in certain proportions, enter the agreement, and from time to time the receipts and expenditures of the mine, the names of the shareholders, their respective accounts with the mine, and transfers of shares. These associations are called "Cost-Book Mining Companies," and are governed by the general law of partnership. Lindl. Partn. *147.

CO-STIPULATOR. A joint promisor.

COSTS. A pecuniary allowance, made to the successful party, (and recoverable from the losing party,) for his expenses in prosecuting or defending a suit or a distinct proceeding within a suit. Apperson v. Insurance Co., 38 N. J. Law, 388; Stevens v. Bank, 168 N. Y. 560, 61 N. E. 904; Bennett v. Kroth, 37 Kan. 235, 15 Pac. 221, 1 Am. St. Rep. 248; Chase v. De Wolf, 69 Ill. 49; Noyes v. State, 46 Wis. 250, 1 N. W. 1, 32 Am. Rep. 710.

Costs and fees were originally altogether different in their nature. The one is an allowance to a *party* for expenses incurred in prosecuting or defending a suit; the other, a compensation to an *officer* for services rendered in the progress of a cause. Therefore, while an executor or administrator was not personally liable to his adversary for costs, yet, if at his instance an officer performed services for him, he had a personal demand for his fees. Musser v. Good, 11 Serg. & R. (Pa.) 247. There is in our statute a manifest difference between costs and fees in another respect. Costs are an allowance to a party for the expenses incurred in prosecuting or defending a suit,—an incident to the judgment; while fees are compensation to public officers for services rendered individuals not in the course of litigation. Tillman v. Wood, 58 Ala. 579.

In England, the term is also used to designate the charges which an attorney or solicitor is entitled to make and recover from his client, as his remuneration for professional services, such as legal advice, attendances, drafting and copying documents, conducting legal proceedings, etc.

—Bill of costs. A certified, itemized statement of the amount of costs in an action or suit. **—Certificate for costs.** In English practice, a certificate or memorandum drawn up and signed by the judge before whom a case was tried, setting out certain facts, the existence of which must be thus proved before the party is entitled, under the statutes, to recover costs.— **Cost bond, or bond for costs.** A bond given by a party to an action to secure the eventual payment of such costs as may be awarded against him.**—Costs de incremento.** Increased costs, costs of increase. Costs adjudged by the court in addition to those assessed by the

jury. Day v. Woodworth, 13 How. 372, 14 L. Ed. 181. Those extra expenses incurred which do not appear on the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court fees, etc. Wharton.—**Costs of the day.** Costs which are incurred in preparing for the trial of a cause on a specified *day*, consisting of witnesses' fees, and other fees of attendance. Archb. N. Prac. 281.—**Costs to abide event.** When an order is made by an appellate court reversing a judgment, with "costs to abide the event," the costs intended by the order include those of the appeal, so that, if the appellee is finally successful, he is entitled to tax the costs of the appeal. First Nat. Bank v. Fourth Nat. Bank, 84 N. Y. 469.—**Double costs.** The ordinary single costs of suit, and one-half of that amount in addition. 2 Tidd, Pr. 987. "Double" is not used here in its ordinary sense of "twice" the amount. Van Aulen v. Decker, 2 N. J. Law, 108; Gilbert v. Kennedy, 22 Mich. 19. But see Moran v. Hudson, 34 N. J. Law, 531. These costs are now abolished in England by St. 5 & 6 Vict. c. 97. Wharton.—**Final costs.** Such costs as are to be paid at the end of the suit; costs, the liability for which depends upon the final result of the litigation. Goodyear v. Sawyer (C. C.) 17 Fed. 8.—**Interlocutory costs.** In practice. Costs accruing upon proceedings in the intermediate stages of a cause, as distinguished from final costs; such as the costs of motions. 3 Chit. Gen. Pr. 597; Goodyear v. Sawyer (C. C.) 17 Fed. 6.—**Treble costs.** 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 latter. 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 and New Jersey 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. Shoemaker v. Nesbit, 2 Rawle (Pa.) 203; Welsh v. Anthony, 16 Pa. 256; Mairs v. Sparks, 5 N. J. Law, 516.—**Security for costs.** In practice. A security which a defendant in an action may require of a plaintiff who does not reside within the jurisdiction of the court, for the payment of such costs as may be awarded to the defendant. 1 Tidd, Pr. 534. Ex parte Louisville & N. R. Co., 124 Ala. 547, 27 South. 239.

COSTUMBRE. In Spanish law. Custom; an unwritten law established by usage, during a long space of time. Las Partidas, pt. 1, tit. 2, l. 4.

CO-SURETIES. Joint sureties; two or more sureties to the same obligation.

COTA. A cot or hut. Blount.

COTAGIUM. In old English law. A cottage.

COTARIUS. In old English law. A cottager, who held in free socage, and paid a stated fine or rent in provisions or money, with some occasional personal services.

COTERELLI. Anciently, a kind of peasantry who were outlaws: robbers. Blount.

COTERELLUS. In feudal law. A servile tenant, who held in mere villenage; his person, issue, and goods were disposable at the lord's pleasure.

COTERIE. A fashionable association, or a knot of persons forming a particular circle. The origin of the term was purely commercial, signifying an association, in which each member furnished his part, and bore his share in the profit and loss. Wharton.

COTESWOLD. In old records. A place where there is no wood.

COTLAND. In old English law. Land held by a cottager, whether in socage or villenage. Cowell.

COTSETHLA. In old English law. The little seat or mansion belonging to a small farm.

COTSETHLAND. The seat of a cottage with the land belonging to it. Spelman.

COTSETUS. A cottager or cottage-holder who held by servile tenure and was bound to do the work of the lord. Cowell.

COTTAGE. In English law. A small dwelling-house that has no land belonging to it. Shep. Touch. 94; Emerton v. Selby, 2 Ld. Raym. 1015; Scholes v. Hargreaves, 5 Term, 46; Hubbard v. Hubbard, 15 Adol. & E. (N. S.) 240; Gibson v. Brockway, 8 N. H. 470, 31 Am. Dec. 200.

COTTIER TENANCY. A species of tenancy in Ireland, constituted by an agreement in writing, and subject to the following terms: That the tenement consist of a dwelling-house with not more than half an acre of land; at a rental not exceeding £5 a year; the tenancy to be for not more than a month at a time; the landlord to keep the house in good repair. Landlord and Tenant Act, Ireland, (23 & 24 Vict. c. 154, § 81.)

COTTON NOTES. Receipts given for each bale of cotton received on storage by a public warehouse. Fourth Nat. Bank v. St. Louis Cotton Compress Co., 11 Mo. App 337.

COTUCA. Coat armor.

COTUCHANS. A term used in Domesday for peasants, boors, husbandmen.

COUCHANT. Lying down; squatting. *Couchant and levant* (lying down and rising up) is a term applied to animals trespassing on the land of one other than their owner, for one night or longer. 3 Bl. Comm. 9.

COUCHER, or COURCHER. A factor who continues abroad for traffic, (37 Edw. III. c. 16;) also the general book wherein any

corporation, etc., register their acts, (3 & 4 Edw. VI. c. 10.)

COUNCIL. An assembly of persons for the purpose of concerting measures of state or municipal policy; hence called "councillors."

In American law. The legislative body in the government of cities or boroughs. An advisory body selected to aid the executive; particularly in the colonial period (and at present in some of the United States) a body appointed to advise and assist the governor in his executive or judicial capacities or both.

—Common council. In American law. The lower or more numerous branch of the legislative assembly of a city. In English law. The councillors of the city of London. The parliament, also, was anciently called the "common council of the realm." Fleta, 2, 13.—**Privy council.** See that title.—**Select council.** The name given, in some states, to the upper house or branch of the council of a city.

COUNCIL OF CONCILIATION. By the Act 30 & 31 Vict. c. 105, power is given for the crown to grant licenses for the formation of councils of conciliation and arbitration, consisting of a certain number of masters and workmen in any trade or employment, having power to hear and determine all questions between masters and workmen which may be submitted to them by both parties, arising out of or with respect to the particular trade or manufacture, and incapable of being otherwise settled. They have power to apply to a justice to enforce the performance of their award. The members are elected by persons engaged in the trade. Davis, Bldg. Soc. 232; Sweet.

COUNCIL OF JUDGES. Under the English judicature act, 1873, § 75, an annual council of the judges of the supreme court is to be held, for the purpose of considering the operation of the new practice, offices, etc., introduced by the act, and of reporting to a secretary of state as to any alterations which they consider should be made in the law for the administration of justice. An extraordinary council may also be convened at any time by the lord chancellor. Sweet.

COUNCIL OF THE NORTH. A court instituted by Henry VIII. in 1537, to administer justice in Yorkshire and the four other northern counties. Under the presidency of Stratford, the court showed great rigor, bordering, it is alleged, on harshness. It was abolished by 16 Car. I., the same act which abolished the Star Chamber. Brown.

COUNSEL. **1.** In practice. An advocate, counsellor, or pleader. 3 Bl. Comm. 26; 1 Kent, Comm. 307. One who assists his client with advice, and pleads for him in open court. See COUNSELLOR.

Counsellors who are associated with those regularly retained in a cause, either for the purpose of advising as to the points of law involved, or preparing the case on its legal side, or arguing questions of law to the court, or preparing or conducting the case on its appearance before an appellate tribunal, are said to be "of counsel."

2. Knowledge. A grand jury is sworn to keep secret "the commonwealth's *counsel*, their fellows', and their own."

3. Advice given by one person to another in regard to a proposed line of conduct, claim, or contention. State v. Russell, 83 Wis. 330, 53 N. W. 441; Ann. Codes & St. Or. 1901, § 1049. The words "counsel" and "advise" may be, and frequently are, used in criminal law to describe the offense of a person who, not actually doing the felonious act, by his will contributed to it or procured it to be done. True v. Com., 90 Ky. 651, 14 S. W. 684; Omer v. Com., 95 Ky. 353, 25 S. W. 594.

—Junior counsel. The younger of the counsel employed on the same side of a case, or the one lower in standing or rank, or who is intrusted with the less important parts of the preparation or trial of the cause.

COUNSEL'S SIGNATURE. This is required, in some jurisdictions, to be affixed to pleadings, as affording the court a means of judging whether they are interposed in good faith and upon legal grounds.

COUNSELLOR. An advocate or barrister. A member of the legal profession whose special function is to give counsel or advice as to the legal aspects of judicial controversies, or their preparation and management, and to appear in court for the conduct of trials, or the argument of causes, or presentation of motions, or any other legal business that takes him into the presence of the court.

In some of the states, the two words "counsellor" and "attorney" are used interchangeably to designate all lawyers. In others, the latter term alone is used, "counsellor" not being recognized as a technical name. In still others, the two are associated together as the full legal title of any person who has been admitted to practice in the courts; while in a few they denote different grades, it being prescribed that no one can become a counsellor until he has been an attorney for a specified time and has passed a second examination.

In the practice of the United States supreme court, the term denotes an officer who is employed by a party in a cause to conduct the same on its trial on his behalf. He differs from an attorney at law.

In the supreme court of the United States, the two degrees of attorney and counsel were at first kept separate, and no person was permitted to practice in both capacities, but the present practice is otherwise. Weeks, Attys. at Law, 54. It is the duty of the counsel to draft or review and cor-

rect the special pleadings, to manage the cause on trial, and, during the whole course of the suit, to apply established principles of law to the exigencies of the case. 1 Kent, Comm. 307.

COUNT, *v.* In pleading. To declare; to recite; to state a case; to narrate the facts constituting a plaintiff's cause of action. In a special sense, to set out the claim or count of the demandant in a real action.

To plead orally; to plead or argue a case in court; to recite or read in court; to recite a count in court.

—Count upon a statute. Counting upon a statute consists in making express reference to it, as by the words "against the form of the statute" (or "by the force of the statute") "in such case made and provided." Richardson v. Fletcher, 74 Vt. 417, 52 Atl. 1064.

COUNT, *n.* In pleading. The different parts of a declaration, each of which, if it stood alone, would constitute a ground for action, are the counts of the declaration. Used also to signify the several parts of an indictment, each charging a distinct offense. Cheetham v. Tillotson, 5 Johns. (N. Y.) 434; Buckingham v. Murray, 7 Houst. (Del.) 176, 30 Atl. 779; Boren v. State, 23 Tex. App. 28, 4 S. W. 463; Bailey v. Mosher, 63 Fed. 490, 11 C. C. A. 304; Ryan v. Riddle, 109 Mo. App. 115, 82 S. W. 1117.

—Common counts. Certain general counts or forms inserted in a declaration in an action to recover a money debt, not founded on the circumstances of the individual case, but intended to guard against a possible variance, and to enable the plaintiff to take advantage of any ground of liability which the proof may disclose, within the general scope of the action. In the action of *assumpsit*, these counts are as follows: For goods sold and delivered, or bargained and sold; for work done; for money lent; for money paid; for money received to the use of the plaintiff; for interest; or for money due on an account stated. See Nugent v. Teauchot, 67 Mich. 571, 35 N. W. 254.—**General count.** One stating in a general way the plaintiff's claim. Wertheim v. Casualty Co., 72 Vt. 326, 47 Atl. 1071.—**Omnibus count.** A count which combines in one all the money counts with one for goods sold and delivered, work and labor, and an account stated. Webber v. Tivill, 2 Saund. 122; Griffin v. Murdock, 88 Me. 254, 34 Atl. 30.—**Money counts.** A species of common counts, so called from the subject-matter of them; embracing the *indebitatus assumpsit* count for money lent and advanced, for money paid and expended, and for money had and received, together with the *insimul computassent* count, or count for money due on an account stated. 1 Burrill, Pr. 132. —**Several counts.** Where a plaintiff has several distinct causes of action, he is allowed to pursue them cumulatively in the same action, subject to certain rules which the law prescribes. Wharton.—**Special count.** As opposed to the common counts, in pleading, a special count is a statement of the actual facts of the particular case, or a count in which the plaintiff's claim is set forth with all needed particularity. Wertheim v. Casualty Co., 72 Vt. 326, 47 Atl. 1071.

COUNT. (Fr. *comte;* from the Latin *comes.*) An earl.

COUNT-OUT. In English parliamentary law. Forty members form a house of commons; and, though there be ever so many at the beginning of a debate, yet, if during the course of it the house should be deserted by the members, till reduced below the number of forty, any one member may have it adjourned upon its being counted; but a debate may be continued when only one member is left in the house, provided no one choose to move an adjournment. Wharton.

COUNTEE. In old English law. The most eminent dignity of a subject before the Conquest. He was *præfectus* or *præpositus comitatus,* and had the charge and custody of the county; but this authority is now vested in the sheriff. 9 Coke, 46.

COUNTENANCE. In old English law. Credit; estimation. Wharton. Also, encouragement; aiding and abetting. Cooper v. Johnson, 81 Mo. 487.

COUNTER, *n.* The name of two prisons formerly standing in London, but now demolished. They were the Poultry Counter and Wood Street Counter.

COUNTER, *adj.* Adverse; antagonistic; opposing or contradicting; contrary. Silliman v. Eddy, 8 How. Prac. (N. Y.) 122.

—Counter-affidavit. An affidavit made and presented in contradiction or opposition to an affidavit which is made the basis or support of a motion or application.—**Counter-bond.** In old practice. A bond of indemnity. 2 Leon. 90. —**Counter-deed.** A secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one.—**Counter-letter.** A species of instrument of defeasance common in the civil law. It is executed by a party who has taken a deed of property, absolute on its face, but intended as security for a loan of money, and by it he agrees to reconvey the property on payment of a specified sum. The two instruments, taken together, constitute what is known in Louisiana as an *"antichresis," (q. v.)*—**Counter-mark.** A sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to show that they must not be opened, but in the presence of all the owners or their agents.—**Counter-security.** A security given to one who has entered into a bond or become surety for another; a countervailing bond of indemnity.

COUNTER-CLAIM. A claim presented by a defendant in opposition to or deduction from the claim of the plaintiff. A species of set-off or recoupment introduced by the codes of civil procedure in several of the states, of a broad and liberal character.

A counter-claim must be one "existing in favor of a defendant and against a plaintiff between whom a several judgment might be had in the action, and arising out of one of the following causes of action: (1) A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of action; (2) in an action arising on contract, any other

cause of action arising also on contract, and existing at the commencement of the action." Code Proc. N. Y. § 150.

The term "counter-claim," of itself, imports a claim opposed to, or which qualifies, or at least in some degree affects, the plaintiff's cause of action. Dietrich v. Koch, 35 Wis. 626.

A counter-claim is an opposition claim, or demand of something due; a demand of something which of right belongs to the defendant, in opposition to the right of the plaintiff. Silliman v. Eddy, 8 How. Prac. (N. Y.) 122.

A counter-claim is that which might have arisen out of, or could have had some connection with, the original transaction, in view of the parties, and which, at the time the contract was made, they could have intended might, in some event, give one party a claim against the other for compliance or non-compliance with its provisions. Conner v. Winton, 7 Ind. 523, 524.

COUNTERFEIT. In criminal law. To forge; to copy or imitate, without authority or right, and with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine. Most commonly applied to the fraudulent and criminal imitation of money. State v. McKenzie, 42 Me. 392; U. S. v. Barrett (D. C.) 111 Fed. 369; State v. Calvin, R. M. Charlt. (Ga.) 159; Mattison v. State, 3 Mo. 421.

—Counterfeit coin. Coin not genuine, but resembling or apparently intended to resemble or pass for genuine coin, including genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination. U. S. v. Hopkins (D. C.) 26 Fed. 443; U. S. v. Bogart, 24 Fed. Cas. 1185.**—Counterfeiter.** In criminal law. One who unlawfully makes base coin in imitation of the true metal, or forges false currency, or any instrument of writing, bearing a likeness and similitude to that which is lawful and genuine, with an intention of deceiving and imposing upon mankind. Thirman v. Matthews, 1 Stew. (Ala.) 384.

COUNTER-FESANCE. The act of forging.

COUNTERMAND. A change or revocation of orders, authority, or instructions previously issued. It may be either express or implied; the former where the order or instruction already given is explicitly annulled or recalled; the latter where the party's conduct is incompatible with the further continuance of the order or instruction, as where a new order is given inconsistent with the former order.

COUNTERPART. In conveyancing. The corresponding part of an instrument; a duplicate or copy. Where an instrument of conveyance, as a lease, is executed in parts, that is, by having several copies or duplicates made and interchangeably executed, that which is executed by the grantor is usually called the "original," and the rest are "counterparts;" although, where all the parties execute every part, this renders them all originals. 2 Bl. Comm. 296; Shep. Touch. 50. Roosevelt v. Smith, 17 Misc. Rep. 323, 40 N. Y. Supp. 381. See DUPLICATE.

—Counterpart writ. A copy of the original writ, authorized to be issued to another county when the court has jurisdiction of the cause by reason of the fact that some of the defendants are residents of the county or found therein. White v. Lea, 9 Lea (Tenn.) 450.

COUNTER-PLEA. See PLEA.

COUNTER-ROLLS. In English law. The rolls which sheriffs have with the coroners, containing particulars of their proceedings, as well of appeals as of inquests, etc. 3 Edw. I. c. 10.

COUNTERSIGN. The signature of a secretary or other subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it. Fifth Ave. Bank v. Railroad Co., 137 N. Y. 231, 33 N. E. 378, 19 L. R. A. 331, 33 Am. St. Rep. 712; Gurnee v. Chicago, 40 Ill. 167; People v. Brie, 43 Hun (N. Y.) 326.

COUNTERVAIL. To counterbalance; to avail against with equal force or virtue; to compensate for, or serve as an equivalent of or substitute for.

—Countervail livery. At common law, a release was a form of transfer of real estate where some right to it existed in one person but the actual possession was in another; and the possession in such case was said to "countervail livery," that is, it supplied the place of and rendered unnecessary the open and notorious delivery of possession required in other cases. Miller v. Emans, 19 N. Y. 387.**—Countervailing equity.** See EQUITY.

COUNTEZ. L. Fr. Count, or reckon. In old practice. A direction formerly given by the clerk of a court to the crier, after a jury was sworn, to *number* them; and which Blackstone says was given in his time, in good English, "count these." 4 Bl. Comm. 340, note (*u.*)

COUNTORS. Advocates, or serjeants at law, whom a man retains to defend his cause and speak for him in court, for their fees. 1 Inst. 17.

COUNTRY. The portion of the earth's surface occupied by an independent nation or people; or the inhabitants of such territory.

In its primary meaning "country" signifies "place;" and, in a larger sense, the territory or dominions occupied by a community; or even waste and unpeopled sections or regions of the earth. But its metaphorical meaning is no less definite and well understood; and in common parlance, in historical and geographical writings, in diplomacy, legislation, treaties, and international codes, the word is employed to denote the population, the nation, the state, or the government, having possession and dominion over a territory. Stairs v. Peaslee, 18 How. 521, 15 L. Ed. 474; U. S. v. Recorder, 1 Blatchf. 218, 225, 5 N. Y. Leg. Obs. 286, Fed. Cas. No. 16,129.

In pleading and practice. The inhabitants of a district from which a jury is to be summoned; pais; a jury. 3 Bl. Comm. 349; Steph. Pl. 73, 78, 230.

COUNTY. The name given to the principal subdivisions of the kingdom of England and of most of the states of the American Union, denoting a distinct portion of territory organized by itself for political and judicial purposes. The etymology of the word shows it to have been the district anciently governed by a *count* or earl. In modern use, the word may denote either the territory marked off to form a county, or the citizens resident within such territory, taken collectively and considered as invested with political rights, or the county regarded as a municipal corporation possessing subordinate governmental powers, or an organized jural society invested with specific rights and duties. Patterson v. Temple, 27 Ark. 207; Eagle v. Beard, 33 Ark. 501; Wooster v. Plymouth, 62 N. H. 208.

—County bridge. A bridge of the larger class, erected by the county, and which the county is liable to keep in repair. Taylor v. Davis County, 40 Iowa, 295; Boone County v. Mutchler, 137 Ind. 140, 36 N. E. 534.**—County commissioners.** Officers of a county charged with a variety of administrative and executive duties, but principally with the management of the financial affiairs of the county, its police regulations, and its corporate business. Sometimes the local laws give them limited judicial powers. In some states they are called "supervisors." Com. v. Krickbaum, 199 Pa. 351, 49 Atl. 68.**—County corporate.** A city or town, with more or less territory annexed, having the privilege to be a county of itself, and not to be comprised in any other county; such as London, York, Bristol, Norwich, and other cities in England. 1 Bl. Comm. 120.**—County court.** A court of high antiquity in England, incident to the jurisdiction of the sheriff. It is not a court of record, but may hold pleas of debt or damages, under the value of forty shillings. The freeholders of the county (anciently termed the "suitors" of the court) are the real judges in this court, and the sheriff is the ministerial officer. See 3 Bl. Comm. 35, 36; 3 Steph. Comm. 395. But in modern English law the name is appropriated to a system of tribunals established by the statute 9 & 10 Vict. c. 95, having a limited jurisdiction, principally for the recovery of small debts. It is also the name of certain tribunals of limited jurisdiction in the county of Middlesex, established under the statute 22 Geo. II. c. 33. In American law. The name is used in many of the states to designate the ordinary courts of record having jurisdiction for trials at nisi prius. Their powers generally comprise ordinary civil jurisdiction, also the charge and care of persons and estates coming within legal guardianship, a limited criminal jurisdiction, appellate jurisdicton over justices of the peace, etc.**—County jail.** A place of incarceration for the punishment of minor offenses and the custody of transient prisoners, where the ignominy of confinement is devoid of the infamous character which an imprisonment in the state jail or penitentiary carries with it. U. S. v. Greenwald (D. C.) 64 Fed. 8.**—County officers.** Those whose general authority and jurisdiction are confined within the limits of the county in which they are appointed, who are appointed in and for a particular county, and whose duties apply only to that county, and through whom the county performs its usual political functions. State v. Burns, 38 Fla. 367, 21 South. 290; State v. Glenn, 7 Heisk. (Tenn.) 473; In re Carpenter, 7 Barb. (N. Y.) 34; Philadelphia v. Martin, 125 Pa. 583, 17 Atl. 507.**—County palatine.** A term bestowed upon certain counties in England, the lords of which in former times enjoyed especial privileges. They might pardon treasons, murders, and felonies. All writs and indictments ran in their names, as in other counties in the king's; and all offenses were said to be done against their peace, and not, as in other places, *contra pacem domini regis.* But these privileges have in modern times nearly disappeared.**—County rate.** In English law. An imposition levied on the occupiers of lands, and applied to many miscellaneous purposes, among which the most important are those of defraying the expenses connected with prisons, reimbursing to private parties the costs they have incurred in prosecuting public offenders, and defraying the expenses of the county police. See 15 & 16 Vict. c. 81.**—County road.** One which lies wholly within one county, and which is thereby distinguished from a state road, which is a road lying in two or more counties. State v. Wood County, 17 Ohio, 186.**—County-seat.** A county-seat or county-town is the chief town of a county, where the county buildings and courts are located and the county business transacted. Williams v. Reutzel, 60 Ark. 155, 29 S. W. 374; In re Allison, 13 Colo. 525, 22 Pac. 820, 10 L. R. A. 790, 16 Am. St. Rep. 224; Whallon v. Gridley, 51 Mich. 503, 16 N. W. 876.**—County sessions.** In England, the court of general quarter sessions of the peace held in every county once in every quarter of a year. Mozley & Whitley.**—County-town.** The county-seat; the town in which the seat of government of the county is located. State v. Cates, 105 Tenn. 441, 58 S. W. 649.**—County warrant.** An order or warrant drawn by some duly authorized officer of the county, directed to the county treasurer and directing him to pay out of the funds of the county a designated sum of money to a named individual, or to his order or to bearer. Savage v. Mathews, 98 Ala. 535, 13 South. 328; Crawford v. Noble County, 8 Okl. 450, 58 Pac. 616; People v. Rio Grande County, 11 Colo. App. 124, 52 Pac. 748.**—Foreign county.** Any county having a judicial and municipal organization separate from that of the county where matters arising in the former county are called in question, though both may lie within the same state or country.

COUPONS. Interest and dividend certificates; also those parts of a commercial instrument which are to be *cut*, and which are evidence of something connected with the contract mentioned in the instrument. They are generally attached to certificates of loan, where the interest is payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payer. Wharton.

Coupons are written contracts for the payment of a definite sum of money on a given day, and being drawn and executed in a form and mode for the purpose, that they may be separated from the bonds and other instruments to which they are usually attached, it is held that they are negotiable and that a suit may be maintained on them without the necessity of producing the bonds. Each matured coupon upon a negotiable bond is a separable promise, distinct from the promises to pay the bonds or the other coupons, and gives rise to a separate cause of action. Aurora v. West, 7 Wall. 88, 19 L. Ed. 42.

—Coupon bonds. Bonds to which are attached coupons for the several successive installments of interest to maturity. Benwell v. Newark, 55 N. J. Eq. 260, 36 Atl. 668; Tennessee Bond Cases, 114 U. S. 663, 5 Sup. Ct. 974, 29 L. Ed. 281.**—Coupon notes.** Promissory notes with coupons attached, the coupons being notes for interest written at the bottom

of the principal note, and designed to be cut off severally and presented for payment as they mature. Williams v. Moody, 95 Ga. 8, 22 S. E. 30.

COUR DE CASSATION. The supreme judicial tribunal of France, having appellate jurisdiction only. For an account of its composition and powers, see Jones, French Bar, 22; Guyot, Repert. Univ.

COURSE. A term used in surveying, meaning the direction of a line with reference to a meridian.

—Course of business. Commercial paper is said to be transferred, or sales alleged to have been fraudulent may be shown to have been made, "in the course of business," or "in the usual and ordinary course of business," when the circumstances of the transaction are such as usually and ordinarily attend dealings of the same kind and do not exhibit any signs of haste, secrecy, or fraudulent intention. Walbrun v. Babbitt, 16 Wall. 581, 21 L. Ed. 489; Clough v. Patrick, 37 Vt. 429; Brooklyn, etc., R. Co. v. National Bank, 102 U. S. 14, 26 L. Ed. 61. **—Course of river.** The course of a river is a line parallel with its banks; the term is not synonymous with the "current" of the river. Attorney General v. Railroad Co., 9 N. J. Eq. 550.—**Course of the voyage.** By this term is understood the regular and customary track, if such there be, which a ship takes in going from one port to another, and the shortest way. Marsh. Ins. 185.—**Course of trade.** What is customarily or ordinarily done in the management of trade or business.

COURT. In legislation. A legislative assembly. Parliament is called in the old books a court of the king, nobility, and commons assembled. Finch, Law, b. 4, c. 1, p. 233; Fleta, lib. 2, c. 2.

This meaning of the word has been retained in the titles of some deliberative bodies, such as the general court of Massachusetts, (the legislature.)

In international law. The person and suite of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. The English government is spoken of in diplomacy as the court of St. James, because the palace of St. James is the official palace.

In practice. An organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. White County v. Gwin, 136 Ind. 562, 36 N. E. 237, 22 L. R. A. 402.

The presence of a sufficient number of the members of such a body regularly convened in an authorized place at an appointed time, engaged in the full and regular performance of its functions. Brumley v. State, 20 Ark. 77.

A court may be more particularly described as an organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings. Ex parte Gardner, 22 Nev. 280, 39 Pac. 570.

The place where justice is judicially administered. Co. Litt. 58*a*; 3 Bl. Comm. 23. Railroad Co. v. Harden, 113 Ga. 456, 38 S. E. 950.

The judge, or the body of judges, presiding over a court.

The words "court" and "judge," or "judges," are frequently used in our statutes as synonymous. When used with reference to orders made by the court or judges, they are to be so understood. State v. Caywood, 96 Iowa, 367, 65 N. W. 385; Michigan Cent. R. Co. v. Northern Ind. R. Co., 3 Ind. 239.

Classification. Courts may be classified and divided according to several methods, the following being the more usual:

Courts of record and *courts not of record;* the former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher (C. C.) 24 Fed. 481; Ex parte Thistleton, 52 Cal. 225; Thomas v. Robinson, 3 Wend. (N. Y.) 268; Erwin v. U. S. (D. C.) 37 Fed. 488, 2 L. R. A. 229.

Superior and *inferior* courts; the former being courts of general original jurisdiction in the first instance, and which exercise a control or supervision over a system of lower courts, either by appeal, error, or *certiorari;* the latter being courts of small or restricted jurisdiction, and subject to the review or correction of higher courts. Sometimes the former term is used to denote a particular group or system of courts of high powers, and all others are called "inferior courts."

To constitute a court a superior court as to any class of actions, within the common-law meaning of that term, its jurisdiction of such actions must be unconditional, so that the only thing requisite to enable the court to take cognizance of them is the acquisition of jurisdiction of the persons of the parties. Simons v. De Bare, 4 Bosw. (N. Y.) 547.

An inferior court is a court whose judgments or decrees can be reviewed, on appeal or writ of error, by a higher tribunal, whether that tribunal be the circuit or supreme court. Nugent v. State, 18 Ala. 521.

Civil and *criminal* courts; the former being such as are established for the adjudication of controversies between subject and subject, or the ascertainment, enforcement, and redress of private rights; the latter, such as are charged with the administration of the criminal laws, and the punishment of wrongs to the public.

Equity courts and *law* courts; the former being such as possess the jurisdiction of a

chancellor, apply the rules and principles of chancery law, and follow the procedure in equity; the latter, such as have no equitable powers, but administer justice according to the rules and practice of the common law.

As to the division of courts according to their *jurisdiction*, see JURISDICTION.

As to several names or kinds of courts not specifically described in the titles immediately following, see ARCHES COURT, APPELLATE, CIRCUIT COURTS, CONSISTORY COURTS, COUNTY, CUSTOMARY COURT BARON, ECCLESIASTICAL COURTS, FEDERAL COURTS, HIGH COMMISSION COURT, INSTANCE COURT, JUSTICE COURT, JUSTICIARY COURT, MARITIME COURT, MAYOR'S COURT, MOOT COURT, MUNICIPAL COURT, ORPHANS' COURT, POLICE COURT, PREROGATIVE COURT, PRIZE COURT, PROBATE COURT, SUPERIOR COURTS, SUPREME COURT, and SURROGATE'S COURT.

As to **court-hand, court-house, court-lands, court rolls,** see those titles in their alphabetical order *infra*.

—Court above, court below. In appellate practice, the "court above" is the one to which a cause is removed for review, whether by appeal, writ of error, or certiorari; while the "court below" is the one from which the case is removed. Going v. Schnell, 6 Ohio Dec. 933; Rev. St. Tex. 1895, art. 1386.**—Court in bank.** A meeting of all the judges of a court, usually for the purpose of hearing arguments on demurrers, points reserved, motions for new trial, etc., as distinguished from sessions of the same court presided over by a single judge or justice. **—De facto court.** One established, organized, and exercising its judicial functions under authority of a statute apparently valid, though such statute may be in fact unconstitutional and may be afterwards so adjudged; or a court established and acting under the authority of a *de facto* government. 1 Bl. Judgm. § 173; Burt v. Railroad Co., 31 Minn. 472, 18 N. W. 285.**—Full court.** A session of a court which is attended by all the judges or justices composing it.**—Spiritual courts.** In English law. The ecclesiastical courts, or courts Christian. See 3 Bl. Comm. 61.

COURT-BARON. In English law. A court which, although not one of record, is incident to every manor, and cannot be severed therefrom. It was ordained for the maintenance of the services and duties stipulated for by lords of manors, and for the purpose of determining actions of a personal nature, where the debt or damage was under forty shillings. Wharton.

Customary court-baron is one appertaining entirely to copyholders. 3 Bl. Comm. 33.

Freeholders' court-baron is one held before the freeholders who owe suit and service to the manor. It is the court-baron proper.

COURT CHRISTIAN. The ecclesiastical courts in England are often so called, as distinguished from the civil courts. 1 Bl. Comm. 83; 3 Bl. Comm. 64; 3 Steph. Comm. 430.

COURT FOR CONSIDERATION OF CROWN CASES RESERVED. A court established by St. 11 & 12 Vict. c. 78, composed of such of the judges of the superior courts of Westminster as were able to attend, for the consideration of questions of law reserved by any judge in a court of oyer and terminer, gaol delivery, or quarter sessions, before which a prisoner had been found guilty by verdict. Such question is stated in the form of a special case. Mozley & Whiteley; 4 Steph. Comm. 442.

COURT FOR DIVORCE AND MATRIMONIAL CAUSES. This court was established by St. 20 & 21 Vict. c. 85, which transferred to it all jurisdiction then exercisable by any ecclesiastical court in England, in matters matrimonial, and also gave it new powers. The court consisted of the lord chancellor, the three chiefs, and three senior puisne judges of the common-law courts, and the judge ordinary, who together constituted, and still constitute, the "full court." The judge ordinary heard almost all matters in the first instance. By the judicature act, 1873, § 3, the jurisdiction of the court was transferred to the supreme court of judicature. Sweet.

COURT FOR THE CORRECTION OF ERRORS. The style of a court having jurisdiction for review, by appeal or writ of error. The name was formerly used in New York and South Carolina.

COURT FOR THE RELIEF OF INSOLVENT DEBTORS. In English law. A local court which has its sittings in London only, which receives the petitions of insolvent debtors, and decides upon the question of granting a discharge.

COURT FOR THE TRIAL OF IMPEACHMENTS. A tribunal empowered to try any officer of government or other person brought to its bar by the process of impeachment. In England, the house of lords constitutes such a court; in the United States, the senate; and in the several states, usually, the upper house of the legislative assembly.

COURT-HAND. In old English practice. The peculiar hand in which the records of courts were written from the earliest period down to the reign of George II. Its characteristics were great strength, compactness, and undeviating uniformity; and its use undoubtedly gave to the ancient record its acknowledged superiority over the modern, in the important quality of durability.

The writing of this hand, with its peculiar abbreviations and contractions, constituted, while it was in use, an art of no little importance, being an indispensable part of the profession of "clerkship," as it was called. Two sizes of it were employed, a large and a small hand; the former, called "great court-hand," being used for initial words or clauses, the *placita* of records, etc. Burrill.

COURT-HOUSE. The building occupied for the public sessions of a court, with its various offices. The term may be used of a place temporarily occupied for the sessions of a court, though not the regular court-house. Harris v. State, 72 Miss. 960, 18 South. 387, 33 L. R. A. 85; Vigo County v. Stout, 136 Ind. 53, 35 N. E. 683, 22 L. R. A. 398; Waller v. Arnold, 71 Ill. 353; Kane v. McCown, 55 Mo. 198.

COURT-LANDS. Domains or lands kept in the lord's hands to serve his family.

COURT-LEET. The name of an English court of record held once in the year, and not oftener, within a particular hundred, lordship, or manor, before the steward of the leet; being the king's court granted by charter to the lords of those hundreds or manors. Its office was to view the frankpledges,—that is, the freemen within the liberty; to present by jury crimes happening within the jurisdiction; and to punish trivial misdemeanors. It has now, however, for the most part, fallen into total desuetude; though in some manors a court-leet is still periodically held for the transaction of the administrative business of the manor. Mozley & Whitley.

COURT-MARTIAL. A military court, convened under authority of government and the articles of war, for trying and punishing military offenses committed by soldiers or sailors in the army or navy. People v. Van Allen, 55 N. Y. 31; Carver v. U. S., 16 Ct. Cl. 361; U. S. v. Mackenzie, 30 Fed. Cas. 1160.

COURT OF ADMIRALTY. A court having jurisdiction of causes arising under the rules of admiralty law. See ADMIRALTY.

—High court of admiralty. In English law. This was a court which exercised jurisdiction in prize cases, and had general jurisdiction in maritime causes, on the instance side. Its proceedings were usually *in rem*, and its practice and principles derived in large measure from the civil law. The judicature acts of 1873 transferred all the powers and jurisdiction of this tribunal to the probate, divorce, and admiralty division of the high court of justice.

COURT OF ANCIENT DEMESNE. In English law. A court of peculiar constitution, held by a bailiff appointed by the king, in which alone the tenants of the king's demesne could be impleaded. 2 Burrows, 1046; 1 Spence, Eq. Jur. 100; 2 Bl. Comm. 99; 1 Steph. Comm. 224.

COURT OF APPEAL, HIS MAJESTY'S. The chief appellate tribunal of England. It was established by the judicature acts of 1873 and 1875, and is invested with the jurisdiction formerly exercised by the court of appeal in chancery, the exchequer chamber, the judicial committee of the privy council in admiralty and lunacy appeals, and with general appellate jurisdiction from the high court of justice.

COURT OF APPEALS. In American law. An appellate tribunal which, in Kentucky, Maryland, the District of Columbia, and New York, is the court of last resort. In Delaware and New Jersey, it is known as the "court of errors and appeals;" in Virginia and West Virginia, the "supreme court of appeals." In Texas the court of appeals is inferior to the supreme court.

COURT OF APPEALS IN CASES OF CAPTURE. A court erected by act of congress under the articles of confederation which preceded the adoption of the constitution. It had appellate jurisdiction in prize causes.

COURT OF ARBITRATION OF THE CHAMBER OF COMMERCE. A court of arbitrators, created for the convenience of merchants in the city of New York, by act of the legislature of New York. It decides disputes between members of the chamber of commerce, and between members and outside merchants who voluntarily submit themselves to the jurisdiction of the court.

COURT OF ARCHDEACON. The most inferior of the English ecclesiastical courts, from which an appeal generally lies to that of the bishop. 3 Bl. Comm. 64.

COURT OF ASSISTANTS. In Massachusetts during the early colonial period, this name was given to the chief or supreme judicial court, composed of the governor, his deputy, and certain assistants.

COURTS OF ASSIZE AND NISI PRIUS. Courts in England composed of two or more commissioners, called "judges of assize," (or of "assize and *nisi prius*,") who are twice in every year sent by the king's special commission, on circuits all round the kingdom, to try, by a jury of the respective counties, the truth of such matters of fact as are there under dispute in the courts of Westminster Hall. 3 Steph. Comm. 421, 422; 3 Bl. Comm. 57.

COURT OF ATTACHMENTS. The lowest of the three courts held in the forests. It has fallen into total disuse.

COURT OF AUDIENCE. Ecclesiastical courts, in which the primates once exercised in person a considerable part of their jurisdiction. They seem to be now obsolete, or at least to be only used on the rare occurrence of the trial of a bishop. Phillim. Ecc. Law, 1201, 1204.

COURT OF AUGMENTATION. An English court created in the time of Henry VIII., with jurisdiction over the property and revenue of certain religious foundations, which had been made over to the king by act of parliament, and over suits relating to the same.

COURT OF BANKRUPTCY. An English court of record, having original and appellate jurisdiction in matters of bankruptcy, and invested with both legal and equitable powers for that purpose. In the United States, the "courts of bankruptcy" include the district courts of the United States and of the territories, the supreme court of the District of Columbia, and the United States court of the Indian Territory and of Alaska. U. S. Comp. St. 1901, p. 3419.

COURT OF BROTHERHOOD. An assembly of the mayors or other chief officers of the principal towns of the Cinque Ports in England, originally administering the chief powers of those ports, now almost extinct. Cent. Dict.

COURT OF CHANCERY. A court having the jurisdiction of a chancellor; a court administering equity and proceeding according to the forms and principles of equity. In England, prior to the judicature acts, the style of the court possessing the largest equitable powers and jurisdiction was the "high court of chancery." In some of the United States, the title "court of chancery" is applied to a court possessing general equity powers, distinct from the courts of common law. Parmeter v. Bourne, 8 Wash. 45, 35 Pac. 586.

The terms "equity" and "chancery," "court of equity" and "court of chancery," are constantly used as synonymous in the United States. It is presumed that this custom arises from the circumstance that the equity jurisdiction which is exercised by the courts of the various states is assimilated to that possessed by the English courts of chancery. Indeed, in some of the states it is made identical therewith by statute, so far as conformable to our institutions. Bouvier.

COURT OF CHIVALRY, or COURT MILITARY, was a court not of record, held before the lord high constable and earl marshal of England. It had jurisdiction, both civil and criminal, in deeds of arms and war, armorial bearings, questions of precedence, etc., and as a court of honor. It has long been disused. 3 Bl. Comm. 103; 3 Steph. Comm. 335, note *l*.

COURTS OF CINQUE PORTS. In English law. Courts of limited local jurisdiction formerly held before the mayor and jurats (aldermen) of the Cinque Ports.

COURT OF CLAIMS. One of the courts of the United States, erected by act of congress. It consists of a chief justice and four associates, and holds one annual session. It is located at Washington. Its jurisdiction extends to all claims against the United States arising out of any contract with the government or based on an act of congress or regulation of the executive, and all claims referred to it by either house of congress, as well as to claims for exoneration by a disbursing officer. Its judgments are, in certain cases, reviewable by the United States supreme court. It has no equity powers. Its decisions are reported and published.

This name is also given, in some of the states, either to a special court or to the ordinary county court sitting "as a court of claims," having the special duty of auditing and ascertaining the claims against the county and expenses incurred by it, and providing for their payment by appropriations out of the county levy or annual tax. Meriweather v. Muhlenburg County Court, 120 U. S. 354, 7 Sup. Ct. 563, 30 L. Ed. 653.

COURT OF THE CLERK OF THE MARKET. An English court of inferior jurisdiction held in every fair or market for the punishment of misdemeanors committed therein, and the recognizance of weights and measures.

COURT OF COMMISSIONERS OF SEWERS. The name of certain English courts created by commission under the great seal pursuant to the statute of sewers, (23 Hen. VIII. c. 5.)

COURT OF COMMON PLEAS. The English court of common pleas was one of the four superior courts at Westminster, and existed up to the passing of the judicature acts. It was also styled the "Common Bench." It was one of the courts derived from the breaking up of the *aula regis*, and had exclusive jurisdiction of all real actions and of *communia placita*, or common pleas, *i. e.*, between subject and subject. It was presided over by a chief justice with four puisne judges. Appeals lay anciently to the king's bench, but afterwards to the exchequer chamber. See 3 Bl. Comm. 37, et seq.

In American law. The name sometimes given to a court of original and general jurisdiction for the trial of issues of fact and law according to the principles of the common law. See Moore v. Barry, 30 S. C. 530, 9 S. E. 589, 4 L. R. A. 294.

COURT OF COMMON PLEAS FOR THE CITY AND COUNTY OF NEW YORK. The oldest court in the state of New York. Its jurisdiction is unlimited as respects amount, but restricted to the city and county of New York as respects locality. It has also appellate jurisdiction of cases tried in the marine court and district courts of New York city. Rap. & L.

COURTS OF CONSCIENCE. These were the same as courts of request, (*q. v.*) This name is also frequently applied to the courts of equity or of chancery, not as a name but as a description. See Harper v. Clayton, 84 Md. 346, 35 Atl. 1083, 35 L. R. A. 211, 57 Am. St. Rep. 407. And see CONSCIENCE.

COURT OF CONVOCATION. In English ecclesiastical law. A court, or assembly,

comprising all the high officials of each province and representatives of the minor clergy. It is in the nature of an ecclesiastical parliament; and, so far as its judicial functions extend, it has jurisdiction of cases of heresy, schism, and other purely ecclesiastical matters. An appeal lies to the king in council.

COURT OF THE CORONER. In English law. A court of record, to inquire, when any one dies in prison, or comes to a violent or sudden death, by what manner he came to his end. 4 Steph. Comm. 323; 4 Bl. Comm. 274. See CORONER.

COURTS OF THE COUNTIES PALATINE. In English law. A species of private court which formerly appertained to the counties palatine of Lancaster and Durham.

COURT OF COUNTY COMMISSIONERS. There is in each county of Alabama a court of record, styled the "court of county commissioners," composed of the judge of probate, as principal judge, and four commissioners, who are elected at the times prescribed by law, and hold office for four years. Code Ala. 1886, § 819.

COURT OF DELEGATES. An English tribunal composed of delegates appointed by royal commission, and formerly the great court of appeal in all ecclesiastical causes. The powers of the court were, by 2 & 3 Wm. IV. c. 92, transferred to the privy council. A commission of review was formerly granted, in extraordinary cases, to revise a sentence of the court of delegates, when that court had apparently been led into material error. Brown; 3 Bl. Comm. 66.

COURT OF THE DUCHY OF LANCASTER. A court of special jurisdiction, held before the chancellor of the duchy or his deputy, concerning all matters of equity relating to lands holden of the king in right of the duchy of Lancaster. 3 Bl. Comm. 78.

COURT OF EQUITY. A court which has jurisdiction in equity, which administers justice and decides controversies in accordance with the rules, principles, and precedents of equity, and which follows the forms and procedure of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the common law. Thomas v. Phillips, 4 Smedes & M. (Miss.) 423.

COURT OF ERROR. An expression applied especially to the court of exchequer chamber and the house of lords, as taking cognizance of *error* brought. Mozley & Whitley. It is applied in some of the United States to the court of last resort in the state; and in its most general sense denotes any court having power to review the decisions of lower courts on appeal, error, *certiorari*, or other process.

COURT OF ERRORS AND APPEALS. The court of last resort in the state of New Jersey is so named. Formerly, the same title was given to the highest court of appeal in New York.

—High court of errors and appeals. The court of last resort in the state of Mississippi.

COURT OF EXCHEQUER. In English law. A very ancient court of record, set up by William the Conqueror as a part of the *aula regis*, and afterwards one of the four superior courts at Westminster. It was, however, inferior in rank to both the king's bench and the common pleas. It was presided over by a chief baron and four puisne barons. It was originally the king's treasury, and was charged with keeping the king's accounts and collecting the royal revenues. But pleas between subject and subject were anciently heard there, until this was forbidden by the *Articula super Chartas*, (1290,) after which its jurisdiction as a court only extended to revenue cases arising out of the non-payment or withholding of debts to the crown. But the privilege of suing and being sued in this court was extended to the king's accountants, and later, by the use of a convenient fiction to the effect that the plaintiff was the king's debtor or accountant, the court was thrown open to all suitors in personal actions. The exchequer had formerly both an equity side and a common-law side, but its equity jurisdiction was taken away by the statute 5 Vict. c. 5, (1842,) and transferred to the court of chancery. The judicature act (1873) transferred the business and jurisdiction of this court to the "Exchequer Division" of the "High Court of Justice."

In Scotch law. A court which formerly had jurisdiction of matters of revenue, and a limited jurisdiction over cases between the crown and its vassals where no questions of title were involved.

COURT OF EXCHEQUER CHAMBER. The name of a former English court of appeal, intermediate between the superior courts of common law and the house of lords. When sitting as a court of appeal from any one of the three superior courts of common law, it was composed of judges of the other two courts. 3 Bl. Comm. 56, 57; 3 Steph. Comm. 333, 356. By the judicature act (1873) the jurisdiction of this court is transferred to the court of appeal.

COURT OF GENERAL QUARTER SESSIONS OF THE PEACE. In American law. A court of criminal jurisdiction in New Jersey.

In English law. A court of criminal jurisdiction, in England, held in each county once in every quarter of a year, but in the county of Middlesex twice a month. 4 Steph. Comm. 317–320.

COURT OF GENERAL SESSIONS. The name given in some of the states (as

New York) to a court of general original jurisdiction in criminal cases.

COURT OF GREAT SESSIONS IN WALES. A court formerly held in Wales; abolished by 11 Geo. IV. and 1 Wm. IV. c. 70, and the Welsh judicature incorporated with that of England. 3 Steph. Comm. 317, note.

COURT OF GUESTLING. An assembly of the members of the Court of Brotherhood (*supra*) together with other representatives of the corporate members of the Cinque Ports, invited to sit with the mayors of the seven principal towns. Cent. Dict.

COURT OF HIGH COMMISSION. In English law. An ecclesiastical court of very formidable jurisdiction, for the vindication of the peace and dignity of the church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offenses, contempts, and enormities. 3 Bl. Comm. 67. It was erected by St. 1 Eliz. c. 1, and abolished by 16 Car. I. c. 11.

COURT OF HONOR. A court having jurisdiction to hear and redress injuries or affronts to a man's honor or personal dignity, of a nature not cognizable by the ordinary courts of law, or encroachments upon his rights in respect to heraldry, coat-armor, right of precedence, and the like. It was one of the functions of the Court of Chivalry (*q. v.*) in England to sit and act as a court of honor. 3 Bl. Comm. 104. The name is also given in some European countries to a tribunal of army officers (more or less distinctly recognized by law as a "court") convened for the purpose of inquiring into complaints affecting the honor of brother officers and punishing derelictions from the code of honor and deciding on the causes and occasions for fighting duels, in which officers are concerned, and the manner of conducting them.

COURT OF HUSTINGS. In English law. The county court of London, held before the mayor, recorder, and sheriff, but of which the recorder is, in effect, the sole judge. No actions can be brought in this court that are merely personal. 3 Steph. Comm. 449, note *l*.

In American law. A local court in some parts of the state of Virginia. Smith v. Commonwealth, 6 Grat. 696.

COURT OF INQUIRY. In English law. A court sometimes appointed by the crown to ascertain whether it be proper to resort to extreme measures against a person charged before a court-martial.

In American law. A court constituted by authority of the articles of war, invested with the power to examine into the nature of any transaction, accusation, or imputation against any officer or soldier. The said court shall consist of one or more officers, not exceeding three, and a judge advocate, or other suitable person, as a recorder, to reduce the proceedings and evidence to writing; all of whom shall be sworn to the performance of their duty. Rev. St. § 1342, arts. 115, 116 (U. S. Comp. St. 1901, pp. 970, 971.)

COURT OF JUSTICE SEAT. In English law. The principal of the forest courts.

COURT OF JUSTICIARY. A Scotch court of general criminal jurisdiction of all offenses committed in any part of Scotland, both to try causes and to review decisions of inferior criminal courts. It is composed of five lords of session with the lord president or justice-clerk as president. It also has appellate jurisdiction in civil causes involving small amounts. An appeal lies to the house of lords.

COURT OF KING'S BENCH. In English law. The supreme court of common law in the kingdom, now merged in the high court of justice under the judicature act of 1873, § 16.

COURT OF LAW. In a wide sense, any duly constituted tribunal administering the laws of the state or nation; in a narrower sense, a court proceeding according to the course of the common law and governed by its rules and principles, as contrasted with a "court of equity."

COURT OF LODEMANAGE. An ancient court of the Cinque Ports, having jurisdiction in maritime matters, and particularly over pilots (lodemen.)

COURT OF THE LORD HIGH STEWARD. In English law. A court instituted for the trial, during the recess of parliament, of peers indicted for treason or felony, or for misprision of either. This court is not a permanent body, but is created in modern times, when occasion requires, and for the time being, only; and the lord high steward, so constituted, with such of the temporal lords as may take the proper oath, and act, constitute the court.

COURT OF THE LORD HIGH STEWARD OF THE UNIVERSITIES. In English law. A court constituted for the trial of scholars or privileged persons connected with the university at Oxford or Cambridge who are indicted for treason, felony, or mayhem.

COURT OF MAGISTRATES AND FREEHOLDERS. In American law. The name of a court formerly established in South Carolina for the trial of slaves and free persons of color for criminal offenses.

COURT OF MARSHALSEA. A court which has jurisdiction of all trespasses com-

mitted within the verge of the king's court, where one of the parties was of the royal household; and of all debts and contracts, when both parties were of that establishment. It was abolished by 12 & 13 Vict. c. 101, § 13. Mozley & Whitley.

COURT OF NISI PRIUS. In American law. Though this term is frequently used as a general designation of any court exercising general, original jurisdiction in civil cases, (being used interchangeably with "trial-court,") it belonged as a legal title only to a court which formerly existed in the city and county of Philadelphia, and which was presided over by one of the judges of the supreme court of Pennsylvania. This court was abolished by the constitution of 1874. See COURTS OF ASSIZE AND NISI PRIUS.

COURT OF ORDINARY. In some of the United States (*e. g.*, Georgia) this name is given to the probate or surrogate's court, or the court having the usual jurisdiction in respect to the proving of wills and the administration of decedents' estates. Veach v. Rice, 131 U. S. 293, 9 Sup. Ct. 730, 33 L. Ed. 163.

COURT OF ORPHANS. In English law. The court of the lord mayor and aldermen of London, which has the care of those orphans whose parent died in London and was free of the city.

In Pennsylvania (and perhaps some other states) the name "orphans' court" is applied to that species of tribunal which is elsewhere known as the "probate court" or "surrogate's court."

COURT OF OYER AND TERMINER. In English law. A court for the trial of cases of treason and felony. The commissioners of assise and *nisi prius* are judges selected by the king and appointed and authorized under the great seal, including usually two of the judges at Westminster, and sent out twice a year into most of the counties of England, for the trial (with a jury of the county) of causes then depending at Westminster, both civil and criminal. They sit by virtue of several commissions, each of which, in reality, constitutes them a separate and distinct court. The commission of *oyer and terminer* gives them authority for the trial of treasons and felonies; that of *general gaol delivery* empowers them to try every prisoner then in gaol for whatever offense; so that, altogether, they possess full criminal jurisdiction.

In American law. This name is generally used (sometimes, with additions) as the title, or part of the title, of a state court of criminal jurisdiction, or of the criminal branch of a court of general jurisdiction, being commonly applied to such courts as may try *felonies*, or the higher grades of crime.

COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY. In American law. A court of criminal jurisdiction in the state of Pennsylvania.

It is held at the same time with the court of quarter sessions, as a general rule, and by the same judges. See Brightly's Purd. Dig. Pa. pp. 26, 382, 1201.

COURT OF PALACE AT WESTMINSTER. This court had jurisdiction of personal actions arising within twelve miles of the palace at Whitehall. Abolished by 12 & 13 Vict. c. 101, 3 Steph. Comm. 317, note.

COURT OF PASSAGE. An inferior court, possessing a very ancient jurisdiction over causes of action arising within the borough of Liverpool. It appears to have been also called the "Borough Court of Liverpool." It has the same jurisdiction in admiralty matters as the Lancashire county court. Rosc. Adm. 75.

COURT OF PECULIARS. A spiritual court in England, being a branch of, and annexed to, the Court of Arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these *peculiar* or exempt jurisdictions are originally cognizable by this court, from which an appeal lies to the Court of Arches. 3 Steph. Comm. 431; 4 Reeve, Eng. Law, 104.

COURT OF PIEPOUDRE. The lowest (and most expeditious) of the courts of justice known to the older law of England. It is supposed to have been so called from the dusty feet of the suitors. It was a court of record incident to every fair and market, was held by the steward, and had jurisdiction to administer justice for all commercial injuries and minor offenses done in that same fair or market, (not a preceding one.) An appeal lay to the courts at Westminster. This court long ago fell into disuse. 3 Bl. Comm. 32.

COURT OF PLEAS. A court of the county palatine of Durham, having a local common-law jurisdiction. It was abolished by the judicature act, which transferred its jurisdiction to the high court. Jud. Act 1873, § 16; 3 Bl. Comm. 79.

COURT OF POLICIES OF ASSURANCE. A court established by statute 43 Eliz. c. 12, to determine in a summary way all causes between merchants, concerning policies of insurance. Crabb, Eng. Law, 503.

COURTS OF PRINCIPALITY OF WALES. A species of private courts of a limited though extensive jurisdiction, which,

upon the thorough reduction of that principality and the settling of its polity in the reign of Henry VIII., were erected all over the country. These courts, however, have been abolished by 1 Wm. IV. c. 70; the principality being now divided into two circuits, which the judges visit in the same manner as they do the circuits in England, for the purpose of disposing of those causes which are ready for trial. Brown.

COURT OF PRIVATE LAND CLAIMS. A federal court created by act of Congress in 1891 (26 Stat. 854 [U. S. Comp. St. 1901, p. 765]), to hear and determine claims by private parties to lands within the public domain, where such claims originated under Spanish or Mexican grants, and had not already been confirmed by Congress or otherwise adjudicated. The existence and authority of this court were to cease and determine at the end of the year 1895.

COURT OF PROBATE. In English law. The name of a court established in 1857, under the probate act of that year, (20 & 21 Vict. c. 77,) to be held in London, to which court was transferred the testamentary jurisdiction of the ecclesiastical courts. 2 Steph. Comm. 192. By the judicature acts, this court is merged in the high court of justice.

In American law. A court having jurisdiction over the probate of wills, the grant of administration, and the supervision of the management and settlement of the estates of decedents, including the collection of assets, the allowance of claims, and the distribution of the estate. In some states the probate courts also have jurisdiction of the estates of minors, including the appointment of guardians and the settlement of their accounts, and of the estates of lunatics, habitual drunkards, and spendthrifts. And in some states these courts possess a limited jurisdiction in civil and criminal cases. They are also called "orphans' courts" and "surrogate's courts."

COURT OF QUARTER SESSIONS OF THE PEACE. In American law. A court of criminal jurisdiction in the state of Pennsylvania, having power to try misdemeanors, and exercising certain functions of an administrative nature. There is one such court in each county of the state. Its sessions are, in general, held at the same time and by the same judges as the *court of oyer and terminer and general jail delivery.* See Brightly's Purd. Dig. pp. 26, 383, § 35, p. 1198, § 1.

COURT OF QUEEN'S BENCH. See KING'S BENCH.

COURT OF RECORD. See COURT, *supra.*

COURT OF REGARD. In English law. One of the forest courts, in England, held every third year, for the lawing or expeditation of dogs, to prevent them from running after deer. It is now obsolete. 3 Steph. Comm. 440; 3 Bl. Comm. 71, 72.

COURTS OF REQUEST. Inferior courts, in England, having local jurisdiction in claims for small debts, established in various parts of the kingdom by special acts of parliament. They were abolished in 1846, and the modern county courts (*q. v.*) took their place. 3 Steph. Comm. 283.

COURT OF SESSION. The name of the highest court of civil jurisdiction in Scotland. It was composed of fifteen judges, now of thirteen. It sits in two divisions. The lord president and three ordinary lords form the first division; the lord justice clerk and three other ordinary lords form the second division. There are five permanent lords ordinary attached equally to both divisions; the last appointed of whom officiates on the bills, *i. e.*, petitions preferred to the court during the session, and performs the other duties of junior lord ordinary. The chambers of the parliament house in which the first and second divisions hold their sittings are called the "inner house;" those in which the lords ordinary sit as single judges to hear motions and causes are collectively called the "outer house." The nomination and appointment of the judges is in the crown. Wharton.

COURT OF SESSIONS. Courts of criminal jurisdiction existing in California, New York, and one or two other of the United States.

COURT OF STANNARIES. In English law. A court established in Devonshire and Cornwall, for the administration of justice among the miners and tinners, and that they may not be drawn away from their business to attend suits in distant courts. The stannary court is a court of record, with a special jurisdiction. 3 Bl. Comm. 79.

COURT OF STAR CHAMBER. This was an English court of very ancient origin, but new-modeled by St. 3 Hen. VII. c. 1, and 21 Hen. VIII. c. 20, consisting of divers lords, spiritual and temporal, being privy councillors, together with two judges of the courts of common law, without the intervention of any jury. The jurisdiction extended legally over riots, perjury, misbehavior of sheriffs, and other misdemeanors contrary to the laws of the land; yet it was afterwards stretched to the asserting of all proclamations and orders of state, to the vindicating of illegal commissions and grants of monopolies; holding for honorable that which it pleased, and for just that which it profited, and becoming both a court of law

to determine civil rights and a court of revenue to enrich the treasury. It was finally abolished by St. 16 Car. I. c. 10, to the general satisfaction of the whole nation. Brown.

COURT OF THE STEWARD AND MARSHAL. A high court, formerly held in England by the steward and marshal of the king's household, having jurisdiction of all actions against the king's peace within the bounds of the household for twelve miles, which circuit was called the "verge." Crabb, Eng. Law, 185. It had also jurisdiction of actions of debt and covenant, where both the parties were of the household. 2 Reeve, Eng. Law, 235, 247.

COURT OF THE STEWARD OF THE KING'S HOUSEHOLD. In English law. A court which had jurisdiction of all cases of treason, misprision of treason, murder, manslaughter, bloodshed, and other malicious strikings whereby blood is shed, occurring in or within the limits of any of the palaces or houses of the king, or any other house where the royal person is abiding. It was created by statute 33 Hen. VIII. c. 12, but long since fell into disuse. 4 Bl. Comm. 276, 277, and notes.

COURT OF SURVEY. A court for the hearing of appeals by owners or masters of ships, from orders for the detention of unsafe ships, made by the English board of trade, under the merchant shipping act, 1876, § 6.

COURT OF SWEINMOTE. In old English law. One of the forest courts, having a somewhat similar jurisdiction to that of the court of attachments, (*q. v.*)

COURTS OF THE UNITED STATES comprise the following: The senate of the United States, sitting as a court of impeachment; the supreme court; the circuit courts; the circuit courts of appeals; the district courts; the supreme court and court of appeals of the District of Columbia; the territorial courts; the court of claims; the court of private land claims; and the customs court. See the several titles.

COURTS OF THE UNIVERSITIES of Oxford and Cambridge have jurisdiction in all personal actions to which any member or servant of the respective university is a party, provided that the cause of action arose within the liberties of the university, and that the member or servant was resident in the university when it arose, and when the action was brought. 3 Steph. Comm. 299; St. 25 & 26 Vict. c. 26, § 12; St. 19 & 20 Vict. c. 17. Each university court also has a criminal jurisdiction in all offenses committed by its members. 4 Steph. Comm. 325.

COURT OF WARDS AND LIVERIES. A court of record, established in England in the reign of Henry VIII. For the survey and management of the valuable fruits of tenure, a court of record was created by St. 32 Hen. VIII. c. 46, called the "Court of the King's Wards." To this was annexed, by St. 33 Hen. VIII. c. 22, the "Court of Liveries;" so that it then became the "Court of Wards and Liveries." 4 Reeve, Eng. Law, 258. This court was not only for the management of "wards," properly so called, but also of idiots and natural fools in the king's custody, and for licenses to be granted to the king's widows to marry, and fines to be made for marrying without his license. Id. 259. It was abolished by St. 12 Car. II. c. 24. Crabb, Eng. Law, 468.

COURTS OF WESTMINSTER HALL. The superior courts, both of law and equity, were for centuries fixed at Westminster, an ancient palace of the monarchs of England. Formerly, all the superior courts were held before the king's capital justiciary of England, in the *aula regis*, or such of his palaces wherein his royal person resided, and removed with his household from one end of the kingdom to another. This was found to occasion great inconvenience to the suitors, to remedy which it was made an article of the great charter of liberties, both of King John and King Henry III., that "common pleas should no longer follow the king's court, but be held in some certain place," in consequence of which they have ever since been held (a few necessary removals in times of the plague excepted) in the palace of Westminster only. The courts of equity also sit at Westminster, nominally, during term time, although, actually, only during the first day of term, for they generally sit in courts provided for the purpose in, or in the neighborhood of, Lincoln's Inn. Brown.

COURT ROLLS. The rolls of a manor, containing all acts relating thereto. While belonging to the lord of the manor, they are not in the nature of public books for the benefit of the tenant.

COURTESY. See CURTESY.

COUSIN. Kindred in the fourth degree, being the issue (male or female) of the brother or sister of one's father or mother.

Those who descend from the brother or sister of the father of the person spoken of are called "paternal cousins;" "maternal cousins" are those who are descended from the brothers or sisters of the mother. Cousins-german are first cousins. Sanderson v. Bayley, 4 Myl. & C. 59.

In English writs, commissions, and other formal instruments issued by the crown, the word signifies any peer of the degree of an earl. The appellation is as ancient as the reign of Henry IV., who, being related or allied to every earl then in the kingdom, acknowledged that connec-

tion in all his letters and public acts; from which the use has descended to his successors, though the reason has long ago failed. Mozley & Whitley.

—First cousins. Cousins-german; the children of one's uncle or aunt. Sanderson v. Bayley, 4 Mylne & C. 59.**—Second cousins.** Persons who are related to each other by descending from the same great-grandfather or great-grandmother. The children of one's first cousins are his second cousins. These are sometimes called "first cousins once removed." Slade v. Fooks, 9 Sim. 387; Corporation of Bridgnorth v. Collins, 15 Sim. 541.**—Quater cousin.** Properly, a cousin in the fourth degree; but the term has come to express any remote degree of relationship, and even to bear an ironical signification in which it denotes a very trifling degree of intimacy and regard. Often corrupted into "cater" cousin.

COUSINAGE. See COSINAGE.

COUSTOM. Custom; duty; toll; tribute. 1 Bl. Comm. 314.

COUSTOUMIER. (Otherwise spelled "*Coustumier*" or "*Coutumier.*") In old French law. A collection of customs, unwritten laws, and forms of procedure. Two such volumes are of especial importance in juridical history, viz., the *Grand Coustumier de Normandie*, and the *Coutumier de France* or *Grand Coutumier*.

COUTHUTLAUGH. A person who willingly and knowingly received an outlaw, and cherished or concealed him; for which offense he underwent the same punishment as the outlaw himself. Bract. 128*b*; Spelman.

COUVERTURE, in French law, is the deposit ("margin") made by the client in the hands of the broker, either of a sum of money or of securities, in order to guaranty the broker for the payment of the securities which he purchases for the client. Arg. Fr. Merc. Law, 555.

COVENABLE. A French word signifying convenient or suitable; as covenably endowed. It is anciently written "convenable." Termes de la Ley.

COVENANT. In practice. The name of a common-law form of action *ex contractu*, which lies for the recovery of damages for breach of a covenant, or contract under seal. Stickney v. Stickney, 21 N. H. 68.

In the law of contracts. An agreement, convention, or promise of two or more parties, *by deed* in writing, signed, sealed, and delivered, by which either of the parties pledges himself to the other that something is either done or shall be done, or stipulates for the truth of certain facts. Sabin v. Hamilton, 2 Ark. 490; Com. v. Robinson, 1 Watts (Pa.) 160; Kent v. Edmondston, 49 N. C. 529.

An agreement between two or more parties, reduced to writing and executed by a sealing and delivery thereof, whereby some of the parties named therein engage, or one of them engages, with the other, or others, or some of them, therein also named, that some act hath or hath not already been done, or for the performance or non-performance of some specified duty. De Bolle v. Insurance Co., 4 Whart. (Pa.) 71, 33 Am. Dec. 38.

Classification. Covenants may be classified according to several distinct principles of division. According as one or other of these is adopted, they are:

Express or implied; the former being those which are created by the express words of the parties to the deed declaratory of their intention, while implied covenants are those which are inferred by the law from certain words in a deed which imply (though they do not express) them. Express covenants are also called covenants "in deed," as distinguished from covenants "in law." McDonough v. Martin, 88 Ga. 675, 16 S. E. 59, 18 L. R. A. 343; Conrad v. Morehead, 89 N. C. 31; Garstang v. Davenport, 90 Iowa, 359, 57 N. W. 876.

Dependent, concurrent, and independent. Covenants are either dependent, concurrent, or mutual and independent. The first depends on the prior performance of some act or condition, and, until the condition is performed, the other party is not liable to an action on his covenant. In the second, mutual acts are to be performed at the same time; and if one party is ready, and offers to perform his part, and the other neglects or refuses to perform his, he who is ready and offers has fulfilled his engagement, and may maintain an action for the default of the other, though it is not certain that either is obliged to do the first act. The third sort is where either party may recover damages from the other for the injuries he may have received by a breach of the covenants in his favor; and it is no excuse for the defendant to allege a breach of the covenants on the part of the plaintiff. Bailey v. White, 3 Ala. 330; Tompkins v. Elliot, 5 Wend. (N. Y.) 497; Gray v. Smith (C. C.) 76 Fed. 534.

Principal and auxiliary; the former being those which relate directly to the principal matter of the contract entered into between the parties; while auxiliary covenants are those which do not relate directly to the principal matter of contract between the parties, but to something connected with it.

Inherent and collateral; the former being such as immediately affect the particular property, while the latter affect some property collateral thereto or some matter collateral to the grant or lease. A covenant inherent is one which is conversant about the land, and knit to the estate in the land; as, that the thing demised shall be quietly enjoyed, shall be kept in repair, or shall not be aliened. A covenant collateral is one which is conversant about some collateral thing that doth nothing at all, or not so immediately, concern the thing granted; as to pay a sum of money in gross, etc. Shep. Touch. 161.

Joint or several. The former bind both or all the covenantors together; the latter bind each of them separately. A covenant may be both joint and several at the same time, as regards the covenantors; but, as regards the covenantees, they cannot be joint and several for one and the same cause, (5 Coke, 19*a*,) but must be either joint or several only. Covenants are usually joint or several according as the interests of the covenantees are such; but the words of the covenant, where they are unambiguous, will decide, although, where they are ambiguous, the nature of the interests as being joint or several is left to decide. Brown. See

Capen v. Barrows, 1 Gray (Mass.) 379; In re Slingsby, 5 Coke, 18b.

General or specific. The former relate to land generally and place the covenantee in the position of a specialty creditor only; the latter relate to particular lands and give the covenantee a lien thereon. Brown.

Executed or executory; the former being such as relate to an act already performed; while the latter are those whose performance is to be future. Shep. Touch. 161.

Affirmative or negative; the former being those in which the party binds himself to the existence of a present state of facts as represented or to the future performance of some act; while the latter are those in which the covenantor obliges himself *not* to do or perform some act.

Declaratory or obligatory; the former being those which serve to limit or direct uses; while the latter are those which are binding on the party himself. 1 Sid. 27; 1 Keb. 337.

Real and personal. A real covenant is one which binds the heirs of the covenantor and passes to assignees or purchasers; a covenant the obligation of which is so connected with the realty that he who has the latter is either entitled to the benefit of it or is liable to perform it; a covenant which has for its object something annexed to, or inherent in, or connected with, land or other real property, and runs with the land, so that the grantee of the land is invested with it and may sue upon it for a breach happening in his time. 4 Kent, Comm. 470; 2 Bl. Comm. 304; Chapman v. Holmes, 10 N. J. Law, 20; Skinner v. Mitchell, 5 Kan. App. 366, 48 Pac. 450; Oil Co. v. Hinton, 159 Ind. 398, 64 N. E. 224; Davis v. Lyman, 6 Conn. 249. In the old books, a covenant real is also defined to be a covenant by which a man binds himself to pass a thing real, as lands or tenements. Termes de la Ley; 3 Bl. Comm. 156; Shep. Touch. 161. A personal covenant, on the other hand, is one which, instead of being a charge upon real estate of the covenantor, only binds himself and his personal representatives in respect to assets. 4 Kent, Comm. 470; Carter v. Denman, 23 N. J. Law, 270; Hadley v. Bernero, 97 Mo. App. 314, 71 S. W. 451. The phrase may also mean a covenant which is personal to the covenantor, that is, one which he must perform in person, and cannot procure another person to perform for him.

Transitive or intransitive; the former being those personal covenants the duty of performing which passes over to the representatives of the covenantor; while the latter are those the duty of performing which is limited to the covenantee himself, and does not pass over to his representative. Bac. Abr. Cov.

Disjunctive covenants. Those which are for the performance of one or more of several things at the election of the covenantor or covenantee, as the case may be. Platt, Cov. 21.

Absolute or conditional. An absolute covenant is one which is not qualified or limited by any condition.

The following compound and descriptive terms may also be noted:

Continuing covenant. One which indicates or necessarily implies the doing of stipulated acts successively or as often as the occasion may require; as, a covenant to pay rent by installments, to keep the premises in repair or insured, to cultivate land, etc. McGlynn v. Moore, 25 Cal. 395.

Full covenants. As this term is used in American law, it includes the following: The covenants for seisin, for right to convey, against incumbrances, for quiet enjoyment, sometimes for further assurance, and almost always of warranty, this last often taking the place of the covenant for quiet enjoyment, and indeed in many states being the only covenant in practical use. Rawle, Cov. for Title, § 21.

Mutual covenants. A mutual covenant is one where either party may recover damages from the other for the injury he may have received from a breach of the covenants in his favor. Bailey v. White, 3 Ala. 330.

Separate covenant. A several covenant; one which binds the several covenantors each for himself, but not jointly.

Usual covenants. An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of "seisin," "quiet enjoyment," "further assurance," "general warranty," and "against incumbrances." Civ. Code Cal. § 1733. See Wilson v. Wood, 17 N. J. Eq. 216, 88 Am. Dec. 231; Drake v. Barton, 18 Minn. 467 (Gil. 414). The result of the authorities appears to be that in a case where the agreement is silent as to the particular covenants to be inserted in the lease, and provides merely for the lease containing "usual covenants," or, which is the same thing, in an open agreement without any reference to the covenants, and there are no special circumstances justifying the introduction of other covenants, the following are the only ones which either party can insist upon, namely: Covenants by the lessee (1) to pay rent; (2) to pay taxes, except such as are expressly payable by the landlord; (3) to keep and deliver up the premises in repair; and (4) to allow the lessor to enter and view the state of repair; and the usual qualified covenant by the lessor for quiet enjoyment by the lessee. 7 Ch. Div. 561.

Specific covenants.—Covenant against incumbrances. A covenant that there are no incumbrances on the land conveyed; a stipulation against all rights to or interests in the land which may subsist in third persons to the diminution of the value of the estate granted. Bank v. Parisette, 68 Ohio St. 450, 67 N. E. 896; Shearer v. Ranger, 22 Pick. (Mass.) 447; Sanford v. Wheelan, 12 Or. 301, 7 Pac. 324. **—Covenant for further assurance.** An undertaking, in the form of a covenant, on the part of the vendor of real estate to do such further acts for the purpose of perfecting the purchaser's title as the latter may reasonably require. This covenant is deemed of great importance, since it relates both to the title of the vendor and to the instrument of conveyance to the vendee, and operates as well to secure the performance of all acts necessary for supplying any defect in the former as to remove all objections to the sufficiency and security of the latter. Platt, Cov.; Rawle, Cov. §§ 98, 99. See Sugd. Vend. 500; Armstrong v. Darby, 26 Mo. 520. **—Covenant for quiet enjoyment.** An assurance against the consequences of a defective title, and of any disturbances thereupon. Platt, Cov. 312; Rawle, Cov. 125. A covenant that the tenant or grantee of an estate shall enjoy the possession of the premises in peace and without disturbance by hostile claimants. Poposkey v. Munkwitz, 68 Wis. 322, 32 N. W. 35, 60 Am. Rep. 858; Stewart v. Drake, 9 N. J. Law, 141; Kane v. Mink, 64 Iowa, 84, 19 N. W. 852; Chestnut v. Tyson, 105 Ala. 149, 16 South. 723, 53 Am. St. Rep. 101; Christy v. Bedell, 10 Kan. App. 435, 61 Pac. 1095. **—Covenants for title.** 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, or quiet enjoyment, sometimes for further assurance, and almost always of warranty." Rawle, Cov. § 21. **—Covenants in gross.** Such as do not run with the land. **—Covenant not to sue.** A covenant by one who had a right of action at the time of mak-

ing it against another person, by which he agrees not to sue to enforce such right of action.—**Covenant of non-claim.** A covenant sometimes employed, particularly in the New England states, and in deeds of extinguishment of ground rents in Pennsylvania, that neither the vendor, nor his heirs, nor any other person, etc., shall claim any title in the premises conveyed. Rawle, Cov. § 22.—**Covenant of right to convey.** An assurance by the covenantor that the grantor has sufficient capacity and title to convey the estate which he by his deed undertakes to convey.—**Covenant of seisin.** An assurance to the purchaser that the grantor has the very estate in quantity and quality which he purports to convey. 11 East, 641; Rawle, Cov. § 58. It is said that the covenant of seisin is not now in use in England, being embraced in that of a right to convey; but it is used in several of the United States. 2 Washb. Real Prop. *648; Pecare v. Chouteau, 13 Mo. 527; Kincaid v. Brittain, 5 Sneed (Tenn.) 121; Backus v. McCoy, 3 Ohio, 221, 17 Am. Dec. 585; De Long v. Sea Girt Co., 65 N. J. Law, 1, 47 Atl. 491.—**Covenant of warranty.** An assurance by the grantor of an estate that the grantee shall enjoy the same without interruption by virtue of paramount title. King v. Kilbride, 58 Conn. 109, 19 Atl. 519; Kincaid v. Brittain, 5 Sneed (Tenn.) 124; King v. Kerr, 5 Ohio, 155, 22 Am. Dec. 777; Chapman v. Holmes, 10 N. J. Law, 26.—**Covenant running with land.** A covenant which goes with the land, as being annexed to the estate, and which cannot be separated from the land, and transferred without it. 4 Kent, Comm. 472, note. A covenant is said to run with the land, when not only the original parties or their representatives, but each successive owner of the land, will be entitled to its benefit, or be liable (as the case may be) to its obligation. 1 Steph. Comm. 455. Or, in other words, it is so called when either the liability to perform it or the right to take advantage of it passes to the assignee of the land. Tillotson v. Prichard, 60 Vt. 94, 14 Atl. 302, 6 Am. St. Rep. 95; Spencer's Case, 3 Coke, 31; Gilmer v. Railway Co., 79 Ala. 572, 58 Am. Rep. 623; Conduitt v. Ross, 102 Ind. 166, 26 N. E. 198.—**Covenant to convey.** A covenant by which the covenantor agrees to convey to the covenantee a certain estate, under certain circumstances.—**Covenant to stand seised.** A conveyance adapted to the case where a person seised of land in possession, reversion, or vested remainder, proposes to convey it to his wife, child, or kinsman. In its terms it consists of a covenant by him, in consideration of his natural love and affection, to stand seised of the land to the use of the intended transferee. Before the statute of uses this would merely have raised a use in favor of the covenantee; but by that act this use is converted into the legal estate, and the covenant therefore operates as a conveyance of the land to the covenantee. It is now almost obsolete. 1 Steph. Comm. 532; Williams, Seis. 145; French v. French, 3 N. H. 261; Jackson v. Swart, 20 Johns. (N. Y.) 85.

COVENANTEE. The party to whom a covenant is made. Shep. Touch. 160.

COVENANTOR. The party who makes a covenant. Shep. Touch. 160.

COVENANTS PERFORMED. In Pennsylvania practice. This is the name of a plea to the action of covenant whereby the defendant, upon informal notice to the plaintiff, may give anything in evidence which he might have pleaded. With the addition of the words "absque hoc" it amounts to a denial of the allegations of the declaration; and the further addition of "with leave," etc., imports an equitable defense, arising out of special circumstances, which the defendant means to offer in evidence. Zents v. Legnard, 70 Pa. 192; Stewart v. Bedell, 79 Pa. 336; Turnpike Co. v. McCullough, 25 Pa. 303.

COVENT. A contraction, in the old books, of the word "convent."

COVENTRY ACT. The name given to the statute 22 & 23 Car. II. c. 1, which provided for the punishment of assaults with intent to maim or disfigure a person. It was so named from its being occasioned by an assault on Sir John Coventry in the street. 4 Bl. Comm. 207; State v. Cody, 18 Or. 506, 23 Pac. 891.

COVER INTO. The phrase "covered into the treasury," as used in acts of congress and the practice of the United States treasury department, means that money has actually been paid into the treasury in the regular manner, as distinguished from merely depositing it with the treasurer. U. S. v. Johnston, 124 U. S. 236, 8 Sup. Ct. 446, 31 L. Ed. 389.

COVERT. Covered, protected, sheltered. A *pound covert* is one that is close or covered over, as distinguished from *pound overt*, which is open overhead. Co. Litt. 47*b*; 3 Bl. Comm. 12. A *feme covert* is so called, as being under the wing, protection, or *cover*, of her husband. 1 Bl. Comm. 442.

—**Covert baron, or covert de baron.** Under the protection of a husband; married. 1 Bl. Comm. 442. *La feme que est covert de baron*, the woman which is covert of a husband. Litt. § 670.

COVERTURE. The condition or state of a married woman. Sometimes used elliptically to describe the legal disability arising from a state of coverture. Osborn v. Horine, 19 Ill. 124; Roberts v. Lund, 45 Vt. 86.

COVIN. A secret conspiracy or agreement between two or more persons to injure or defraud another. Mix v. Muzzy, 28 Conn. 191; Anderson v. Oscamp (Ind. App.) 35 N. E. 707; Hyslop v. Clarke, 14 Johns. (N. Y.) 465.

COVINOUS. Deceitful; fraudulent; having the nature of, or tainted by, covin.

COWARDICE. Pusillanimity; fear; misbehavior through fear in relation to some duty to be performed before an enemy. O'Brien, Ct. M. 142; Coil v. State, 62 Neb. 15, 86 N. W. 925.

CRAFT. 1. A general term, now commonly applied to all kinds of sailing vessels, though formerly restricted to the smaller

vessels. The Wenonah, 21 Grat. (Va.) 697; Reed v. Ingham, 3 El. & B. 898.

2. A trade or occupation of the sort requiring skill and training, particularly manual skill combined with a knowledge of the principles of the art; also the body of persons pursuing such a calling; a guild. Ganahl v. Shore, 24 Ga. 23.

3. Guile, artful cunning, trickiness. Not a legal term in this sense, though often used in connection with such terms as "fraud" and "artifice."

CRANAGE. A liberty to use a crane for drawing up goods and wares of burden from ships and vessels, at any creek of the sea, or wharf, unto the land, and to make a profit of doing so. It also signifies the money paid and taken for the service. Tomlins.

CRANK. A term vulgarly applied to a person of eccentric, ill-regulated, and unpractical mental habits; a person half-crazed; a monomaniac; not necessarily equivalent to "insane person," "lunatic," or any other term descriptive of complete mental derangement, and not carrying any implication of homicidal mania. Walker v. Tribune Co. (C. C.) 29 Fed. 827.

CRASSUS. Large; gross; excessive; extreme. *Crassa ignorantia*, gross ignorance. Fleta, lib. 5, c. 22, § 18.

—Crassa negligentia. Gross neglect; absence of ordinary care and diligence. Hun v. Cary, 82 N. Y. 72, 37 Am. Rep. 546.

CRASTINO. Lat. On the morrow, the day after. The return-day of writs; because the first day of the term was always some saint's day, and writs were returnable on the day after. 2 Reeve, Eng. Law, 56.

CRATES. An iron gate before a prison. 1 Vent. 304.

CRAVE. To ask or demand; as to crave oyer. See OYER.

CRAVEN. In old English law. A word of disgrace and obloquy, pronounced on either champion, in the ancient trial by battle, proving recreant, *i. e.*, yielding. Glanville calls it "*infestum et inverecundum verbum.*" His condemnation was *amittere liberam legem, i. e.*, to become infamous, and not to be accounted *liber et legalis homo*, being supposed by the event to have been proved forsworn, and not fit to be put upon a jury or admitted as a witness. Wharton.

CREAMER. A foreign merchant, but generally taken for one who has a stall in a fair or market. Blount.

CREAMUS. Lat. We create. One of the words by which a corporation in England was formerly created by the king. 1 Bl. Comm. 473.

CREANCE. In French law. A claim; a debt; also belief, credit, faith.

CREANCER. One who trusts or gives credit; a creditor. Britt. cc. 28, 78.

CREANSOR. A creditor. Cowell.

CREATE. To bring into being; to cause to exist; to produce; as, to create a trust in lands, to create a corporation. Edwards v. Bibb, 54 Ala. 481; McClellan v. McClellan, 65 Me. 500.

To *create* a charter or a corporation is to make one which never existed before, while to *renew* one is to give vitality to one which has been forfeited or has expired; and to *extend* one is to give an existing charter more time than originally limited. Moers v. Reading, 21 Pa. 189; Railroad Co. v. Orton (C. C.) 32 Fed. 473; Indianapolis v. Navin, 151 Ind. 139, 51 N. E. 80, 41 L. R. A. 344.

CREDENTIALS. In international law. The instruments which authorize and establish a public minister in his character with the state or prince to whom they are addressed. If the state or prince receive the minister, he can be received only in the quality attributed to him in his credentials. They are, as it were, his letter of attorney, his mandate patent, *mandatum manifestum.* Vattel, liv. 4, c. 6, § 76.

CREDIBLE. Worthy of belief; entitled to credit. See COMPETENCY.

—Credible person. One who is trustworthy and entitled to be believed; in law and legal proceedings, one who is entitled to have his oath or affidavit accepted as reliable, not only on account of his good reputation for veracity, but also on account of his intelligence, knowledge of the circumstances, and disinterested relation to the matter in question. Dunn v. State, 7 Tex. App. 605; Territory v. Leary, 8 N. M. 180, 43 Pac. 688; Peck v. Chambers, 44 W. Va. 270, 28 S. E. 706.**—Credible witness.** One who, being competent to give evidence, is worthy of belief. Peck v. Chambers, 44 W. Va. 270, 28 S. E. 706; Savage v. Bulger (Ky.) 77 S. W. 717; Amory v. Fellowes, 5 Mass. 228; Bacon v. Bacon, 17 Pick. (Mass.) 134; Robinson v. Savage, 124 Ill. 266, 15 N. E. 850.**—Credibility.** Worthiness of belief; that quality in a witness which renders his evidence worthy of belief. After the competence of a witness is allowed, the consideration of his *credibility* arises, and not before. 3 Bl. Comm. 369; 1 Burrows, 414, 417; Smith v. Jones, 68 Vt. 132, 34 Atl. 424. As to the distinction between *competency* and *credibility*, see COMPETENCY. **—Credibly informed.** The statement in a pleading or affidavit that one is "credibly informed and verily believes" such and such facts, means that, having no direct personal knowledge of the matter in question, he has derived his information in regard to it from authentic sources or from the statements of persons who are not only "credible," in the sense of being trustworthy, but also informed as to the particular matter or conversant with it.

CREDIT. **1.** The ability of a business man to borrow money, or obtain goods on

time, in consequence of the favorable opinion held by the community, or by the particular lender, as to his solvency and reliability. People v. Wasservogle, 77 Cal. 173, 19 Pac. 270; Dry Dock Bank v. Trust Co., 3 N. Y. 356.

2. Time allowed to the buyer of goods by the seller, in which to make payment for them.

3. The correlative of a *debt;* that is, a debt considered from the creditor's standpoint, or that which is incoming or due *to* one.

4. That which is due to a merchant, as distinguished from debit, that which is due by him.

5. That influence connected with certain social positions. 20 Toullier, n. 19.

The credit of an individual is the trust reposed in him by those who deal with him that he is of ability to meet his engagements; and he is trusted because through the tribunals of the country he may be made to pay. The credit of a government is founded on a belief of its ability to comply with its engagements, and a confidence in its honor, that it will do that voluntarily which it cannot be compelled to do. Owen v. Branch Bank, 3 Ala. 258.

—Bill of credit. See BILL.—**Letter of credit.** An open or sealed letter, from a merchant in one place, directed to another, in another place or country, requiring him, if a person therein named, or the bearer of the letter, shall have occasion to buy commodities, or to want money to any particular or unlimited amount, either to procure the same or to pass his promise, bill, or bond for it, the writer of the letter undertaking to provide him the money for the goods, or to repay him by exchange, or to give him such satisfaction as he shall require, either for himself, or the bearer of the letter. 3 Chit. Com. Law, 336. A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn. Civ. Code Cal. § 2858. Mechanics' Bank v. New York & N. H. R. Co., 13 N. Y. 630; Pollock v. Helm, 54 Miss. 5, 28 Am. Rep. 342; Lafargue v. Harrison, 70 Cal. 380, 9 Pac. 261, 59 Am. Rep. 416. *General and special.* A general letter of credit is one addressed to any and all persons, without naming any one in particular, while a special letter of credit is addressed to a particular individual, firm, or corporation by name. Birckhead v. Brown, 5 Hill (N. Y.) 642; Civ. Code Mont. 1895, § 3713.—**Line of credit.** See LINE.—**Mutual credits.** In bankrupt law. Credits which must, from their nature, terminate in debts; as where a debt is due from one party, and credit given by him to the other for a sum of money payable at a future day, and which will then become a debt; or where there is a debt on one side, and a delivery of property with directions to turn it into money on the other. 8 Taunt. 499; 2 Smith, Lead. Cas. 179. By this phrase, in the rule under which courts of equity allow set-off in cases of mutual credit, we are to understand a knowledge on both sides of an existing debt due to one party, and a credit by the other party, founded on and trusting to such debt, as a means of discharging it. King v. King, 9 N. J. Eq. 44. Credits given by two persons mutually; *i. e.*, each giving credit to the other. It is a more extensive phrase than "mutual debts." Thus, the sum credited by one may be due at once, that by the other payable *in futuro;* yet the credits are mutual, though the transaction would not come within the meaning of "mutual debts." 1 Atk. 230; Atkinson v. Elliott, 7 Term R. 378.—**Personal credit.** That credit which a person possesses as an individual, and which is founded on the opinion entertained of his character and business standing.

CRÉDIT. Fr. Credit in the English sense of the term, or more particularly, the security for a loan or advancement.

—Crédit foncier. A company or corporation formed for the purpose of carrying out improvements, by means of loans and advances on real estate security.—**Crédit mobilier.** A company or association formed for carrying on a banking business, or for the construction of public works, building of railroads, operation of mines, or other such enterprises, by means of loans or advances on the security of personal property. Barrett v. Savings Inst., 64 N. J. Eq. 425, 54 Atl. 543.

CREDITOR. A person to whom a debt is owing by another person, called the "debtor." Mohr v. Elevator Co., 40 Minn. 343, 41 N. W. 1074; Woolverton v. Taylor Co., 43 Ill. App. 424; Insurance Co. v. Meeker, 37 N. J. Law, 300; Walsh v. Miller, 51 Ohio St. 462, 38 N. E. 381. The foregoing is the strict legal sense of the term; but in a wider sense it means one who has a legal right to demand and recover from another a sum of money on any account whatever, and hence may include the owner of any right of action against another, whether arising on contract or for a tort, a penalty, or a forfeiture. Keith v. Hiner, 63 Ark. 244, 38 S. W. 13; Bongard v. Block, 81 Ill. 186, 25 Am. Rep. 276; Chalmers v. Sheehy, 132 Cal. 459, 64 Pac. 709, 84 Am. St. Rep. 62; Pierstoff v. Jorges, 86 Wis. 128, 56 N. W. 735, 39 Am. St. Rep. 881.

Classification. A creditor is called a "simple contract creditor," a "specialty creditor," a "bond creditor," or otherwise, according to the nature of the obligation giving rise to the debt.

Other compound and descriptive terms. —Attaching creditor. One who has caused an attachment to be issued and levied on property of his debtor.—**Catholic creditor.** In Scotch law, one whose debt is secured on all or on several distinct parts of the debtor's property. The contrasted term (designating one who is not so secured) is "secondary creditor." **—Certificate creditor.** A creditor of a municipal corporation who receives a certificate of indebtedness for the amount of his claim, there being no funds on hand to pay him. Johnson v. New Orleans, 46 La. Ann. 714, 15 South. 100.—**Confidential creditor.** A term sometimes applied to creditors of a failing debtor who furnished him with the means of obtaining credit to which his real circumstances did not entitle him, thus involving loss to other creditors not in his confidence. Gay v. Strickland, 112 Ala. 567, 20 South. 921.—**Creditor at large.** One who has not established his debt by the recovery of a judgment or has not otherwise secured a lien on any of the debtor's property. U. S. v. Ingate (C. C.) 48 Fed. 254; Wolcott v. Ashenfelter, 5 N. M. 442, 23 Pac. 780, 8 L. R. A. 691.—**Domestic creditor.** One who resides in the same state or country in which the debtor has his domicile or his property.—**Execution creditor.** One who, having recovered a judgment against the debtor for his debt or claim, has also caused an execution to be issued thereon.—**Foreign creditor.** One who resides in a state or country foreign to that where the

debtor has his domicile or his property.—**General creditor.** A creditor at large (*supra*), or one who has no lien or security for the payment of his debt or claim. King v. Fraser, 23 S. C. 543; Wolcott v. Ashenfelter, 5 N. M. 442, 23 Pac. 780, 8 L. R. A. 691.—**Joint creditors.** Persons jointly entitled to require satisfaction of the same debt or demand.—**Judgment creditor.** One who has obtained a judgment against his debtor, under which he can enforce execution. King v. Fraser, 23 S. C. 548; Baxter v. Moses, 77 Me. 465, 1 Atl. 350, 52 Am. Rep. 783; Code Civ. Proc. N. Y. 1899, § 3343.—**Junior creditor.** One whose claim or demand accrued at a date later than that of a claim or demand held by another creditor, who is called correlatively the "senior" creditor. —**Lien creditor.** See LIEN.—**Preferred creditor.** See PREFERRED.—**Principal creditor.** One whose claim or demand very greatly exceeds the claims of all other creditors in amount is sometimes so called. See In re Sullivan's Estate, 25 Wash. 430, 65 Pac. 793.—**Secured creditor.** See SECURED.—**Subsequent creditor.** One whose claim or demand accrued or came into existence after a given fact or transaction, such as the recording of a deed or mortgage or the execution of a voluntary conveyance. McGhee v. Wells, 57 S. C. 280, 35 S. E. 529, 76 Am. St. Rep. 567; Evans v. Lewis, 30 Ohio St. 14.—**Warrant creditor.** A creditor of a municipal corporation to whom is given a municipal warrant for the amount of his claim, because there are no funds in hand to pay it. Johnson v. New Orleans, 46 La. Ann. 714, 15 South. 100.

CREDITORS' BILL. In English practice. A bill in equity, filed by one or more creditors, for an account of the assets of a decedent, and a legal settlement and distribution of his estate among themselves and such other creditors as may come in under the decree.

In American practice. A proceeding to enforce the security of a judgment creditor against the property or interests of his debtor. This action proceeds upon the theory that the judgment is in the nature of a lien, such as may be enforced in equity. Hudson v. Wood (C. C.) 119 Fed. 775; Fink v. Patterson (C. C.) 21 Fed. 602; Gould v. Torrance, 19 How. Prac. (N. Y.) 560; McCartney v. Bostwick, 32 N. Y. 57.

A creditors' bill, strictly, is a bill by which a creditor seeks to satisfy his debt out of some equitable estate of the defendant, which is not liable to levy and sale under an execution at law. But there is another sort of a creditors' bill, very nearly allied to the former, by means of which a party seeks to remove a fraudulent conveyance out of the way of his execution. But a naked bill to set aside a fraudulent deed, which seeks no discovery of any property, chose in action, or other thing alleged to belong to the defendant, and which ought to be subjected to the payment of the judgment, is not a creditors' bill. Newman v. Willetts, 52 Ill. 98.

Creditorum appellatione non hi tantum accipiuntur qui pecuniam crediderunt, sed omnes quibus ex qualibet causa debetur. Under the head of "creditors" are included, not alone those who have lent money, but all to whom from any cause a debt is owing. Dig. 50, 16, 11.

CREDITRIX. A female creditor.

CREEK. In maritime law. Such little inlets of the sea, whether within the precinct or extent of a port or without, as are narrow passages, and have shore on either side of them. Call. Sew. 56.

A small stream less than a river. Baker v. City of Boston, 12 Pick. 184, 22 Am. Dec. 421.

The term imports a recess, cove, bay, or inlet in the shore of a river, and not a separate or independent stream; though it is sometimes used in the latter meaning. Schermerhorn v. Railroad Co., 38 N. Y. 103.

CREMENTUM COMITATÛS. The increase of a county. The sheriffs of counties anciently answered in their accounts for the improvement of the king's rents, above the *viscontiel* rents, under this title.

CREPARE OCULUM. In Saxon law. To put out an eye; which had a pecuniary punishment of fifty shillings annexed to it.

CREPUSCULUM. Twilight. In the law of burglary, this term means the presence of sufficient light to discern the face of a man; such light as exists immediately before the rising of the sun or directly after its setting.

Crescente malitiâ crescere debet et pœna. 2 Inst. 479. Vice increasing, punishment ought also to increase.

CREST. A term used in heraldry; it signifies the devices set over a coat of arms.

CRETINISM. In medical jurisprudence. A form of imperfect or arrested mental development, which may amount to idiocy, with physical degeneracy or deformity or lack of development; endemic in Switzerland and some other parts of Europe, but the term is applied to similar states occurring elsewhere.

CRETINUS. In old records. A sudden stream or torrent; a rising or inundation.

CRETIO. Lat. In the civil law. A certain number of days allowed an heir to deliberate whether he would take the inheritance or not. Calvin.

CREW. The aggregate of seamen who man a ship or vessel, including the master and officers; or it may mean the ship's company, exclusive of the master, or exclusive of the master and all other officers. See U. S. v. Winn, 3 Sumn. 209, 28 Fed. Cas. 733; Millaudon v. Martin, 6 Rob. (La.) 540; U. S. v. Huff (C. C.) 13 Fed. 630.

—**Crew list.** In maritime law. A list of the crew of a vessel; one of a ship's papers. This instrument is required by act of congress, and

sometimes by treaties. Rev. St. U. S. §§ 4374, 4375 (U. S. Comp. St. 1901, p. 2986). It is necessary for the protection of the crews of every vessel, in the course of the voyage, during a war abroad. Jac. Sea Laws, 66, 69, note.

CRIER. An officer of a court, who makes proclamations. His principal duties are to announce the opening of the court and its adjournment and the fact that certain special matters are about to be transacted, to announce the admission of persons to the bar, to call the names of jurors, witnesses, and parties, to announce that a witness has been sworn, to proclaim silence when so directed, and generally to make such proclamations of a public nature as the judges order.

CRIEZ LA PEEZ. Rehearse the concord, or peace. A phrase used in the ancient proceedings for levying fines. It was the form of words by which the justice before whom the parties appeared directed the serjeant or countor in attendance to recite or *read aloud* the *concord* or agreement between the parties, as to the lands intended to be conveyed. 2 Reeve, Eng. Law, 224, 225.

CRIM. CON. An abbreviation for "criminal conversation," of very frequent use, denoting adultery. Gibson v. Cincinnati Enquirer, 10 Fed. Cas. 311.

CRIME. A crime is an act committed or omitted, in violation of a public law, either forbidding or commanding it; a breach or violation of some public right or duty due to a whole community, considered as a community in its social aggregate capacity, as distinguished from a civil injury. Wilkins v. U. S., 96 Fed. 837, 37 C. C. A. 588; Pounder v. Ashe, 36 Neb. 564, 54 N. W. 847; State v. Bishop, 7 Conn. 185; In re Bergin, 31 Wis. 386; State v. Brazier, 37 Ohio St. 78; People v. Williams, 24 Mich. 163, 9 Am. Rep. 119; In re Clark, 9 Wend. (N. Y.) 212. "Crime" and "misdemeanor," properly speaking, are synonymous terms; though in common usage "crime" is made to denote such offenses as are of a deeper and more atrocious dye. 4 Bl. Comm. 5.

Crimes are those wrongs which the government notices as injurious to the public, and punishes in what is called a "criminal proceeding," in its own name. 1 Bish. Crim. Law, § 43.

A crime may be defined to be any act done in violation of those duties which an individual owes to the community, and for the breach of which the law has provided that the offender shall make satisfaction to the public. Bell.

A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: (1) Death; (2) imprisonment; (3) fine; (4) removal from office; or (5) disqualification to hold and enjoy any office of honor, trust, or profit in this state. Pen. Code Cal. § 15.

A crime or misdemeanor shall consist in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence. Code Ga. 1882, § 4292.

Synonyms. According to Blackstone, the word "crime" denotes such offenses as are of a deeper and more atrocious dye, while smaller faults and omissions of less consequence are called "misdemeanors." But the better use appears to be to make *crime* a term of broad and general import, including both felonies and misdemeanors, and hence covering all infractions of the criminal law. In this sense it is not a technical phrase, strictly speaking, (as "felony" and "misdemeanor" are,) but a convenient general term. In this sense, also, "offense" or "public offense" should be used as synonymous with it.

The distinction between a *crime* and a *tort* or civil injury is that the former is a breach and violation of the public right and of duties due to the whole community considered as such, and in its social and aggregate capacity; whereas the latter is an infringement or privation of the civil rights of individuals merely. Brown.

A crime, as opposed to a civil injury, is the violation of a right, considered in reference to the evil tendency of such violation, as regards the community at large. 4 Steph. Comm. 4.

Varieties of crimes.—Capital crime. One for which the punishment of death is prescribed and inflicted. Walker v. State, 28 Tex. App. 503, 13 S. W. 860; Ex parte Dusenberry, 97 Mo. 504, 11 S. W. 217.—**Common-law crimes.** Such crimes as are punishable by the force of the common law, as distinguished from crimes created by statute. Wilkins v. U. S., 96 Fed. 837, 37 C. C. A. 588; In re Greene (C. C.) 52 Fed. 111. These decisions (and many others) hold that there are no common-law crimes against the United States.—**Constructive crime.** See CONSTRUCTIVE.—**Continuous crime.** One consisting of a continuous series of acts, which endures after the period of consummation, as, the offense of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitations begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act. U. S. v. Owen (D. C.) 32 Fed. 537.—**Crime against nature.** The offense of buggery or sodomy. State v. Vicknair, 52 La. Ann. 1921, 28 South. 273; Ausman v. Veal, 10 Ind. 355, 71 Am. Dec. 331; People v. Williams, 59 Cal. 397.—**High crimes.** High crimes and misdemeanors are such immoral and unlawful acts as are nearly allied and equal in guilt to felony, yet, owing to some technical circumstance, do not fall within the definition of "felony." State v. Knapp, 6 Conn. 417, 16 Am. Dec. 68.—**Infamous crime.** A crime which entails infamy upon one who has committed it. Butler v. Wentworth, 84 Me. 25, 24 Atl. 456, 17 L. R. A. 764. The term "infamous"—*i. e.*, without fame or good report—was applied at common law to certain crimes, upon the conviction of which a person became incompetent to testify as a witness, upon the theory that a person would not commit so heinous a crime unless he was so depraved as to be unworthy of credit. These crimes are treason, felony, and the *crimen falsi*. Abbott. A crime punishable by imprisonment in the state prison or penitentiary, with or without hard labor, is an infamous crime, within the provision of the fifth amendment of the constitution that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." Mackin v. U. S., 117 U. S. 348, 6 Sup. Ct. 777, 29 L. Ed. 909.

"Infamous," as used in the fifth amendment to the United States constitution, in reference to crimes, includes those only of the class called "*crimen falsi*," which both involve the charge of falsehood, and may also injuriously affect the public administration of justice by introducing falsehood and fraud. U. S. v. Block, 15 N. B. R. 325, Fed. Cas. No. 14,609. By the Revised Statutes of New York the term "infamous crime," when used in any statute, is directed to be construed as including every offense punishable with death or by imprisonment in a state-prison, and no other. 2 Rev. St. (p. 702, § 31,) p. 587, § 32.—**Quasi crimes.** This term embraces all offenses not crimes or misdemeanors, but that are in the nature of crimes,—a class of offenses against the public which have not been declared crimes, but wrongs against the general or local public which it is proper should be repressed or punished by forfeitures and penalties. This would embrace all *qui tam* actions and forfeitures imposed for the neglect or violation of a public duty. A *quasi* crime would not embrace an indictable offense, whatever might be its grade, but simply forfeitures for a wrong done to the public, whether voluntary or involuntary, where a penalty is given, whether recoverable by criminal or civil process. Wiggins v. Chicago, 68 Ill. 375.—**Statutory crimes.** Those created by statutes, as distinguished from such as are known to, or cognizable by, the common law.

CRIMEN. Lat. Crime. Also an accusation or charge of crime.

—**Crimen furti.** The crime or offense of theft.—**Crimen incendii.** The crime of burning, which included not only the modern crime of arson, but also the burning of a man, a beast, or other chattel. Britt. c. 9; Crabb, Eng. Law, 308.—**Crimen innominatum.** The nameless crime; the crime against nature; sodomy or buggery.—**Crimen raptus.** The crime of rape.—**Crimen roberiæ.** The offense of robbery.—**Flagrans crimen; Locus criminis; Particeps criminis.** See those titles.

CRIMEN FALSI. In the civil law. The crime of falsifying; which might be committed either by writing, as by the forgery of a will or other instrument; by words, as by bearing false witness, or perjury; and by acts, as by counterfeiting or adulterating the public money, dealing with false weights and measures, counterfeiting seals, and other fraudulent and deceitful practices. Dig. 48, 10; Hallifax, Civil Law, b. 3, c. 12, nn. 56–59.

In Scotch law. It has been defined: "A fraudulent imitation or suppression of truth, to the prejudice of another." Ersk. Inst. 4, 4, 66.

At common law. Any crime which may injuriously affect the administration of justice, by the introduction of falsehood and fraud. 1 Greenl. Ev. § 373.

In modern law. This phrase is not used as a designation of any specific crime, but as a general designation of a class of offenses, including all such as involve deceit or falsification; *e. g.*, forgery, counterfeiting, using false weights or measures, perjury, etc.

Includes forgery, perjury, subornation of perjury, and offenses affecting the public administration of justice. Matzenbaugh v. People, 194 Ill. 108, 62 N. E. 546, 88 Am. St. Rep. 134; Little v. Gibson, 39 N. H. 510; State v. Randolph, 24 Conn. 365; Webb v. State, 29 Ohio St. 358; Johnston v. Riley, 13 Ga. 97.

Crimen falsi dicitur, cum quis illicitus, cui non fuerit ad hæc data auctoritas, de sigillo regis, rapto vel invento, brevia, cartasve consignaverit. Fleta, lib. 1, c. 23. The crime of forgery is when any one illicitly, to whom power has not been given for such purposes, has signed writs or charters with the king's seal, either stolen or found.

CRIMEN LÆSÆ MAJESTATIS. In criminal law. The crime of *lese-majesty*, or injuring majesty or royalty; high treason. The term was used by the older English law-writers to denote any crime affecting the king's person or dignity.

It is borrowed from the civil law, in which it signified the undertaking of any enterprise against the emperor or the republic. Inst. 4, 18, 3.

Crimen læsæ majestatis omnia alia crimina excedit quoad pœnam. 3 Inst. 210. The crime of treason exceeds all other crimes in its punishment.

Crimen omnia ex se nata vitiat. Crime vitiates everything which springs from it. Henry v. Bank of Salina, 5 Hill (N. Y.) 523, 531.

Crimen trahit personam. The crime carries the person, (*i. e.*, the commission of a crime gives the courts of the place where it is committed jurisdiction over the person of the offender.) People v. Adams, 3 Denio (N. Y.) 190, 210, 45 Am. Dec. 468.

Crimina morte extinguuntur. Crimes are extinguished by death.

CRIMINAL, *n.* One who has committed a criminal offense; one who has been legally convicted of a crime; one adjudged guilty of crime. Molineux v. Collins, 177 N. Y. 395, 69 N. E. 727, 65 L. R. A. 104.

CRIMINAL, *adj.* That which pertains to or is connected with the law of crimes, or the administration of penal justice, or which relates to or has the character of crime. Charleston v. Beller, 45 W. Va. 44, 30 S. E. 152; State v. Burton, 113 N. C. 655, 18 S. E. 657.

—**Criminal act.** A term which is equivalent to crime; or is sometimes used with a slight softening or glossing of the meaning, or as importing a possible question of the legal guilt of the deed.—**Criminal action.** The proceeding by which a party charged with a public offense is accused and brought to trial and punishment is known as a "criminal action." Pen.

Code Cal. § 683. A criminal action is (1) an action prosecuted by the state as a party, against a person charged with a public offense, for the punishment thereof; (2) an action prosecuted by the state, at the instance of an individual, to prevent an apprehended crime, against his person or property. Code N. C. 1883, § 129. State v. Railroad Co. (C. C.) 37 Fed. 497, 3 L. R. A. 554; Ames v. Kansas, 111 U. S. 449, 4 Sup. Ct. 437, 28 L. Ed. 482; State v. Costello, 61 Conn. 497, 23 Atl. 868.—**Criminal case.** An action, suit, or cause instituted to punish an infraction of the criminal laws. State v. Smalls, 11 S. C. 279; Adams v. Ashby, 2 Bibb. (Ky.) 97; U. S. v. Three Tons of Coal, 28 Fed. Cas. 149; People v. Iron Co., 201 Ill. 236, 66 N. E. 349.—**Criminal charge.** An accusation of crime, formulated in a written complaint, information, or indictment, and taking shape in a prosecution. U. S. v. Patterson, 150 U. S. 65, 14 Sup. Ct. 20, 37 L. Ed. 999; Eason v. State, 11 Ark. 482.—**Criminal conversation.** Adultery, considered in its aspect of a civil injury to the husband entitling him to damages; the tort of debauching or seducing of a wife. Often abbreviated to *crim. con.*—**Criminal intent.** The intent to commit a crime; malice, as evidenced by a criminal act; an intent to deprive or defraud the true owner of his property. People v. Moore, 3 N. Y. Cr. R. 458.—**Criminal law.** That branch or division of law which treats of crimes and their punishments. In the plural—"criminal laws"—the term may denote the laws which define and prohibit the various species of crimes and establish their punishments. U. S. v. Reisinger, 128 U. S. 398, 9 Sup. Ct. 99, 32 L. Ed. 480.—**Criminal law amendment act.** This act was passed in 1871, (34 & 35 Vict. c. 32,) to prevent and punish any violence, threats, or molestation, on the part either of master or workmen, in the various relations arising between them. 4 Steph. Comm. 241.—**Criminal law consolidation acts.** The statutes 24 & 25 Vict. cc. 94–100, passed in 1861, for the consolidation of the criminal law of England and Ireland. 4 Steph. Comm. 297. These important statutes amount to a codification of the modern criminal law of England.—**Criminal letters.** In Scotch law. A process used as the commencement of a criminal proceeding, in the nature of a summons issued by the lord advocate or his deputy. It resembles a criminal information at common law.—**Criminal proceeding.** One instituted and conducted for the purpose either of preventing the commission of crime, or for fixing the guilt of a crime already committed and punishing the offender; as distinguished from a "civil" proceeding, which is for the redress of a private injury. U. S. v. Lee Huen (D. C.) 118 Fed. 442; Sevier v. Washington County Justices, Peck (Tenn.) 334; People v. Ontario County, 4 Denio (N. Y.) 260.—**Criminal procedure.** The method pointed out by law for the apprehension, trial, or prosecution, and fixing the punishment, of those persons who have broken or violated, or are supposed to have broken or violated, the laws prescribed for the regulation of the conduct of the people of the community, and who have thereby laid themselves liable to fine or imprisonment or other punishment. 4 Amer. & Eng. Enc. Law, 730.—**Criminal process.** Process which issues to compel a person to answer for a crime or misdemeanor. Ward v. Lewis, 1 Stew. (Ala.) 27.—**Criminal prosecution.** An action or proceeding instituted in a proper court on behalf of the public, for the purpose of securing the conviction and punishment of one accused of crime. Harger v. Thomas, 44 Pa. 128, 84 Am. Dec. 422; Ely v. Thompson, 3 A. K. Marsh. (Ky.) 70.

As to criminal "Conspiracy," "Contempt," "Information," "Jurisdiction," "Libel," "Negligence," "Operation," see those titles.

CRIMINALITER. Lat. Criminally. This term is used, in distinction or opposition to the word *"civiliter,"* civilly, to distinguish a criminal liability or prosecution from a civil one.

CRIMINATE. To charge one with crime; to furnish ground for a criminal prosecution; to expose a person to a criminal charge. A witness cannot be compelled to answer any question which has a tendency to *criminate* him. Stewart v. Johnson, 18 N. J. Law, 87; Kendrick v. Comm., 78 Va. 490.

CRIMP. One who decoys and plunders sailors under cover of harboring them. Wharton.

CRO, CROO. In old Scotch law. A weregild. A composition, satisfaction, or assythment for the slaughter of a man.

CROCIA. The *crosier*, or pastoral staff.

CROCIARIUS. A cross-bearer, who went before the prelate. Wharton.

CROCKARDS, CROCARDS. A foreign coin of base metal, prohibited by statute 27 Edw. I. St. 3, from being brought into the realm. 4 Bl. Comm. 98; Crabb, Eng. Law, 176.

CROFT. A little close adjoining a dwelling-house, and inclosed for pasture and tillage or any particular use. Jacob. A small place fenced off in which to keep farm-cattle. Spelman. The word is now entirely obsolete.

CROISES. Pilgrims; so called as wearing the sign of the *cross* on their upper garments. Britt. c. 122. The knights of the order of St. John of Jerusalem, created for the defense of the pilgrims. Cowell; Blount.

CROITEIR. A crofter; one holding a croft.

CROP. The products of the harvest in corn or grain. Emblements. Insurance Co. v. Dehaven (Pa.) 5 Atl. 65; Goodrich v. Stevens, 5 Lans. (N. Y.) 230.

CROPPER. One who, having no interest in the land, works it in consideration of receiving a portion of the crop for his labor. Fry v. Jones, 2 Rawle (Pa.) 11; Wood v. Garrison (Ky.) 62 S. W. 728; Steel v. Frick, 56 Pa. 172.

The difference between a tenant and a cropper is: A tenant has an estate in the land for the term, and, consequently, he has a right of property in the crops. Until division, the right of property and of possession in the whole is the tenant's. A cropper has no estate in the land; and, although he has in some sense the possession of the crop, it is the possession of a servant only, and is, in law, that of the landlord, who must divide off to the cropper his share. Harrison v. Ricks, 71 N. C. 7.

CROSS. A mark made by persons who are unable to write, to stand instead of a signature; usually made in the form of a Maltese cross.

As an adjective, the word is applied to various demands and proceedings which are connected in subject-matter, but opposite or contradictory in purpose or object.

—Cross-action. An action brought by one who is defendant in a suit against the party who is plaintiff in such suit, upon a cause of action growing out of the same transaction which is there in controversy, whether it be a contract or tort.—**Cross-demand.** Where a person against whom a demand is made by another, in his turn makes a demand against that other, these mutual demands are called "cross-demands." A *set-off* is a familiar example. Musselman v. Galligher, 32 Iowa, 383.—**Cross-errors.** Errors being assigned by the respondent in a writ of error, the errors assigned on both sides are called "cross-errors."

As to cross "Appeal," "Bill," "Complaint," "Examination," "Remainder," "Rules," see those titles. As to "crossed check," see CHECK.

CROWN. The sovereign power in a monarchy, especially in relation to the punishment of crimes. "Felony is an offense of the crown." Finch, Law, b. 1, c. 16.

An ornamental badge of regal power worn on the head by sovereign princes. The word is frequently used when speaking of the sovereign himself, or the rights, duties, and prerogatives belonging to him. Also a silver coin of the value of five shillings. Wharton.

—Crown cases. In English law. Criminal prosecutions on behalf of the crown, as representing the public; causes in the criminal courts.—**Crown cases reserved.** In English law. Questions of law arising in criminal trials at the assizes, (otherwise than by way of demurrer,) and not decided there, but reserved for the consideration of the court of criminal appeal.—**Crown court.** In English law. The court in which the crown cases, or criminal business, of the assizes is transacted.—**Crown debts.** In English law. Debts due to the crown, which are put, by various statutes, upon a different footing from those due to a subject.—**Crown lands.** The demesne lands of the crown.—**Crown law.** Criminal law in England is sometimes so termed, the crown being always the prosecutor in criminal proceedings. 4 Bl. Comm. 2.—**Crown office.** The criminal side of the court of king's bench. The king's attorney in this court is called "master of the crown office." 4 Bl. Comm. 308.—**Crown office in chancery.** One of the offices of the English high court of chancery, now transferred to the high court of justice. The principal official, the clerk of the crown, is an officer of parliament, and of the lord chancellor, in his nonjudicial capacity, rather than an officer of the courts of law.—**Crown paper.** A paper containing the list of criminal cases which await the hearing or decision of the court, and particularly of the court of king's bench; and it then includes all cases arising from informations *quo warranto*, criminal informations, criminal cases brought up from inferior courts by writ of *certiorari*, and cases from the sessions. Brown.—**Crown side.** The criminal department of the court of king's bench; the civil department or branch being called the "plea side." 4 Bl. Comm. 265.—**Crown solicitor.** In England, the solicitor to the treasury acts, in state prosecutions, as solicitor for the crown in preparing the prosecution. In Ireland there are officers called "crown solicitors" attached to each circuit, whose duty it is to get up every case for the crown in criminal prosecutions. They are paid by salaries. There is no such system in England, where prosecutions are conducted by solicitors appointed by the parish, or other persons bound over to prosecute by the magistrates on each committal; but in Scotland the still better plan exists of a crown prosecutor (called the "procurator-fiscal," and being a subordinate of the lord-advocate) in every county, who prepares every criminal prosecution. Wharton.

CROWNER. In old Scotch law. Coroner; a coroner. "Crowner's quest," a coroner's inquest.

CROY. In old English law. Marsh land. Blount.

CRUCE SIGNATI. In old English law. Signed or marked with a cross. Pilgrims to the holy land, or crusaders; so called because they wore the sign of the cross upon their garments. Spelman.

CRUELTY. The intentional and malicious infliction of physical suffering upon living creatures, particularly human beings; or, as applied to the latter, the wanton, malicious, and unnecessary infliction of pain upon the body, or the feelings and emotions; abusive treatment; inhumanity; outrage.

Chiefly used in the law of divorce, in such phrases as "cruel and abusive treatment," "cruel and barbarous treatment," or "cruel and inhuman treatment," as to the meaning of which, and of "cruelty" in this sense, see May v. May, 62 Pa. 206; Waldron v. Waldron, 85 Cal. 251, 24 Pac. 649, 9 L. R. A. 487; Ring v. Ring, 118 Ga. 183, 44 S. E. 861, 62 L. R. A. 878; Sharp v. Sharp, 16 Ill. App. 348; Myrick v. Myrick, 67 Ga. 771; Shell v. Shell, 2 Sneed (Tenn.) 716; Vignos v. Vignos, 15 Ill. 186; Poor v. Poor, 8 N. H. 307, 29 Am. Dec. 664; Goodrich v. Goodrich, 44 Ala. 670; Bailey v. Bailey, 97 Mass. 373; Close v. Close, 25 N. J. Eq. 526; Cole v. Cole, 23 Iowa, 433; Turner v. Turner, 122 Iowa, 113, 97 N. W. 997; Levin v. Levin, 68 S. C. 123, 46 S. E. 945.

As between husband and wife. Those acts which affect the life, the health, or even the comfort, of the party aggrieved and give a reasonable apprehension of bodily hurt, are called "cruelty." What merely wounds the feelings is seldom admitted to be cruelty, unless the act be accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, will not amount to legal cruelty; *a fortiori*, the denial of little indulgences and particular accommodations, which the delicacy of the world is apt to number among its necessaries, is not cruelty. The negative descriptions of cruelty are perhaps the best, under the infinite variety of cases that may occur, by showing what is not cruelty. Evans v. Evans, 1 Hagg. Const. 35; Westmeath v. Westmeath, 4 Eng. Ecc. 238, 311, 312.

Cruelty includes both willfulness and malicious temper of mind with which an act is done, as well as a high degree of pain inflicted. Acts merely accidental, though they inflict great pain, are not "cruel," in the sense of the word as used in statutes against cruelty. Comm. v. McClellan, 101 Mass. 34.

—Cruelty to animals. The infliction of physical pain, suffering, or death upon an animal, when not necessary for purposes of training or discipline or (in the case of death) to procure food or to release the animal from incurable suffering, but done wantonly, for mere sport, for the indulgence of a cruel and vindictive temper, or with reckless indifference to its pain. Com. v. Lufkin, 7 Allen (Mass.) 581; State v. Avery, 44 N. H. 392; Paine v. Bergh, 1 City Ct. R. (N. Y.) 160; State v. Porter, 112 N. C. 887, 16 S. E. 915; State v. Bosworth, 54 Conn. 1, 4 Atl. 248; McKinne v. State, 81 Ga. 164, 9 S. E. 1091; Waters v. People, 23 Colo. 33, 46 Pac. 112, 33 L. R. A. 836, 58 Am. St. Rep. 215.**—Legal cruelty.** Such as will warrant the granting of a divorce to the injured party; as distinguished from such kinds or degrees of cruelty as do not, under the statutes and decisions, amount to sufficient cause for a decree. Legal cruelty may be defined to be such conduct on the part of the husband as will endanger the life, limb, or health of the wife, or create a reasonable apprehension of bodily hurt; such acts as render cohabitation unsafe, or are likely to be attended with injury to the person or to the health of the wife. Odom v. Odom, 36 Ga. 286.**—Cruel and unusual punishment.** See PUNISHMENT.

CRUISE. A voyage undertaken for a given purpose; a voyage for the purpose of making captures *jure belli*. The Brutus, 2 Gall. 538, Fed. Cas. No. 2,060.

A voyage or expedition in quest of vessels or fleets of the enemy which may be expected to sail in any particular track at a certain season of the year. The region in which these cruises are performed is usually termed the "rendezvous," or "cruising latitude." Bouvier.

Imports a definite place, as well as time of commencement and termination, unless such construction is repelled by the context. When not otherwise specially agreed, a cruise begins and ends in the country to which a ship belongs, and from which she derives her commission. The Brutus, 2 Gall. 526, Fed. Cas. No. 2,060.

CRY. To call out aloud; to proclaim; to publish; to sell at auction. "To cry a tract of land." Carr v. Gooch, 1 Wash. (Va.) 335, (260.)

A clamor raised in the pursuit of an escaping felon. 4 Bl. Comm. 293. See HUE AND CRY.

CRY DE PAIS, or CRI DE PAIS. The hue and cry raised by the people in ancient times, where a felony had been committed and the constable was absent.

CRYER. An auctioneer. Carr v. Gooch, 1 Wash. (Va.) 337, (262.) One who calls out aloud; one who publishes or proclaims. See CRIER.

CRYPTA. A chapel or oratory underground, or under a church or cathedral. Du Cange.

CUCKING-STOOL. An engine of correction for common scolds, which in the Saxon language is said to signify the scolding-stool, though now it is frequently corrupted into *ducking-stool*, because the judgment was that, when the woman was placed therein, she should be plunged in the water for her punishment. It was also variously called a "trebucket," "tumbrel," or "castigatory." 3 Inst. 219; 4 Bl. Comm. 169; Brown. James v. Comm., 12 Serg. & R. (Pa.) 220.

CUEILLETTE. A term of French maritime law. See A CUEILLETTE.

CUI ANTE DIVORTIUM. (To whom before divorce.) A writ for a woman divorced from her husband to recover her lands and tenements which she had in fee-simple or in tail, or for life, from him to whom her husband alienated them during the marriage, when she could not gainsay it. Reg. Orjg. 233.

CUI BONO. For whose good; for whose use or benefit. "*Cui bono* is ever of great weight in all agreements." Parker, C. J., 10 Mod. 135. Sometimes translated, for what good, for what useful purpose.

Cuicunque aliquis quid concedit concedere videtur et id, sine quo res ipsa esse non potuit. 11 Coke, 52. Whoever grants anything to another is supposed to grant that also without which the thing itself would be of no effect.

CUI IN VITA. (To whom in life.) A writ of entry for a widow against him to whom her husband aliened her lands or tenements in his life-time; which must contain in it that during his life she could not withstand it. Reg. Orig. 232; Fitzh. Nat. Brev. 193.

Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potest. To whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised. Dig. 2, 1, 2. The grant of jurisdiction implies the grant of all powers necessary to its exercise. 1 Kent, Comm. 339.

Cui jus est donandi, eidem et vendendi et concedendi jus est. He who has the right of giving has also the right of selling and granting. Dig. 50, 17, 163.

Cuilibet in arte sua perito est credendum. Any person skilled in his peculiar art or profession is to be believed, [*i. e.*, when he speaks of matters connected with such art.] Co. Litt. 125*a*; Shelf. Mar. & Div. 206. Credence should be given to one skilled in his peculiar profession. Broom, Max. 932.

Cuilibet licet juri pro se introducto, renunciare. Any one may waive or renounce the benefit of a principle or rule of law that exists only for his protection.

Cui licet quod majus, non debet quod minus est non licere. He who is allowed to do the greater ought not to be prohibited from doing the less. He who has authority to do the more important act ought not to be debarred from doing what is of less importance. 4 Coke, 23.

Cui pater est populus non habet ille patrem. He to whom the people is father has not a father. Co. Litt. 123.

Cuique in sua arte credendum est. Every one is to be believed in his own art. Dickinson v. Barber, 9 Mass. 227, 6 Am. Dec. 58.

Cujus est commodum ejus debet esse incommodum. Whose is the advantage, his also should be the disadvantage.

Cujus est dare, ejus est disponere. Wing. Max. 59. Whose it is to give, his it is to dispose; or, as Broom says, "the bestower of a gift has a right to regulate its disposal." Broom, Max. 459, 461, 463, 464.

Cujus est divisio, alterius est electio. Whichever [of two parties] has the division, [of an estate,] the choice [of the shares] is the other's. Co. Litt. 166*b*. In partition between coparceners, where the division is made by the eldest, the rule in English law is that she shall choose her share last. Id.; 2 Bl. Comm. 189; 1 Steph. Comm. 323.

Cujus est dominium ejus est periculum. The risk lies upon the owner of the subject. Tray. Lat. Max. 114.

Cujus est instituere, ejus est abrogare. Whose right it is to institute, his right it is to abrogate. Broom, Max. 878, note.

Cujus est solum ejus est usque ad cœlum. Whose is the soil, his it is up to the sky. Co. Litt. 4*a*. He who owns the soil, or surface of the ground, owns, or has an exclusive right to, everything which is upon or above it to an indefinite height. 9 Coke, 54; Shep. Touch. 90; 2 Bl. Comm. 18; 3 Bl. Comm. 217; Broom, Max. 395.

Cujus est solum, ejus est usque ad cœlum et ad inferos. To whomsoever the soil belongs, he owns also to the sky and to the depths. The owner of a piece of land owns everything above and below it to an indefinite extent. Co. Litt. 4.

Cujus juris (*i. e.*, jurisdictionis) est principale, ejusdem juris erit accessorium. 2 Inst. 493. An accessory matter is subject to the same jurisdiction as its principal.

Cujus per errorem dati repetitio est, ejus consulto dati donatio est. He who gives a thing by mistake has a right to recover it back; but, if he gives designedly, it is a gift. Dig. 50, 17, 53.

Cujusque rei potissima pars est principium. The chiefest part of everything is the beginning. Dig. 1, 2, 1; 10 Coke, 49*a*.

CUL DE SAC. (Fr. the bottom of a sack.) A blind alley; a street which is open at one end only. Bartlett v. Bangor, 67 Me. 467; Perrin v. Railroad Co., 40 Barb. (N. Y.) 65; Talbott v. Railroad Co., 31 Grat. (Va.) 691; Hickok v. Plattsburg, 41 Barb. (N. Y.) 135.

CULAGIUM. In old records. The laying up a ship in a dock, in order to be repaired. Cowell; Blount.

CULPA. Lat. A term of the civil law, meaning fault, neglect, or negligence. There are three degrees of *culpa*,—*lata culpa*, gross fault or neglect; *levis culpa*, ordinary fault or neglect; *levissima culpa*, slight fault or neglect,—and the definitions of these degrees are precisely the same as those in our law. Story, Bailm. § 18. This term is to be distinguished from *dolus*, which means fraud, guile, or deceit.

Culpa caret qui scit sed prohibere non potest. He is clear of blame who knows, but cannot prevent. Dig. 50, 17, 50.

Culpa est immiscere se rei ad se non pertinenti. 2 Inst. 208. It is a fault for any one to meddle in a matter not pertaining to him.

Culpa lata dolo æquiparatur. Gross negligence is held equivalent to intentional wrong.

Culpa tenet [teneat] suos auctores. Misconduct binds [should bind] its own authors. It is a never-failing axiom that every one is accountable only for his own delicts. Ersk. Inst. 4, 1, 14.

CULPABILIS. Lat. In old English law. Guilty. *Culpabilis de intrusione*,—guilty of intrusion. Fleta, lib. 4, c. 30, § 11. *Non culpabilis*, (abbreviated to *non cul.*) In criminal procedure, the plea of "not guilty." See CULPRIT.

CULPABLE. Blamable; censurable; involving the breach of a legal duty or the commission of a fault. The term is not necessarily equivalent to "criminal," for, in present use, and notwithstanding its derivation, it implies that the act or conduct spoken of is reprehensible or wrong but not that it involves malice or a guilty purpose. "Culpable" in fact connotes fault rather than guilt.

Railway Co. v. Clayberg, 107 Ill. 651; Bank v. Wright, 8 Allen (Mass.) 121.

As to culpable "Homicide," "Neglect," and "Negligence," see those titles.

Culpæ pœna par esto. Pœna ad mensuram delicti statuenda est. Let the punishment be proportioned to the crime. Punishment is to be measured by the extent of the offense.

CULPRIT. A person who is indicted for a criminal offense, but not yet convicted. It is not, however, a technical term of the law; and in its vernacular usage it seems to imply only a light degree of censure or moral reprobation.

Blackstone believes it an abbreviation of the old forms of arraignment, whereby, on the prisoner's pleading not guilty, the clerk would respond, "*culpabilis, prit*," *i. e.*, he is guilty and the crown is ready. It was (he says) the *viva voce* replication, by the clerk, on behalf of the crown, to the prisoner's plea of *non culpabilis; prit* being a technical word, anciently in use in the formula of joining issue. 4 Bl. Comm. 339.

But a more plausible explanation is that given by Donaldson, (cited Whart. Lex.,) as follows: The clerk asks the prisoner, "Are you guilty, or not guilty?" Prisoner "Not guilty." Clerk, "*Qu'il paroit*, [may it prove so.] How will you be tried?" Prisoner, "By God and my country." These words being hurried over, came to sound, "culprit, how will you be tried?" The ordinary derivation is from *culpa*.

CULRACH. In old Scotch law. A species of pledge or cautioner, (Scottice, *back borgh*,) used in cases of the replevin of persons from one man's court to another's. Skene.

CULTIVATED. A field on which a crop of wheat is growing is a cultivated field, although not a stroke of labor may have been done in it since the seed was put in the ground, and it is a cultivated field after the crop is removed. It is, strictly, a cultivated piece of ground. State v. Allen, 35 N. C. 36.

CULTURA. A parcel of arable land. Blount.

CULVERTAGE. In old English law. A base kind of slavery. The confiscation or forfeiture which takes place when a lord seizes his tenant's estate. Blount; Du Cange.

Cum actio fuerit mere criminalis, institui poterit ab initio criminaliter vel civiliter. When an action is merely criminal, it can be instituted from the beginning either criminally or civilly. Bract. 102.

Cum adsunt testimonia rerum, quid opus est verbis? When the proofs of facts are present, what need is there of words? 2 Bulst. 53.

Cum aliquis renunciaverit societati, solvitur societas. When any partner renounces the partnership, the partnership is dissolved. Tray. Lat. Max. 118.

Cum confitente sponte mitius est agendum. 4 Inst. 66. One confessing willingly should be dealt with more leniently.

CUM COPULA. Lat. With copulation, *i. e.*, sexual intercourse. Used in speaking of the validity of a marriage contracted "per verba de futuro cum copula," that is, with words referring to the future (a future intention to have the marriage solemnized) and consummated by sexual connection.

Cum de lucro duorum quæritur, melior est causa possidentis. When the question is as to the gain of two persons, the cause of him who is in possession is the better. Dig. 50, 17, 126.

Cum duo inter se pugnantia reperiuntur in testamento, ultimum ratum est. Where two things repugnant to each other are found in a will, the last shall stand. Co. Litt. 112*b*; Shep. Touch. 451; Broom, Max. 583.

Cum duo jura concurrunt in una persona æquum est ac si essent in duobus. When two rights meet in one person, it is the same as if they were in two persons.

CUM GRANO SALIS. (With a grain of salt.) With allowance for exaggeration.

Cum in corpore dissentitur, apparet nullam esse acceptionem. When there is a disagreement in the substance, it appears that there is no acceptance. Gardner v. Lane, 12 Allen (Mass.) 44.

Cum in testamento ambigue aut etiam perperam scriptum est benigne interpretari et secundum id quod credibile est cogitatum credendum est. Dig. 34, 5, 24. Where an ambiguous, or even an erroneous, expression occurs in a will, it should be construed liberally, and in accordance with the testator's probable meaning. Broom, Max. 568.

Cum legitimæ nuptiæ factæ sunt, patrem liberi sequuntur. Children born under a legitimate marriage follow the condition of the father.

CUM ONERE. With the burden; subject to an incumbrance or charge. What is taken *cum onere* is taken subject to an existing burden or charge.

Cum par delictum est duorum, semper oneratur petitor et melior habetur possessoris causa. Dig. 50, 17, 154. When both parties are in fault the plaintiff must always fail, and the cause of the person in possession be preferred.

CUM PERA ET LOCULO. With satchel and purse. A phrase in old Scotch law.

CUM PERTINENTIIS. With the appurtenances. Bract. fol. 73*b*.

CUM PRIVILEGIO. The expression of the monopoly of Oxford, Cambridge, and the royal printers to publish the Bible.

Cum quod ago non valet ut ago, valeat quantum valere potest. 4 Kent, Comm. 493. When that which I do is of no effect as I do it, it shall have as much effect as it can; *i. e.*, in some other way.

CUM TESTAMENTO ANNEXO. L. Lat. With the will annexed. A term applied to administration granted where a testator makes an incomplete will, without naming any executors, or where he names incapable persons, or where the executors named refuse to act. 2 Bl. Comm. 503, 504.

CUMULATIVE. Additional; heaping up; increasing; forming an aggregate. The word signifies that two things are to be added together, instead of one being a repetition or in substitution of the other. People v. Superior Court, 10 Wend. (N. Y.) 285; Regina v. Eastern Archipelago Co., 18 Eng. Law & Eq. 183.

—Cumulative dividend. See STOCK.—**Cumulative offense.** One which can be committed only by a repetition of acts of the same kind but committed on different days. The offense of being a "common seller" of intoxicating liquors is an example. Wells v. Com., 12 Gray (Mass.) 328.—**Cumulative punishment.** An increased punishment inflicted for a second or third conviction of the same offense, under the statutes relating to habitual criminals. State v. Hambly, 126 N. C. 1066, 35 S. E. 614. To be distinguished from a "cumulative sentence," as to which see SENTENCE.—**Cumulative remedy.** A remedy created by statute in addition to one which still remains in force. Railway Co. v. Chicago, 148 Ill. 141, 35 N. E. 881.—**Cumulative voting.** A system of voting, by which the elector, having a number of votes equal to the number of officers to be chosen, is allowed to concentrate the whole number of his votes upon one person, or to distribute them as he may see fit. For example, if ten directors of a corporation are to be elected, then, under this system, the voter may cast ten votes for one person, or five votes for each of two persons, etc. It is intended to secure representation of a minority.

As to cumulative "Evidence," "Legacies," and "Sentences," see those titles.

CUNADES. In Spanish law. Affinity; alliance; relation by marriage. Las Partidas, pt. 4, tit. 6, 1, 5.

CUNEATOR. A coiner. Du Cange. *Cuneare*, to coin. *Cuneus*, the die with which to coin. *Cuneata*, coined. Du Cange; Spelman.

CUNTEY-CUNTEY. In old English law. A kind of trial, as appears from Bract. lib. 4, tract 3, ca. 18, and tract 4, ca. 2, where it seems to mean, one by the ordinary jury.

CUR. A common abbreviation of *curia*.

CURA. Lat. Care; charge; oversight; guardianship.

In the civil law. A species of guardianship which commenced at the age of puberty, (when the guardianship called "*tutela*" expired,) and continued to the completion of the twenty-fifth year. Inst. 1, 23, pr.; Id. 1, 25, pr.; Hallifax, Civil Law, b. 1, c. 9.

CURAGULOS. One who takes care of a thing.

CURATE. In ecclesiastical law. Properly, an incumbent who has the *cure* of souls, but now generally restricted to signify the spiritual assistant of a rector or vicar in his *cure*. An officiating temporary minister in the English church, who represents the proper incumbent; being regularly employed either to serve in his absence or as his assistant, as the case may be. 1 Bl. Comm. 393; 3 Steph. Comm. 88; Brande.

—Perpetual curacy. The office of a curate in a parish where there is no spiritual rector or vicar, but where a clerk (curate) is appointed to officiate there by the impropriator. 2 Burn, Ecc. Law, 55. The church or benefice filled by a curate under these circumstances is also so called.

CURATEUR. In French law. A person charged with supervising the administration of the affairs of an emancipated minor, of giving him advice, and assisting him in the important acts of such administration. Duverger.

CURATIO. In the civil law. The power or duty of managing the property of him who, either on account of infancy or some defect of mind or body, cannot manage his own affairs. The duty of a curator or guardian. Calvin.

CURATIVE. Intended to cure (that is, to obviate the ordinary legal effects or consequences of) defects, errors, omissions, or irregularities. Applied particularly to statutes, a "curative act" being a retrospective law passed in order to validate legal proceedings, the acts of public officers, or private deeds or contracts, which would otherwise be void for defects or irregularities or for want of conformity to existing legal requirements. Meigs v. Roberts, 162 N. Y. 371, 56 N. E. 838, 76 Am. St. Rep. 322.

CURATOR. In the civil law. A person who is appointed to take care of anything for another. A guardian. One appointed to take care of the estate of a minor above a certain age, a lunatic, a spendthrift, or other person not regarded by the law as competent to administer it for himself. The

title was also applied to a variety of public officers in Roman administrative law. Sproule v. Davies, 69 App. Div. 502, 75 N. Y. Supp. 229.

In Scotch law. The term means a guardian.

In Louisiana. A person appointed to take care of the estate of an absentee. Civil Code La. art. 50.

In Missouri. The term "curator" has been adopted from the civil law, and it is applied to the guardian of the estate of the ward as distinguished from the guardian of his person. Duncan v. Crook, 49 Mo. 117.

—Curator ad hoc. In the civil law. A guardian for this purpose; a special guardian. **—Curator ad litem.** Guardian for the suit. In English law, the corresponding phrase is "guardian *ad litem*."**—Curator bonis.** In the civil law. A guardian or trustee appointed to take care of *property* in certain cases; as for the benefit of creditors. Dig. 42, 7. In Scotch law. The term is applied to guardians for minors, lunatics, etc.**—Curatores viarum.** Surveyors of the highways.

CURATORSHIP. The office of a curator. Curatorship differs from tutorship, (*q. v.*,) in this; that the latter is instituted for the protection of property in the first place, and, secondly, of the person; while the former is intended to protect, first, the person, and secondly, the property. 1 Lec. El. Dr. Civ. Rom. 241.

CURATRIX. A woman who has been appointed to the office of curator; a female guardian. Cross' Curatrix v. Cross' Legatees, 4 Grat. (Va.) 257.

Curatus non habet titulum. A curate has no title, [to tithes.] 3 Bulst. 310.

CURE BY VERDICT. The rectification or rendering nugatory of a defect in the pleadings by the rendition of a verdict; the court will presume, after a verdict, that the particular thing omitted or defectively stated in the pleadings was duly proved at the trial. State v. Keena, 63 Conn. 329, 28 Atl. 522; Alford v. Baker, 53 Ind. 279; Treanor v. Houghton, 103 Cal. 53, 36 Pac. 1081.

CURE OF SOULS. In ecclesiastical law. The ecclesiastical or spiritual charge of a parish, including the usual and regular duties of a minister in charge. State v. Bray, 35 N. C. 290.

CURFEW. An institution supposed to have been introduced into England by order of William the Conqueror, which consisted in the ringing of a bell or bells at eight o'clock at night, at which signal the people were required to extinguish all lights in their dwellings, and to put out or rake up their fires, and retire to rest, and all companies to disperse. The word is probably derived from the French *couvre feu*, to cover the fire.

CURIA. In old European law. A court. The palace, household, or retinue of a sovereign. A judicial tribunal or court held in the sovereign's palace. A court of justice. The civil power, as distinguished from the ecclesiastical. A manor; a nobleman's house; the hall of a manor. A piece of ground attached to a house; a yard or court-yard. Spelman. A lord's court held in his manor. The tenants who did suit and service at the lord's court. A manse. Cowell.

In Roman law. A division of the Roman people, said to have been made by Romulus. They were divided into three tribes, and each tribe into ten *curiæ*, making thirty *curiæ* in all. Spelman.

The place or building in which each *curia* assembled to offer sacred rites.

The place of meeting of the Roman senate; the senate house.

The senate house of a province; the place where the *decuriones* assembled. Cod. 10, 31, 2. See DECURIO.

—Curia admiralitatis. The court of admiralty.**—Curia baronis,** or **baronum.** In old English law. A court-baron. Fleta, lib. 2, c. 53.**—Curia Christianitatis.** The ecclesiastical court.**—Curia comitatus.** The county court, (*q. v.*)**—Curia cursus aquæ.** A court held by the lord of the manor of Gravesend for the better management of barges and boats plying on the river Thames between Gravesend and Windsor, and also at Gravesend bridge, etc. 2 Geo. II. c. 26.**—Curia domini.** In old English law. The lord's court, house, or hall, where all the tenants met at the time of keeping court. Cowell.**—Curia legitime affirmata.** A phrase used in old Scotch records to show that the court was opened in due and lawful manner.**—Curia magna.** In old English law. The great court; one of the ancient names of parliament.**—Curia majoris.** In old English law. The mayor's court. Calth. 144.**—Curia militum.** A court so called, anciently held at Carisbrook Castle, in the Isle of Wight. Cowell.**—Curia palatii.** The palace court. It was abolished by 12 & 13 Vict. c. 101.**—Curia pedis pulverizati.** In old English law. The court of *piedpoudre* or *pie-pouders*, (*q. v.*) 3 Bl. Comm. 32.**—Curia penticiarum.** A court held by the sheriff of Chester, in a place there called the "*Pendice*" or "*Pentice*;" probably it was so called from being originally held under a pent-house, or open shed covered with boards. Blount.**—Curia personæ.** In old records. A parsonage-house, or manse. Cowell.**—Curia regis.** The king's court. A term applied to the *aula regis*, the *bancus*, or *communis bancus*, and the *iter* or *eyre*; as being courts of the king, but especially to the *aula regis*, (which title see.)

CURIA ADVISARI VULT. L. Lat. The court will advise; the court will consider. A phrase frequently found in the reports, signifying the resolution of the court to suspend judgment in a cause, after the argument, until they have deliberated upon the question, as where there is a new or difficult point involved. It is commonly abbreviated to *cur. adv. vult*, or *c. a. v.*

Curia cancellariæ officina justitiæ. 2 Inst. 552. The court of chancery is the workshop of justice.

CURIA CLAUDENDA. The name of a writ to compel another to make a fence or wall, which he was bound to make, between his land and the plaintiff's. Reg. Orig. 155. Now obsolete.

Curia parliamenti suis propriis legibus subsistit. 4 Inst. 50. The court of parliament is governed by its own laws.

CURIALITY. In Scotch law. Curtesy. Also the privileges, prerogatives, or, perhaps, retinue, of a court.

Curiosa et captiosa interpretatio in lege reprobatur. A curious [overnice or subtle] and captious interpretation is reprobated in law. 1 Bulst. 6.

CURNOCK. In old English law. A measure containing four bushels or half a quarter of corn. Cowell; Blount.

CURRENCY. Coined money and such bank-notes or other paper money as are authorized by law and do in fact circulate from hand to hand as the medium of exchange. Griswold v. Hepburn, 2 Duv. (Ky.) 33; Leonard v. State, 115 Ala. 80, 22 South. 564; Insurance Co. v. Keiron, 27 Ill. 505; Insurance Co. v. Kupfer, 28 Ill. 332, 81 Am. Dec. 284; Lackey v. Miller, 61 N. C. 26.

CURRENT. Running; now in transit; whatever is at present in course of passage; as "the current month." When applied to money, it means "lawful;" current money is equivalent to lawful money. Wharton v. Morris, 1 Dall. 124, 1 L. Ed. 65.

—Current account. An open, running, or unsettled account between two parties. Tucker v. Quimby, 37 Iowa, 19; Franklin v. Camp, 1 N. J. Law, 196; Wilson v. Calvert, 18 Ala. 274.**—Current expenses.** Ordinary, regular, and continuing expenditures for the maintenance of property, the carrying on of an office, municipal government, etc. Sheldon v. Purdy, 17 Wash. 135, 49 Pac. 228; State v. Board of Education, 68 N. J. Law, 496, 53 Atl. 236; Babcock v. Goodrich, 47 Cal. 510.**—Current funds.** This phrase means gold or silver, or something equivalent thereto, and convertible at pleasure into coined money. Bull v. Bank, 123 U. S. 105, 8 Sup. Ct. 62, 31 L. Ed. 97; Lacy v. Holbrook, 4 Ala. 90; Haddock v. Woods, 46 Iowa, 433.**—Current money.** The currency of the country; whatever is intended to and does actually circulate as currency; every species of coin or currency. Miller v. McKinney, 5 Lea (Tenn.) 96. In this phrase the adjective "current" is not synonymous with "convertible." It is employed to describe money which passes from hand to hand, from person to person, and circulates through the community, and is generally received. Money is current which is received as money in the common business transactions, and is the common medium in bar er and trade. Stalworth v. Blum, 41 Ala. 321.**—Current price.** This term means the same as "market value." Cases of Champagne, 23 Fed. Cas. 1168.**—Current value.** The current value of imported commodities is their common market price at the place of exportation, without reference to the price actually paid by the importer. Tappan v. U. S., 23 Fed. Cas. 690.**—Current wages.** Such as are paid periodically, or from time to time as the services are rendered or the work is performed; more particularly, wages for the current period, hence not including such as are past-due. Sydnor v. Galveston (Tex. App.) 15 S. W. 202; Bank v. Graham (Tex. App.) 22 S. W. 1101; Bell v. Live Stock Co. (Tex.) 11 S. W. 346, 3 L. R. A. 642.**—Current year.** The year now running. Doe v. Dobell, 1 Adol. & El. 806; Clark v. Lancaster County, 69 Neb. 717, 96 N. W. 593.

CURRICULUM. The year; of the course of a year; the set of studies for a particular period, appointed by a university.

CURRIT QUATUOR PEDIBUS. L. Lat. It runs upon four feet; or, as sometimes expressed, it runs upon all fours. A phrase used in arguments to signify the entire and exact application of a case quoted. "It does not follow that they run *quatuor pedibus*." 1 W. Bl. 145.

Currit tempus contra desides et sui juris contemptores. Time runs against the slothful and those who neglect their rights. Bract. fols. 100*b*, 101.

CURSITOR BARON. An officer of the court of exchequer, who is appointed by patent under the great seal to be one of the barons of the exchequer. The office was abolished by St. 19 & 20 Vict. c. 86.

CURSITORS. Clerks in the chancery office, whose duties consisted in drawing up those writs which were of course, *de cursu*, whence their name. They were abolished by St. 5 & 6 Wm. IV. c. 82. Spence, Eq. Jur. 238; 4 Inst. 82.

CURSO. In old records. A ridge. *Cursones terræ*, ridges of land. Cowell.

CURSOR. An inferior officer of the papal court.

Cursus curiæ est lex curiæ. 3 Bulst. 53. The practice of the court is the law of the court.

CURTESY. The estate to which by common law a man is entitled, on the death of his wife, in the lands or tenements of which she was seised in possession in fee-simple or in tail during her coverture, provided they have had lawful issue born alive which might have been capable of inheriting the estate. It is a freehold estate for the term of his natural life. 1 Washb. Real Prop. 127; 2 Bl. Comm. 126; Co. Litt. 30*a*; Dozier v. Toalson, 180 Mo. 546, 79 S. W. 420, 103 Am. St. Rep. 586; Valentine v. Hutchinson, 43 Misc. Rep. 314, 88 N. Y. Supp. 862; Redus v. Hayden, 43 Miss. 614; Billings v. Baker, 28 Barb. (N. Y.) 343; Templeton v. Twitty, 88 Tenn. 595, 14 S. W. 435; Jackson v. John-

son, 5 Cow. (N. Y.) 74, 15 Am. Dec. 433; Ryan v. Freeman, 36 Miss. 175.

Initiate and consummate. Curtesy initiate is the interest which a husband has in his wife's estate after the birth of issue capable of inheriting, and before the death of the wife; after her death, it becomes an estate "by the curtesy consummate." Wait v. Wait, 4 Barb. (N. Y.) 205; Churchill v. Hudson (C. C.) 34 Fed. 14; Turner v. Heinberg, 30 Ind. App. 615, 65 N. E. 294.

CURTEYN. The name of King Edward the Confessor's sword. It is said that the point of it was broken, as an emblem of mercy. (Mat. Par. in Hen. III.) Wharton.

CURTILAGE. The inclosed space of ground and buildings immediately surrounding a dwelling-house.

In its most comprehensive and proper legal signification, it includes all that space of ground and buildings thereon which is usually inclosed within the *general fence* immediately surrounding a principal messuage and outbuildings, and yard closely adjoining to a dwelling-house, but it may be large enough for cattle to be levant and couchant therein. 1 Chit. Gen. Pr. 175.

The curtilage of a dwelling-house is a space, necessary and convenient and habitually used for the family purposes, and the carrying on of domestic employments. It includes the garden, if there be one, and it need not be separated from other lands by fence. State v. Shaw, 31 Me. 523; Com. v. Barney, 10 Cush. (Mass.) 480; Derrickson v. Edwards, 29 N. J. Law, 474, 80 Am. Dec. 220.

The curtilage is the court-yard in the front or rear of a house, or at its side, or any piece of ground lying near, inclosed and used with, the house, and necessary for the convenient occupation of the house. People v. Gedney, 10 Hun (N. Y.) 154.

In Michigan the meaning of curtilage has been extended to include more than an inclosure near the house. People v. Taylor, 2 Mich. 250.

CURTILES TERRÆ. In old English law. Court lands. Cowell. See COURT LANDS.

CURTILLIUM. A curtilage; the area or space within the inclosure of a dwelling-house. Spelman.

CURTIS. A garden; a space about a house; a house, or manor; a court, or palace; a court of justice; a nobleman's residence. Spelman.

CUSSORE. A term used in Hindostan for the discount or allowance made in the exchange of rupees, in contradistinction to *batta*, which is the sum deducted. Enc. Lond.

CUSTA, CUSTAGIUM, CUSTANTIA. Costs.

CUSTODE ADMITTENDO, CUSTODE AMOVENDO. Writs for the admitting and removing of guardians.

CUSTODES. In Roman law. Guardians; observers; inspectors. Persons who acted as inspectors of elections, and who counted the votes given. Tayl. Civil Law, 193.

In old English law. Keepers; guardians; conservators.

Custodes pacis, guardians of the peace. 1 Bl. Comm. 349.

CUSTODES LIBERTATIS ANGLIÆ AUCTORITATE PARLIAMENTI. The style in which writs and all judicial processes were made out during the great revolution, from the execution of King Charles I. till Oliver Cromwell was declared protector.

CUSTODIA LEGIS. In the custody of the law. Stockwell v. Robinson, 9 Houst. (Del.) 313, 32 Atl. 528.

CUSTODIAM LEASE. In English law. A grant from the crown under the exchequer seal, by which the custody of lands, etc., seised in the king's hands, is demised or committed to some person as custodee or lessee thereof. Wharton.

CUSTODY. The care and keeping of anything; as when an article is said to be "in the custody of the court." People v. Burr, 41 How. Prac. (N. Y.) 296; Emmerson v. State, 33 Tex. Cr. R. 89, 25 S. W. 290; Roe v. Irwin, 32 Ga. 39. Also the detainer of a man's person by virtue of lawful process or authority; actual imprisonment. In a sentence that the defendant "be in custody until," etc., this term imports actual imprisonment. The duty of the sheriff under such a sentence is not performed by allowing the defendant to go at large under his general watch and control, but so doing renders him liable for an escape. Smith v. Com., 59 Pa. 320; Wilkes v. Slaughter, 10 N. C. 216; Turner v. Wilson, 49 Ind. 581; Ex parte Powers (D. C.) 129 Fed. 985.

—Custody of the law. Property is in the custody of the law when it has been lawfully taken by authority of legal process, and remains in the possession of a public officer (as, a sheriff) or an officer of a court (as, a receiver) empowered by law to hold it. Gilman v. Williams, 7 Wis. 334, 76 Am. Dec. 219; Weaver v. Duncan (Tenn. Ch. App.) 56 S. W. 41; Carriage Co. v. Solanes (C. C.) 108 Fed. 532; Stockwell v. Robinson, 9 Houst. (Del.) 313, 32 Atl. 528; In re Receivership, 109 La. 875, 33 South. 903.

CUSTOM. A usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject-matter to which it relates. Adams v. Insurance Co., 95 Pa. 355, 40 Am. Rep. 662; Lindsay v. Cusimano (C. C.) 12 Fed. 504; Strother v. Lucas, 12 Pet. 445, 9 L. Ed. 1137; Minis v. Nelson (C. C.) 43 Fed. 779; Panaud v. Jones, 1 Cal. 498; Hursh v. North, 40 Pa. 241.

A law not written, established by long usage, and the consent of our ancestors.

Termes de la Ley; Cowell; Bract. fol. 2. If it be universal, it is common law; if particular to this or that place, it is then properly *custom*. 3 Salk. 112.

Customs result from a long series of actions constantly repeated, which have, by such repetition, and by uninterrupted acquiescence, acquired the force of a tacit and common consent. Civil Code La. art. 3.

It differs from prescription, which is personal and is annexed to the person of the owner of a particular estate; while the other is local, and relates to a particular district. An instance of the latter occurs where the question is upon the manner of conducting a particular branch of trade at a certain place; of the former, where a certain person and his ancestors, or those whose estates he has, have been entitled to a certain advantage or privilege, as to have common of pasture in a certain close, or the like. The distinction has been thus expressed: "While prescription is the making of a right, custom is the making of a law." Lawson, Usages & Cust. 15, note 2.

Classification. Customs are general, local or particular. *General* customs are such as prevail throughout a country and become the law of that country, and their existence is to be determined by the court. Bodfish v. Fox, 23 Me. 95; 39 Am. Dec. 611. Or as applied to usages of trade and business, a general custom is one that is followed in all cases by all persons in the same business in the same territory, and which has been so long established that persons sought to be charged thereby, and all others living in the vicinity, may be presumed to have known of it and to have acted upon it as they had occasion. Sturges v. Buckley, 32 Conn. 267; Railroad Co. v. Harrington, 192 Ill. 9, 61 N. E. 622; Bonham v. Railroad Co., 13 S. C. 267. *Local* customs are such as prevail only in some particular district or locality, or in some city, county, or town. Bodfish v. Fox, 23 Me. 95, 39 Am. Dec. 611; Clough v. Wing, 2 Ariz. 371, 17 Pac. 457. *Particular* customs are nearly the same, being such as affect only the inhabitants of some particular district. 1 Bl. Comm. 74.

—Customs of London. Certain particular customs, peculiar to that city, with regard to trade, apprentices, widows, orphans and a variety of other matters; contrary to the general law of the land, but confirmed by act of parliament. 1 Bl. Comm. 75.**—Custom of merchants.** A system of customs or rules relative to bills of exchange, partnership, and other mercantile matters, and which, under the name of the "*lex mercatoria*," or "law-merchant," has been ingrafted into and made a part of, the common law. 1 Bl. Comm. 75; 1 Steph. Comm. 54; 2 Burrows, 1226, 1228.**—Custom of York.** A custom of intestacy in the province of York similar to that of London. Abolished by 19 & 20 Vict. c. 94.**—Customs and services** annexed to the tenure of lands are those which the tenants thereof owe unto their lords, and which, if withheld, the lord might anciently have resorted to "a writ of customs and services" to compel them. Cowell. But at the present day he would merely proceed to eject the tenant as upon a forfeiture, or claim damages for the subtraction. Brown.**—Special custom.** A particular or local custom; one which, in respect to the sphere of its observance, does not extend throughout the entire state or country, but is confined to some particular district or locality. 1 Bl. Comm. 67; Bodfish v. Fox, 23 Me. 95, 39 Am. Dec. 611.

CUSTOM-HOUSE. In administrative law. The house or office where commodities are entered for importation or exportation; where the duties, bounties, or drawbacks payable or receivable upon such importation or exportation are paid or received; and where ships are cleared out, etc.

—Custom-house broker. One whose occupation it is, as the agent of others, to arrange entries and other custom-house papers, or transact business, at any port of entry, relating to the importation or exportation of goods, wares, or merchandise. 14 St. at Large, 117. A person authorized by the commissioners of customs to act for parties, at their option, in the entry or clearance of ships and the transaction of general business. Wharton.

Custom is the best interpreter of the law. 4 Inst. 75; 2 Eden, 74; McKeen v. Delancy, 5 Cranch, 32, 3 L. Ed. 25; McFerran v. Powers, 1 Serg. & R. (Pa.) 106.

CUSTOMARY. According to custom or usage; founded on, or growing out of, or dependent on, a custom, (*q. v.*)

—Customary Court-Baron. See COURT-BARON.**—Customary estates.** Estates which owe their origin and existence to the custom of the manor in which they are held. 2 Bl. Comm. 149.**—Customary freehold.** In English law. A variety of copyhold estate, the evidences of the title to which are to be found upon the court rolls; the entries declaring the holding to be according to the custom of the manor, but it is not said to be at the will of the lord. The incidents are similar to those of common or pure copyhold. 1 Steph. Comm. 212, 213, and note.**—Customary interpretation.** See INTERPRETATION.**—Customary services.** Such as are due by ancient custom or prescription only.**—Customary tenants.** Tenants holding by custom of the manor.

Custome serra prise stricte. Custom shall be taken [is to be construed] strictly. Jenk. Cent. 83.

CUSTOMS. This term is usually applied to those taxes which are payable upon goods and merchandise imported or exported. Story, Const. § 949; Pollock v. Trust Co., 158 U. S. 601, 15 Sup. Ct. 912, 39 L. Ed. 1108; Marriott v. Brune, 9 How. 632, 13 L. Ed. 282.

The duties, toll, tribute, or tariff payable upon merchandise exported or imported. These are called "customs" from having been paid from time immemorial. Expressed in law Latin by *custuma*, as distinguished from *consuetudines*, which are usages merely. 1 Bl. Comm. 314.

—Customs consolidation act. The statute 16 & 17 Vict. c. 107, which has been frequently amended. See 2 Steph. Comm. 563.

CUSTOMS COURT. A court of the United States, created by act of congress in 1909, to hear and determine appeals from the decisions of the revenue officers in the imposition and collection of customs-duties. It is composed of a chief judge and four associates, and sits at Washington.

CUSTOS. Lat. A custodian, guard, keeper, or warden; a magistrate.

—Custos brevium. The keeper of the writs. A principal clerk belonging to the courts of

queen's bench and common pleas, whose office it was to keep the writs returnable into those courts. The office was abolished by 1 Wm. IV. c. 5.—**Custos ferarum.** A gamekeeper. Townsh. Pl. 265.—**Custos horrei regii.** Protector of the royal granary. 2 Bl. Comm. 394. —**Custos maris.** In old English law. Warden of the sea. The title of a high naval officer among the Saxons and after the Conquest, corresponding with *admiral*.—**Custos morum.** The guardian of morals. The court of queen's bench has been so styled. 4 Steph. Comm. 377. —**Custos placitorum coronæ.** In old English law. Keeper of the pleas of the crown. Bract. fol. 14*b*. Cowell supposes this office to have been the same with the *custos rotulorum*. But it seems rather to have been another name for "coroner." Crabb, Eng. Law, 150; Bract. fol. 136*b*.—**Custos rotulorum.** Keeper of the rolls. An officer in England who has the custody of the rolls or records of the sessions of the peace, and also of the commission of the peace itself. He is always a justice of the quorum in the county where appointed and is the principal civil officer in the county. 1 Bl. Comm. 349; 4 Bl. Comm. 272.—**Custos spiritualium.** In English ecclesiastical law. Keeper of the spiritualities. He who exercises the spiritual jurisdiction of a diocese during the vacancy of the see. Cowell.—**Custos temporalium.** In English ecclesiastical law. The person to whom a vacant see or abbey was given by the king, as supreme lord. His office was, as steward of the goods and profits, to give an account to the escheator, who did the like to the exchequer.—**Custos terræ.** In old English law. Guardian, warden, or keeper of the land.

Custos statum hæredis in custodia existentis meliorem, non deteriorem, facere potest. 7 Coke, 7. A guardian can make the estate of an existing heir under his guardianship better, not worse.

CUSTUMA ANTIQUA SIVE MAGNA. (Lat. Ancient or great duties.) The duties on wool, sheep-skin, or wool-pelts and leather exported were so called, and were payable by every merchant, stranger as well as native, with the exception that merchant strangers paid one-half as much again as natives. 1 Bl. Comm. 314.

CUSTUMA PARVA ET NOVA. (Small and new customs.) Imposts of 3d. in the pound, due formerly in England from merchant strangers only, for all commodities, as well imported as exported. This was usually called the "aliens duty," and was first granted in 31 Edw. I. 1 Bl. Comm. 314; 4 Inst. 29.

CUT. A wound made with a sharp instrument. State v. Patza, 3 La. Ann. 512; State v. Cody, 18 Or. 506, 23 Pac. 891; State v. Mairs, 1 N. J. Law, 453.

CUTCHERRY. In Hindu law. Corrupted from *Kachari*. A court; a hall; an office; the place where any public business is transacted.

CUTH, COUTH. Sax. Known, knowing, *Uncuth*, unknown. See COUTHUTLAUGH, UNCUTH.

CUTHRED. A knowing or skillful counsellor.

CUTPURSE. One who steals by the method of cutting purses; a common practice when men wore their purses at their girdles, as was once the custom. Wharton.

CUTTER OF THE TALLIES. In old English law. An officer in the exchequer, to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, etc.

CUTWAL, KATWAL. The chief officer of police or superintendent of markets in a large town or city in India.

CWT. A hundred-weight; one hundred and twelve pounds. Helm v. Bryant, 11 B. Mon. (Ky.) 64.

CY. In law French. Here. (*Cy-apres*, hereafter; *cy-devant*, heretofore.) Also as, so.

CYCLE. A measure of time; a space in which the same revolutions begin again; a periodical space of time. Enc. Lond.

CYNE-BOT, or CYNE-GILD. The portion belonging to the nation of the mulct for slaying the king, the other portion or *were* being due to his family. Blount.

CYNEBOTE. A mulct anciently paid by one who killed another, to the kindred of the deceased. Spelman.

CYPHONISM. That kind of punishment used by the ancients, and still used by the Chinese, called by Staunton the "wooden collar," by which the neck of the malefactor is bent or weighed down. Enc. Lond.

CY-PRES. As near as [possible.] The rule of *cy-pres* is a rule for the construction of instruments in equity, by which the intention of the party is carried out *as near as may be*, when it would be impossible or illegal to give it literal effect. Thus, where a testator attempts to create a perpetuity, the court will endeavor, instead of making the devise entirely void, to explain the will in such a way as to carry out the testator's general intention as far as the rule against perpetuities will allow. So in the case of bequests to charitable uses; and particularly where the language used is so vague or uncertain that the testator's design must be sought by construction. See 6 Cruise, Dig. 165; 1 Spence, Eq. Jur. 532; Taylor v. Keep, 2 Ill. App. 383; Beekman v. Bonsor, 23 N. Y. 308, 80 Am. Dec. 269; Jackson v. Brown, 13 Wend. (N. Y.) 445; Doyle v. Whalen, 87

Me. 414, 32 Atl. 1022, 31 L. R. A. 118; Philadelphia v. Girard, 45 Pa. 28, 84 Am. Dec. 470.

CYRCE. In Saxon law. A church.

—**Cyricbryce.** A breaking into a church. Blount.—**Cyricsceat.** (From *cyric*, church, and *sceat*, a tribute.) In Saxon law. A tribute or payment due to the church. Cowell.

CYROGRAPHARIUS. In old English law. A cyrographer; an officer of the *banous*, or court of common bench. Fleta, lib. 2, c. 36.

CYROGRAPHUM. A chirograph, (which see.)

CZAR. The title of the emperor of Russia, first assumed by Basil, the son of Basilides, under whom the Russian power began to appear, about 1740.

CZARINA. The title of the empress of Russia.

CZAROWITZ. The title of the eldest son of the czar and czarina.